



A highly stylized, cursive handwritten signature in black ink, featuring large loops and a long, sweeping underline that extends to the right.

Fraserburg

June 1887





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

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EDITED BY

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

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**VOL. I.**

TITLES—"Aliens" to "Liquor Licensing Acts."

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PUBLISHED BY AUTHORITY.

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CAPE TOWN :  
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## INTRODUCTORY NOTE.

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THE necessity for a revision of the Statute Law of the Colony has long been recognized, and for some years past a sum of money has annually been voted by Parliament for the codification of the Statutes. The codification scheme was, however, abandoned, and we were authorized by the Government to bring out this revised edition, which, it will at once be observed, has been prepared on an entirely different basis from the first edition. The various Statutes, instead of being printed, as hitherto, simply in their chronological order, have been arranged alphabetically according to the subjects to which they relate, all enactments and portions of enactments dealing with the same subject being grouped together.

The expediency of this innovation may perhaps be questioned by some who have been long accustomed to the chronological order; but the advantages of the alphabetical arrangement—which has been adopted in the Australian colonies—are obvious, and we had, moreover, the strongly expressed opinion of the Honourable the Attorney-General in its favour.

The chief difficulty in carrying out the present arrangement has been occasioned by the “patchy” nature of many of the Statutes, it being by no means uncommon to find several subjects of a totally different character treated of in the same Act. This has rendered it necessary to print portions of a large number of Acts more than once.

The alphabetical arrangement was in itself a matter of considerable difficulty. We have endeavoured to produce one which will, we trust, be found *practically* useful and convenient: for, in the words of the learned and eminent compilers of the first volume of the Statute Law, “A scientific, methodical arrangement of the laws under certain artificial heads, indicating the particular department of polity intended to be embraced, might be useful for the philosopher, and perhaps for the legislator, but for all practical uses by the public in general or by the practitioners of the law, we apprehend it would be of little use.”

Advantage has been taken of the provisions of Sect. 12 of Act 5 of 1883 to embody alterations made in the Statutes by subsequent legislation.

The text of every enactment has been carefully compared with the certified original in the office of the Registrar of the Supreme Court, and it may not be amiss to mention that several discrepancies were found to exist between the original and the published copies now in use.

This Edition comprises the whole of the Statute Law up to and including the Acts passed during the Session of 1886. It consists of three volumes, the first two containing the text of the Acts, and the last a full Chronological Table and a complete Alphabetical Index.

*March, 1887.*

J. F.  
H. T.  
E. M. J.



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<ol style="list-style-type: none"> <li>1. Charter of Justice.</li> <li>2. <del>Repealed</del> (E. of Court created, &amp;c.)</li> <li>3. <del>Repealed</del> (Rules of Court).</li> <li>4. <del>Repealed</del> Judge's Powers in (vacation).</li> <li>5. <del>Repealed</del> §§ 9-18 (High Court)</li> <li>6. <del>Repealed</del> 5-1879, (E. of Court and Appeals)</li> <li>7. <del>Repealed</del> 12-1880 (Appeals from High Court).</li> </ol>	<hr style="width: 50%; margin: 0 auto;"/>	<ol style="list-style-type: none"> <li>8. <del>Repealed</del> 1882 (Increase of number of Judges, &amp;c.)</li> <li>9. <del>Repealed</del> 41-1882, §§ 1, 2 and 4 (Service of Process by Telegraph).</li> <li>10. <del>Repealed</del> 17-1886, (Appel Court and Sheriffs' Duties)</li> <li>11. <del>Repealed</del> 1861 (Salary of Puisne Judges secured).</li> <li>12. <del>Repealed</del> 2-1861 (Judges' Pensions).</li> </ol>
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except §§ 22 & 23

§§ 1-5 repealed

His Majesty's Royal Charter for the better and more effectual Administration of Justice within the Colony of the Cape of Good Hope (1).

William the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

*To all to whom these presents shall come,*

GREETING :—

WHEREAS it is expedient to make provision for the better and more effectual administration of justice in our Colony of the Cape of Good Hope, and in the several territories and settlements dependent thereupon, and for that purpose to constitute within Our said Colony and its dependencies one Supreme Court of Justice, to be holden in the manner and form hereinafter mentioned: Now know ye, that we of our special grace, certain knowledge, and mere motion, have thought fit to grant, direct, order, and appoint, and by these presents do accordingly for us, our heirs and successors, grant, direct, order, and appoint, that there shall be within Our said Colony of the Cape of Good Hope, a court which shall be called "The Supreme Court of the Colony of the Cape of Good Hope."

Preamble.

Creation of the supreme court.

2. And we do hereby create, erect, and constitute the said Supreme Court to be a Court of Record.

A court of record.

3. And we do further will, ordain, and appoint, that the said Supreme Court of the Colony of the Cape of Good Hope shall consist of and be holden by and before one Chief Justice and two (2) Puisne Judges, and that the said Chief Justice shall be called and known by the name and style of the Chief Justice of the Colony of the Cape of

Its constitution.

<sup>1</sup> By a proclamation of Governor Sir Benjamin D'Urban, K.C.B., under the 55th Section, dated 13th February, 1834, this charter took effect in the colony from the 1st March, 1834.

<sup>2</sup> Increased to 3 by Act 10, 1855; to 4 by Act 21, 1864; to 5 by Act 5, 1879; to 6 by Act 12, 1880; and to 8 by Act 40, 1882.



Charter of Justice.

Appointment of judges by letters patent under the seal of the colony.

Power of the governor, in case of death, resignation, sickness, or incapacity of a judge, to appoint a fit person to act in the place of such judge.

Tenure of office during good behaviour.

Power of suspension by governor with advice of the executive council, in case of misconduct.

Confirmation or disallowance of such suspension.

Good Hope, and which said Chief Justice and Puisne Judges shall be respectively barristers in England or Ireland, or advocates admitted to practise in our Courts of Session in Scotland or in the said Supreme Court. And which said Chief Justice and Puisne Judges shall, from time to time, be nominated and appointed to such their offices by us, our heirs and successors, by letters patent under the public seal of the said Colony, to be issued in pursuance of any warrants or warrant to be from time to time for that purpose granted by us, our heirs and successors, under our or their sign manual.

4. And we do hereby declare, ordain, and grant that upon the death, resignation, sickness, or incapacity of the said Chief Justice, or any of the said Puisne Judges, or in the case of the absence of any of them from the said Colony, or in case of any such suspension from office as hereinafter mentioned, of any such Chief Justice or Puisne Judge, it shall and may be lawful to and for the governor of our said Colony for the time being, by letters patent, to be by him for that purpose made and issued under the public seal of the said Colony, to nominate and appoint some fit and proper person or persons to act as and in the place and stead of any such Chief Justice, or Puisne Judge, so dying or resigning, or labouring under such sickness or incapacity as aforesaid, or being so absent as aforesaid from the Colony, or being so suspended until the vacancy or vacancies so created by any such death or resignation or sickness or incapacity, or absence or suspension, shall be supplied by a new appointment, to be made in manner aforesaid by us, our heirs and successors, or until the Chief Justice, or Puisne Judge, so becoming sick or incapable, or being absent or suspended, as aforesaid, shall resume such his office and enter into the discharge of the duties thereof.

5. And we do further will, ordain, and grant, that the said Chief Justice and Puisne Judges shall hold such their offices during their good behaviour: Provided, nevertheless, that it shall and may be lawful for the Governor of our said Colony for the time being, by any order or orders to be by him for that purpose made and issued under the public seal of the said Colony, with the advice of the Executive Council of Government of the said Colony, or the major part of them, upon proof of the misconduct of any such Chief Justice or Puisne Judge, as aforesaid, to suspend him from such his office and from the discharge of the duties thereof: Provided, that in every such case the said Governor shall immediately report for our information, through one of our principal secretaries of state, the grounds and causes of such suspension.

6. And we do hereby reserve to us, our heirs and successors, full power and authority to confirm or disallow such suspension from office as aforesaid, of any such Chief Justice or Puisne Judge. And we do hereby further reserve to us, our heirs and successors, full power and authority upon sufficient proof to our or their

satisfaction of any such misconduct, to remove and displace any such Chief Justice or Puisne Judge from such his office. Charter of Justice.

7. And we do hereby give and grant to our said Chief Justice, for the time being, rank and precedence above and before all our subjects whomsoever within the said Colony of the Cape of Good Hope, and the territories and places dependent thereupon, excepting the Governor or Lieutenant-Governor for the time being, thereof, and the Commander-in-Chief of our forces for the time being within the same, and excepting all such persons as by law or usage in England take place before our Chief Justice of our Court of King's Bench. Rank and precedence of chief justice.

8. And we do hereby give and grant to the said Puisne Judges for the time being, rank and precedence within our said Colony of the Cape of Good Hope, and the territories and places dependent thereupon, next after our said Chief Justice of our said Colony, for the time being. Of puisne judges.

9. And we do hereby declare that the said Puisne Judges shall take rank and precedence between themselves, according to the priority of their appointments respectively. Seniority of puisne judges.

10. And we do further grant, ordain, and appoint, that the said Supreme Court of the Colony of the Cape of Good Hope shall have and use, as occasion may require, a seal, bearing a device and impression of our royal arms, within an exergue or label surrounding the same, within this inscription, "The Seal of the Supreme Court of the Cape of Good Hope." Seal of supreme court.

11. And we do hereby ordain, grant, and appoint, that the said seal shall be delivered to, and shall be kept in the custody of the said Chief Justice, with full liberty to deliver the same to any Puisne Judge of the said Court, for any temporary purpose; and in case of vacancy of, or suspension from, the office of Chief Justice, the same shall be delivered over to, and kept in the custody of such person as shall be appointed by the said Governor of our said Colony, to act as and in the place and stead of the said Chief Justice. Custody of the seal.

12. And we do further grant, ordain, and declare, that the said Chief Justice, and the said Puisne Judges, so long as they shall hold their offices respectively, shall be entitled to have and receive such salaries as shall be granted to them by us, our heirs and successors, which salaries shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fee of office, perquisite, emolument, or advantages, other than and except the said salaries, shall be accepted, received, or taken by any such Chief Justice or Puisne Judge, on any account, or any pretence whatsoever. <sup>(1)</sup> Salaries of Judges.

13. And we do further ordain, appoint, and declare, that no such Chief Justice or Puisne Judge as aforesaid, shall accept, take, or Forfeiture of judicial office by acceptance of other office.

<sup>1</sup> See Act 36 of 1882, which provides for payment of allowance to chief justice as president of the Legislative Council.

Charter of Justice. perform any other office, place of profit, or emolument, within our said Colony, and that the acceptance of any such other office or place as aforesaid shall actually vacate and avoid such his office of Chief Justice or Puisne Judge, as the case may be, and the salary thereof shall cease accordingly, from the time of the acceptance of any such other office or place. <sup>(1)</sup>

Officers of the court. 14. And we do hereby ordain, appoint, and declare, that there shall be attached, and belong to the said Court, the following officers, (that is to say),—one officer to be styled the Registrar or Prothonotary and Keeper of Records of the said Court, and one other officer to be styled the Master thereof, together with such and so many other officers as to the Chief Justice of the said Court for the time being, shall from time to time appear to be necessary for the administration of justice, and the due execution of the powers and authorities which are granted and committed to the said Court by these our letters patent: Provided nevertheless, that no new office shall be created in the said Court, unless the Governor of the said Colony, or Lieutenant-Governor for the time being, shall first signify his approbation thereof to the said Chief Justice for the time being, in writing, under the hand of such Governor or Lieutenant-Governor.

Mode of appointment of officers. 15. And we do further ordain and direct, that all persons who shall and may be appointed to the offices of Registrar or Prothonotary and Keeper of Records, or Master of the said Court, and that all persons who shall be appointed in the said court to any offices, of which the duties shall correspond to those performed by the Master or Prothonotary of any or either of our Courts of Record at Westminster, shall be so appointed by us, our heirs and successors, by warrant, under our or their Royal Sign Manual, and that all persons who shall and may be appointed to any other office within the said Supreme Court, shall be so appointed by the Governor for the time being of the said Colony.

Duration of office. 16. And we do further direct and appoint, that the several officers of the said Court other than and except the said Chief Justice and Puisne Judges thereof shall hold their respective offices therein during the pleasure of us, our heirs and successors.

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 <sup>(1)</sup>.

Advocates of the late court. 18. And we do further authorize and empower the said Supreme 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

<sup>1</sup> See § 2, Act 12, 1858, and § 20, Act 16 of 1873.

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 <sup>(2)</sup>. 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 un-enrolled 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 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 Authority of the court, in case of insufficiency in number of barristers or attorneys, to allow attorneys to act as barristers, and vice versa.

<sup>2</sup> See § 3, Act 12, 1858 and § 21, Act 16, of 1873. See also Act 27, 1883.

Charter of Justice. attorneys, solicitors, and proctors, during the time of such insufficiency only.

Annual appointment of sheriff. 25. 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. <sup>(1)</sup>

Duration of sheriff's office. 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.

Execution of all sentences, decrees, orders, commands, processes, &c., of the court, by sheriff or his deputies. 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.

Authority to the governor to re-appoint 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

<sup>1</sup> See Ord. 37 (Regulating Sheriffs' duties.)

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. Charter of Justice.

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. Execution of process by a person specially appointed, when the sheriff cannot by law execute.

30. And we do hereby further ordain, direct, and appoint, that the said Supreme Court of the Colony of the Cape of Good Hope shall have cognizance of all pleas, and jurisdiction in all causes, whether civil, criminal, or mixed, arising within the said colony, with jurisdiction over our subjects, and all other persons whomsoever residing and being within the said Colony, in as full and ample a manner and to all intents and purposes, as the supreme court of justice now existing within the said colony now hath or can lawfully exercise the same. <sup>(1)</sup> Jurisdiction of the supreme court.

31. And we do further give and grant to the said Supreme Court of the Colony of the Cape of Good Hope, full power, authority, and jurisdiction, to apply, judge, and determine upon, and according to the laws now in force within our said Colony, and all such other laws as shall at any time hereafter be made and established for the peace, order, and government thereof by us, our heirs and successors, with the advice and consent of Parliament, or in our or their Privy Council, or by the Governor of the said Colony by the advice of the Legislative Council of Government thereof. Laws according to which the court is to judge and determine.

32. And we do further give and grant to the said Supreme Court, full power, jurisdiction, and authority to review the proceedings of all inferior courts of justice within our said Colony, and, if necessary, to set aside or correct the same <sup>(2)</sup>; and in the exercise of such jurisdiction, powers, and authorities as aforesaid, our will and pleasure is, that the pleadings and proceedings of the said Supreme Court and the said Circuit Courts shall be carried on, Power of review of proceedings of all inferior courts.

<sup>1</sup> See § 1, Ord. 40.

<sup>2</sup> See § 4, Ord. 40, § 4, Act 21 of 1876. §§ 22 *et seq.* Act 5, 1879; § 16, Act 40, 1882, and §§ 1 and 5, Act 17, 1886.

- Charter of Justice. and the sentences, decrees, judgments, and orders thereof pronounced and declared, in open Court, and not otherwise, and that the several pleadings and proceedings of the said Court shall be in the English <sup>(1)</sup> language; and that in all criminal cases, the witnesses against and for any accused person or persons shall deliver their evidence *vivâ voce*, and in open Court.
- Proceedings in open court, and in the English language. 33. And we do further will, direct and appoint, that for the conduct and decision of all civil suits, actions, and causes depending before the said Supreme Court, and of all questions, matters, and things arising in the course of any such civil suits, actions, or causes, any two of the judges of the said Supreme Court shall form a quorum, and shall be competent to execute all and every the powers, jurisdictions, and authorities hereby granted to and vested in the said Supreme Court, and that in the event of any difference of opinion between such two judges, the decision of the said Court shall, in any such case, be suspended until all the three judges shall be present, and the decision of such two judges, when unanimous, or of the majority of such three judges in case of any difference of opinion, shall in all cases be deemed and taken to be the decision of the whole court <sup>(2)</sup>.
- Quorum of the court in civil suits. 34. And we do further ordain, direct and appoint that in any criminal case depending before the said Supreme Court, the trial of the person or persons accused shall be before any one or more of the judges of the said Court and a jury of nine men, who shall concur in every verdict to be given on the trial of any such accused party or parties; and every such verdict shall be delivered in open Court by the mouth of the foreman of every such jury, and shall be thereupon recorded and read over to such jury before they are discharged from attendance on the said Court. Provided nevertheless, and we do further declare, and direct, that no person within the said Colony, who may be otherwise competent to serve on any such jury as aforesaid shall be or be taken to be incompetent to serve on such jury by reason of his ignorance or supposed ignorance of the English language.
- Trial by jury in criminal cases. 35. And we do further ordain and direct, that all the duties heretofore performed by the Orphan Chamber within our said Colony, shall henceforth be performed by the Master for the time being of the said Supreme Court, and that the said Orphan Chamber shall be, and the same is hereby, abolished <sup>(3)</sup>.
- Delivery of verdict in open court. 36. And we do further direct and appoint, that the said Supreme Court shall at all times be holden at Cape Town, in our said Colony.
- Jurors ignorant of the English language. 37. And we do further ordain and direct, that it shall and may be lawful for the Governor of the said Colony, by any proclamation or proclamations to be by him for that purpose issued, to apportion
- Abolition of orphan chamber. Division of the colony into circuit districts.

<sup>1</sup> But see Act 21 of 1884. As to quorum see § 3 Act 40, 1882.

<sup>2</sup> During vacation one judge can discharge all functions of the court. See Act 23 of 1875.

<sup>3</sup> See Ords. 103, 104, 105.

and divide the said Colony into two or more districts, and to fix and ascertain the boundaries and limits of every such district, and such boundaries and limits, from time to time, to alter as occasion may require: Provided always, that such apportionment of the said Colony into such districts as aforesaid, be made in such manner as to such Governor may appear to be best adapted for enabling the inhabitants of the said Colony to resort with ease and convenience to the Circuit Courts, to be therein established as after mentioned.

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38. And we do further grant, ordain, and appoint, that Courts, to be called Circuit Courts, shall be holden twice at the least in each year, in each of the districts into which the said Colony may be so divided as aforesaid: and each of the said Circuit Courts shall be holden by the Chief Justice or by one of the said Puisne Judges of the said Supreme Court of the Colony of the Cape of Good Hope, at such times, and at such one, or more, place or places within each of the said districts, as the Governor of the Colony of the Cape of Good Hope shall from time to time direct and appoint. <sup>(1)</sup>

Circuit courts held twice at least in each year before judges of the supreme court.

39. And we do direct and appoint, that each of the said Circuit Courts shall be respectively Courts of Record, and shall within the district in which it may be holden, have, and exercise all such and the same jurisdiction, powers, and authority, as is hereby vested in the said Supreme Court of the Colony of the Cape of Good Hope, throughout the whole of the said Colony <sup>(2)</sup>;—and that all crimes and offences, cognizable in the said Circuit Courts, shall be inquired of, heard and determined by the said Circuit Judge, and a jury of nine men; and that the verdict of such jury shall be pronounced and recorded in the manner before directed, respecting the verdicts of juries to be given in the said Supreme Court; and that the provision hereinbefore <sup>(3)</sup> contained respecting the ignorance or supposed ignorance of the English language of any person otherwise competent to serve on any jury in the said Supreme Court, shall also extend and apply to persons serving, or who may be required to serve, as jurors in the said Circuit Courts, or any of them.

Jurisdiction of circuit courts, and mode of proceeding therein in criminal cases.

40. Provided nevertheless, and we do further ordain and direct, that if upon the trial of any crime or offence before any of the said Circuit Courts nine good and lawful men, being duly summoned, shall not appear to form a jury, then, in all such cases, such trial shall be had before the Circuit Judge and any number of the jury who shall appear, not being less than six, who shall be sworn, and have the same power, as if the full number of nine had appeared. <sup>(4)</sup>

Number of jurors, and provision in case of a deficiency of jurors.

41. Provided also, and we do further direct and appoint, that

Decision of civil suits.

<sup>1</sup> See § 37, Act 21 of 1864.

<sup>2</sup> See § 2, Ord. 40.

<sup>3</sup> § 34.

<sup>4</sup> See § 12, Ord. 84.



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all civil suits or actions, depending in any of the said Circuit Courts, shall be tried and decided by the judge of such Court alone, and without a jury: [Remainder of Section superseded by Section 13, Act 5, 1879.]

42. [Repealed by Section 12, Act 5 of 1879.]

43. [Repealed by Section 12, Act 5 of 1879.]

Removal of suits from supreme court to circuit court, and vice versa.

44. And we do further direct and appoint, that as often as any action or suit shall be brought in the Supreme Court, or in either of the said Circuit Courts, respectively, and it shall be made to appear to the Court, before which such action or suit may be pending, that such action may be more conveniently heard or determined either in the said Supreme Court or in some other of the said Circuit Courts, it shall be lawful for such Court to permit and allow such action or suit to be removed to such other court: and such allowance shall be certified by the judge, together with the process and proceedings in such action or suit, to the Court into which such action or suit shall be intended to be removed; and thereupon it shall be lawful for such last-mentioned Court and such Court is hereby required, to proceed in such action or suit in like manner, as if the same had been originally commenced and prosecuted in such last-mentioned Court.

Transmission to the governor by the presiding judge of report of proceedings on trials resulting in condemnation to death, transportation, or banishment.

45. And we do further ordain and direct, that no judgment or sentence, either of the said Supreme Court, or of any such Circuit Court as aforesaid, in any criminal case, whereby any person shall be condemned to death, or transportation, or banishment from the said Colony, shall be carried into execution, until a report of all the proceedings upon any such trial hath been laid before, or transmitted to the Governor of the said Colony by the Chief Justice or Puisne Judge presiding at any such trial, nor until such Governor shall have authorized and approved the execution of such sentence.

Framing and publication of rules, orders, and regulations of supreme and circuit courts.

46. And we do further grant, ordain, direct, and appoint 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, 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 the time and place of holding the said Supreme Court; and touching the forms and manner of proceeding to be observed in the said Supreme Court and Circuit Courts respectively<sup>(1)</sup>; and the practice and pleadings upon all actions, suits, and other matters, both civil and criminal, indictments, and informations to be therein brought; the appointing of commissioners to take bail and examine witnesses; the examination of witnesses, *de bene esse*,<sup>(2)</sup> and allowing the same as evidence; the proceedings of the Sheriff and other ministerial officers of the said Courts respectively; the process of the said Courts, and the mode of executing the same; the summoning, impannelling, and challeng-

<sup>1</sup> See §§ 3 and 4 of Act 15, 1867.

<sup>2</sup> See Ord. 72, § 40.

ing of jurors; the admission of barristers, advocates, attorneys, solicitors, and proctors; the fees, poundage or perquisites to be lawfully demanded by, and payable to, any officers, attorneys, solicitors, and proctors in the said courts respectively; and touching and concerning all such other matters and things necessary for the proper conduct and dispatch of business in the said Supreme and Circuit Courts respectively; and all such rules, orders, and regulations from time to time, to revoke, alter, amend, or renew, as occasion may require; Provided always, that no such rules, orders, and regulations shall be repugnant to this our Charter, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the dispatch of the business of the said Supreme Court and Circuit Courts respectively, and that all such rules and forms of practice, process, and proceeding shall, so far as the circumstances of the said Colony may permit, be framed with reference to the corresponding rules and forms in use in our Courts of Record at Westminster, and that the same be drawn up in plain, succinct, and compendious terms, avoiding all unnecessary repetitions and obscurity, and promulgated in the most public and authentic manner in the said Colony, for three months at least <sup>(1)</sup>, before the same shall operate and take effect: Provided always, that all such rules, orders, and regulations shall forthwith be transmitted to us, our heirs and successors, under the Seal of the said Court, for our or their approbation or disallowance <sup>(1)</sup>.

Charter of Justice.

Transmission of rules for the royal approbation or disallowance.

47. And whereas it may be expedient and necessary to make provision respecting the qualifications of jurors, to serve in the said Courts and the mode of enforcing the attendance of such jurors, and it may also be expedient and necessary to make provision for the extension of trial by jury in the said Supreme Court, <sup>(2)</sup> or Circuit Courts, in civil cases: Now, we do further ordain, direct, and appoint, that it shall and may be lawful for the Governor, for the time being, of our said Colony, with the advice of the Legislative Council of Government thereof, to make and establish all such wholesome laws, statutes, and ordinances, as to them may seem meet, respecting the matters aforesaid; which laws, statutes, and ordinances shall forthwith be transmitted to us for our approbation or disallowance, in the manner prescribed by law respecting all other the laws, statutes, and ordinances made, or to be made, by the said Governor with the advice of the said Council.

Provision for the passing of laws respecting the qualification of jurors.

48. And whereas it may be expedient to establish within our said Colony Courts of Request, and other Courts having jurisdiction in civil cases of small amount or value, and in cases of crimes or offences not punishable by death or transportation: Now we do hereby authorize and empower the Governor, for the time being, of our said Colony, with the advice of the Legislative Council of

Provision for the constitution of inferior courts having civil and criminal jurisdiction.

<sup>1</sup> See Act 15 of 1867.

<sup>2</sup> See Act 7, 1854, and 30, 1874.

Charter of Justice. Government thereof, by any laws and ordinances to be from time to time made for that purpose, to erect, constitute, and establish all such Courts of Request and other Courts having jurisdiction in civil and criminal cases within our said Colony: Provided that the jurisdiction of such Civil Courts shall not be extended to any case wherein the sum or matter in dispute shall exceed the amount or value of forty pounds sterling money, or wherein the title to any lands or tenements, or any fee, duty, or office may be in question, or whereby rights in future may be bound: And provided also, that the jurisdiction of such Courts in criminal cases shall not be extended to any case wherein any person may be accused of any crime punishable by death transportation, or banishment from the said Colony <sup>(1)</sup>.

Framing of rules  
for such courts.

49. And we do hereby authorize and empower the said Governor, by and with the advice of the said Chief Justice and Puisne Judges of the said Supreme Court, for the time being, to make, ordain, and establish all necessary rules, orders, or regulations respecting the manner and form of proceeding in any such last-mentioned Courts, and respecting the local limits within which the jurisdiction thereof is to be exercised, and respecting the manner and form of carrying the judgments and orders of such Courts into execution, and all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of the said Courts <sup>(2)</sup>.

Right of appeal to  
the Privy Council, in  
all cases beyond  
£500.

50. And we do hereby grant, ordain, and direct, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action depending in the said Supreme Court of the Colony of the Cape of Good Hope, to appeal to us, our heirs and successors, in our or their Privy Council, against any final judgment, decree, or sentence of the said Court, or against any rule or order, made in any such civil suit or action, having the effect of a final or definitive sentence; and which appeals shall be made subject to the rules, regulations, and limitations following, that is to say: in case any such judgment, decree, order, or sentence shall be given or pronounced, for or in respect of any sum or matter at issue, above the amount or value of five hundred pounds sterling, or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim, demand, or question, to or respecting property, or any civil right amounting to or of the value of five hundred pounds sterling, the person or persons feeling aggrieved by any such judgment, decree, order or sentence of the supreme court may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said Supreme Court, by petition, for leave to appeal therefrom to us, our heirs and successors, in our or their Privy Council; and in case such leave to appeal shall be prayed by the party or

<sup>1</sup> See Act 20 of 1856 (Resident Magistrates' Courts).

<sup>2</sup> See § 7, Act 21 of 1876 and § 13 Act 17, 1886.

parties, who is or are directed to pay any sum of money, or perform any duty, the said Supreme Court shall, and is hereby empowered, either to direct that the judgment, decree, order, 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 in each case appear to be most consistent with real and substantial justice. And in case the said Supreme Court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons, in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs and successors, shall think fit to make thereupon; or in case the said Supreme Court shall direct the execution of any judgment, decree, order, or sentence to be suspended pending the said appeal, the person or persons against whom the same shall have been given, shall, in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs and successors, shall think fit to make thereupon; and in all cases, we will and require that security shall also be given by the party or parties appellant, to the satisfaction of the Supreme Court, for the prosecution of the appeal, and for the payment of all such costs as may be awarded by us, our heirs and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petitions for leave to appeal, then, and not otherwise, the said Supreme Court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal, to us, our heirs and successors, in our or their Privy Council, in such manner, and under such rules, as are observed in appeals made to us from our plantations or Colonies.

51. And we do hereby reserve to ourselves, our heirs and successors, in our or their Privy Council, full power and authority, upon the humble petition, at any time, of any person or persons aggrieved by any judgment or determination of the said Supreme Court, to admit his, her, or their appeal therefrom, upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as we or they shall think fit, and to reverse, correct, or vary such judgment or determination, as to us or them shall seem meet. And it is our further will and pleasure, that in all cases of appeal allowed by the said Supreme Court, or by us, our heirs and successors, the said Court shall certify and transmit to us, our heirs or successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees, and orders, had or made in such causes appealed, so far as the same have relation to

Charter of Justice.

Power of supreme court to order or suspend execution of sentence pending the appeal: and security in either case.

Security for the prosecution of the appeal.

Power of the court of appeal to reverse, correct, or vary judgment.

Transmission of proceedings.

Charter of Justice. the matter of appeal; such copies to be certified under the Seal of the said Court.

Execution of judgments or orders in appeal.

52. And we do further direct and ordain, that the said Supreme Court shall, in all cases of appeal to us, our heirs and successors, conform to and execute such judgments and orders, as we shall think fit to make in the premises, in such manner, as any original judgment, decree, or decretal order or rule by the said Supreme Court of the Colony of the Cape of Good Hope could or might have been executed.

Aid and assistance of authorities, civil and military.

53. And we hereby strictly charge and command all Governors, Commanders, Magistrates, Ministers, civil and military, and all our liege subjects within and belonging to the said Colony, that in the execution of the several powers, jurisdictions, and authorities hereby granted, made, given, or created, they be aiding and assisting, and obedient in all things as they will answer the contrary at their peril.

Reservation of power of repeal or alteration of charter by letters patent.

54. Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend or be construed to extend, to prevent us, our heirs and successors, from repealing these presents, or any part thereof, or from making from time to time, as occasion may require, such further or other provision by Letters Patent, for the administration of justice, civil and criminal, within the said Colony, and the places now or at any time hereafter to be annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample a manner, as if these presents had not been made; these presents, or anything contained to the contrary therein, in anywise notwithstanding.

And whereas our royal brother and predecessor, his late Majesty King George the Fourth, by Letters Patent, under the Great Seal of the United Kingdom aforesaid, bearing date at Westminster, the twenty-fourth day of August, in the eighth year of his reign, did grant, direct, order, and appoint, that there should be within the Colony of the Cape of Good Hope, a Court, which should be called the Supreme Court of the Colony of the Cape of Good Hope, and it was thereby amongst other things provided that nothing therein contained should extend or be construed to extend, to prevent us, our heirs and successors, from repealing the said Letters Patent or any part thereof, or from making such further or other provision, by Letters Patent for the administration of justice, civil and criminal, within the said Colony, and the places then or at any time thereafter to be annexed thereto as to us, our heirs and successors, should seem fit, in as full and ample a manner as if the said Letters Patent had not been made; the said Letters Patent, or anything contained to the contrary therein, in anywise notwithstanding:

Repeal of former charter.

Now, we do, hereby in virtue and in pursuance of the powers so reserved to us as aforesaid, in and by the said Letters Patent, repeal and revoke the beforementioned Letters Patent, and each and every part thereof: Provided nevertheless, that all decrees, judgments

and sentences, rules and orders heretofore made by the Courts established by, or by the judges appointed under, the said Letters Patent, or by any or either of such Courts or judges, and that all general rules, orders, and regulations of Court made under and in pursuance thereof, and that all proclamations issued by any Governor of the said Colony in virtue thereof, and that all laws and ordinances promulgated by the Governor of the said Colony, with the advice of the Council of Government thereof for carrying the said Letters Patent, or any part thereof, into effect, shall to all intents and purposes be as binding, conclusive, good, valid, and effectual, as if these presents had not been made.

Charter of Justice.

55. And we do further ordain and direct, that the Governor of our said Colony of the Cape of Good Hope, upon the arrival therein of these presents, shall, by proclamation, notify to the inhabitants of the said Colony the time when the Courts hereby established will be open; and as soon as the judges of the said Supreme Court shall have assumed and entered upon the exercise of their jurisdiction therein, then, and from thenceforth, the Supreme Court of the Colony of the Cape of Good Hope, and the Circuit Courts now established within the same, and the jurisdiction of the said Courts respectively, shall be absolutely abolished, cease, and determine; and every suit, action, complaint, matter, or thing, civil or criminal, which shall be depending in such last-mentioned Courts respectively, shall and may be proceeded upon in the Supreme Court instituted under and by virtue of these presents, or in either of the said Circuits Courts which shall and may have jurisdiction within the district or place in the Colony of the Cape of Good Hope where such action or suit or other matter, civil or criminal, respectively, was depending; and all proceedings, which shall thereafter be had in such action or suit, or other matter, civil or criminal, respectively, shall be conducted in like manner as if such action or suit, or other matter, civil or criminal, had been originally commenced in one or other of the said Courts instituted under these presents. And all the records, muniments, and proceedings whatsoever of and belonging to the said Supreme Court and Circuit Courts established by the said recited Letters Patent shall, from and immediately after the opening of the said Courts respectively instituted by these presents, be delivered over and deposited for safe custody in such of the said Courts respectively instituted under these presents as shall be found most convenient; and all parties concerned shall and may have recourse to the said records and proceedings, as to any other records or proceedings of the said Courts respectively.

Proclamation by governor of the time of the opening of the courts hereby established.

Abolition of courts established under the former charter.

Custody of records of the said courts.

56. And we do hereby further declare and direct, that during the absence from our said Colony of the Cape of Good Hope of the Governor thereof, or if there shall be no person commissioned by us, our heirs and successors, to be the Governor of our said colony, then, and in every such case, all and every the powers hereby granted to and vested in the Governor for the time being of the said Colony,

Power of governor, in his absence, vested in the officer for the time being administering the government.

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shall and may be executed by and vested in the Lieutenant-Governor thereof, or the officer for the time being administering the government thereof.

In witness whereof, we have caused these our Letters to be made Patent. Witness ourself at Westminster, the fourth day of May, in the second year of our reign.

By Writ of Privy Seal,  
BATHURST.

No. 21, 1864.]

[July 26, 1864.]

## AN ACT

*Repealed*  
For Adding to the Number of the Judges of the Supreme Court, and for other purposes.

Preamble.

WHEREAS it has been found that the number of judges of which the Supreme Court, as at present constituted, is insufficient to enable the said judges to hold Courts in the several districts of this Colony as frequently as the wants of the inhabitants require: And whereas, in order to remedy these evils, and to afford, at the same time, to the inhabitants of the Eastern Districts of this Colony the benefit of a local Court, it is expedient to add to the number of the judges of the said Supreme Court, and to enable certain of the judges to form a separate Court, having jurisdiction over the said Eastern Districts, but so, however, as not to interfere with the jurisdiction of the said Supreme Court over every part and portion of the entire 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:—

Repugnant laws repealed.

1. So much of the Royal Letters Patent of His late Majesty King William the Fourth, bearing date at Westminster the fourth of May, in the second year of his reign, commonly called "The Charter of Justice," and so much of any other law, usage, ordinance, or rule of Court, as shall be repugnant to, or inconsistent with any of the provisions of this Act, are hereby repealed.

2. [Superseded by Section 2, Act 40, 1882.]

3. [Sections 3 and 4 lapsed.]

Two judges to form quorum.

5. (1) The number of judges of the said Supreme Court necessary to form a quorum thereof, shall continue to be two, as in the thirty-third section of the said Charter provided, and in case of any difference of opinion between such two judges, the decision of the said Court shall be suspended until three or more judges shall be present, but not longer; and the decision of such two judges, when unanimous, or the majority of such three or more judges, in case of any difference of opinion, shall, in all cases, be deemed and taken to be the decision of the whole Court.

In case of difference of opinion.

<sup>1</sup> See § 3, Act 40, 1882.

Repealed

6. So long as the number of judges of the Supreme Court, for the time being, shall not be less than such quorum as aforesaid, the said Court shall be competent to execute all and every the powers, jurisdiction, and authorities belonging to or vested in the said Court.

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Powers vested in quorum.

7. A Court of justice is hereby established in and for the several districts named in the schedule to this Act, to have and exercise such jurisdiction as is hereinafter specified, and such Court shall be called "The Court of the Eastern Districts of the Cape of Good Hope."

Court in Eastern Districts established

8. [Repealed by Section 3 Act 5, 1879.]

9. The Court of the Eastern Districts hereby created shall have, throughout the districts within and for which it is established, a jurisdiction concurrent with that of the Supreme Court in and over all causes arising and persons residing and being within the said districts.<sup>(1)</sup>

Jurisdiction.

10. The thirtieth, thirty-first, thirty-second, and thirty-fourth sections of the Charter of Justice, and the first, fourth, fifth, forty-eighth, fiftieth, and fifty-fourth sections of the Ordinance No. 40, entitled "Ordinance for regulating the manner of proceeding in Criminal Cases in the Colony," shall apply, *mutatis mutandis*, to the said Court of the Eastern Districts, so far as regards the districts throughout which it shall exercise jurisdiction.

Sections 30, 31, 32, and 34 of Charter of Justice, and Sections 1, 4, 5, 43, 50, and 54 of Ordinance No. 40, regarding proceedings in criminal cases to apply.

11. Nothing contained in this Act shall be construed so as to deprive the Supreme Court aforesaid of any jurisdiction, power, or authority which it does or shall by law possess throughout every part and portion of this Colony.

Not to abrogate from powers of Supreme Court.

12. There shall be attached and belong to the said Court of the Eastern Districts a registrar, who shall keep the records of the said Court, together with so many other officers as the Governor, with the advice of the Chief Justice of the Colony, find necessary and appoint.

Appointment of registrar and other officers.

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,

Oath to be taken by advocate or attorney on enrolment.

<sup>1</sup> Jurisdiction extended by § 6, Act 3, 1865 ; § 17, Act 40, 1882, and § 3, Act 3, 1885.



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shall take and subscribe the like oaths as such person would have taken and subscribed if admitted and enrolled by the Supreme Court.

Attorneys admitted to practise in circuit courts may be enrolled.

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.

When notaries may be allowed to practise as attorneys before Eastern Districts Court.

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.

Persons admitted under two preceding sections not entitled to enrolment in Supreme 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.

When advocates may act as attorneys and attorneys as advocates

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.

Rules of Supreme Court to be in force in Eastern Districts Court, subject to certain omissions, alterations, and adaptations.

20. All and singular the rules and orders of the Supreme Court now in force therein, and numbered from No. 1 to No. 213, shall be in force in the Court of the Eastern Districts, subject, however, for the purpose of this section, to the several omissions, alterations, and adaptations hereinafter mentioned, that is to say :

1. As often as the term Supreme Court is mentioned in any of the said rules and orders, or in any form of, or for, process, civil or criminal, the term "Court of the Eastern Districts" shall be taken to be substituted in its stead.
2. As often as "the registrar of the Supreme Court" is mentioned in any rule, order, or form of process, the registrar of the Court of the Eastern Districts shall be deemed and taken to be the person meant.
3. As often as any process of the Supreme Court in the said rules and orders mentioned is directed or appointed to be witnessed by the Chief Justice of the Colony, the like process issued by the Court of the Eastern Districts, shall be witnessed by the senior of the judges assigned to hold, for the time being, the said last-mentioned Court.

# Repealed

4. The rules and orders following, namely, those numbered 37, 38, 39, 40, 67, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 137, 138, shall not apply to or be in force in the Court of the Eastern Districts, nor so much of the rule or order No. 13 as specifies the number of hours or days which the copy of summons therein mentioned must be served before the day therein prescribed for the appearance of the defendant, nor so much of the rule or order No. 20 as specifies the number of days within which a defendant must plead, answer, or except to the plaintiff's declaration, or make a claim in reconvention.
5. The taxation of costs in the thirty-first rule or order mentioned and therein directed to be made by the Master of the Supreme Court, shall, in regard to the Court of Eastern Districts, be made by the registrar thereof.
6. The several duties connected with the sale of real property attached by legal process, which duties are, by the rules and orders from No. 105 to No. 122 (both inclusive), directed to be performed by the Master of the Supreme Court, shall be performed by the Deputy Sheriff of the District within which the Court of the Eastern Districts, together with the other duties by the said last-mentioned rules and orders imposed upon the Sheriff of the Colony.
7. The records which by the one hundred and eighty-fifth of the rules and orders aforesaid the Registrar of every Circuit Court is directed to transmit to the Registrar of the Supreme Court, shall be transmitted by the Registrar of every Circuit Court holden within the district over which the Court of the Eastern Districts shall have jurisdiction, to the Registrar of such last-mentioned Court.
8. The process in the one hundred and eighty-seventh of the said rules and orders mentioned, and by the said rule authorized to be sued out by the Clerk of the Peace in Cape Town, may be sued out, in regard to any Circuit Court holden within the districts over which the Court of the Eastern Districts shall have the certain jurisdiction by this Act conferred, by the Clerk of the Peace of the district of Resident Magistrate within which the said Court shall be appointed to be holden, or by such other officer as the Governor shall from time to time appoint. <sup>(1)</sup>
9. For the purpose of any Circuit Courts holden for the districts of Uitenhage and Port Elizabeth, or either of them, the following words in the two hundred and fourth rule of court shall be, and the same are hereby expunged, viz., "and in so far as relates to any Circuit Court which shall be holden for the districts of Uitenhage, or Port Elizabeth,

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<sup>1</sup> See Rule of Court No. 376.

Repealed

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or either of them, when there shall not be within the town of Uitenhage, or the town of Port Elizabeth, or jointly within both," and the said rule shall be read as if these words had not been inserted therein.

Rules as regards service of summonses to be fixed by Supreme Court; pending such order by the Eastern Districts Court.

21. The copy of summons in the thirteenth of the rules and orders of Court mentioned, and the copy of declaration and claim and accompanying notice mentioned in the twentieth of the said rules and orders, shall be served upon defendants resident within the districts over which the Court of the Eastern Districts shall have such jurisdiction as aforesaid, such length of time varying with the distance from the said Court of the residences of such defendants respectively, as the judges of the Supreme Court, by any such rule or order thereof, as is hereinafter in the section mentioned, shall prescribe: Provided that, until such rule or order shall be duly promulgated, the Court of the Eastern Districts shall have full power and authority to fix, by any order thereof, issued from time to time to the registrar thereof, such reasonable time or times, in regard to the matters aforesaid, as the said Court shall deem suitable and sufficient.

Court may fix days for disposal of provisional cases, &c., during vacation.

22. The Court of the Eastern Districts shall sit for the hearing of provisional cases, and the dispatch of other business, on such days in vacation as the Supreme Court shall, by any rule or order thereof, fix and prescribe.

[Sections 23-26 repealed by Section 12 Act 5, 1879].

Section 50 of Charter of Justice, with respect to appeal to Privy Council, to apply.

27. The judgment, decree, sentence, rule, or order made by the said Supreme Court in cases as aforesaid, brought in appeal before it from the said Court of the Eastern Districts shall be subject to the provisions of the fiftieth section of the Charter of Justice aforesaid. (1)

In appeals from Eastern Districts Court, Supreme Court may remit case for further evidence, &c.

28. It shall and may be lawful for the said Supreme Court, should it see fit in any such case as aforesaid brought in appeal as aforesaid, to remit such case to the Court of the Eastern Districts aforesaid, with such rule or order touching the taking of further evidence, when necessary, or other the further proceedings therein, as the said Supreme Court shall consider needful, and the said Court of the Eastern Districts shall, in all cases of appeal to the said Supreme Court, conform to and execute such judgments and orders as the said Supreme Court shall see fit to make, in like manner as any original judgment, decree, order, or rule of the said Court of the Eastern Districts could or might have been executed. (1)

Suit may be removed by order of Supreme or Eastern Districts Court.

29. As often as any suit or action shall be brought or depending in the Supreme Court, or in the Court of the Eastern Districts respectively, and it shall be made to appear to the Court before which such suit or action may be pending, that the same may be more conveniently or more fitly heard or determined in the other of the said Courts, it shall be lawful for the Court before which

<sup>1</sup> See § 14 *et seq.* Act 5, 1879.

such suit or action is pending to order the same to be removed to such other Court, and such order shall be certified by the Court granting the same to the court into which the suit or action shall be intended to be removed; and thereupon it shall be lawful for such last-mentioned Court to proceed in such suit or action in like manner as if the same had been originally commenced and prosecuted in such last-mentioned Court.

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30. When and as often as any judgment, decree, or order for the payment of money shall be made by the Court of the Eastern Districts in respect of or in relation to any civil suit, action, or proceeding in which the party defendant shall have been duly served with the process of such court, or shall have appeared in pursuance of any process thereof, it shall be lawful for the Supreme Court, and it is hereby required, upon inspection of such judgment, decree, or order, and upon proof to be made by the return of the officer proper to make such return to the process of execution of the said Court of the Eastern Districts, that the said judgment, decree, or order remains either wholly or in part unsatisfied, to issue process of execution upon such judgment, decree, or order, against any property, movable or immovable, belonging to the party against whom such judgment, decree, or order shall have been obtained, and situated elsewhere in this Colony than in the Eastern Districts, and to cause such process to be executed in such manner as process could or might have been issued and executed upon any original judgment, decree, or order, of the like nature of the said last-mentioned Court: Provided that it shall not be necessary to prove the handwriting of such officer as aforesaid to any such return as aforesaid.

Supreme Court may order seizure of property found beyond jurisdiction of Eastern Districts Court in satisfaction of judgment of that Court.

31. In every case in which any judgment, decree, order, or other record of the Supreme Court aforesaid, or of any Circuit Court, or of the Court of the Eastern Districts, shall require to be proved, inspected, or in any manner referred to in any other Court, a copy of such record, certified under the seals of the Supreme Court and of the said Court of the Eastern Districts respectively, or, as to any such record of any Circuit Court, under the signature of the Registrar of such Court, shall be taken and received as *prima facie* evidence of such record: Provided that it shall not be necessary, in regard to any certified copy, to prove the handwriting of any such registrar to any such copy.

Copy of record duly certified to be admitted as evidence.

32. It shall be lawful for the Supreme Court, by any rules or orders of the said Court, to provide for the form of the process of the Court of the Eastern Districts and for the manner in which such process shall be executed and returned by the Sheriff of the Colony, or his lawful deputies, or by any of the said deputies: Provided that unless and until other provisions shall in manner aforesaid be made in that behalf, the process of the Court of the Eastern Districts shall in substance, be in the like form as if such Court were a Circuit Court having jurisdiction over an area or territory

Supreme Court may provide for form and execution of process of the Eastern Districts Court.

How until provision shall be made.

Repealed

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comprising the whole of the Eastern Districts, and that such process shall be executed and returned by the Deputy Sheriff of the particular district in which the person to be served or otherwise affected by such process shall reside, or the property to be attached or otherwise affected shall be situated.

Powers of Eastern Districts Court as regards summoning persons resident in those districts.

33. In all cases depending in the Court of the Eastern Districts, the process of the said Court for summoning, whether as a party or a witness, any person residing or being within any of the Eastern Districts to appear in such Court, shall be of the same force and effect as if such Court were the Supreme Court, and such process that of the Supreme Court, and that in regard to the summoning of witnesses residing or being elsewhere in this Colony that in any of the Eastern Districts, the process of the Court of the Eastern Districts shall, for the purpose of the one hundred and eighty-eighth Rule of Court and the seventeenth section of the Criminal Law Amendment Act, 1861, and of any other law, be of the same force and effect as if the said last mentioned Court were a Circuit Court.

Where parties summoned are non-residents.

Jurisdiction of Eastern Districts Courts as regards certain existing laws.

34. In regard to the Ordinance No. 6, 1843, entitled "Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," and to the Ordinance No. 97, entitled "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 on the Land Register," and to the Ordinance No. 104, entitled "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 this Colony," and to the Ordinance No. 105, entitled "Ordinance for the due Administration and Management of Estates and Property of Minors, Lunatics, and persons absent from the Colony, and for the proper Care of the Persons of Minors and Lunatics," and to the Ordinance No. 9, 1844, entitled "Ordinance for facilitating the Recovery of Land Rents in this Colony," and to the Ordinance No. 15, 1844, entitled "Ordinance for the Enregisterment in the Land Registers of the Colony of certain Sub-divisions of the Locations and Extensions of the Settlers of 1820," and to the Ordinance No. 5, 1848, entitled "Ordinance for enabling Resident Magistrates to exercise in regard to disputed Rights of Water certain Powers formerly exercised by Landdrost and Heemraden," and to the Act No. 1, 1854, entitled "An Act to secure Freedom of Speech and Debates on Proceedings in Parliament, and to give summary Protection to Persons employed in the Publication of Parliamentary Papers," the Court of the Eastern Districts shall have the same jurisdiction and authority and none other, which would belong to it under and by virtue of the same Ordinances, and the said Act respectively in case the

Court of the Eastern Districts were a Circuit Court having jurisdiction over an area or territory comprising the whole of the Eastern Districts.

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35. The Court of the Eastern Districts shall exercise and perform, in regard to the District of Resident Magistrate within which it shall be appointed to be holden, the same powers and duties which, by the fifty-sixth, fifty-eighth, sixtieth, sixty-fifth, and sixty-sixth sections of Ordinance No. 40 aforesaid, the Supreme Court is empowered or required to exercise and perform in regard to Cape Town and the Cape district.

Powers exercised by Supreme Court in regard to Cape Town and district to be exercised by Eastern Districts Court in regard of district within which it is held.

36. In regard to all criminal cases pending in the Court of the Eastern Districts, the Attorney-General shall exercise the right of prosecution now by law vested him in person; or by the Solicitor-General of the Colony, should such an officer be appointed, or by any person appointed by the said Attorney-General under his hand to conduct such cases: Provided that nothing herein contained shall prevent the said Attorney-General from specially appointing any person to appear and act for him in any particular case, as by the seventh section of Ordinance No. 40 aforesaid provided: Provided, also, that when and as soon as such Solicitor-General shall have been appointed, every right, power, and function conferred or imposed by law upon the Attorney-General may be exercised by the said Solicitor-General, in regard to all criminal cases within the Eastern Districts, or any of them: <sup>(1)</sup> Provided that such Solicitor-General shall be appointed by Her Majesty the Queen, but may be appointed by the Governor provisionally, and until Her Majesty's pleasure be known.

Attorney-General or Solicitor-General to prosecute.

Attorney-General may appoint person to prosecute.

Solicitor-General (when appointed) to possess the powers conferred on Attorney-General in regard to Criminal cases.

Solicitor-General to be appointed by the Queen, but Governor may appoint provisionally.

37. Nothing in this Act contained shall be construed so as to prevent any judge of the Supreme Court of the Colony from holding any Circuit Court anywhere within the Colony, or prevent any number of such judges from holding separate Circuit Courts at the same time, in case the Governor of the Colony shall so direct and appoint.

Holding of circuit courts not prevented.

38. All appeals from or against any judgment, decree, or sentence, of any Circuit Court held for any of the Eastern Districts shall be directly to the Supreme Court, and not to the Court of the Eastern Districts: Provided that nothing herein contained shall prevent the parties to any suit which may from time to time be pending in any such Circuit Court from referring such suit by mutual consent, with the permission of the then presiding judge to the said Court of the Eastern Districts, for argument and decision, or shall prevent any judge of any such Circuit Court from referring any suit pending therein to the said Court of the Eastern Districts, if he shall so see fit.

Appeal from circuit courts to be direct to Supreme Court.

But cause may be referred from circuit to Eastern Districts Court by consent of parties.

Or such reference may be made by presiding judge.

39. The rules and orders in force for the time being in the Court of the Eastern Districts may be amended, added to, or rescinded by the Supreme Court, proceeding in like manner as by

Rules of Eastern Districts Court may be amended by Supreme Court.

<sup>1</sup> See also § 18, Act 40, 1882.

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Record books of  
magistrate of district  
to be produced to  
court.

law is or shall be required in regard to the framing and confirmation of rules and orders of and for the said Supreme Court.

40. The criminal record book, and the civil record book of the Court of the Resident Magistrate of the District of Resident Magistrate within which the Court of the Eastern Districts shall be holden, shall be submitted for inspection to the said last-mentioned Court on the first sitting day of every criminal session of the said Court of the Eastern Districts for the inspection of the presiding judge, and the provisions of this section shall be in room and stead of the fifth and fifty-third of the rules, orders, and regulations for the Courts of Resident Magistrates. <sup>(1)</sup>

Court to have separate seal.

41. The said Eastern Districts Court shall have and use as occasion may require, a seal bearing a device and impression of the Royal Arms and this inscription: "The Seal of the Court of the Eastern Districts of the Cape of Good Hope."

Governor to notify  
time and place for  
holding Eastern Districts  
Court.

42. The Governor of this Colony shall, by proclamation, notify to the inhabitants of the districts over which the Court of the Eastern Districts shall have jurisdiction, the time when the said Court will be open, and the place where it shall, for the time being, be holden, and from and after the time when such Court shall be open, the said Court shall be competent to exercise the certain concurrent jurisdiction conferred upon it by this Act: Provided that it shall be lawful for the Governor, from time to time, with the advice of the Chief Justice and other judges of the Supreme Court, to provide for the occasional holding of the Court of the Eastern Districts, before not less than two judges, at such places other than the stated or ordinary place for the holding of such Court, as circumstances will permit, and the Governor shall, by proclamation, notify the days during which the said Court will sit at every such other place for the dispatch of business.

Short title.

43. This Act may be cited for all purposes as "The Administration of Justice Act, 1864."

SCHEDULE. <sup>(2)</sup>

Albany	Humansdorp
Albert	Middelburg
Alexandria	Murraysburg
Aliwal North	Peddie
Bathurst	Port Elizabeth
Bedford	Queenstown
Colesberg	Richmond
Cradock	Stöckenstrom
Fort Beaufort	Somerset
Graaff-Reinet	Uitenhage
Hopetown.	Victoria East.

<sup>1</sup> The rules herein referred to are obviously those of the 22nd March, 1828, which have been repealed by Act 20, 1856.

<sup>2</sup> See note to § 7.

Repealed 35/96

No. 15—1867.]

[August 16, 1867.

AN ACT

For Confirming certain General Rules and Orders and for amending the Law relating to General Rules and Orders of the Supreme Court and the Court of the Eastern Districts.

WHEREAS certain general rules and orders, contained in the schedules to this Act annexed, have been from time to time made by the judges of the Supreme Court for the time being for the regulation of the practice of the said Court and of the Court of the Eastern Districts, respectively, and have been approved by the Governor, with the advice of the Executive Council, and have been from time to time published in the *Government Gazette*, and it is expedient that the same should be enacted and confirmed, respectively: 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. That the several rules and orders in the several schedules <sup>(1)</sup> to this Act contained and set forth shall be of full force and binding effect until altered or repealed by competent authority.

Rules of Court in annexed schedule confirmed.

2. From and after the promulgation of this Act, the Act No. 26 of 1856 shall be, and the same is hereby repealed.

Act No. 26 of 1856 repealed.

3. It shall be lawful for the judges for the time being of the Supreme Court, or the major part of them, to alter or amend in any respect in which the Court was authorized by the forty-sixth section of the Charter of Justice to make general rules or orders, any general rule or order for the time being in force, or to make any new rule or order which by the same section of the said Charter such Court was authorized to make for regulating the practice of the Supreme Court, and in the like respects to alter or amend any rule now in force in the Court of the Eastern Districts, or to make any new rule in like respect for regulating the practice of the said last-mentioned Court; and every such amendment or alteration, and every such new rule, respectively, shall be submitted to the Governor for his approval, with the advice of the Executive Council, and on being so approved shall be published in the *Government Gazette*, and shall take effect from and after such publication, unless some other subsequent time shall be named therein from which the same is to take effect, in which case it shall take effect from such time, and shall from such times forward, respectively, be of full force and effect until altered or repealed by competent authority.

Supreme Court may frame or amend rules and orders mentioned in section 46 of Charter of Justice.

Rules to be submitted to Governor in Executive Council, and, if approved, published.

4. Every such alteration, amendment, or new general rule or order, respectively, shall, if Parliament be in session at the date of its publication as aforesaid, be laid on the table of both Houses as

Amended or new rules to be laid before Parliament.

<sup>1</sup> Not printed.



No. 23—1875.

soon as conveniently may be after the publication thereof, and if Parliament be not in session at the date of such publication, then so soon as conveniently may be after the opening of the then next ensuing session of Parliament.

No. 23—1875.]

[June 30, 1875.

## ACT

*Repealed*

To enable one Judge of the Supreme Court to exercise at certain times the jurisdiction of the said Court.

Preamble.

WHEREAS by the thirty-third section of the Royal Letters Patent, commonly called the Charter of Justice, it is provided that for the conduct and decision of all civil suits, actions, and causes depending before the Supreme Court of this Colony, and of all questions, matters, and things arising in the course of any such civil suits, actions, or causes, any two of the judges of the said Court shall form a quorum, and shall be competent to execute all and every the powers, jurisdiction, and authorities thereby granted to and vested in the said Court, and whereas it is expedient that during the vacations hereinafter specified one judge of the said Court should be competent to execute the said powers, jurisdictions, and authorities: 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:—

One judge competent in vacation to exercise powers of Supreme Court.

1. During any period which shall by any Act of Parliament or rule of Court be fixed as a vacation of the said Supreme Court, during which the ordinary business of the said Court shall be suspended, one judge of the said Court shall be competent to execute all and every the powers, jurisdictions, and authorities vested in the said Supreme Court, anything in the said thirty-third section of the said Charter of Justice, in the fifth section of "The Administration of Justice Act, 1864," or in any other Act or law to the contrary notwithstanding.

No. 39 of 1876 *repealed**Act 35/96*

[August 15, 1879.

## ACT (1)

To Make provision for the Annexation to this Colony of the Province of Griqualand West.

Number of puisne judges of Supreme Court increased to five, of which the recorder of Griqualand to be one.

9. From and after the annexation of the said province to the said Colony, the Supreme Court of the said Colony shall consist of one Chief Justice and five (2) Puisne Judges, instead of four as heretofore,—the additional judge being the Recorder for the time being

<sup>1</sup> For full text of this Act see under "Annexation."

<sup>2</sup> Increased by Acts 5, 1879; 12, 1880; 40, 1882.

68 9-10-11-12-14-15-16 *repealed*

of Griqualand; and in case of any vacancy in the said office of Recorder, such vacancy may be filled up in like manner as by law provided with respect to a vacancy in the office of any other judge of the said Supreme Court: Provided that nothing in this section contained shall be construed so as to confer on the said Recorder any larger jurisdiction or powers within the said province than he shall have possessed immediately before the said annexation, or to render his consent or assistance necessary to the making, alteration, or amendment of any rules or orders of the Supreme Court or Court of the Eastern Districts.

No. 39—1877.

10. The proclamation of His Excellency Sir Henry Barkly, bearing date the 27th day of October, 1871, making provision for the due and effectual administration of justice within the territory of Griqualand West shall, except as hereinafter provided, continue and have the same force and effect after the said annexation as if the same had not taken place; but the High Court thereby created, shall have, and exercise concurrent jurisdiction only in the said province with the Supreme Court of the Colony of the Cape of Good Hope, and in lieu of any right of appeal which may exist at the time of such annexation from any decision of the said High Court, or of any Circuit Court within the said province, such appeal shall be made, in the first instance, to the said Supreme Court<sup>(1)</sup>; and all and singular the provisions of the law of this Colony as to appeals from the Court of the Eastern Districts of the Cape of Good Hope to the said Supreme Court shall, *mutatis mutandis*, apply to appeals from the said High Court or such Circuit Court as aforesaid, to the said Supreme Court, precisely as if the judgment, decree, sentence, rule, or order appealed from had been a judgment, decree, sentence, rule, or order of the said Court of the Eastern Districts: Provided that in case of any judgments of the said High Court or such Circuit Court as aforesaid against which appeals shall have been duly noted, but such appeals not yet transmitted to the Privy Council at the time of the taking effect of this Act, it shall be lawful for the parties to such suits, if they shall agree so to do, to carry such appeals to the Supreme Court instead of to the said Privy Council; and the same right of appeal to the Privy Council shall exist as to a decision of the said High Court or such Circuit Court as aforesaid as shall at the time of the taking effect of this Act exist in regard to a decision of the said Court of the Eastern Districts.

High Court to have concurrent jurisdiction in Griqualand with Supreme Court.

Appeals to Supreme Court.

Law of this colony as to appeals from Eastern Districts Court to apply.

Provision as to pending appeals

11. All appeals from decisions of the Land Court of Griqualand West which shall be pending in the High Court at the time of the taking effect of this Act, or which may thereafter be lawfully noted may, after the taking effect of this Act, by consent of all the parties to any such appeal, be removed into the said Supreme Court instead of being proceeded with in the said High Court; and such appeals shall, in case of such removal, be carried on, tried,

Provision as to pending appeals from Land Court.

<sup>1</sup> Amended by Act 12, 1880, but see § 1, Act 17, 1886.

No. 39—1877.

heard, and determined in the said Supreme Court in like manner as nearly as may be as if the same were appeals from decisions of the said Court of the Eastern Districts to the said Supreme Court.

Duties of sheriff.

12. <sup>(1)</sup> *Except as is otherwise provided by this Act, the duties, powers, and authorities of the Sheriff for the said province shall continue to be the same after as immediately before such annexation as aforesaid: Provided that nothing herein contained shall be construed so as to prevent the Sheriff for the Colony from exercising, by himself or his lawful deputies, within the said province, such duties, powers, or authorities as he might immediately before such annexation as aforesaid have lawfully exercised within this Colony.*

Duties of master.

13. As often as in or by any proclamation, ordinance, act, or other instrument having the force of law within the said province at the time of the said annexation, any right, power, duty or function, shall be vested in the Master of the High Court, in regard to the registration of wills and the administration of the estates of deceased persons, and in regard to the administration of insolvent estates, and in regard to any matter or thing whatsoever, such right, power, duty or function, shall not, except as is otherwise provided by this Act, be deemed or taken to be vested in the Master of the Supreme Court, but shall continue to be vested in the Master of the said High Court; Provided, that all letters of administration or of confirmation which shall be granted, and all other matters or things which shall be lawfully done by the Master of the Supreme Court by virtue of the powers and jurisdiction vested in him before the annexation, shall, in regard to any property, movable or immovable, found or situated within the said province, have the same force and effect as within any other portion of the said Colony: Provided further, that it shall be the duty of the Master of the said High Court, forthwith after any order for sequestration of any estate, or any deed purporting to be a testamentary disposition, or any death notice, or any inventory of the estate of any deceased person or persons, or any account or plan of distribution of the estate of any minor, lunatic, or deceased person, or of any insolvent estate, shall have been delivered or transmitted to him, and forthwith after granting any letters of administration or of confirmation, and forthwith after security shall have been found or given for any executor, tutor, or curator to forward to the Master of the Supreme Court a true copy of such order, deed, death notice, inventory, account, plan or other instrument, for the purpose of being duly registered by the said Master of the Supreme Court: Provided, however, that it shall not be necessary for the Master of the said High Court to forward any duplicates or copies of accounts lodged with and filed by him in his office to the Resident Magistrates of the respective districts in which the estates to which such accounts respectively relate were situated.

<sup>1</sup> Superseded by § 9, Act 40, 1882.

14. As often as any suit or action shall be brought or depending in the Supreme Court, or in the Court of the Eastern Districts, or in the said High Court of Griqualand West respectively, and it shall be made to appear to the Court before which such suit or action may be pending, that the same may be more conveniently or more fitly heard or determined in another of the said Courts, it shall be lawful for the Court before which such suit or action is pending, to order the same to be removed to such other Court, and such order shall be certified by the Court granting the same to the Court into which the suit or action shall be intended to be removed; and thereupon it shall be lawful for such last mentioned Court to proceed in such suit or action, in like manner as if the same had been originally commenced and prosecuted in such last mentioned Court.

No. 39—1877.  
Removal of suits or actions.

15. When and as often as any judgment, decree, or order for the payment of money shall be made by the High Court of Griqualand in respect of or in relation to any civil suit, action, or proceeding in which the party defendant shall have been duly served with the process of the said Court, or shall have appeared in pursuance of any process thereof, it shall be lawful for the Supreme Court, and it is hereby required upon inspection of such judgment, decree, or order, and upon proof to be made by the return of the officer proper to make such return to the process of execution of the said High Court, that the said judgment, decree, or order remains either wholly or in part unsatisfied, to issue process of execution upon such judgment, decree, or order against any property, movable or immovable, belonging to the party against whom such judgment, decree, or order shall have been obtained, and situate elsewhere in the Colony than in the said province of Griqualand West, and to cause such process to be executed in such manner as process could or might have been issued and executed upon any original judgment, decree, or order of the like nature of the said Supreme Court: Provided, that it shall not be necessary to prove the handwriting of such officer as aforesaid to any such return as aforesaid.

Execution of judgments of High Court against property in this colony.

16. In every case in which any judgment, decree, or order, or other record of the High Court aforesaid, or of any Circuit Court within the said province, shall require to be proved, inspected, or in any manner referred to in any other Court, a copy of such record certified under the seal of the said High Court, or as to any such record of any Circuit Court as aforesaid, under the signature of the Registrar of such Court, shall be taken and received as *prima facie* evidence of such record: Provided that it shall not be necessary in regard to any certified copy to prove the handwriting of any such Registrar.

Copies of records to be received in evidence.

17. In all cases depending in the said High Court, the process of the said Court for summoning, whether as a party or a witness, any person residing or being within the said province of Griqua-

Provision for summoning parties or witnesses residing out of the province.

No. 5—1879.

land West to appear in such Court, shall be of the same force and effect as if such Court were the Supreme Court, and such process that of the Supreme Court, and in regard to the summoning of witnesses residing or being elsewhere in this Colony than in the said province, the process of the said High Court shall be of the same force and effect as the process of the Eastern Districts Court in regard to the summoning of witnesses residing or being elsewhere in this Colony than in any of the Eastern Districts.

Rules of the court.

18. The rules and orders in force in the said High Court of Griqualand immediately before such annexation as aforesaid shall, except as is otherwise provided by this Act, remain in force thereafter: Provided that such rules and orders may be amended, added to, or rescinded by the judges of the Supreme Court, including the said Recorder, proceeding in like manner as by law is or shall be required in regard to the framing and confirmation of rules and orders of and for the said Supreme Court.

No. 5—1879.]

[Sept. 8, 1879.

*Repealed 35/96*  
ACT (1)

To Increase the Efficiency of the Court of the Eastern Districts, and to Improve the Administration of Justice generally.

Preamble.

WHEREAS it has been found expedient to add to the number of judges constituting the Court of the Eastern Districts, and to make provision for appeals from the said Court and from the Circuit Courts, and to establish a Court of Criminal Appeal for the Colony: 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:—

Repeal of repugnant statutes.

1. So much of the Royal Letters Patent of His late Majesty King William the Fourth, bearing date at Westminster in the second year of his reign, commonly called "the Charter of Justice," and so much of Act No. 21 of 1864, commonly called "the Administration of Justice Act of 1864," and so much of any other law, usage, ordinance, or rule of court as shall be repugnant to, or inconsistent with, any of the provisions of this Act, are hereby repealed, so far as such repugnancy or inconsistency exists, but not further or otherwise.

Supreme Court to consist of chief justice and five puisne judges.

2. The Supreme Court shall henceforth consist of one Chief Justice and five (2) Puisne Judges, who shall be appointed and hold office in the same manner as the judges already constituting such Court.

Eastern Districts Court to consist of three judges.

3. The Court of the Eastern Districts shall consist of, and be

<sup>1</sup> The Court of Appeal established by this Act was abolished by Act 17, 1886.

<sup>2</sup> Eight, see Act 40, 1882.

holden by and before, three of the Puisne Judges of the Supreme Court, of whom one, to be called the Judge President, and who shall be nominated and appointed by the said Governor, shall be a judge of the Court of Appeal hereinafter mentioned, and the two others shall not be judges of the said Court of Appeal: Provided, always, that the law relating to the number of judges necessary to constitute a quorum in the Supreme Court and to the powers vested in certain cases in a single judge, shall apply equally to the said Court of the Eastern Districts.

No. 5—1879.

4. Every judge who shall be assigned and appointed to the office of Judge President of the Eastern Districts Court shall be entitled to hold the said office so long as he shall continue to be a judge of the Supreme Court.

Judges assigned to Eastern Districts Court.

5. Whenever any suit, action or cause, or any questions, matters or things arising in any suit, action, or cause, shall be heard before any two of the judges of the Court of the Eastern Districts, and any difference of opinion shall arise between such two judges, the decision of the said Court shall in any such case be suspended until three judges shall be present, and the decision of the majority of such three judges shall be deemed and taken to be the decision of the whole Court.

When case heard by two judges who differ.

6. From and after the taking effect of this Act there shall be in this Colony a Court of Appeal, to be called "The Court of Appeal of the Cape of Good Hope," and such Court shall have a Seal bearing that inscription <sup>(1)</sup>.

Court of appeal established.

[Sections 7 to 10 refer to the constitution of the Court of Appeal, and are no longer applicable.]

11. <sup>(2)</sup> It shall be lawful for any person being a party to any civil suit in the Eastern Districts Court, or in any Circuit Court, to appeal to the said Court of Appeal against any judgment, decree, or order of such Eastern Districts or Circuit Court; provided that the party appellant shall, within twenty-one days next after such judgment, decree, or order, shall have been pronounced, give notice of appeal to the party respondent, and to the Registrar of the Court from which the appeal takes place, and shall, within three months after judgment, duly prosecute such appeal in the said Court of Appeal, in case there shall be a sitting of the said Court within that period, or if there shall not be any such sitting, then at the next sitting of the said Court of Appeal: Provided that it shall be lawful for the said Court of Appeal, for good and sufficient cause shown, to extend the time within which the appellant shall prosecute his appeal.

Appeal from Eastern Districts Court and Circuit Courts.

12. The forty-second and forty-third sections of the Charter of Justice, and the twenty-third, twenty-fourth, twenty-fifth, and twenty-sixth sections of Act No. 21 of 1864, are hereby repealed.

Repeal of repugnant enactments.

<sup>1</sup> Court of Appeal abolished by Act 17, 1886, and its powers vested in Supreme Court.

<sup>2</sup> Provisions of §§ 11-29 extended to High Court, § 3, Act 12, 1880.

*Repealed*

No. 5—1879.  
Mode of hearing cases.  
Registrar to transmit records if appealed against.

13. In every civil suit heard or tried before the Supreme Court, Eastern Districts Court, <sup>(1)</sup> or any Circuit Court, the presiding judge shall cause the evidence, if oral, to be fully and clearly taken down in writing, and the evidence so taken shall be entered upon the proceedings of the said Courts, and be of record. In every case in which notice of appeal shall be given to the Registrar of the Eastern Districts Court, or of any Circuit Court, as the case may be, such Registrar shall forthwith transmit a copy of the record, certified by him as authentic, to the Registrar of the Court of Appeal. Such record shall include all oral evidence taken down in writing, in manner aforesaid, and all other evidence, whether taken by commission or by affidavit, and all documents and papers which shall have been produced and given in evidence. Copies of any documents and papers which shall have been produced and tendered in evidence and rejected, shall, if required by the party producing the same, be authenticated and marked by the Registrar as rejected.

How judgments appealed against to be dealt with pending appeal.  
Security.  
Security may be dispensed with.

14. It shall be lawful for the Eastern Districts Court, or for any Circuit Court, as the case may be, to direct that the judgment, decree, or order appealed against shall be carried into execution, or that execution thereof shall be suspended pending the said appeal, as to such Court may in each case appear to be most consistent with real and substantial justice. And in case such judgment, decree, or order, shall be carried into execution, the party respondent shall, before the execution of such judgment, decree, or order, enter into good and sufficient security, to be approved by the Registrar of the Eastern Districts Court, or in case of an appeal from any Circuit Court, by the Resident Magistrate of the district in which such Circuit Court was held, for the due performance of such judgment, decree, or order, as the Court of Appeal shall think fit to make thereon; or in case the execution of any judgment, decree or order shall be suspended pending the said appeal, the party appellant shall enter into good and sufficient security, to be approved in manner aforesaid, for the due performance of such judgment, decree, or order, as the said Court of Appeal shall see fit to make thereupon: Provided that it shall be lawful for the Court of Appeal, for good and sufficient cause shown, to dispense with the security by this section required from the appellant or respondent, as the case may be.

Judgments by consent or questions of costs not to be appealed against except by leave.

15. No judgment, decree, or order, made by the Eastern Districts Court, or any Circuit Court, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, and no interlocutory order shall be subject to any appeal, except by leave of the Court or judge pronouncing such judgment, decree or order.

Enforcement of judgments of appeal court.

16. For all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment, decree, or order pronounced or made on any such appeal, and for the purpose

<sup>1</sup> High Court. See § 3, Act 12, 1880.

of every other authority given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority and jurisdiction vested in the Supreme Court of the Colony at the time of the passing of this Act.

No. 5—1879.

17. [Sections 17-19 superseded by Act 17, 1886].

20. An appeal to Her Majesty the Queen shall be allowed by such Court of Appeal against any final judgment, decree, or order thereof in any civil suit or action in which an appeal is now allowed, and the fiftieth, fifty-first, and fifty-second sections of the Charter of Justice shall apply, *mutatis mutandis*, to every appeal from the said Court of Appeal, precisely as if such Court of Appeal were the Supreme Court in the said Charter mentioned.

Appeal to the Queen.

21. [Temporary.]

22. The judges of the said Court of Appeal, or any three of them, shall likewise constitute a Court of Appeal in criminal cases, <sup>(1)</sup> and appeals shall be allowed to the said Court of Appeal in criminal cases in the cases hereinafter provided for, and in no others.

Appeal in criminal cases.

23. If any defendant, who shall be tried upon any indictment in the Supreme Court, Eastern Districts Court, or any Circuit Court, shall think that any of the proceedings of the Court before which the trial takes place are irregular or not according to law it shall be lawful for him either during his trial or after his conviction, to apply to such Court to direct a special entry to be made on the record, showing the nature of the proceedings alleged to be irregular or illegal. If such a special entry be directed to be made, it shall be drawn up by the Registrar of the Court, and the defendant and the prosecutor, or their counsel and attorneys, shall be permitted to see it and to copy it, and if either of them shall object to its terms, it shall be settled by the judge of the Court before which the case is tried.

When appeal in criminal cases to be applied for.

Special entry.

24. <sup>(2)</sup> If any defendant who shall be convicted of any indictable crime or offence shall obtain leave to make, and shall cause to be made, such a special entry on the record as is hereinbefore <sup>(3)</sup> provided for, it shall be lawful for him, by leave of the judge of the Court before which the case shall have been tried, to appeal against his conviction on the ground of the irregularity or illegality of such proceedings as aforesaid as stated in such special entry aforesaid: Provided that within fourteen days after verdict notice of such appeal shall be given to the Registrar of the Court appealed from; and such Registrar shall forthwith, after receiving such notice, give notice of such appeal to the Attorney-General and transmit to the Registrar of the Court of Appeal an authenticated copy of the record, including copies of the evidence, whether oral or in writing, taken or admitted at the trial, and of the special entry made on the record in manner aforesaid.

Leave to be applied for.

Notice to registrar.

<sup>1</sup> See § 1, Act 17, 1886.

<sup>2</sup> See also § 5 *ibid*.

<sup>3</sup> "Hereinbefore" substituted for "hereinafter" by § 4, Act 12, 1880.



Repealed

No. 5—1879.  
Questions of law reserved.

25. (1) If any question of law shall arise on the trial of any person for any indictable crime or offence in the Supreme Court, Eastern Districts Court, or any Circuit Court, it shall be lawful for such Court to reserve such question, for the consideration of the Court of Appeal in criminal cases. If the Court shall determine to reserve any such question, and the defendant shall be convicted, the Court shall state the question or questions reserved, and shall direct such case to be specially entered in the record, and a copy thereof to be transmitted to the Court of Appeal in criminal cases.

Cases in which execution of sentence may be suspended.

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

- (a) Unless the sentence shall be that the defendant suffer death, or be flogged or whipped, in either of which cases the sentence shall not be executed until the appeal or question reserved for the Court shall have been heard and decided.
- (b) Unless the Court from which the appeal is made, or by which the question is reserved, shall think fit to order either that the defendant be admitted to bail, or if he is sentenced to any punishment other than simple imprisonment, that he be treated as an unconvicted prisoner till the appeal or the question reserved for the Court shall have been heard and decided.

What appeal court may do in cases where question of law reserved.

27. In case of any appeal against a conviction, or of any question being reserved as aforesaid, it shall be lawful for the Court of Appeal in criminal cases

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

<sup>1</sup> See also § 16, Act 40, 1882.

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

No. 12—1880.

28. The order or direction of the Court of Appeal in criminal cases shall be certified under hand of the Presiding Judge to the Registrar of the Court before which the case was tried, and such order or direction shall be carried into effect, and shall authorize every person affected by it to do whatever is necessary to carry it into effect.

How order of appeal court to be certified.

29. (1) This Act shall take effect when and so soon as the Governor, with the advice of the Executive Council, shall, by proclamation published in the *Government Gazette*, declare that the same is in force.

When Act to take effect.

30. This Act may be cited for all purposes as "The Administration of Justice Amendment Act, 1879."

Short title.

No. 12—1880

*Repealed 35/96*  
ACT

[July 29, 1880.]

To Amend in certain respects Act No. 39 of 1877 and Act No. 5 of 1879.

WHEREAS it was provided by Act No. 39 of 1877 that, from and after the annexation of the province of Griqualand West to the Colony of the Cape of Good Hope, the Supreme Court of the said Colony shall consist of one Chief Justice and five Puisne Judges, the Recorder of Griqualand West being one of them: and whereas it was further provided by the said Act that appeals from the decisions of the High Court of Griqualand West, or of any Circuit Court within the said province shall be made in the first instance to the Supreme Court of this Colony, and that appeals from the Land Court of Griqualand West may, by consent of parties be removed into the said Supreme Court: and whereas by the subsequent Act No. 5 of 1879, it was provided that the Supreme Court shall consist of one Chief Justice and five Puisne Judges, the said Recorder not being included among the said five judges: and whereas, by the said last mentioned Act, a Court of Appeal in criminal as well as in civil cases was established in respect of decisions of the Eastern Districts Court, and from the Circuit Courts of this Colony, and certain provisions were made in respect of the mode of procedure to regulate such appeals: and whereas it is expedient in view of the future annexation of the said province to the said Colony that the said first mentioned Act should be amended in such a manner as to provide one and the same Court

Preamble.

<sup>1</sup> Proc. in Gazette 27th January, 1880.

Repealed

No. 40—1882.

of Appeal for the united Colony, to render the mode of procedure in all appeals uniform, and in other respects to make the provisions of the first mentioned Act consistent with Act No. 5 of 1879: 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:—

Repeal of inconsistent enactments.

1. So much of the Royal Letters Patent, commonly called the "Charter of Justice," of the Act No. 39 of 1877, of the Act No. 5 of 1879, and of any other law in force in this Colony at the time of the taking effect of this Act, as shall be repugnant to or inconsistent with the provisions of this Act, shall be, and the same is hereby repealed.

2. [Superseded by Section 2 Act 40, 1882.]

Appeal to be to court of appeal.

3. In lieu of any right of appeal which may, under and by virtue of the 10th and 11th sections of the said Act No. 39 of 1877, exist at the time of such annexation as aforesaid to the Supreme Court of this Colony, such appeal shall be made, in the first instance, to the Court of Appeal of this Colony (1) instead of the said Supreme Court, and all and singular the provisions of the said Act No. 5 of 1879, contained in the sections numbered eleven to twenty-nine inclusive, shall apply, *mutatis mutandis*, to the said High Court, precisely as if the said High Court had been therein mentioned instead of the Eastern Districts Court.

"Hereinbefore" to be read for "hereinafter" in sec. 24 of Act 5 of 1879.

4. The 24th section of the said Act No. 5 of 1879 shall be read and construed as if the word "hereinbefore" had been written for the word "hereinafter" in the said section.

No. 40—1882.] *Repealed 35-96 + cept 33-22+23*

[September 1, 1882.

ACT

For the Better Administration of Justice.

Preamble.

WHEREAS it is desirable to increase the number of judges in the High Court of Griqualand, and to provide in other respects for the better administration of justice: 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:—

Laws repealed.

1. The laws mentioned in the schedule hereto, to the extent to which the same are therein expressed to be repealed, 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.

THE SUPREME COURT.

Number of Judges

2. The Supreme Court shall henceforth consist of one Chief Justice and eight Puisne Judges, who shall be appointed and hold office in the same manner as the judges already constituting such Court.

<sup>1</sup> But see § 1, Act 17, 1886.

3. The number of judges of the Supreme Court necessary to form a quorum thereof shall continue to be two as in the thirty-third section of the Charter of Justice is provided, and in case of a difference of opinion between such two judges, the decision of the said Court shall be suspended until three or more judges shall be present, but not longer; and the decision of such two judges, when unanimous, or of the majority of such three or more judges in case of any difference of opinion, shall in all cases be deemed and taken to be the decision of the whole Court.

No. 40--1882.  
Quorum of Supreme Court.

4. Nothing contained in this or in any other Act heretofore passed shall be construed to prevent the Judge President of the Court of the Eastern Districts, or the Judge President of the High Court of Griqualand, or any judge assigned to either of the said Courts, from taking part in the determination of any cause civil or criminal which shall be heard before the Supreme Court.

Judges of Eastern Districts Court and High Court of Griqualand competent to sit in Supreme Court.

5. It shall be lawful for the Supreme Court in any cause which shall be heard before such Court, and which such Court shall deem to be of sufficient importance to be heard before a larger number of judges than are then present to order a re-hearing of such cause before five or more judges who may be available for the purpose.

Supreme Court may order a rehearing before 5 or more judges.

THE HIGH COURT OF GRIQUALAND.

6. The High Court of Griqualand shall consist of and be holden before three of the Puisne Judges of the Supreme Court, who shall be thereto duly assigned and appointed by the Governor, of whom one shall be by the Governor appointed to preside in the said Court and shall be called the "Judge President": Provided that the law relating to the number of judges necessary to constitute a quorum in the Supreme Court, and to the powers vested in certain cases in a single judge, shall apply equally to the said High Court of Griqualand.

Constitution of High Court of Griqualand.

Quorum.

7. Every judge who shall be assigned and appointed to the office of Judge President of the High Court of Griqualand shall be entitled to hold the said office so long as he shall continue to be a judge of the Supreme Court.

Term of office of Judge President.

8. Whenever any suit, action or cause, or any questions, matters or things, arising in any suit, action or cause, shall be heard before any two of the judges of the High Court of Griqualand, and any difference of opinion shall arise between such two judges, the decision of the said Court shall in any such case be suspended until three judges shall be present, and the decision of the majority of such three judges shall be deemed and taken to be the decision of the whole Court.

In case of difference of opinion between two Judges.

9. The office of Sheriff of Griqualand West shall cease to exist, and the duties now attached to such office shall be performed by the deputy or deputies to be from time to time appointed for that purpose by the Sheriff of the Colony of the Cape of Good Hope in like manner as such deputies are appointed for the other districts

Office of Sheriff of Griqualand West abolished.

Deputy Sheriffs provided for

*Repealed*

No. 40—1882.

of this Colony ; but all process in the hands of the Sheriff of Griqualand West at the time of the taking effect of this Act shall be executed and returned as if this Act had not been passed.

Sale of landed property by legal process to be performed by Deputy Sheriffs.

10. The several duties connected with the sale of real property attached by legal process within Griqualand West, which duties are by the rules and orders of the Supreme Court from No. 105 to 122 (both inclusive), directed to be performed by the Master of the Supreme Court, shall be performed by the Deputy Sheriff of the district within which the High Court of Griqualand is held, together with the other duties by the said beforementioned rules and orders imposed upon the Sheriff of the Colony.

Jurisdiction of High Court in appeals.

11. The High Court of Griqualand shall have final jurisdiction without appeal in all cases of appeal from the decision of the Court mentioned in the fifteenth clause of the fifth section of the rules and regulations forming the schedule to the Proclamation No. 8 of 1880, issued by the acting Administrator of Griqualand West, upon the 30th day of September, 1880 ; and any claimholder feeling himself aggrieved at the decision of such Court, with regard to any valuation determined upon under and by virtue of such clause, may appeal from such decision to the said High Court, upon due notice given to the Secretary of the Mining Board of the mine in which the property valued is situate, who shall be, in his official capacity, the party respondent in every such appeal: Provided, however, that the notice aforesaid shall be given within twenty-one days next after the date of the decision of the said Court and that the said appeal shall be prosecuted within three months after such decision. The said High Court, after hearing the parties to such appeal, and considering such affidavits as may have been submitted to the Court from which the appeal is made, and the record of the proceedings of such Court relating to the matter in dispute, shall and may confirm, modify, or alter such decision as to it may seem just : Provided that in the event of the Mining Board for the time being deciding to levy any rate in terms of such assessment, notwithstanding the prosecution of any such appeal as is hereinbefore provided for, such rate shall notwithstanding such appeal be due and payable, as though no such appeal was being prosecuted ; and in the event of the High Court modifying or altering such assessment the payment previously made of rates levied under such assessment shall be adjusted and allowed in terms of such modification or alteration : Provided, however, that nothing in this clause contained shall affect any question that may have arisen on any valuation made previous to the taking effect of this Act. The term "claimholder" in this section shall include every individual holder of a claim or the duly authorized representative of any absentee claimholder or of any company holding claim property in such mine as aforesaid.

Service of summons, &c.

12. The summons or process of the High Court of Griqualand for procuring the attendance of any person before the said Court to

give evidence in any criminal case shall be delivered to the resident Deputy Sheriff of the district within which the said person shall reside or be, for the execution thereof, together with so many copies of the summons as there are persons to be summoned. And in case there be no resident Deputy Sheriff within such district, the provisions of the sixth section of Act No. 15 of 1864 shall be taken to apply as if the High Court of Griqualand were specially mentioned therein in addition to the Supreme Court and Circuit Courts.

No. 40—1882.

## THE COURT OF APPEAL.

13. [Sections 13 and 14 superseded by Act 17, 1886.]

15. For the purpose of hearing and determining any application for extending the time within which an appellant shall prosecute his appeal, or any application or motion relating to any appeal prior to the hearing thereof, any one or more of the judges of the Court of Appeal may sit in Chambers, and may make such order in the premises as may be deemed necessary: and every order so made in Chambers may be appealed from to the Court of Appeal, and may by such Court be confirmed, altered, or rescinded.

Judges may sit in Chambers to hear motions relating to pending appeals.

16. (1) If any question of law shall arise upon review of the judgment or sentence of any Inferior Court in any criminal action or suit by or before the Court of the Eastern Districts, or the High Court of Griqualand, respectively, it shall be lawful for the reviewing court, if it shall see fit to do so, to reserve such question for the consideration and determination of the Court of Appeal; and in every such case, the provisions of the twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth sections, inclusive, of the "Administration of Justice Amendment Act, 1879," shall, *mutatis mutandis*, be deemed to apply.

Questions of law in cases under "review" of Eastern Districts or High Court may be reserved for Court of Appeal.

## JURISDICTION OF THE COURT OF THE EASTERN DISTRICTS.

17. The Court of the Eastern Districts shall have a jurisdiction concurrent with that of the Supreme Court in and over all causes arising, and persons residing and being within all districts of the Colony to the eastward of and including the districts of Humansdorp, Uitenhage, Jansenville, Aberdeen, Murraysburg, Richmond, and Hope Town, and within the territories known as the Transkei and Griqualand East, described in the "Transkeian Annexation Act, 1877."

Extension of the jurisdiction of the Eastern Districts Court.

18. Notwithstanding anything contained in the thirty-sixth section of "The Administration of Justice Act, 1864," the rights, powers, and functions, therein conferred upon the Solicitor-General may be exercised by him in regard to all criminal cases within any district or territory over which the Court of the Eastern Districts now has or hereafter may have jurisdiction.

Of the Solicitor-General.

<sup>1</sup> See also § 5, Act 17, 1886.

No. 40—1882. JURISDICTION OF THE COURTS OF RESIDENT MAGISTRATE IN THE  
TRANSKEI AND GRIQUALAND EAST.

Jurisdiction of  
Magistrates' Courts  
of Transkei and Gri-  
qualand East in cri-  
minal cases.

19. (1) The Resident Magistrates of the territories known as the Transkei and Griqualand East shall, until the Governor shall by any proclamation to be issued under the provisions of the second section of the "Transkeian Annexation Act, 1877," otherwise direct, 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; and may sentence any person convicted to any punishment allowed by law: anything in the forty-second section of the Act No. 20, 1856, to the contrary notwithstanding.

Review of such  
Magistrates' deci-  
sions.

20. (2) The sentences of the Resident Magistrates of the territories in the last preceding section mentioned shall, until the Governor shall by any such proclamation issued as is therein mentioned, otherwise direct, continue to be reviewed by the Chief Magistrates, respectively, of the said territories in the manner provided for in and by the twenty-sixth sections respectively of the regulations promulgated by certain two proclamations of His Excellency the then Governor of the Colony bearing date, respectively, the fifteenth and seventeenth days of September, 1879: provided that any person convicted and sentenced to suffer any punishment may appeal in the manner provided, and to the Courts respectively mentioned, in the fourth section of the "Resident Magistrate's Court Act, 1876."

Appeals in civil  
cases.

21. Any person being a party to any civil suit, action, or proceeding pending in the Court of any Resident Magistrate in the said respective territories may appeal either to the Chief Magistrate thereof in the manner provided by the twenty-fifth sections, respectively, of the proclamations mentioned in the last preceding section, or to the Supreme Court, or Court of the Eastern Districts, as such person may elect.

JURISDICTION OF SPECIAL JUSTICES OF THE PEACE.

not repealed  
Extension of juris-  
diction of Special  
Justices of the Peace.

22. Every Special Justice of the Peace appointed under the provisions of "The better Administration of Justice in Criminal Cases Act, 1876," shall in addition to the jurisdiction conferred by the second section of the said Act, have and enjoy and be at liberty to exercise within the local limits fixed and determined by any such proclamation as is in the first section of the said Act mentioned, the same jurisdiction, power and authority as if he were Resident Magistrate of the district in which the offence then under investigation was committed, over and in respect of any such offence or instance of misconduct as is mentioned in the second and seventh sections respectively of the "Masters and

<sup>1</sup> But see § 250, Act 24, 1886 (Native Territories Penal Code).

<sup>2</sup> But see §§ 259 and 268 *ibid.*

Servants Law Amendment Act, 1873," as such Act is amended by the "Master and Servants Act, 1875," subject to the provisions of the said Acts respectively.

No. 40—1882.

23. As often as any such Special Justice of the Peace shall, by the provisions of any Act, be empowered to impose a fine, such fine shall not exceed two pounds, and as often as any such justice shall be empowered to adjudge imprisonment upon non-payment of any fine or otherwise such imprisonment shall not exceed one month.

Their powers of fine and imprisonment.

24. This Act shall take effect when and so soon as the Governor shall by proclamation published in the *Government Gazette*, declare that the same is in force, <sup>(1)</sup> and may be cited as the "Administration of Justice Act, 1882."

Time of taking effect of Act.

Short title.

SCHEDULE.

LAWS REPEALED.

Number and Year.	Title.	Extent of Repeal.
4. May, 1832.	The Royal Letters Patent of His late Majesty King William the Fourth, commonly called the "Charter of Justice."	So much as is repugnant to or inconsistent with the provisions of this Act.
Act 20, 1856.	An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates.	
27. Oct., 1871.	Proclamation of His Excellency Sir Henry Barkly, No. 70 of 1871, establishing the High Court of Griqualand.	
Act No. 39, 1877.	The "Griqualand West Annexation Act, 1877."	The third section.
Act 38, 1877.	The "Transkeian Annexation Act, 1877."	
15. Sep., 1879.	Proclamation of His Excellency the Right Honourable Sir Henry Bartle Edward Frere, under the provisions of the Act, No. 38, 1877, annexing the Transkei, and promulgating regulations for the government thereof.	The twentieth section of this Proclamation, and so much thereof as may be repugnant to or inconsistent with this Act.

<sup>1</sup> Declared in force September 8th, 1882.



No. 41—1882.

Number and Year.	Title.	Extent of Repeal.
17. Sept., 1879.	Proclamation of His Excellency the Right Honourable Sir Henry Bartle Edward Frere, under the provisions of the Act, No. 38, 1877, annexing Griqualand East, and promulgating regulations for the government thereof.	The twentieth section of this Proclamation and so much thereof as may be repugnant to or inconsistent with this Act.
Act No. 5, 1879.	“The Administration of Justice Amendment Act, 1879.”	
Act No. 12, 1880.	“To amend in certain respects Act No. 39, 1877, and Act No. 5, 1879.”	So much as may be repugnant to or inconsistent with this Act.
Act No. 10, 1876.	“The better Administration of Justice in Criminal Cases Act, 1876.”	
Act No. 23, 1879.	“The Vagrancy Act, 1879.”	So much as limits the amounts of fine which may be imposed by any Special Justice of the Peace, to Twenty Shillings, or any period of imprisonment which may be adjudged to fourteen days.
Act No. 29, 1881.	“The Villages Management Act, 1881.”	

No. 41—1882.]

[June 29, 1882.

## ACT (1)

## To Extend the Advantages of the Electric Telegraph.

Preamble.

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:—

Transmission of summonses, writs, &c., by telegraph.

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.

<sup>1</sup> Printed in full under “Telegraphs.”

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.

No. 17—1886.  
Telegram stating issue of warrant or writ of arrest, authority for execution of the same.

\* \* \* \* \*

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.

Supreme Court may make rules under this Act for service of legal process.

No. 17—1886.]

*§§ 1-5 repealed 35/96*

[June 26, 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.

WHEREAS it is expedient to amend the law relating to appeals and to the duties of the Sheriff, and to make more convenient provision regarding legal process in certain cases: 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. From and after the passing of this Act the Court of Appeal shall cease to exist, and all and singular the powers, duties and authorities conferred upon the said Court of Appeal by Act No. 5 of 1879, Act No. 40 of 1882, or any other Act of Parliament, shall be vested in the Supreme Court of the Colony.

Supreme Court to be Court of Appeal.

2. Every appeal to the Supreme Court against any judgment of the Eastern Districts Court, High Court of Griqualand, or any Circuit Court, shall be heard before not less than three judges, one of whom shall be the Chief Justice of the Colony, and two of them shall be Puisne Judges specially assigned to the Supreme Court: Provided that it shall be lawful for the Judge President of

Quorum of Judges.

No. 17—1886.

the Eastern Districts Court or any other judge assigned to that court, and for the Judge President of the High Court of Griqualand, or any other judge assigned to that court, to take part in the determination of any cause, civil or criminal, which shall be brought in appeal before the Supreme Court.

Puisne Judges assigned to Supreme Court to remain so.

3. Every Puisne Judge who shall be specially and permanently assigned by the Governor in Council to the Supreme Court shall be entitled to remain so assigned until he shall cease to be a judge of the Supreme Court.

Appeals from unanimous judgment of E. D. Court and High Court.

4. In case any appeal shall be heard before the Supreme Court against the unanimous judgment of the full Eastern Districts Court or High Court of Griqualand, such judgment shall be affirmed unless three or more of the judges sitting in appeal shall concur in reversing or varying the same.

Appeals in criminal cases—how to be heard.

5. It shall be lawful for the prosecutor or defendant in any criminal suit, which shall be brought in appeal or review before the Eastern Districts Court, High Court of Griqualand, or any Circuit Court, from any inferior court, to appeal to the Supreme Court against the judgment of the said Eastern Districts Court, High Court of Griqualand or Circuit Court, as the case may be, and thereupon it shall be lawful for the Supreme Court to execute all and singular the powers heretofore vested in the Court of Appeal under and by virtue of the twenty-seventh section of Act No. 5 of 1879.

What security Sheriff may demand before seizing disputed property.

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.

How movables seized by Sheriff are to be sold.

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.

Action against Sheriff to be brought within six months.

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.

Sheriff and Deputy Sheriffs of Albany and Kimberley to lodge moneys received with Civil Commissioner.

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 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.

No. 17—1886.

How moneys to be distributed.

10. The 328th rule of court as amended by the 377th rule of court shall be applicable to the High Court of Griqualand, the word Kimberley being substituted for Cape Town.

The 328th and 377th Rules of Court to apply to High Court.

11. Unless by order of any judge to whom application shall be made by any petitioner for the surrender of his estate, execution against his property shall not be stayed under and by virtue of the second section of Act No. 38 of 1884, for a longer period than fourteen days from the date of the publication of the notice in the said section mentioned.

Execution stayed against petitioner for surrender for only 14 days.

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' Court 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.

14. The following shall be added as a proviso to the second section of Act No. 21 of 1884:—"Provided, however, that if it shall appear to the officer issuing any such process as aforesaid, either from his personal knowledge or otherwise, that the person upon whom the same is intended to be served is sufficiently acquainted with the English language to understand the purport of such process, or is not sufficiently acquainted with the Dutch language to understand the purport of such process if it be drawn in the Dutch language, then it shall not be necessary to issue such process in the Dutch language as well as the English language."

Provision as to issuing process in Dutch or English.

15. This Act may be cited as the "Appeal Court and Sheriff's Duties Act, 1886."

Short Title.

46 ADMINISTRATION OF JUSTICE.—(JUDGES' SALARIES  
AND PENSIONS.)

No. 13—1861.]

[August 14, 1861.

ACT

For securing by Law the Salary of one of the Judges of the Supreme Court whose Salary is not at present so secured.

Preamble.

WHEREAS it is provided by the Act No. 10, 1855, entitled "An Act for the better Administration of Justice," that the Supreme Court of this Colony shall consist of one Chief Justice and three Puisne Judges: And whereas by the schedule marked A, annexed to a certain Ordinance appended to a certain order of Her Majesty in Council, bearing date the 11th day of March, 1853, and which Ordinance is entitled "Ordinance enacted by the Honourable the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for regulating in certain respects the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof," the salaries of the Chief Justice aforesaid and of the Puisne Judges of the said Supreme Court are secured by law: And whereas it is fitting and expedient that the salaries of the whole number of the judges of the said Supreme Court should be equally secured by law: 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:—

£1,200 payable annually to the third Puisne judge

1. There shall be payable every year to Her Majesty, her heirs, and successors, out of the public revenue of this Colony, for defraying the salary of a third Puisne Judge of the Supreme Court, the sum of twelve hundred pounds sterling, the said sum to be issued by the Treasurer of this Colony in discharge of warrants to be from time to time directed to him under the hand and seal of the Governor of this Colony.

No. 2—1867.]

[August 16, 1867.

ACT

To amend Act No. 14, 1861, to regulate the Retiring Pensions of the Judges of the Supreme Court.

Preamble.

WHEREAS it is expedient that the provisions of Act No. 14 of 1861 should be altered: 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 1 of Act 14 of 1861 repealed. Exception in regard to judges now in office.

The first clause of the Act No. 14 of 1861 is hereby repealed, save and except as regards the judges of the Supreme Court now serving or in office, and the following substituted: Any person having served the office of judge of the Supreme Court for the

full period of ten years shall be entitled to retire from the said office and to receive a pension, to be ascertained as follows: that is to say, if he shall have served such office for a period of ten years or upwards, he shall be entitled to a pension equal to one half of the salary which shall have been paid to him for the three years immediately preceding his retirement; and if he shall have served for the period of fifteen years or upwards, then to a pension equal to two-thirds of such salary as aforesaid: Provided, always, that no such pension shall be paid to any judge retiring before he shall have attained the age of sixty-five years, unless he shall be afflicted with some permanent infirmity disabling him from the due execution of his office; and provided, further, that in case any person serving the office of judge shall, before he shall have served for such full period of ten years, happen to be afflicted with any permanent infirmity disabling him from the due execution of his office, he shall be entitled to receive such pension as the Governor for the time being shall, in the circumstances, consider to be reasonable, such pension not exceeding one-half of the salary which shall have been payable to him at the time at which he shall have ceased to be able to discharge the duties of his office.

No. 2--1867.

Pension after ten years' service and upwards.

Pensions after fifteen years' service and upwards. No pension claimable before the age of sixty-five, unless disabled.

Pension for service under ten years may be granted.

## ALIENS (NATURALIZATION OF).

No. 2—1883.]

[August 22, 1883.

## ACT

To Consolidate and Amend the Law relating to Aliens.

WHEREAS it is expedient to consolidate and amend the law relating to the legal condition of aliens: 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 first schedule to this Act shall be and are hereby wholly repealed: Provided that such repeal shall not, as to any time before the passing of this Act, affect

Repeal (with exceptions) of Laws in Schedule.

- (1) Any right acquired or thing done.
- (2) Any liability accrued or accruing.
- (3) Any penalty or other punishment incurred, or to be incurred, in respect of any offence committed.
- (4) The institution of any investigation or legal proceeding, or any other remedy for ascertaining or enforcing any such liability, penalty, or punishment as aforesaid.

2. Any person of alien birth may purchase, acquire, own, and dispose of immovable property in this Colony in like manner as natural-born subjects of Her Majesty: Provided that this section

Aliens may acquire fixed property.

No. 2-1883.

shall not qualify an alien for any <sup>(1)</sup> office or any franchise which such alien does not now by law possess, nor entitle an alien to any right or privilege except such rights and privileges in respect of immovable property as are hereby expressly given to him.

Aliens may apply for Letters of Naturalization.

3. Any alien now residing, or who may hereafter reside, within this Colony, may make application, addressed to the Colonial Secretary, for Letters of Naturalization: and every such application shall be as nearly as is material in the form set forth in the second schedule.

Governor may grant Letters of Naturalization.

4. The Governor may (if he think fit) grant Letters of Naturalization in this Colony to any alien, or to any person who has been naturalized as a British subject elsewhere than in this Colony, who shall apply for naturalization and conform to the provisions of this Act: Provided that no Letters of Naturalization shall be granted until proof be furnished, to the satisfaction of the Colonial Secretary, that notice of application for such Letters of Naturalization has been given, by the person applying for the same, in two issues of the *Government Gazette*, and also in two issues of some local newspaper circulating in the district where such applicant resides.

Aliens having certificates may apply for Letters of Naturalization.

5. Any person resident in this Colony who has previously obtained a certificate of naturalization as a British subject as aforesaid may obtain Letters of Naturalization under the provisions of this Act if he shall submit such certificate and make an application to the Colonial Secretary, stating in the said application

- (1) That he is the person named in such certificate;
- (2) That the certificate has been obtained without any fraud or intentionally false statement; and
- (3) That the signature and seal (if any) thereto are to the best of his knowledge and belief genuine.

Declaration of allegiance to be taken.

6. Every alien, being a male, to whom the Governor may grant Letters of Naturalization, shall before the delivery of such letters to him make and subscribe before a Justice of the Peace a declaration of allegiance in the form contained in the third schedule, which declaration shall be of the same force and effect as an oath of allegiance.

Rights of naturalized aliens.

7. An alien to whom Letters of Naturalization have been granted shall in this Colony be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in this Colony.

Persons deemed to be naturalized.

8. The following persons shall be deemed and taken to be naturalized, and shall have all the rights and privileges of natural-born subjects of Her Majesty in this Colony:

<sup>1</sup> Alien cannot be registered as voter. Section 10, Constitution Ordinance. Cannot be elected member of House of Assembly, Section 47 *ibid.*, or of Legislative Council, Section 33 *ibid.* Cannot be elected member of Municipality, Act 45 of 1882, Section 16.

- (1) Any alien woman in this Colony already married, or who shall hereafter be married to any such natural-born or naturalized subject. No. 2—1883.
- (2) All minor children alien born of any alien parent who shall be or become naturalized under this or any other Act, and which children shall either be within this Colony at the time of the naturalization of their parent, or shall become resident with such parent in this Colony during minority.
9. A return of persons to whom Letters of Naturalization shall have been granted under this Act shall be published in the *Gazette* half-yearly, in the months of January and July, and such return shall shew : Returns to be published of Letters issued.
- (1) Names of such persons in full.
  - (2) Their birth-place.
  - (3) Occupation.
  - (4) Residence in the Colony.
  - (5) Date of the issue of letters.
10. If any person shall wilfully make any false statement in any application made under the provisions of this Act for the purpose of obtaining Letters of Naturalization, he shall, upon conviction, incur the same penalties as are by law provided against persons convicted of wilful and corrupt perjury. And in case Letters of Naturalization shall have been granted such letters shall be void. Penalty for false declaration.
11. Every person obtaining Letters of Naturalization under this Act shall pay for the same a fee, to be collected by means of stamps, of one pound. Fee.
12. The Colonial Secretary shall cause a register to be made and kept of all Letters of Naturalization heretofore granted or hereafter granted under this Act, and shall upon the application of any person, and upon payment of a fee of one shilling in respect of every name, permit a search to be made for the name of any person upon, or supposed to be upon, the register. Register to be kept.
- A certificate under the hand of the Colonial Secretary authenticating the fact of the issue of Letters of Naturalization to any person whose name appears upon the said register may, at the discretion of the Colonial Secretary, be issued upon payment by means of stamps of a fee of five shillings. Every such certificate shall be received as evidence of the facts therein stated. Certificate of authentication.
13. Every Letter of Naturalization and every such certificate as aforesaid shall be admissible in evidence without proof of the signature or seal authenticating the same and shall be *prima facie* evidence of the person named therein being duly naturalized, and of the signature or seal authenticating the same and of the official character of the persons appearing to have signed the same. Evidence.
14. This Act may be cited as the "Aliens Naturalization Act, 1883." Short title



## THE FIRST SCHEDULE.

LAWS REPEALED.

No. and Year.	Title of Act.
No. 8, 1856.	For enabling Persons alien born to hold fixed Property in this Colony.
No. 37, 1861.	For Facilitating the Naturalization of Aliens.
No. 21, 1868.	For further Facilitating the Naturalization of Certain Aliens.

## THE SECOND SCHEDULE.

FORM OF APPLICATION FOR LETTERS OF NATURALIZATION.

To the Colonial Secretary of  
the Cape of Good Hope.

I do hereby apply for Letters of Naturalization in the Colony of the Cape of Good Hope, and I declare that the answers to the questions hereunder given are true and correct.

<ol style="list-style-type: none"> <li>1. Name of the applicant (in full)</li> <li>2. Birth-place (state fully the name of the place and the country in which the place is situated).</li> <li>3. Age next birthday.</li> <li>4. Occupation.</li> <li>5. Place of Residence in the Colony.</li> <li>6. Length of time during which the applicant has resided in the Colony.</li> <li>7. Does the applicant intend, when naturalized, to reside in this Colony?</li> </ol>	
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Dated at \_\_\_\_\_  
the \_\_\_\_\_ day of \_\_\_\_\_ 18

Witness :

(Signature of Applicant.)

## THE THIRD SCHEDULE.

Sept. 4, 1742.

## DECLARATION OF ALLEGIANCE.

I, A.B., of ———, do sincerely promise that I will be faithful and bear true allegiance to Her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Colony of the Cape of Good Hope, and to her heirs and successors, according to Law.

Declared this                      day of  
Before me :

A.B.  
18

Justice of the Peace.

## ANIMALS.

## RENEWAL OF THE FOLLOWING WARNING, RESPECTING THE CARCASSES OF HORSES, OXEN, &amp;c., ON AND NEAR THE PUBLIC ROADS (1).

WHEREAS it is daily found that certain of the inhabitants, whose horses, oxen, and other beasts of burden, whether through weakness or otherwise, happen to fall down upon the public roads and die there, permit them to lie there and rot, without taking any further trouble about them, by which the air is infected, and other evils arise: Therefore, we, wishing to provide against this, have thought fit to ordain and direct, as we hereby ordain and direct, that whenever, as well in the Cape as in the country districts, any of the abovementioned animals or other cattle through sickness or other accident should happen to fall upon or about the public road, or are compelled to be left behind, so that there is nothing else to be expected but that such animal or animals will die there, such animals shall then be thrown into a hole, to be dug by those whom it may concern, whether Europeans or slaves, and be covered over with earth, under penalty that whoever shall be found neglectful herein shall be mulcted in a fine of fifty rixdollars; and masters of slaves who shall offend herein shall be liable for such slaves. Wherefore let every one beware.

Preamble.

Cattle dying on or near roads to be buried by those in charge of them.

Penalty fifty rixdollars.

In the Castle of Good Hope, 4th September, 1742.

By order of the Honourable the Governor and Council,

J. DE GRANDPREEZ, Councillor and Sec.

Thus done and renewed in the Castle of Good Hope, 22nd April, 1783. Published and affixed on the 30th of the same month.

By order of the Honourable the Governor and Council,

O. M. BERGH, Councillor and Sec.

<sup>1</sup> See Act 27, 1882: Part 2, § 7, sub-section 8. (Police Offences).

No. 3—1875.]

[June 30, 1875.

## ACT

For the more effectual prevention of Cruelty to Animals.

Preamble.

WHEREAS by the Act No. 10 of 1856 provision was made for the prevention of cruelty to animals, and it is expedient to repeal the said Act, and to make other and more effectual provisions for promoting the object and purposes 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:—

Act No. 10 of 1856 repealed.

1. The said Act No. 10 of 1856, intituled "An Act for the Prevention of Cruelty to Animals" is hereby repealed: Provided that such repeal shall not affect any pending proceedings under the said Act, which shall proceed as if the said Act were still in force.

Penalty for ill-treating an animal.

2. Every person who shall wantonly or cruelly beat, ill-treat, over-drive, abuse, wound, or torture, or cause or procure to be wantonly or cruelly beaten, ill-treated, over-driven, abused, wounded, or tortured any animal, whether belonging to himself or to another, shall be liable to be fined any sum not exceeding ten pounds sterling, and in case of default to be imprisoned with or without hard labour for not exceeding three months, or to both such fine and such imprisonment.

Meaning of word "animal."

3. The word "animal" in this Act shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, calf, mule, ass, sheep, lamb, goat, pig, ostrich, dog, cat, or any other domestic animal.

Short title.

4. This Act may be cited for all purposes as the "Cruelty to Animals Act, 1875."

No. 5.—Sd. George Napier.]

[January 30, 1844.

Ordinance to prevent the Spread of the Horse Disease called Glanders. (1)

Penalty for treating grain with glandered horses.

WHEREAS there is reason to believe that a few farmers in this Colony make use of glandered horses in treading out grain: And whereas such a practice may tend to spread disease amongst other horses fed with grain so trodden out: 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, any person who shall knowingly make use of, or knowingly permit use to be made of, any horse or mare of any age or description whatever, which shall have, or be commonly deemed and taken to have, the disease called glanders,

<sup>1</sup> By Act No. 7 of 1866-67 the provisions of this Ordinance are extended to mules and asses.

or to have the usual symptoms of the said disease, in trampling or treading out any species of grain, and whether the animal and the grain, or either of them, shall or shall not be the property of such person, shall for every offence incur and become liable to a penalty not exceeding ten and not less than five pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for any period not exceeding three and not less than one month.

No. 5—1844.

2. And be it enacted, that the use, in manner aforesaid, of any such animal as aforesaid, for the whole or any part of any one day, shall constitute a separate offence, and that every day during which any one such animal as aforesaid shall be used as aforesaid, shall also constitute a separate offence.

Each day's use a separate offence.

3. And be it enacted, that the owner of every such animal as aforesaid, which shall have, or be commonly deemed and taken to have, the said disease called the glanders, or the usual symptoms of the said disease, shall cause the same to be kept shut up in some stable, kraal, or other complete enclosure; and in case any such animal shall, wilfully or by neglect, be permitted and allowed by the owner thereof, or his servants, to be or go from and out of such enclosure as aforesaid, unless in the actual and immediate charge of some person conducting the same by means of a riem, reins, or some such thing, shall incur and become liable to a penalty not exceeding five pounds and not less than one pound, and in default of payment thereof, to imprisonment, with or without hard labour, for any period not exceeding one month.

Glandered animals to be confined.

4. And be it enacted, that if any person, whether the owner of any such animal as aforesaid or not, shall ride, lead, or drive, or otherwise conduct any such animal upon or along any public road, street, or thoroughfare, or into any common pasture land or any outspan-place, such person shall incur and become liable to a penalty not exceeding five pounds, and not less than one pound, and in default of payment thereof, to imprisonment, with or without hard labour, for any period not exceeding one month, unless he shall prove to the satisfaction of the court before which the case shall be prosecuted, that the said animal was not affected by the disease called glanders, or otherwise, that the said animal was at the time and place charged, in the act of being conducted to some particular place for the purpose of being examined or physicked, or otherwise treated for the sickness or disease under which he may be labouring, or in the act of returning from some such place; or otherwise, that the said animal having first exhibited the symptoms of the said disease when absent from the owner's place or residence, and at the time and place charged was in the act of returning or being conducted to the owner's, or some other place, in order to be duly secured and taken care of.

Penalty for having glandered animals on public roads, &c.

5. And be it enacted, that it shall and may be lawful for any person who shall find any such animal as aforesaid, without being in the charge of any person, in or upon any public road, street, or

Glandered animals may be destroyed.

No. 1—1853.

thoroughfare, or on any common pasture land, or outspan-place, or upon the place or ground of any such person, to destroy any such animal: Provided always, that every such person shall be bound, before destroying any such animal, to obtain the approval, after inspection, of some field-cornet or acting field-cornet, or otherwise of two persons qualified to serve as common jurors; or otherwise of three males of full age who shall not be the servants of the person so destroying the said animal, or related to him within the second degree of consanguinity—And in case any person shall destroy any such animal, without having obtained some such approval thereof as aforesaid, he shall incur and become liable to a fine not exceeding five pounds, and shall also be bound to make good to the owner of the animal destroyed, whatever damage, if any, he shall have sustained by the destruction of the same.

Application of penalties.

6. And be it enacted, that any person or persons who shall give such information as shall lead to the conviction of any such offender as aforesaid, shall be entitled to receive one-half of the penalty aforesaid, and that the other half of the said penalty shall be paid to the Colonial Treasury.

No. 7—1866-'67.]

[January 12, 1867.]

## ACT

To Extend the Provisions of the Ordinance No. 5 of 1844 to Mules and Asses.

Preamble.

WHEREAS it is expedient that the provisions of the Ordinance No. 5 of the year 1844, intituled "An Ordinance to prevent the spread of the Horse Disease called Glanders," should be made applicable to mules and asses: 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:—

Provisions of Ordinance 5 of 1844 to apply to mules and asses.

1. The provisions of the Ordinance No. 5 of the year 1844 shall be, and the same are hereby declared to be applicable, in all respects, to mules and asses which shall have, or be commonly deemed and taken to have, the disease called glanders.

No. 1.—Sd. George Cathcart.]

[October 7, 1853.]

Ordinance to prevent the Spread of the Cattle Disease, commonly called "Long Ziekte."<sup>(1)</sup>

Preamble.

WHEREAS there has recently appeared amongst the horned cattle in some of the western districts of this Colony a contagious disease of a fatal nature, called in the Dutch language "long ziekte:"

<sup>1</sup> See Act 2 of 1881 infra, §§ 2 and 12.

and whereas it is expedient to provide against the spread of the said disease: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the owner of every animal which shall have, or be commonly deemed and taken to have, the said disease, called the "long ziekte," or the usual symptoms of the said disease, shall cause the same to be shut up in some kraal, or other complete enclosure; and in case any such animal shall wilfully, or by neglect, be permitted and allowed by the owner thereof, or his servants, to be or go from and out of such enclosure as aforesaid, unless in the actual and immediate charge of some person conducting the same by means of a riem, reins, or some such thing, such owner shall incur and become liable to a penalty not exceeding five pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for any period not exceeding one month.

No. 1—1853.  
Enclosure for diseased cattle.

Penalty on allowing cattle to go out of enclosure.

2. And be it enacted, that if any person, whether the owner of any such animal as aforesaid or not, shall ride, lead, drive, or otherwise conduct any such animal upon or along any public road, street, or thoroughfare, or into any common pasture land or any outspan-place, such person shall incur and become liable to a penalty not exceeding five pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for any period not exceeding one month, unless he shall prove to the satisfaction of the court before which the case shall be prosecuted, that the said animal was not affected by the disease called the "long ziekte," or otherwise, that the said animal was at the time and place charged, in the act of being conducted to some particular place for the purpose of being examined or physicked, or otherwise treated for the sickness or disease under which it may be labouring, or in the act of returning from some such place; or otherwise, that the said animal, having first exhibited the symptoms of the said disease when absent from the owner's place or residence, was at the time and place charged in the act of returning or being conducted to the owner's, or some other place, in order to be duly secured and taken care of.

Penalty on bringing diseased cattle into public thoroughfares.

Cases in which penalty will not be enforced.

3. And be it enacted, that it shall and may be lawful for any person who shall find any such animal as aforesaid, without being in the charge of any person, in or upon any public road, street, or thoroughfare, or on any common pasture land, or outspan-place, or upon the place or ground of the person finding the same, to destroy any such animal: Provided always, that every such person shall be bound, before destroying any such animal, to obtain the approval, after inspection, of some field-cornet or acting field-cornet, or otherwise, of two persons qualified to serve as common jurors; or otherwise, of three males of full age who shall not be the servants of the person so destroying the said animal, or related to him within the second degree of consanguinity. And in case any person shall destroy any such animal, without having

Destruction after inspection by field-cornet, of diseased animals.

- No. 1--1853. obtained some such approval thereof as aforesaid, he shall incur and become liable to a fine not exceeding five pounds, and shall also be bound to make good to the owner of the animal destroyed, whatever damage, if any, he shall have sustained by the destruction of the same.
- Penalty on selling  
flesh of diseased  
animals. 4. And be it enacted, that if any person shall sell, or expose for sale, for the food of man or beast, or supply to man or beast for food, the flesh of any animal which shall have died of the said disease, or which had, when killed, the said disease, or the usual symptoms thereof, such person shall, for every such offence, forfeit any sum not exceeding five pounds, and in default of payment shall be liable to be imprisoned, with or without hard labour, for any period not exceeding one month: Provided that when and as often as any person might, for any such act as is in this section mentioned, be proceeded against under or by virtue of any municipal regulation, such person may be prosecuted, either under such regulation or under this Ordinance; but any prosecution for any such act under such regulation shall be a bar to any prosecution under this Ordinance, and *vice versa*.
- Penalty on turning  
loose diseased cattle. 5. And be it enacted, that if any person, in charge of any such animal as aforesaid, so diseased as aforesaid, or supposed so to be, shall leave the same in any place whatever, public or private, except in the care and custody of some person who shall have undertaken to take and keep the charge thereof, such person shall forfeit any sum not exceeding five pounds, and in default of payment, shall be liable to be imprisoned with or without hard labour, for any period not exceeding one month.
- Burial of carcases. 6. And be it enacted, that every person in charge of any animal destroyed for, or dying of, the disease aforesaid, at the time of its destruction or death, shall be bound to bury the carcase thereof, without skinning the same, or removing the horns thereof, at a depth of not less than three feet. And any person contravening this section shall forfeit any sum not exceeding five pounds, and in default of payment shall be liable to be imprisoned, with or without hard labour, for any period not exceeding one month.
- Penalty on contra-  
vention. 7. And be it enacted, that any person or persons who shall give such information as shall lead to the conviction of any such offender as aforesaid, shall be entitled to receive one-half of the penalty aforesaid, and that the other half of the said penalty shall be paid to the Colonial Treasury.
- Application of fines 7. And be it enacted, that any person or persons who shall give such information as shall lead to the conviction of any such offender as aforesaid, shall be entitled to receive one-half of the penalty aforesaid, and that the other half of the said penalty shall be paid to the Colonial Treasury.
- Interpretation of  
terms. 8. And be it enacted, that the terms "horned cattle" and "animal," as used in this Ordinance, shall extend to and embrace any bull, ox, cow, heifer, or calf.
- Time of taking  
effect. 9. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 20—1868.]

[Sept. 2, 1868.

ACT

To Repeal Act No. 5 of 1867, and to make provision relating to Contagious and Infectious Diseases affecting Cattle, Sheep, or other Domestic Animals.

WHEREAS it is expedient that an Act numbered 5 of 1867 should be repealed, and that provision should be made in future for preventing the introduction into this Colony of contagious and infectious diseases affecting cattle, sheep, or other domestic animals: 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 said Act, No. 5 of 1867, shall be, and the same is hereby repealed.

Act No. 5, 1867, repealed.

2. If at any time it shall seem expedient, by reason of the known or supposed prevalence in any place beyond this Colony of any contagious or infectious disease, or any disease supposed to be contagious or infectious, affecting cattle, sheep, horses, or any other domestic animals, to prohibit the importation or introduction into this Colony for any time, from any place or places, of any such cattle, sheep, horses, or other domestic animals, it shall be lawful for the Governor, with the advice of the Executive Council, to make proclamation which shall be published in the *Government Gazette*, declaring that during such time as shall be named in such proclamation, it shall not be lawful to land at any port or place in this Colony, from any ship, vessel, or boat, or otherwise to introduce into this Colony any such cattle, or any sheep, or horse, or other domestic animal, or any animal of all or any of such denominations, and that the master of any ship or vessel, and the owner of any boats, who shall land or permit or suffer to be landed from such ship or vessel, or boat, and every other person who shall otherwise introduce into this Colony, contrary to the prohibition in such proclamation contained, any such cattle, sheep, horse, or other domestic animal, shall, for every animal so landed or otherwise introduced into this Colony contrary to such prohibition, forfeit, upon conviction, any sum not exceeding four hundred pounds sterling, and in default of payment thereof may be imprisoned, with or without hard labour, for any term not exceeding twelve months, unless the fine be sooner paid.

Governor may by proclamation prohibit importation of cattle, sheep, horses, &c.

Penalty for landing animal contrary to such prohibition.

3. From and after the publication of such proclamation the prohibitions and penalties contained in the same shall be as binding and validly imposed as if the same were imposed and enacted directly by this Act.

Proclamation to have force of law.

4. Notwithstanding the general restrictions hereinbefore enacted, it shall be lawful for the Governor, with the advice of the Executive Council, if it shall seem expedient, by any such proclamation as

Governor may permit landing of animals at Robben Island or elsewhere.



58 ANIMALS DISEASES (IMPORTATION OF DISEASED ANIMALS).

No. 20—1868.

Governor may, after certain period, under certain restrictions, permit landing of animals on mainland.

Penalty for evading or breaking restrictions imposed.

Sufficient bail to be taken before release of any person committed under this Act.

Duty of officer boarding vessel to inform master of existence of Act and proclamation under it.

Indemnity to owners of animals prohibited to be landed under certain circumstances.

aforesaid, to permit the landing of such cattle, sheep, horses, or other animals as aforesaid upon Robben Island, or any other island to be named in such proclamation, and to give order for the keeping of such animals separate and apart from any other animals; and if any such animals shall have been so kept on any such island as aforesaid, separate and apart from any others afterwards imported, for a period not less than three months, and shall during such time have shown no symptom of any contagious or infectious disease, or disease supposed to be contagious or infectious, then it shall be lawful for the Governor to give under his hand permission that such specified animals as to him shall seem expedient may, under such restrictions, if any, as to him shall seem expedient, which shall also be under the hand of the Governor, be, and the same may thereupon, subject to such restrictions, if any, be landed from such island on the mainland of this Colony, without incurring any penalty under this Act or any proclamation to be published in pursuance thereof; but if any of the restrictions deemed necessary by the Governor to be coupled with such permission shall be evaded, broken, or neglected, every person knowingly evading, breaking, or neglecting the same shall, on conviction, forfeit any sum not exceeding one hundred pounds sterling, and in default of payment thereof may be imprisoned, with or without hard labour, for any term not exceeding six months, unless the fine be sooner paid.

5. No person who shall have been committed for trial for any offence hereinbefore mentioned shall, pending such trial, be released from custody unless he shall give good and sufficient bail that he will duly appear to take his trial for such offence in any competent court, and that he will pay and satisfy any fine which may by such court be imposed upon him for such offence.

6. It shall be the duty of the port captain, harbour master, or other officer of Government who shall first board any ship or vessel arriving at any of the ports of this Colony pending the time limited in any such proclamation as aforesaid for the continuance of such prohibitions as aforesaid as may be therein contained, to ask the master of such ship or vessel whether he has on board any animal whereof the importation shall by such proclamation be prohibited, mentioning such animals by their denominations; and should the said master reply in the affirmative, the port captain, harbour master, or other officer shall inform the said master of this Act and the said proclamation, and deliver to him a copy of the same respectively.

7. If during the time within which any such prohibition as aforesaid shall be in force there shall arrive in any of the ports of this Colony any of the animals whereof the importation shall be so prohibited as aforesaid, which shall be consigned to any place in this Colony, and which shall have been shipped for this Colony after the publication of this Act in the *London Gazette* and before the

publication of any such proclamation as aforesaid in the *London Gazette*, it shall in such case be lawful for the Governor, and he is hereby authorized, to indemnify, from and out of the public revenue, the owner of every such animal by paying to him or his agent the first cost of every such animal, together with freight, insurance, and any other charge which shall have been reasonably and properly incurred upon or about such animal, whereupon such animal shall become the property of the Queen in her Colonial Revenue; but it shall not be incumbent on any importer of such animal to accept such terms if he shall be willing to submit to such conditions as may be proposed to him by the Colonial Government with reference to landing such animal on Robben Island, or such other island as the Governor shall appoint, and to providing for the care and maintenance of such animal separate and apart from other animals, save such as shall have been imported therewith, at the risk of the owner, for such time as may seem expedient, not being less than three months, and shall abide by such conditions and submit to such restrictions as to subsequently landing such animal upon the mainland of this Colony, and keeping the same for such time thereafter as may seem expedient, and shall be ordered by the Governor as aforesaid in that behalf: Provided, also, that no compensation shall be made in respect of any such animal as aforesaid which shall have been shipped at any time after the publication of such proclamation as aforesaid in the *London Gazette*, or in respect of any such animal as shall be found to be actually suffering from any contagious or infectious disease, or any disease supposed to be contagious or infectious, at the time at which such animal would, in the ordinary course, have been landed on the mainland of this Colony, or within fourteen days thereafter: Provided, also, that it shall be lawful for the Governor to order the destruction of such infected animal, should the same at any time be landed on the mainland.

No. 2—1881.

Exceptions.

8. In the interpretation of this Act, the term "master" shall include any officer in command of any ship or vessel.

Interpretation of term "master."

9. This Act may be cited for all purposes as the "Cattle Diseases Act of 1868."

Short title.

No. 2—1881.]

[May 21, 1881.

## ACT

## For Preventing the Spread of Contagious and Infectious Diseases among Cattle and other Animals.

WHEREAS it is necessary to make provision against the introduction and spread of contagious and infectious diseases among cattle and other animals: 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.

No. 2—1881.

Any animal affected with contagious disease to be isolated, Notice of such isolation to be given to resident magistrate, field-cornet, nearest justice of the peace, and inspector of native location.

1. Every person having in his possession or under his charge any animal affected with rinderpest or cattle plague, redwater, pleuro-pneumonia or lung-sickness, glanders, farcy, or any other contagious or infectious disease, shall keep such animal separate from all animals not so affected, and shall forthwith give notice to the Resident Magistrate of the district or the Field-cornet of the ward in which such animal is, to the nearest Justice of the Peace, or Inspector of Native Location, and also to all the occupiers of all contiguous lands not being lands situated within the limits of any town or village, that such animal is so affected. Every Field-cornet, Justice of the Peace, or Inspector of Native Location, receiving such notice shall forthwith give information thereof to the Resident Magistrate of the district.

Resident Magistrate, field-cornet, justice of the peace, or inspector of locations with two landowners to inspect affected animal, and may order such animal to be destroyed or isolated.

2. Whenever any such notice or information shall have been received by any Resident Magistrate, Field-cornet, Justice of the Peace, or Inspector of Native Location, or it shall otherwise have come to the knowledge of any such person, that any animal in his district, ward, or location, is affected as aforesaid, he shall, with all convenient speed, call to his assistance any two farmers, being landowners, who are hereby authorized and required, upon being so called upon, to render such assistance; and he shall together with such farmers forthwith proceed to inspect such animal, and to hold an inquiry into the circumstances of the case, and if they, or any two of them, shall be of opinion that such animal is affected with any such disease as aforesaid, and that there is danger of such disease spreading, they shall forthwith cause such animal to be destroyed or isolated, or dealt with in such other manner as they, or any two of them, may deem expedient in order to prevent the spread of such disease. The carcasses of all animals destroyed under the provisions of this Act shall be forthwith buried or burnt by the owner thereof, and such owner shall not be entitled to any compensation for any animals destroyed under the provisions of this section.

Carcasses of animals destroyed to be buried or burnt.

No compensation to owner.

Magistrate, &c., on suspicion may cause inspection to be held.

3. Whenever it shall be made to appear to any Resident Magistrate, Field-cornet, Justice of the Peace, or Inspector of Native Location that there is good reason to suspect that any animal in his district, ward, or location is affected as aforesaid, it shall and may be lawful for any such person to cause such inspection or inquiry or investigation to be made as may be necessary in order to ascertain whether such animal is so affected.

Provisions of Section 2 may apply to animal not actually affected. Compensation allowed if animal is destroyed under authority of Commissioner of Crown Lands.

4. If, upon any inquiry such as is provided for in the second section of this Act, the three persons therein mentioned shall un-animously be of opinion that it is necessary, in order to prevent the spread of any such disease as aforesaid, to destroy, isolate, or deal in any other manner with any animal not known to be actually affected with any disease, it shall be lawful for the said persons to deal with such animal as if the same were actually affected with some such disease as aforesaid; and in case any such animal shall

be destroyed under the provisions of this section, it shall be lawful for the three persons aforesaid, or any two of them, if they think fit, to direct that the owner of such animal shall be paid such compensation for the same as they may under the circumstances deem fair and equitable, and such compensation shall be payable out of the public revenue: Provided, however, that no animal shall be destroyed under the provisions of this section without the authority of the Commissioner of Crown Lands and Public Works first had and obtained.

No. 2—1881.

5. Whenever any such disease as aforesaid is known to exist among animals in any district or districts, the Governor may, if he think fit, by proclamation in the *Government Gazette*, declare such district or districts, or any area embracing or forming part of such district or districts, to be an infected district or area, and may by such proclamation, order and direct that it shall not be lawful to remove from or bring into such district or area any such animals as shall in such proclamation be named, whether the same are or are not affected with any disease: Provided, however, that it shall be lawful for the Governor in such proclamation to make such exceptions as he shall think fit, with regard to the removal from or taking into such district or area of any animals not affected with any such disease as aforesaid.

Governor may by proclamation declare district or area infected.

6. It shall be the duty of every Resident Magistrate, whenever it shall come to his knowledge that any such disease as aforesaid exists among animals in his district, forthwith to make report thereof to the Commissioner of Crown Lands and Public Works.

Duty of Resident Magistrate.

7. Whenever it shall be shown to the satisfaction of the Governor that contagious and infectious diseases have ceased to exist among animals in any district or area with regard to which any such proclamation as is in the fifth section hereinbefore mentioned shall have been issued, it shall be lawful for him, if he think fit, at any time after the expiration of fourteen days after the cessation of such diseases to repeal such proclamation by another proclamation in the *Government Gazette*, and to declare such district or area to be no longer infected.

Withdrawal of proclamation by Governor.

8. Any person who shall bring into this Colony, or remove from one part thereof to another, any animal which shall be to his knowledge affected with any such disease as aforesaid, shall be guilty of an offence against this Act, and shall be liable on conviction to the punishment in the next succeeding section mentioned.

Offence under this Act.

9. Any person contravening any of the provisions of this Act, or of any proclamation issued under the provisions thereof, or wilfully obstructing any person in the due execution of any of the said provisions, shall be deemed to be guilty of an offence against this Act, and shall, upon conviction thereof before the Court of the Resident Magistrate of the district within which such offence shall have been committed, be liable to a fine not exceeding £50, and in default of payment to imprisonment with or without hard labour

Penalty.

- No. 28—1886. for any period not exceeding three months, unless such fine be sooner paid.
- This Act not to apply to foot and mouth disease and scab. 10. Nothing in this Act contained shall be deemed as taken to apply to the diseases known as foot and mouth disease among cattle and sheep, and scab among sheep and goats.
- Expenses incurred to be paid out of general revenue. 11. All expenses incurred in carrying into effect the provisions of this Act shall be borne by and paid out of the general revenue, according to such tariff as shall from time to time be framed in that behalf by the Commissioner of Crown Lands and Public Works
- Act not to alter or repeal Ord. 5, 1844, Ord. 1, 1853, Act 20, 1868. 12. Nothing in this Act contained shall have the effect of altering or repealing any of the provisions of Ordinance No. 5 of 1844, Ordinance No. 1 of 1853, Act No. 20 of 1868, or of any other law relating to diseases among animals.
- Construction of "animal." 13. The word "animal" in this Act shall be taken to mean any horse, gelding, mare, mule, ass, bull, ox, cow, heifer, calf, sheep, goat, pig, or ostrich.
- Short title. 14. This Act may be cited as the "Animals Diseases Act, 1881."

No. 28 of 1886.]

[July 6, 1886.

## ACT

### To More effectually Prevent the Spread of Scab Disease in Sheep and Goats.

#### Preamble.

WHEREAS it is expedient to adopt more effectual measures for the prevention of the spread of the scab disease in sheep and goats: 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:—

#### Provisions of Act 31 of 1874 repealed.

1. The provisions of the Act No. 31 of 1874, known as the "Scab Act," are hereby repealed.

#### Governor in Council to appoint Inspectors.

2. The Governor may from time to time appoint an inspector or inspectors of sheep for any district or area, inserted in the first schedule hereto, and may from time to time remove or dismiss such inspector or inspectors, and every person so appointed shall have full power at any time to inspect any sheep within any district or area for which he shall be appointed, wherever such sheep may be kept, driven or depastured, and shall have, exercise, and discharge within any such district or area the several powers, authorities and duties hereinafter mentioned; and if any person shall refuse to allow any inspector to enter upon his land, pasturage, or premises, or to examine any sheep belonging to him or in his care or possession, or shall attempt to impede or hinder any inspector from examining such sheep, or shall not, when required by any inspector, render him every reasonable assistance, such person shall, on conviction before the Resident Magistrate of the

#### Their powers.

#### Penalty for obstructing them, Or not rendering assistance when required.

district, be liable to a penalty not exceeding ten pounds for each offence.

No. 28—1886.

3. If the Divisional Council of any division, adjoining any area or district where this Act is in force, shall by resolution request the Governor to bring this Act into operation in such division, the Governor may bring it into operation accordingly: Provided that before any Divisional Council shall make any such request as aforesaid, two-thirds of the elected members thereof present at a meeting to be specially called for the purpose of making such request shall concur in making the same, and not less than six weeks' notice of such meeting and of the object thereof shall have been given by advertisement in some newspaper circulating in the division.

Provision for Act being brought into operation in adjoining areas or Districts.

4. District or area inspectors as in the last clause provided shall be selected by the Governor, from persons living within such area, and who have had practical experience in the management of sheep in the Colony.

Appointment of Inspectors.

5. It shall be the duty of each inspector appointed under this Act to inspect each flock in his district or area at least once in six months. In the event of such inspector finding indications of any flock being infected with the disease called scab, he shall forthwith proceed to hold an inquiry into the circumstances of the case, and if he shall be of opinion that the said flock is infected as aforesaid, the owner of such flock shall forthwith proceed to make proper and diligent efforts to cleanse them, and the said owner shall be granted by the said inspector a licence to keep such sheep for a period of three months for that purpose; at the expiry of such licence the inspector shall reinspect such flock, and should he find that the said sheep are still infected with scab, the licence may be renewed for a further period of three months, or for such further period as the inspector may with reference to special circumstances consider proper, and the inspector shall repeat his inspection every three months until such flock is found clean.

Duties of Inspectors.

Licence to keep scabby sheep.

6. If at any time after the expiration of any licence in the last preceding section mentioned, and after due inspection by the inspector of the infected sheep, and due inquiry by him into the circumstances under which they are and have been kept, it shall be found that they are still infected and that the owner has failed to make proper and diligent efforts to cleanse the said sheep, the said owner upon proof thereof to the satisfaction of the Resident Magistrate of the district and conviction by him, shall be liable to a fine, for a first conviction at the rate of not more than five pounds, for a second conviction at the rate of not more than ten pounds nor less than five pounds, and for a third or subsequent conviction at the rate of not more than twenty pounds nor less than ten pounds per thousand infected sheep.

Penalty for negligence in cleaning sheep.

7. It shall be the duty of every owner of sheep which are or may become infected with the disease called scab, to give notice at

Owner of scabby sheep to give notice to inspector.

No. 28—1886.

once of such infection to the inspector of the district or area, and to proceed forthwith to take all reasonable precautions and means to prevent the spread of the said disease; and any owner of infected sheep neglecting or delaying to give such notice, or neglecting to take such reasonable precautions and means as aforesaid, shall be liable to a fine at the rate of not more than five pounds per thousand sheep infected. And the inspector on receiving such notice as aforesaid shall proceed to inspect the sheep referred to therein, and shall thereupon issue a licence to keep the infected sheep for the purpose of cleansing the same for the period or periods provided by the fourth section.

Duty of inspector on receiving notice.

Special damages for trespass by infected sheep.

8. Every owner or occupier of land upon which sheep infected with the disease called scab shall trespass, shall be entitled to recover from the owner of such sheep, over and above the damages otherwise recoverable for such trespass, a sum not exceeding twenty pounds.

Flock held to be diseased if one diseased sheep found therein.

9. For the purposes of this Act if any one sheep in a flock is proved to be infected with the disease called scab, all the sheep in such flock shall be deemed and taken to be so infected.

Importing or placing, &amp;c., on public railway or road, &amp;c., any infected sheep forbidden.

10. No person shall import or introduce, or attempt to import or introduce into any district or area in which this Act shall be in operation, or shall place or convey, or allow or cause to be placed or conveyed in any truck, van, carriage or train travelling, or intended to travel along any line of public railway through any such district, or shall drive or allow or cause to be driven along any public road, bridge, way or thoroughfare or within one mile from any public road, way or thoroughfare in any such district, any sheep infected with the disease called scab, unless he shall have a permit so to do from the said inspector in the form in the second schedule hereto, and shall to the satisfaction of the inspector have previously treated the said sheep in manner directed by the said inspector, and shall take such other precautions by way of notice to sheep owners in the neighbourhood of the route taken by such infected sheep as to the said inspector shall seem proper.

Penalty for contravening preceding section.

11. The penalty for any contravention of the last section shall be recoverable in the court of the Resident Magistrate of the district wherein the owner of the said sheep lives or wherein the said sheep may be found, and shall be by way of fine not exceeding twenty pounds.

Terms defined.

12. For the purposes of this Act, two or more sheep kept on the same farm shall constitute a flock, and the term "sheep" shall include "goat."

Commencement of Act.

13. This Act shall commence and take effect from and after the first day of July, 1887.

Short title.

14. This Act may be cited for all purposes as "The Scab Act, 1886."

SCHEDULE.

No. 28—1886.

FIRST SCHEDULE.

First Schedule.

King William's Town  
 Komgha  
 East London  
 Stutterheim  
 Cathcart  
 Queenstown  
 Tarkastad  
 Victoria East  
 Peddie  
 Fort Beaufort  
 Stockenstrom  
 Bedford  
 Somerset East  
 Uitenhage  
 Jansenville  
 Albany  
 Bathurst  
 Port Elizabeth  
 Alexandria  
 Humansdorp.

SECOND SCHEDULE.

Second Schedule.

PERMIT.

No. \_\_\_\_\_ 18  
 District \_\_\_\_\_  
 I certify that \_\_\_\_\_ sheep, the property of \_\_\_\_\_  
 may be driven from \_\_\_\_\_ to \_\_\_\_\_  
 Brand \_\_\_\_\_  
 Ear mark \_\_\_\_\_  
 The above permit is to be in force for \_\_\_\_\_ days.  
 Inspector.

ANNEXATION.

- |                                    |                              |
|------------------------------------|------------------------------|
| 1. Act 39—1877, (Griqualand West). | 5. Act 38—1877, (Transkei).  |
| 2. „ 4—1874, (Ichaboe).            | 6. „ 35—1884, (Walfish Bay). |
| 3. „ 3—1865, (Kaffraria).          | 7. „ 37—1886, (Xesibe).      |
| 4. „ 3—1885, (Tembuland).          |                              |

No. 39—1877.]

[August 15, 1879.

ACT

To Make Provision for the Annexation to this Colony of  
 the Province of Griqualand West.

WHEREAS it is expedient that the Province of Griqualand West  
 should be annexed to and form part of the Colony of the Cape of  
 Good Hope, and that provision should be made by the Legislature  
 of the said Colony for such an annexation, and for the representation

Preamble.

F



No. 39—1877.

in the Parliament of the said Colony of the inhabitants of the said Province, 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 :—

Repugnant laws repealed.

1. So much of the Constitution Ordinance, of the Royal Letters Patent, commonly called the “Charter of Justice,” of “the Administration of Justice Act, 1864,” and of any other law in force in this Colony at the time of the taking effect of this Act as shall be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Annexing Griqualand West.

2. From and after the taking effect of this Act, the said Province of Griqualand West, within the boundaries thereof as then fixed and determined, shall become annexed to and thenceforth be portion of the Colony of the Cape of Good Hope.

Griqualand West to be a new electoral province for the purposes of Legislative Council elections, returning one member, which Council shall, in future, consist of twenty-two members instead of twenty-one.

3. The entire of the said Province of Griqualand West shall, for the purposes of election to the Legislative Council of the Cape of Good Hope, be and become from and after the annexation of the said Province to the said Colony, a new Electoral Province of the said Colony, and such new Electoral Province shall be entitled to return to the Legislative Council of the said Colony one member ; and the entire of the said council shall consist, from and after the said annexation, of twenty-two elective members instead of twenty-one as heretofore.

Griqualand West to be divided into two electoral divisions.

4. Within three months after the taking effect of this Act, there shall be formed out of the said Province of Griqualand West two new Electoral Divisions to become and be Electoral Divisions of the Colony of the Cape of Good Hope, with such boundaries as may be defined by the Governor, with the advice of the Executive Council of the said Colony, by proclamation to be published in the *Government Gazette* within the time aforesaid.

Each division to return two members to House of Assembly.

5. Each of the said Electoral Divisions shall be entitled to return to the House of Assembly of the Colony of the Cape of Good Hope two (1) members.

Member of Council and members of Assembly to be elected as soon as may be, and for that purpose the province and divisions to be treated as if they had members and these members had died or resigned.

6. As soon as may be after the taking effect of this Act, the member to be returned as aforesaid for the said new Electoral Province to the said Legislative Council and the members to be returned as aforesaid for the said two Electoral Divisions to the said House of Assembly shall be elected ; and for the purposes of such respective elections the said Electoral Province and the said Electoral Divisions respectively shall be treated and considered as if members had been returned for the same to the said Legislative Council and the said House of Assembly respectively and their seats had become vacant by death or resignation, and the fact of the occurrence of such vacancies had been duly notified to the Governor ; and the like proceedings shall, *mutatis mutandis*, be taken to fill the said seats as would take place if the said Electoral Province and the said

<sup>1</sup> Two additional members granted to Electoral Division of Kimberley by Act 13, 1882.

Electoral Divisions respectively had been immediately before the taking effect of this Act a Province and Electoral Divisions respectively of the said Colony, and the members elected to fill such seats shall be in the same position in all respects as other members of the said respective Houses of Parliament of the said Colony: Provided that in case of a dissolution of either House of Parliament before any such election as aforesaid, but after the taking effect of this Act, the said new Electoral Province and the said two Electoral Divisions respectively shall in regard to the general election of members be treated in all respects as any other Electoral Province or Electoral Division of the said Colony entitled to return members to the Parliament thereof.

No. 39—1877.

Members elected to be treated in all respects as other members of Parliament.

7. All the provisions existing at the time of the taking effect of this Act with regard to the election and qualification of members of the said Legislative Council and House of Assembly shall, so far as may be, be in force and apply to the election and qualification in time to come of members of the Legislative Council and House of Assembly respectively for the new Electoral Province and Divisions respectively of the said Colony after such annexation as aforesaid.

Provision as to election and qualification of members.

8. All persons for the time being registered as voters under any law of the said Province of Griqualand West, and who, immediately before the annexation of the said Province to the said Colony would have been entitled to vote for a member or members of the Legislative Council of the said Province shall be entitled, after such annexation as aforesaid, to vote for a member of the Legislative Council and for members of the House of Assembly, as the case may be, of the said Colony, at the first election thereof respectively under the provisions of this Act, and shall remain so entitled to vote in like manner as they would be entitled to vote for members of the said Legislative Council and House of Assembly respectively, if duly registered as voters for some Electoral Division heretofore within this Colony until the next general registration of voters throughout the Colony which shall take place after the annexation of the said Province, when all and singular the provisions of the laws for the time being in force in the said Colony relative to the registration of voters and the conduct of elections for members of the Legislative Council and House of Assembly respectively shall apply to the said Electoral Province and the said two Electoral Divisions hereby created, and to persons residing therein, as if the said Province were a Province of the said Colony, and as if the said two Electoral Divisions were Electoral Divisions of the said Colony, and for such purposes the list of registered voters in each of the said Electoral Divisions for the time being in force shall be deemed to be, for the purpose of such general registration as aforesaid, the registered list of voters for the time being for each of the said Electoral Divisions: Provided, however, that the qualification of voters in that part of the said Colony formed by the said Province shall, after the said annexation thereof, remain the same as before the said annexation until Parlia-

Provision as to voters.

No. 39—1877.

ment shall otherwise provide: And provided also that upon the formation of the said Electoral Divisions mentioned in the fourth section of this Act, the lists of registered voters then in force in the said Province shall be divided so as to make the same conformable to the formation of the said new divisions.

Number of puisne judges of Supreme Court.

9. From and after the annexation of the said Province to the said Colony, the Supreme Court of the said Colony shall consist of one Chief Justice and five <sup>(1)</sup> Puisne Judges, instead of four as heretofore, the additional judge being the Recorder <sup>(2)</sup> for the time being of Griqualand; and in case of any vacancy in the said office of Recorder, such vacancy may be filled up in like manner as by law provided with respect to a vacancy in the office of any other judge of the said Supreme Court: Provided that nothing in this section contained shall be construed so as to confer on the said Recorder any larger jurisdiction or powers within the said Province than he shall have possessed immediately before the said annexation, or to render his consent or assistance necessary to the making, alteration, or amendment of any rules or orders of the Supreme Court or Court of the Eastern Districts.

High Court to have concurrent jurisdiction in Griqualand with Supreme Court.

10. The proclamation of His Excellency Sir Henry Barkly, bearing date the 27th day of October, 1871, making provision for the due and effectual administration of justice within the Territory of Griqualand West shall, except as hereinafter provided, continue and have the same force and effect after the said annexation as if the same had not taken place; but the High Court <sup>(2)</sup> thereby created, shall have, and exercise concurrent jurisdiction only in the said Province with the Supreme Court of the Colony of the Cape of Good Hope, and in lieu of any right of appeal which may exist at the time of such annexation from any decision of the said High Court, or of any Circuit Court within the said Province, such appeal shall be made, in the first instance, to the said Supreme Court: and all and singular the provisions of the law of this Colony as to appeals from the Court of the Eastern Districts of the Cape of Good Hope to the said Supreme Court shall, *mutatis mutandis*, apply to appeals from the said High Court or such Circuit Court as aforesaid, to the said Supreme Court, precisely as if the judgment, decree, sentence, rule, or order appealed from had been a judgment, decree, sentence, rule, or order of the said Court of the Eastern Districts: Provided that in case of any judgments of the said High Court or such Circuit Court as aforesaid against which appeals shall have been duly noted, but such appeals not yet transmitted to the Privy Council at the time of the taking effect of this Act, it shall be lawful for the parties to such suits, if they shall agree so to do, to carry such appeals to the Supreme Court instead of to the said Privy Council; and the same right of appeal to the Privy Council shall exist as to a decision of the said High Court

Appeals to Supreme Court.

Law of this colony as to appeals from Eastern Districts Court to apply.

Provision as to pending appeals.

<sup>1</sup> Increased to 6 by Act 12, 1880, and to 8 by Act 40, 1882.

<sup>2</sup> As to constitution of High Court, see §§ 6-12, Act 40, 1882.

or such Circuit Court as aforesaid as shall at the time of the taking effect of this Act exist in regard to a decision of the said Court of the Eastern Districts.

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11. All appeals from decisions of the Land Court of Griqualand West which shall be pending in the High Court at the time of the taking effect of this Act, or which may thereafter be lawfully noted may, after the taking effect of this Act, by consent of all the parties to any such appeal, be removed into the said Supreme Court instead of being proceeded with in the said High Court; and such appeals shall, in case of such removal, be carried on, tried, heard, and determined in the said Supreme Court in like manner as nearly as may be as if the same were appeals from decisions of the said Court of the Eastern Districts to the said Supreme Court.

Provision as to pending appeals from Land Court.

12. (1) Except as is otherwise provided by this Act, the duties, powers, and authorities of the Sheriff for the said Province shall continue to be the same after as immediately before such annexation as aforesaid: Provided that nothing herein contained shall be construed so as to prevent the Sheriff for the Colony from exercising, by himself or his lawful deputies, within the said Province, such duties, powers, or authorities as he might immediately before such annexation as aforesaid have lawfully exercised within this Colony.

Duties of Sheriff.

13. As often as in or by any Proclamation, Ordinance, Act, or other instrument having the force of law within the said Province at the time of the said annexation, any right, power, duty or function, shall be vested in the Master of the High Court, in regard to the registration of wills and the administration of the estates of deceased persons, and in regard to the administration of insolvent estates, and in regard to any matter or thing whatsoever, such right, power, duty or function, shall not, except as is otherwise provided by this Act, be deemed or taken to be vested in the Master of the Supreme Court, but shall continue to be vested in the Master of the said High Court: Provided, that all letters of administration or of confirmation which shall be granted, and all other matters or things which shall be lawfully done by the Master of the Supreme Court by virtue of the powers and jurisdiction vested in him before the annexation, shall, in regard to any property, movable or immovable, found or situated within the said Province, have the same force and effect as within any other portion of the said Colony: Provided further, that it shall be the duty of the Master of the said High Court, forthwith after any order for sequestration of any estate, or any deed purporting to be a testamentary disposition, or any death notice, or any inventory of the estate of any deceased person or persons, or any account or plan of distribution of the estate of any minor, lunatic, or deceased person or of any insolvent estate, shall have been delivered or transmitted to him, and forthwith after granting any letters of

Duties of Master.

<sup>1</sup> See Act 40, 1882, § 9.

No. 39—1877.

administration or of confirmation, and forthwith after security shall have been found or given for any executor, tutor, or curator to forward to the Master of the Supreme Court a true copy of such order, deed, death notice, inventory, account, plan or other instrument, for the purpose of being duly registered by the said Master of the Supreme Court: Provided, however, that it shall not be necessary for the Master of the said High Court to forward any duplicates or copies of accounts lodged with and filed by him in his office to the Resident Magistrates of the respective districts in which the estates to which such accounts respectively relate were situated.

Removal of suits or actions.

14. As often as any suit or action shall be brought or depending in the Supreme Court, or in the Court of the Eastern Districts, or in the said High Court of Griqualand West respectively, and it shall be made to appear to the Court before which such suit or action may be pending, that the same may be more conveniently or more fitly heard or determined in another of the said courts, it shall be lawful for the Court before which such suit or action is pending, to order the same to be removed to such other court, and such order shall be certified by the Court granting the same to the Court into which this suit or action shall be intended to be removed; and thereupon it shall be lawful for such lastmentioned Court to proceed in such suit or action, in like manner as if the same had been originally commenced and prosecuted in such lastmentioned Court.

Execution of judgments of High Court against property in this colony.

15. When and as often as any judgment, decree, or order for the payment of money shall be made by the High Court of Griqualand in respect of or in relation to any civil suit, action, or proceeding in which the party defendant shall have been duly served with the process of the said Court, or shall have appeared in pursuance of any process thereof, it shall be lawful for the Supreme Court, and it is hereby required upon inspection of such judgment, decree, or order, and upon proof to be made by the return of the officer proper to make such return to the process of execution of the said High Court, that the said judgment, decree, or order remains either wholly or in part unsatisfied, to issue process of execution upon such judgment, decree, or order against any property, movable or immovable, belonging to the party against whom such judgment, decree, or order shall have been obtained, and situate elsewhere in the Colony than in the said Province of Griqualand West, and to cause such process to be executed in such manner as process could or might have been issued and executed upon any original judgment, decree, or order of the like nature of the said Supreme Court: Provided, that it shall not be necessary to prove the handwriting of such officer as aforesaid to any such return as aforesaid.

Copies of records to be received in evidence.

16. In every case in which any judgment, decree, or order, or other record of the High Court aforesaid, or of any Circuit Court

within the said Province, shall require to be proved, inspected, or in any manner referred to in any other Court, a copy of such record certified under the seal of the said High Court, or as to any such record of any Circuit Court as aforesaid, under the signature of the Registrar of such Court, shall be taken and received as *prima facie* evidence of such record: Provided that it shall not be necessary in regard to any certified copy to prove the handwriting of any such Registrar.

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17. In all cases depending in the said High Court, the process of the said Court for summoning, whether as a party or a witness, any person residing or being within the said Province of Griqualand West to appear in such Court, shall be of the same force and effect as if such Court were the Supreme Court, and such process that of the Supreme Court, and in regard to the summoning of witnesses residing or being elsewhere in this Colony than in the said Province, the process of the said High Court shall be of the same force and effect as the process of the Eastern Districts Court in regard to the summoning of witnesses residing or being elsewhere in this Colony than in any of the Eastern Districts.

Provision for summoning parties or witnesses residing out of the province.

18. The rules and orders in force in the said High Court of Griqualand immediately before such annexation as aforesaid shall, except as is otherwise provided by this Act, remain in force thereafter: Provided that such rules and orders may be amended, added to, or rescinded by the judges of the Supreme Court, including the said Recorder, proceeding in like manner as by law is or shall be required in regard to the framing and confirmation of rules and orders of and for the said Supreme Court.

Rules of the court.

19. From and after the taking effect of this Act in regard to all criminal cases which may then or thereafter be pending within that part of the said Colony which was theretofore the Province of Griqualand West, and in regard to the prosecution of crimes and offences which may have been or may be committed therein, all and singular the rights, powers, and functions conferred or imposed by law upon the Attorney-General of the said Province or of the said Colony shall and may, within that part of the said Colony which was theretofore the Province of Griqualand West, be exercised by the Attorney-General of the Colony of the Cape of Good Hope, or by an officer to be called the Crown Prosecutor for Griqualand West, such officer to be appointed by the Governor of the said Colony, with the advice of the Executive Council thereof.

Prosecution of crimes.

20. From and after such annexation as aforesaid the districts of Resident Magistrates existing in the said Province at the time of such annexation, and the Courts of Resident Magistrates established in such districts, shall become and be districts and Courts of Resident Magistrates of this Colony, and be in the same situation and condition as if such Courts had been created by the "Resident Magistrates' Court Act 1856": Provided that nothing in this Act contained shall be deemed or taken to affect or alter any of the

Courts of resident magistrates.

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laws of the said Province specially relating to the jurisdiction of such Courts or to the procedure of practicioners therein : And provided also that all appeals from any decision of any of such Courts after such annexation may be made either to the said High Court or to the said Supreme Court ; and all decisions of any of such Courts which are required by law to be sent for revision by a judge of a superior Court shall be sent for revision to the judge of the said High Court as theretofore.

Admission of advocates and attorneys.

21. 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 article 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 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.

Land surveyors.

22. All land surveyors duly admitted to practise as such in the said Province at the time of the passing of this Act shall, from and after the said annexation, be entitled to practise as land surveyors as well in the said Province as throughout the said Colony in like manner as if they had been duly admitted to practise in the said Colony.

Fiscal divisions.

23. The Fiscal Divisions into which the said Province shall be divided at the time of the taking effect of this Act shall thereupon become and be Fiscal Divisions of the Colony of the Cape of Good Hope : Provided that it shall be lawful for the Governor, with the

advice of the Executive Council, at any time before the commencement of the Session of Parliament next after such annexation, by proclamation in the *Government Gazette*, to alter such divisions, or to increase or diminish the number thereof in such manner as to him may seem fit.

No. 39 1877.

24. So soon as may be after the taking effect of this Act, unless Divisional Councils shall before then have been established in the said Province, elections of Divisional Councillors shall take place in the several Fiscal Divisions into which the said Province may then, or shall in pursuance of the provisions of the last preceding section, be divided, so that the said Province in that respect may be in the same position as the other Fiscal Divisions of this Colony, and all and singular the provisions of the Acts of this Colony relating to Divisional Councils shall, from and after the taking effect of this Act, as far as may be, apply to the said divisions of the said Province and to elections of Divisional Councillors therein as aforesaid, and where in any of the said Acts any dates or times are fixed for the performance of any matter or thing relating to the nomination or election of Divisional Councillors or otherwise, it shall be lawful for the Governor, with the advice of the Executive Council, in regard to the first election of councillors for such divisions which shall take place under this Act, to fix such dates and times as to him may seem fit.

Divisional councils to be established.

25. Any Divisional Council existing in the said Province at the time of the taking effect of this Act, or which may be elected pursuant to the last preceding section shall, from and after the taking effect of this Act, or from and after its election, as the case may be, be in the same position in all respects as any other Divisional Council in this Colony, and the members thereof shall be in the same position in all respects as if they had been elected at the last general election of Divisional Councillors in this Colony.

Divisional councils to be in same position as if elected at last general election in this colony.

26. Until the land in the said Province shall be valued for assessment for road purposes, every person registered as a voter for the said Province, or for either of the Electoral Divisions formed under the fourth section of this Act, and not being disqualified as in the fourteenth section of "The Divisional Councils Act, 1865," shall be eligible to be elected as a member of the Divisional Council of the division for which, or for any part of which, he shall be so registered; and after any such valuation shall be made registration in the Deeds Registry of the said Province shall be deemed for the purposes of the qualification of members of Divisional Councils within that part of the said Colony to be registration in the Land Register of the said Colony.

Qualification of members of divisional council.

27. All laws in force in the said Province at the time of the annexation thereof as aforesaid, in so far as the same shall be repugnant to or inconsistent with any of the provisions of this Act shall from and after such annexation stand repealed; but all other laws shall remain in force within that portion of this Colony

Laws of the province.



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formed by the said Province until the same shall be altered or repealed by law: Provided that nothing in this Act contained shall affect the decision of any question which may at the time of taking effect of this Act be pending in any Court of the said Province.

No double duties, licences, &c., to be levied.

28. When by any law which at the time of the taking effect of this Act may be in force in the said Province, any duty, licence, charge, or payment may be leviable or payable within the said Province, which is the same as shall then be leviable or payable in this Colony, no double duty, licence, charge, or payment shall be levied or payable; but the duty, licence, charge, or payment which is leviable or payable in this Colony alone shall be levied and paid.

Deeds registry.

29. (1) Nothing in this or any other law which shall be in force in this Colony at the time of such annexation as aforesaid shall be construed so as to introduce into that part of the Colony formed by such annexation, the operation of the Deeds Registry of the Cape of Good Hope: and the Deeds Registry of the said Province shall, in regard to that part of the Colony formed by such annexation, remain and be of the same force and effect after such annexation as before such annexation; and no deed of transfer or hypothecation executed by any person domiciled in that part of the Colony formed by such annexation shall be registered otherwise than in the local Deeds Registry there established, or if registered elsewhere, shall derive any benefit from such registration.

Revenue of province to become payable to Colonial Government.

30. All quitrents, taxes, duties, dues, and revenue of every kind and nature whatsoever payable to or claimable by the local Executive Government of the said Province at the time of the annexation thereof as aforesaid shall become, be, and continue claimable by and payable to the local Executive Government of the Colony of the Cape of Good Hope, and shall be collected and accounted for in the like manner as the like quitrents, taxes, dues, and revenue according to the nature and kind thereof respectively, are or ought to be collected in the several divisions of this Colony; and all liabilities of the said Province at the time of such annexation as aforesaid shall thenceforth be deemed to be liabilities of the Colony of the Cape of Good Hope.

Compensation to officers for loss of office through abolition.

31. It shall be lawful for the Governor to pay to all persons holding offices of profit under Her Majesty the Queen in the said Province at the time of the annexation thereof as aforesaid, whose offices shall by reason of such annexation be abolished, such compensation for loss of office as shall be awarded by the Governor, with the advice of the Executive Council, in conformity with the established regulations of Her Majesty's service, and to be approved of by one of Her Majesty's Principal Secretaries of State.

Until next session of Parliament Governor in Council authorized to pay salaries of officers of province.

32. From and after such annexation as aforesaid, and until the Session of Parliament next after such annexation, it shall be

<sup>1</sup> See Proclamation (G. W.) No. 25, 1872.

lawful for the Governor, with the advice of the Executive Council, to pay to persons holding office in the said Province at the time of such annexation, salaries at and after the same rate as those which shall be payable to them next before such annexation, and also to make such necessary payments as may be required for carrying on the affairs of the said Province.

No. 4—1874.

33. This Act shall commence and take effect when and so soon as the Governor, with the advice of the Executive Council, shall by proclamation <sup>(1)</sup> published in the *Government Gazette* declare and announce that all matters and things necessary to be done and to happen in order to enable the said annexation to be completed and perfected have been done and happened.

Act to take effect when proclaimed in Government Gazette.

34. This Act may be cited as the "Griqualand West Annexation Act, 1877."

Short title.

No. 4—1874.]

[July 6, 1874.

## ACT

To Repeal the "Annexation of Ichaboe and Penguin Islands Act, 1873," and to make other Provisions in lieu thereof.

WHEREAS the Island of Ichaboe on the south-west coast of South Africa, was, on the twenty-first day of June, 1861, duly taken possession of for and on behalf of Her Majesty Queen Victoria: And whereas, on the fifth day of May, 1866, certain other islands, islets, and rocks on the said coast, viz., Hollandsbird, Mercury, Long Island, Seal Island, Penguin Island, Halifax, Possession, Albatross Rock, Pomona, and Plum Pudding and Roast Beef, or Sinclair's Island, hereinafter called the Penguin Islands, were also duly taken possession of for and on behalf of Her said Majesty: And whereas, by a proclamation dated the sixteenth day of July, 1866, by His Excellency Sir Philip Edmund Wodehouse, the then Governor of this Colony, the said Island of Ichaboe and the said Penguin Islands were declared to be annexed to and to form part of this Colony: And whereas doubts having been entertained touching the legality of the said annexation by the said proclamation, Her said Majesty, by her Letters Patent dated the twenty-seventh day of February, 1867, after reciting (amongst other things the said doubts) that it was expedient that the same should be removed, and that the said islands should be annexed to and form part of this Colony, if the Legislative Council and House of Assembly thereof should desire such annexation, and that until such annexation the affairs of the said islands should be administered by a Governor, to be for that purpose appointed by Her said Majesty, did constitute and appoint the Governor and

Preamble.

<sup>1</sup> See Proclamation in Gazette 15th October, 1880.

No. 3—1865.

Commander-in-Chief for the time being of this Colony to be the Governor of the said islands, with certain powers therein mentioned, and did declare her pleasure to be that if at any time thereafter the said Legislative Council and House of Assembly should by resolution or otherwise request the said Governor of the said islands to transfer the same to this Colony for the purpose of their being annexed to and forming part thereof, and should by law provide that upon such transfer and annexation all laws which might be in force in this Colony on the day on which the said islands should be annexed thereto should immediately upon such annexation take effect and be in force in and upon the said islands so annexed, the said Governor should and was thereby authorized and empowered to transfer to this Colony the said islands, and from and after the date of such transfer the said islands so transferred should be deemed and taken to be and should be annexed to and form part of this Colony: And whereas it is expedient that the said islands shall be annexed to and form part of this Colony, and that, for the purpose of enabling the said annexation to be carried out according to the said Letters Patent, the said "Annexation of Ichaboe and Penguin Islands Act, 1873," which was passed in ignorance of the said doubts and of the said Letters Patent, should be repealed: 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. 1 of 1873  
repealed.

As soon as Islands  
are annexed Colonial  
laws to be in force  
therein.

Short title

1. The "Annexation of Ichaboe and Penguin Islands Act, 1873," is hereby repealed.

2. <sup>(1)</sup> Upon the transfer and annexation of the said Island of Ichaboe and the said Penguin Islands to this Colony, all laws which may then be in force in this Colony shall immediately upon such annexation take effect and be in force in and upon the said islands so annexed.

3. This Act may for all purposes be cited as the "Ichaboe and Penguin Islands Act, 1874."

No. 3—1865.]

[Oct. 10, 1865.]

## 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.

Preamble.

WHEREAS by the third section of the Imperial Act, 28th of Her Majesty, chapter 5, the Parliament of the Cape of Good Hope is empowered to make provision for the incorporation of the Territory

<sup>1</sup> Annexed by Proc. in Gazette 10th July, 1874.

of British Kaffraria with the Cape of Good Hope, and it is enacted that when and as soon as the Governor of the Cape of Good Hope, as Governor of British Kaffraria, assents, in manner and form as in the said section set forth, to the provision so made, then, and from and after the date of such assent, British Kaffraria shall become incorporated with the Cape of Good Hope, on the terms of such provision, for all purposes whatever, as if British Kaffraria had always formed part of the Cape of Good Hope: And whereas it is expedient that such provision as aforesaid should be made, and that the same should take effect when and as soon as the Governor of British Kaffraria shall, by virtue of his powers as such Governor, and by laws and ordinances by him made, have divided British Kaffraria into two parts, to form, after such incorporation as aforesaid, Electoral Divisions of the Cape of Good Hope, each of which shall be entitled to send two members to the House of Assembly of the Cape of Good Hope, and shall have defined and named such Electoral Divisions, and shall have effected a registration of voters entitled to vote according to the qualification of voters fixed and established by the fourth section of the Constitution Ordinance of the Cape of Good Hope, and shall have declared the qualification of persons capable of being elected to be, after such incorporation as aforesaid, members of the House of Assembly aforesaid,—such qualification to be that described in the forty-seventh section of the Constitution Ordinance aforesaid,—and shall have provided for the conduct of the election of such members, in like manner, so far as may be, as if such election were to take place under the provisions of the said Constitution Ordinance, and when and as soon as the said election shall have been held: 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:—

1. So much of the Constitution Ordinance, and so much of any other law in force in this Colony at the time of the promulgation of the proclamation in the next succeeding section mentioned, as shall be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Repugnant part of Constitution Ordinance, &c., repealed.

2. From and after the day upon which the Governor of the Cape of Good Hope shall, by proclamation in the *Government Gazette* of the said Colony, publish the names of the members returned in manner and form as in the preamble to this Act mentioned by each of the two Electoral Divisions of British Kaffraria, then British Kaffraria shall become incorporated with the Cape of Good Hope, for all purposes whatever, as if British Kaffraria had always formed part of the Cape of Good Hope.

Incorporation of British Kaffraria when to take effect.

3. The four members aforesaid shall be added to the number of the members of the House of Assembly of the Cape of Good Hope, and be, from and after the promulgation of such proclamation as aforesaid, in the same situation and condition, in all respects, as if,

Additional members of House of Assembly, condition of.

No. 3--1865.

when they were so returned as aforesaid, the said Electoral Divisions of British Kaffraria had been Electoral Divisions of the Cape of Good Hope entitled to return two members each to the House of Assembly.

Representation in House of Assembly and Legislative Council of the two additional electoral divisions.

4. The two Electoral Divisions aforesaid shall, from and after such incorporation as aforesaid, become and remain Electoral Divisions of the Cape of Good Hope, entitled to be each represented by two members in the House of Assembly, and shall, for the purpose of the election of members of the Legislative Council of the Cape of Good Hope, be comprised in and form part of the Eastern Districts, within the meaning and for the purposes of the Constitution Ordinance, in like manner and with the like effect, in all respects, as if those Electoral Divisions had been expressly constituted part of the Eastern Districts in that Ordinance.

Qualification of voters.

5. All persons registered as voters in British Kaffraria under the Ordinances and Proclamations of the Governor of British Kaffraria, to be in that behalf enacted and proclaimed, shall be entitled, after such incorporation as aforesaid, to vote for members of the Legislative Council for the Eastern Districts, and for members of the House of Assembly for the Electoral Divisions in which such voters shall be registered, until the next general registration of voters throughout the Colony which shall take place after such incorporation, when all and singular the provisions of the Act No. 16 of 1856, entitled "An Act for amending the Law relative to the Registration of Voters, and the taking of Polls," shall apply to the said two Electoral Divisions, and to persons residing therein, precisely as if the said Electoral Divisions had formed part of the Colony of the Cape of Good Hope at the time of the taking effect of the Constitution Ordinance: Provided that the list of registered voters in each of the said Electoral Divisions, framed before the incorporation aforesaid, for the purpose of the first election as aforesaid for members of the House of Assembly, shall be deemed to be, for the purpose of the second and every succeeding section of the Act last aforesaid, the registered list of voters for the time being for each of the said Electoral Divisions.

After next ensuing general registration, Act No. 16 of 1856 to apply.

What shall be deemed the list of registered voters.

Supreme Court of British Kaffraria abolished.

6. From and after the incorporation in manner aforesaid of British Kaffraria, the Supreme Court of British Kaffraria existing at the time of such incorporation, and all laws, rules, and regulations regulating or affecting the trial of suits therein, shall cease and determine; and the districts of Resident Magistrates comprising that part of the Colony formed by such incorporation shall be added to the districts of Resident Magistrates in and over which "the Court of the Eastern Districts of the Cape of Good Hope" has and exercises the certain concurrent jurisdiction by "the Administration of Justice Act, 1864," conferred upon the said Court; which Court, proceeding according to the rules and orders thereof, shall have jurisdiction in and over all causes arising

Eastern Districts Court substituted.

and persons residing and being within any of the districts hereby added to the certain other districts aforesaid, precisely as if the districts so added had been included in the schedule to "The Administration of Justice Act, 1864."

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7. All suits and proceedings, civil or criminal, pending in the Supreme Court of British Kaffraria at the time of such incorporation as aforesaid, shall, by virtue of this Act, stand removed into "the Court of the Eastern Districts," and may be carried on, tried, heard, and determined in such last-mentioned Court, in like manner, as nearly as may be, in all respects, as if they had been instituted or taken in that Court after the incorporation aforesaid.

Pending suits transferred to Eastern Districts Court.

8. <sup>(1)</sup> 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 article 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 article clerk 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

Advocates, attorneys, notaries of Supreme Court of British Kaffraria and their article clerks, how affected by this Act.

<sup>1</sup> See § 2, Act 6, 1872 (Practitioners).

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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.

9. [Repealed by Act 6, 1872.]

British Kaffrarian  
resident magistrates'  
districts and courts  
transferred to Cape  
Colony.

10. From and after such incorporation as aforesaid, the districts of Resident Magistrates existing in British Kaffraria at the time of such incorporation, and the Courts of Resident Magistrates established in such districts, shall become and be districts and Courts of Resident Magistrates of this Colony, and be in the same situation and condition, in all respects, as if such Courts had been created by the Act No. 20 of 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates."

Laws regulating  
customs, stamps, and  
other duties repealed  
and colonial laws  
substituted.

11. All laws and ordinances in force in British Kaffraria at the time of the incorporation thereof, as aforesaid, regulating duties of customs, duties upon stamps and licences, duties upon the transfer of immovable property, duties upon sales by auction, duties upon successions to property, and duties upon bank notes, shall, from and after such incorporation, stand repealed; and there shall be payable to Her Majesty, her heirs, and successors, in that part of the Colony formed by such incorporation, and under and by virtue of the Colonial Acts in that behalf made and provided, the same duties of customs, duties upon stamps and licences, duties upon the transfer of immovable property, duties upon sales by auction, duties upon successions, and duties upon bank notes, as would be payable in case British Kaffraria had at all times formed part of the Cape of Good Hope: Provided that all licences in force and unexpired at the time of the said incorporation shall be and remain in force for the same time as if no such incorporation had taken place: Provided, also, that in case any such Kaffrarian licence shall be a licence which, if issued in this Colony, must have commenced with the first and ended with the last day of the year, and such Kaffrarian licence shall expire otherwise than at the end of the year, then a colonial licence for the residue of the year current at the time of such expiration shall be issued for a sum bearing the same proportion to the charge for an annual licence that such residue shall bear to one year: Provided, further, that if any Kaffrarian licence for the sale of wines and spirituous and fermented liquors, by retail, shall expire at a time which might reasonably and probably prevent the holder thereof from applying for a colonial licence to the Court mentioned in the twelfth and certain succeeding sections of the Ordinance No. 9 of 1851, then the Governor may authorize the issue of a licence to such holder upon such terms as shall appear reasonable, such licence to subsist until the day when the then next quarterly licences should, by law, commence.

Unexpired licences  
not affected.

Exception.

Provision for issue  
under certain cir-  
cumstances of retail  
wine and spirit li-  
cences.

Repugnant laws of  
British Kaffraria re-  
pealed.

12. All laws or ordinances in force in British Kaffraria at the time of the incorporation aforesaid, in so far as the same shall be

repugnant to or inconsistent with any of the provisions of this Act, shall, from and after such incorporation, stand repealed; but all other laws and ordinances shall remain in force until Parliament shall otherwise provide: Provided that it shall be lawful for the Governor, at any time after such incorporation as aforesaid, and before the commencement of the session of Parliament next after such incorporation, by proclamation, to repeal any of the laws or ordinances by this section preserved in force; and upon such repeal the law in force in this Colony, if any, upon the same subject as the law or ordinance so repealed, shall be and remain in force in that part of the Colony formed by such incorporation.

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Power of Governor to repeal laws not repugnant.

13. All laws or ordinances promulgated and in force in British Kaffraria at the time of the incorporation thereof, which laws or ordinances shall, in substance, be duplicates of, or identical with, any laws, ordinances, or acts, in force in this Colony, shall from and after such incorporation be deemed and taken to be repealed, to the end that the part of the Colony formed by such incorporation shall, in regard to such duplicate or identical legislation as aforesaid, become and be subject to the same laws, ordinances, and acts, as the rest of the Colony.

Laws, duplicates of or identical with colonial laws, repealed.

14. As soon as may be after such incorporation as aforesaid, all last wills and other testamentary writings, deposited, before such incorporation, in any public office in British Kaffraria, shall be transmitted to and deposited with the Master of the Supreme Court of the Colony of the Cape of Good Hope: Provided that all letters of administration duly granted in British Kaffraria to any executor, testamentary or dative, and all appointments duly made therein of curators bonis, curators nominate, and curators dative, shall be of the same force and effect after such incorporation as aforesaid, and entail the same duties and obligations in every respect, as if they had been originally granted or made by the Master of the Supreme Court of the Colony of the Cape of Good Hope.

Wills and testamentary writings to be deposited with Master of Supreme Court.

Letters of administration, &c., granted before incorporation, to remain of full effect.

15. The laws and ordinances in force in British Kaffraria at the time of the incorporation thereof as aforesaid, for regulating the collection, administration, and distribution of insolvent estates, shall, from and after such incorporation, stand repealed, and the provisions of the insolvent law, as administered, for the time being, in the Colony of the Cape of Good Hope, shall apply to and regulate all estates placed under sequestration in pursuance of the laws or ordinances hereby repealed, in so far as the said provisions shall be applicable to such estates in the situation and condition in which such estates shall be at the time of such incorporation.

British Kaffrarian insolvent law repealed, and colonial law substituted.

16. Nothing in this or any other act or ordinance which shall be in force in this Colony at the time of such incorporation shall be construed so as to introduce into that part of the Colony formed by such incorporation the operation of the Deeds Registry of the Cape of Good Hope; and the Deeds Registry of British Kaffraria

Deeds registry of British Kaffraria to remain unaltered.



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shall, in regard to that part of the Colony formed by such incorporation, remain and be of the same force and effect after such incorporation as before such incorporation; and no deed of transfer or hypothecation executed by any person domiciled in that part of the Colony formed by such incorporation shall be registered otherwise than in the local Deeds Registry there established, or, if registered elsewhere, shall derive any benefit from such registration.

Revenues payable  
to Cape Colony.

17. All quitrents, taxes, duties, dues, and revenue of every kind and nature whatsoever, payable to or claimable by the local Executive Government of British Kaffraria at the time of the incorporation thereof, shall be and continue payable to and claimable by the local Executive Government of the Cape of Good Hope, and shall, except as regards duties or customs, be collected by the Civil Commissioners of the Fiscal Divisions into which that part of the Colony formed by such incorporation shall be divided, and shall be by such Civil Commissioners accounted for to the Colonial Treasury: Provided that all duties of customs levied in that part of the Colony formed by such incorporation shall be collected and accounted for by the proper officers of customs, in like manner, in all respects, as is the case at the several other outports of the Colony; and all money at the time of such incorporation as aforesaid due on account of British Kaffraria shall thenceforth be deemed to be due on account of the Cape of Good Hope.

Revenues how to  
be collected.

Compensation for  
loss of office.

18. It shall be lawful for the Governor to pay to all persons now holding offices of profit under Her Majesty the Queen in British Kaffraria, whose offices shall, by reason of such incorporation as aforesaid, be abolished, such compensation for loss of office as shall be awarded by the Governor, in conformity with the established regulations of Her Majesty's service, and to be approved of by one of Her Majesty's Principal Secretaries of State.

19. [Lapsed].

Payments to native  
chiefs, £5,000, re-  
served.

20. For the purpose of enabling Her Majesty the Queen to make good engagements entered into by her with certain native chiefs and headmen in British Kaffraria, there shall, from and after such incorporation as aforesaid, be payable to Her Majesty, her heirs, and successors, yearly and every year, such sums of money, not exceeding in all, in any one year, the sum of five thousand pounds, as shall be required for the purpose aforesaid; and there shall be also payable to Her said Majesty, her heirs, and successors, yearly and every year, as and for a salary to the Governor of this Colony as High Commissioner, the sum of one thousand pounds; the said sums of money to be issued by the Treasurer of this Colony, in discharge of such warrant or warrants as shall be, from time to time, directed to him under the hand and seal of the Governor: Provided, always, that a full and particular account, showing the manner in which the sums drawn out for

Salary of High  
Commissioner reserv-  
ed.

native chiefs and headmen have been expended, shall, from time to time, be laid before Parliament.

No. 3—1865.

And whereas it is expedient that the number of the elective members of the Legislative Council of the Cape of Good Hope should be increased to twenty-one, and that the number of the members of the House of Assembly of the said Colony should be increased to sixty-six, such number to include the four members aforesaid to be returned by the two Electoral Divisions forming that part of the Colony which, next before the incorporation thereof as aforesaid, formed the Territory of British Kaffraria: Be it enacted, as follows:—

Number of members of Legislative Council and House of Assembly increased.

21. [Superseded by section 3, Act 39, 1877].

22. [Superseded by section 2, Act 18, 1874].

23. [Superseded by Act 18, 1874].

24. For the purpose of electing the sixteen members required, together with the four members in the second, third, and fourth sections of this Act mentioned, to complete the number of sixty-six members of the House of Assembly, the following ten Fiscal Divisions shall be, and the same are hereby constituted, respectively, Electoral Divisions,—that is to say, Aliwal North, Namaqualand, Oudtshoorn, Piketberg, Riversdale, and Queen's Town, whilst the Fiscal Divisions of Victoria West and Fraserburg shall together constitute a seventh Electoral Division, and the Fiscal Divisions of Hope Town and Richmond shall together constitute an eighth Electoral Division.

New electoral divisions created.

25. Each of the said eight Electoral Divisions shall be entitled from time to time, for ever, to elect two members of the House of Assembly.

Each new electoral division entitled to two members of House of Assembly.

26. Nothing in this Act contained shall be construed so as to deprive any of the Electoral Divisions, of which, before the taking effect of this Act, any of the said eight Electoral Divisions constituted by this Act formed a portion, of the right to continue to elect members as before the taking effect of this Act, or to vacate or affect the seat of any member of Parliament elected before the taking effect of this Act.

Electoral privileges of divisions of which new electoral divisions originally formed part, not affected.

27. [Lapsed.]

28. The Electoral Division formed by the Fiscal Divisions of Victoria West and Fraserburg shall be called the Electoral Division of Victoria West, and the court for the nomination of persons proposed as members of the House of Assembly for such Electoral Division, and the court for declaring the names of the members elected by such Electoral Division, shall be held in the Court-room of the district of Victoria West; and the Electoral Division formed by the Fiscal Divisions of Hope Town and Richmond shall be called the Electoral Division of Richmond, and the court for the nomination of persons proposed as members of the House of Assembly for such Electoral Division, and the court for declaring the names of the members elected by such Electoral

New electoral divisions, how to be named.

- No. 3—1885. Division, shall be held in the Court-room of the district of Richmond.
29. [Lapsed.]
30. [Lapsed.]
31. [Repealed by Act 18, 1874.]
32. As soon as, but not before, the names of the members of the Legislative Council elected as aforesaid shall have been published, there shall be an election of two members of the House of Assembly for each of the eight Electoral Divisions in the twenty-fourth section of this Act mentioned; and all and singular the several provisions of the Constitution Ordinance relating to the election of members of the House of Assembly shall apply to the elections to take place in and for the said eight Electoral Divisions; and the members then elected shall, after their election, be in the same situation and condition, in all respects, as if they had been returned for the said divisions at the last general election held throughout the Colony for members of the House of Assembly.
- When proclamation for election of new members of Assembly is to be issued.
33. This Act shall commence and take effect upon and from and after the publication of the proclamation in the second section of this Act mentioned.
- Commencement of Act.
34. This Act may be cited for all purposes as The "British Kaffraria Incorporation and Parliamentary Representation Amendment Act of 1865."
- Short title.

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No. 3—1885.]

[July 14, 1885.

### ACT

To Provide for the Annexation to the Colony of the Cape of Good Hope, of the British Territories known as Tembuland, Emigrant Tembuland, Gcalekaland and Bomvanaland, and for the Government of the said Territories.

Preamble. WHEREAS by resolution of both Houses of Parliament of this Colony, passed in the Session of Parliament held in the year of our Lord 1884, it was resolved that it is expedient that the British Territories known as Tembuland, Emigrant Tembuland, Gcalekaland and Bomvanaland should be annexed to this Colony: And whereas by Her Majesty's Letters Patent, bearing date at Westminster the 2nd day of October, 1884, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was authorized by proclamation under his hand and the Public Seal of the said Colony, to declare that from and after a day to be therein mentioned, the said Territories, or so much thereof as to him after due consideration and consultation with his Ministers, shall seem fit, shall be

annexed to and form part of this Colony; and was authorized and directed to determine and by proclamation to signify the limits of the said Possessions and Territories so annexed: Provided that no such proclamation should be issued until the Legislature of this Colony should have passed a law providing that the said Territories should on the day aforesaid become part of this Colony, and subject to the laws in force therein: and provided that the application of the said laws to the said Territories might be modified either by such proclamation as aforesaid, or by any law or laws to be from time to time passed by the Legislature of this Colony for the government of the said Territories so annexed: And whereas it is expedient that a law should be enacted providing that the said respective Territories shall, on the day to be mentioned in that behalf in a proclamation or proclamations of the Governor aforesaid, become part of this Colony, but in consequence of the said Territories being for the most part occupied by natives who are not yet sufficiently advanced in civilization and social progress to be admitted to the full responsibility granted and imposed respectively by the ordinary laws of this Colony to and upon other citizens thereof, subject to the laws in force therein only as the same may from time to time be applied and modified as hereinafter mentioned and hereinafter provided: 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:—

1. From and after such day as the Governor shall, pursuant to the powers in that behalf contained in the said Letters Patent, by proclamation (1) under his hand and the Public Seal of this Colony fix in that behalf, the British Territories known as Tembuland, Emigrant Tembuland, Gcalekaland and Bomvanaland, or so much of the said respective Territories as shall be defined in or by any such proclamation, and with the limits and name in any such proclamation signified, shall become and be part of the Colony of the Cape of Good Hope, and subject to the laws in force therein except as the application of the same to the said respective Territories may be modified by any such proclamation: Provided that for the purposes in this section mentioned it shall be lawful for the Governor to issue one or more proclamations as he may seem fit.

Governor may proclaim date from which Tembuland, Emigrant Tembuland, Gcalekaland, and Bomvanaland shall become part of this Colony.

2. From and after the annexation of the said respective Territories to this Colony as aforesaid, the laws which may be in force therein under and by virtue of the last preceding section may, until it shall be otherwise provided by Act of Parliament, be repealed, altered, amended, and modified, and new laws applicable to the said Territories respectively may be made, and may be repealed, altered, amended, and modified by the Governor, by proclamation published in the *Government Gazette*; and no Act passed or to be passed by the Parliament of this Colony shall

Provision as to laws.

The laws at present in force in these territories may, until otherwise provided by Parliament, be repealed, altered, amended, and modified and new laws made by Governor in Council. No colonial Acts to apply unless expressly provided, or unless it is extended to these territories or any of them by Governor in Council.

<sup>1</sup> Proclamation No. 140, dated 26th Aug., 1885, in *Gazette* 1st Sept., 1885.

No. 3—1885.

extend or be deemed to extend to the said Territories or any of them, unless such Act shall be extended thereto in express words either contained therein or in some other Act of Parliament, or unless the operation thereof shall be extended to any of such Territories by the Governor by such proclamation as aforesaid, and in such case any such proclamation may be amended or repealed from time to time by the like proclamation, and no proclamation published in the *Government Gazette* after any proclamation or proclamations as in the last preceding section mentioned shall be deemed to extend or apply to the said Territories or any of them unless the same shall be declared in express words contained in such or some other proclamation as aforesaid to extend or apply thereto: Provided always that all such laws made under or by virtue of this Act shall be laid before both Houses of Parliament within fourteen days after the beginning of the Session of Parliament next after the proclamation thereof as aforesaid, and shall be effectual unless in so far as the same shall be repealed, altered, or varied by Act of Parliament.

Eastern Districts Court to have jurisdiction over annexed territories.

3. The Court of the Eastern Districts shall have a jurisdiction concurrent with that of the Supreme Court in and over all causes arising and persons residing and being within the Territories by this Act annexed.

Jurisdiction of Magistrates' Courts in annexed territories in criminal cases.

4. (1) The Resident Magistrates of such annexed Territories shall, until the Governor shall by any proclamation otherwise direct, have jurisdiction respectively in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death; and may sentence any person convicted, to any punishment allowed by law; anything in the forty-second section of the Act No. 20 of 1856 to the contrary notwithstanding.

Review of such Magistrates' decisions.

5. (1) The sentences of the Resident Magistrates in the last preceding section mentioned shall, until the Governor shall by any proclamation, issued for that purpose, otherwise direct, continue to be reviewed by the Chief Magistrates, respectively, of the Territories hereby annexed in the manner provided for in and by the twenty-seventh section of the regulations promulgated by proclamation of His Excellency the then Governor, bearing date the 26th day of January, 1882, in regard to the said Territories; provided that any person convicted and sentenced to suffer any punishment may appeal in the manner provided, and to the courts respectively mentioned, in the fourth section of the "Resident Magistrates' Courts Act, 1876."

Appeals in civil cases.

6. Any person being a party to any civil suit, action, or proceeding pending in the Court of any Resident Magistrate in the Territories hereby annexed, may appeal either to the Chief Magistrate thereof in the manner provided by the twenty-sixth section

<sup>1</sup> But see §§ 250, 259 and 268 of Act 24, 1886, which will come into force on 1st January, 1887. (See "Natives.")

of the proclamation mentioned in the last preceding section, or to the Supreme Court or Court of the Eastern Districts, as such person may elect.

No. 38—1877.

7. This Act may be cited as the “Tembuland Annexation Act, 1885.”

Short title.

No. 38—1877.]

[August 15, 1879.

## ACT

To Provide for the Annexation to the Colony of the Cape of Good Hope of the Country situated between the Bashee and the Kei, commonly known as Fingoland and the Idutywa Reserve, and the Country situated between the Umtata and the Umzimkulu, commonly known as Nomansland, and for the government of the said Territories.

WHEREAS by resolution of both Houses of the Parliament of this Colony, passed in the Session of Parliament held in the year of our Lord 1875, it was resolved that it is expedient that the country situated between the Bashee and the Kei, known as Fingoland and the Idutywa Reserve, and the country situated between the Umtata and the Umzimkulu, commonly known as Nomansland, should be annexed to this Colony: And whereas by Her Majesty's Letters Patent, bearing date at Westminster the 12th day of June, 1876, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was authorized by proclamation under his hand and the public seal of this Colony to declare that from and after a day to be therein mentioned, the said Territories or so much thereof as to him after due consideration and consultation with his Ministers should seem fit, should be annexed to and form part of this Colony, and was authorized and directed to determine, and by proclamation to signify the limits of the said Territories so annexed; provided that no such proclamation should be issued until the Legislature of this Colony should have passed a law providing that the said Territories should on the day aforesaid become part of this Colony and subject to the laws in force therein; and provided also that the application of the said laws to the said Territories might be modified either by such proclamation as aforesaid or by any law or laws to be from time to time passed by the Legislature of this Colony for the government of the said Territories so annexed: And whereas it is expedient that a law should be enacted providing that the said respective Territories shall on the day to be mentioned in that behalf in a proclamation or proclamations of the Governor as aforesaid become part of this Colony; but, in consequence of the

Preamble.

No. 38—1877.

said Territories being for the most part occupied by natives who are not yet sufficiently advanced in civilization and social progress to be admitted to the full responsibility granted and imposed respectively by the ordinary laws of this Colony to and upon other citizens thereof, subject to the laws in force therein only as the same may from time to time be applied and modified as hereinafter mentioned and hereinafter 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 may proclaim date from which Fingoland, Idutywa Reserve, and Nomansland shall become part of the colony.

1. From and after such day as the Governor, with the advice of the Executive Council, shall, pursuant to the powers in that behalf contained in the said Letters Patent, by proclamation <sup>(1)</sup> under his hand and the public seal of this Colony, fix in that behalf the Territory between the Bashee and the Kei Rivers, commonly known as Fingoland and the Idutywa Reserve, and the Territory between the Umtata and Umzimkulu Rivers, commonly known as Nomansland, or so much of the said respective Territories as shall be defined in or by any such proclamation, and with the limits and name in any such proclamation signified, shall become and be part of the Colony of the Cape of Good Hope, and subject to the laws in force therein except as the application of the same to the said respective Territories may be modified by any such proclamation: Provided that for the purposes in this section mentioned it shall be lawful for the Governor with the advice aforesaid to issue one or more proclamations as may seem fit.

Provision as to laws.

2. From and after the annexation of the said respective Territories to this Colony as aforesaid, the laws which may be in force therein under and by virtue of the last preceding section may, until it shall be otherwise provided by Act of Parliament, be repealed, altered, amended, and modified, and new laws applicable to the said Territories respectively may be made, and may be repealed, altered, amended, and modified by the Governor with the advice of the Executive Council, by proclamation published in the *Government Gazette*; and no Act passed or to be passed by the Parliament of this Colony shall extend or be deemed to extend to the said Territories or any or either of them unless such Act shall be extended thereto in express words either contained therein or in some other Act of Parliament, or unless the operation thereof shall be extended to any or either of such Territories by the Governor with the advice of the Executive Council by such proclamation as aforesaid, and in such case any such proclamation may be amended or repealed from time to time by the like proclamation, and no proclamation published in the *Government Gazette* after any proclamation or proclamations as in the last preceding section mentioned shall be deemed to extend or apply

The laws at present in force in these territories may, until otherwise provided by Parliament, be repealed, altered, amended, and modified by Governor in Council.

No colonial Acts to apply unless expressly provided in such Act, or unless it is extended to these territories or any of them by Governor in Council.

<sup>1</sup> See Proclamation of 12th Aug., 1879, in *Gazette* of 15th Aug., 1879.

ANNEXATION (WALFISH BAY AND ST. JOHN'S RIVER 89  
TERRITORIES).

to the said Territories or any or either of them unless the same shall be declared in express words contained in such or some other proclamation as aforesaid to extend or apply thereto: Provided always that all such laws made under or by virtue of this Act shall be laid before both Houses of Parliament within fourteen days after the beginning of the Session of Parliament next after the proclamation thereof as aforesaid, and shall be effectual unless in so far as the same shall be repealed, altered, or varied by Act of Parliament.

No. 35—1884.

3. (1) The courts of this Colony shall have jurisdiction to take cognizance of, try and determine, any cause or entertain any matter, civil or criminal, which the Governor with the advice of the Executive Council may from time to time by any proclamation published in the *Government Gazette*, extending to the said Territories or any or either of them, declare to be cognizable by such courts respectively, the subject matter whereof shall have occurred within the local limits of such Territory, or the parties whereof or any of them are or is or may be resident within such limits in like manner as if such subject matter had occurred, and such parties were resident within the limits heretofore forming the limits of this Colony; and all persons who may be lawfully sentenced to undergo imprisonment with or without hard labour by any court or magistrate in any or either of the said Territories may by order of the Governor with the advice aforesaid, be removed to undergo the said sentence or any part thereof, to any convict station or gaol within the said limits.

Governor in Council may authorize colonial courts to try any case, civil or criminal, arising in these territories.

And may authorize removal of prisoners sentenced therein to convict stations therein.

4. This Act may be cited as the "Transkeian Annexation Act, 1877."

Short title.

No. 35—1884.]

[July 25, 1884.]

ACT

To Provide for the Annexation to the Colony of the Cape of Good Hope of the Port or Settlement of Walfish Bay on the West Coast of Africa and of certain Territory surrounding the same, and of certain British Territories on the St. John's River in South Africa.

WHEREAS it is expedient that the Port or Settlement of Walfish Bay, situated on the West Coast of South Africa, to the North of the Tropic of Capricorn, together with certain Territory surrounding the same, and bounded as follows, viz.:—On the south by a line from a point on the coast fifteen miles south of Pelican Point to Scheppmansdorp to the Rooibank, including the plateau, and

Preamble.

<sup>1</sup> See however Act 24, 1886.



90 ANNEXATION (WALFISH BAY AND ST. JOHN'S RIVER TERRITORIES).

No. 35—1884.

thence to ten miles inland from the mouth of the Swakop River; on the north by the last ten miles of the course of the said Swakop River, and on the West Coast by the Atlantic Ocean, be annexed to this Colony; and whereas by Her Majesty's Letters Patent, bearing date at Westminster the 14th day of December, 1878, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was authorized by proclamation under his hand and the Public Seal of this Colony, to declare that from and after a day to be therein mentioned, the said Port, Settlement, and Territory, as in the said Letters Patent described, should be annexed to and form part of this Colony. And further whereas it is expedient that the Port and Tidal Estuary of the St. John's River in South Africa, and certain lands on the banks of the said River forming part of Her Majesty's Dominions be also annexed to this Colony; and whereas by Her Majesty's Letters Patent, bearing date at Westminster, the 10th day of October, 1881, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was authorized by proclamation under his hand, and the Public Seal of this Colony to declare that from and after a day to be therein mentioned, the said Territory should be annexed to and form part of this Colony, and by proclamation to signify the limits of the said Territory so annexed, provided that in the case of either of the Territories to be so annexed, no such proclamation should be issued until the Legislature of this Colony should have passed a law providing that the said Territories shall, on the day aforesaid, become part of this Colony and subject to the laws in force therein: and provided also, that the application of the said laws to the said Territories might be modified either by such proclamation as aforesaid or by any law or laws to be from time to time passed by the Legislature of this Colony for the government of the said Territories so annexed: And whereas it is expedient that a law should be enacted providing that the said respective Territories shall on the day to be mentioned in that behalf in a proclamation or proclamations of the Governor as aforesaid, become part 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 may proclaim date from which Walfish Bay and St. John's River shall become part of the Colony.

1. (1) From and after such day as the Governor shall, pursuant to the powers in that behalf contained in the said Letters Patent, by proclamation under his hand and the Public Seal of this Colony, fix in that behalf the Port or Settlement of Walfish Bay on the West Coast of Africa, and certain Territory surrounding the same, the limits of which are defined in the Letters Patent of the 14th December, 1878, aforesaid, and the said British Territories on the

<sup>1</sup> Walfish Bay annexed by Proc. in Gazette 8th Aug., 1884.  
St. John's do. do. do. 16th Sept., 1884.

St. John's River, with the limits and name in any such proclamation signified, shall respectively become and be part of the Colony of the Cape of Good Hope, and subject to the laws in force therein, except as the application of the same to the said respective Territories may be modified by any such proclamation.

No. 37—1886.

2. From and after the annexation of the said respective Territories to this Colony as aforesaid, the laws which may be in force therein under and by virtue of the last preceding section may, until it shall be otherwise provided by Act of Parliament, be repealed, altered, amended, and modified, and new laws applicable to the said Territories respectively may be made, and may be repealed, altered, amended, and modified by the Governor; and no Act hereafter passed by the Parliament of this Colony shall extend or be deemed to extend to the said Territories or any or either of them unless such Act shall be extended thereto in express words either contained therein or in some other Act of Parliament, or unless the operation thereof shall be extended to any or either of such Territories by the Governor, and no proclamation published in the *Gazette* after any proclamation or proclamations as in the last preceding section mentioned shall be deemed to extend or apply to the said Territories or any or either of them unless the same shall be declared in express words contained in such or some other proclamation as aforesaid to extend or apply thereto.

How laws at present in force may be modified, &amp;c.

When Colonial Acts to apply.

3. The Court of the Eastern Districts shall have a jurisdiction concurrent with that of the Supreme Court in and over all causes arising, and persons residing and being within the Territory of St. John's River so to be annexed as aforesaid.

Jurisdiction of E. D. Court.

4. This Act may be cited as the "Walfish Bay and St. John's River Territories Annexation Act, 1884."

Short title.

No. 37—1886.]

[Oct. 25, 1886.

## ACT

To provide for the Annexation to the Colony of the Country known as the Xesibe Country.

WHEREAS by Resolution passed in both branches of the Legislature it has been declared to be expedient that the country situated between the district of Kokstad in Griqualand East and Pondoland East, known as the Xesibe Country, comprised in the district now called Mount Ayliff, should be annexed to the Colony: And whereas it is the intention of Her Majesty the Queen to issue her Royal Letters Patent to authorize the Governor of the Cape of Good Hope, by a Proclamation under his hand and the Public Seal of this Colony, to declare that from and after a day to be therein mentioned, the said country should be annexed to, and form part of, this Colony, and to determine and signify the limits of the said country

Preamble.

No. 28—1860.

so annexed, in case the Legislature of the Colony should have passed an Act providing that the said country should become a part of this Colony : And whereas it is expedient that such an Act should be passed : 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 proclaim Xesibe Country to be annexed to the Colony and form part of Griqualand East.

1. From and after such day as the Governor shall, pursuant to the powers in that behalf contained in any Royal Letters Patent which may be issued for that purpose, by proclamation <sup>(1)</sup> under his hand and the Public Seal of the Colony, fix in that behalf, the country in the preamble to this Act mentioned, or so much of the said country as shall be defined in or by any such proclamation, and with the limits and name in any such proclamation signified, shall be annexed to and become a part of that portion of the Colony known as Griqualand East, and be subject to the laws for the time being in force in such portion of the Colony.

Short title.

2. This Act may be cited as the “Xesibe Country Annexation Act, 1886.”

## ART-UNIONS.

No. 28—1860.]

[July 17, 1860.

## ACT

For Legalizing Art-Unions <sup>(2)</sup>.

Preamble.

WHEREAS certain voluntary associations have been, or may hereafter be formed in the Colony for the purpose of encouraging the arts, and for the purchase of paintings, drawings, or other works of art, to be afterwards allotted and distributed by chance, or otherwise, among the several members, subscribers, or contributors, forming part of such association, or for raising sums of money by subscription or contribution, to be allotted or distributed by chance, or otherwise, as prizes amongst the members, subscribers, or contributors, forming part of such associations, on the condition, nevertheless, that such sums of money so distributed be expended solely and entirely in the purchase of paintings, drawings, or other works of art, or of sums of money for their purchase, and the proceedings taken to carry the same into effect, may be deemed and taken to come within the provisions of certain laws in force in the Colony for the prevention of lotteries and unlawful games, whereby the members, subscribers, or contributors of such associations as aforesaid, or persons acting under their authority, or on their behalf, may be liable to certain pains and penalties

<sup>1</sup> Proc. in Gazette 25th Oct., 1886.

<sup>2</sup> See also Placaat dated 19th May, 1789, under “Lotteries.”

imposed by law on persons concerned in lotteries and unlawful games; and whereas it is expedient that all members of, and subscribers and contributors to, such voluntary associations as aforesaid, and all persons acting under their authority, or on their behalf, so long only as their proceedings are carried on in good faith for the encouragement of the fine arts, shall be discharged and protected from any pains and penalties to which they may have rendered themselves liable by reason of any such their proceedings as aforesaid: 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:—

1. All such voluntary associations as aforesaid now constituted, or which may hereafter be constituted according to the provisions hereinafter contained, shall be deemed to be lawful associations, and the members of and subscribers and contributors to all such lawful associations, and all persons acting under their authority or on their behalf, for the purposes aforesaid, shall be freed and discharged from all pains and penalties, suits, prosecutions, and liabilities to which by law they would be liable but for the passing of this Act, as being concerned in illegal lotteries, or unlawful games, by reason of anything done or which may be done by them, or any of them, in furtherance of the allotment or distribution by chance or otherwise, of paintings, drawings, or other works of art, or of the allotment or distribution of sums of money, as prizes to be expended for their purchase: Provided, always, that the deed of partnership or other instrument or instruments constituting such associations, and the rules and regulations relative to the proceedings of such association for such purposes as aforesaid, shall have first been submitted to the consideration and be approved of by His Excellency the Governor, and a copy thereof deposited in the Colonial Office; and that it shall be expressed in every such deed, or instrument, that it shall be lawful for His Excellency the Governor, whenever it shall appear to him that any such association is perverted from the purposes of this Act, to revoke or annul the deed or instrument under which the association so offending may have been constituted; and nothing in this Act contained shall be deemed to apply to any association whose deed of partnership, or other instrument constituting the same, shall have been so revoked or annulled, or to any member, subscriber, or contributor thereto, or to any person acting under his authority or on his behalf.

2. This Act shall take effect from and after the promulgation thereof.

Associations formed for the encouragement of the fine arts exempt from the operation of laws against lotteries.

Deed constituting association to be submitted to Governor.

Governor may revoke and annul deed

Act when to commence.

No. 10—1879.]

[Sept. 11, 1879.]

## ACT

## To Amend the Law relative to the Execution and Attestation of Powers of Attorney.

- Preamble. WHEREAS the existing law relating to the execution of powers of attorney is inconvenient in practice: 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:—
- Repeal of third section of Ordinance 15 of 1845. 1. The provisions of the third section of Ordinance No. 15 of 1845, so far as the same relate to powers of attorney, are hereby repealed.
- Signature alone to make power of attorney valid. 2. It shall be sufficient for the validity of any power of attorney made after the passing of this Act that the same shall be signed at the foot or end thereof by the person making the same with his signature or mark: Provided, that it shall be lawful for the Registrar of Deeds, Master of the Supreme Court, or any other person, before paying out any money, or doing any other act, or authorizing any act to be done by virtue of any power of attorney, to require that the signature or mark of the person making the same shall be attested:
- Attestation may be required.
- What shall be sufficient attestation.
- (a) By the signature of two witnesses who shall be above the age of fourteen years, and competent to give evidence in a court of justice, and who shall affix their signatures as near as conveniently may be to the signature or mark of the person making the power of attorney; or
- (b) By the declaration of one such witness as aforesaid, who shall declare that he was present and saw the person making such power sign the same, or affix his mark thereto, or that such person acknowledged his signature or mark thereto in the presence or hearing of the witness; or
- (c) By the certificate of a Justice of the Peace or Notary Public.
- Form of declaration. 3. Every declaration made under the last preceding section shall be in the form provided for by Ordinance No. 6 of 1845, and subject to the provisions of the said Ordinance.
- Stamp duty not affected. 4. Nothing in this Act contained shall alter or affect any stamp duty which may now or hereafter be imposed upon powers of attorney.
- Short title. 5. This Act may be cited as the "Powers of Attorney Act, 1879."

No. 23—1884.]

[July 25, 1884.

## ACT

To make Provision for the Discharge of the Duties of the Attorney-General of this Colony, during the illness or absence of that Officer.

WHEREAS it is desirable to provide for the performance under certain circumstances of the duties appertaining to the office of Attorney-General: 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 when, and so often as, by reason of the absence or incapacity, through sickness or other cause, of the Attorney-General for the time being, it shall appear to him necessary or expedient to do so, to appoint some other fit and proper person to act as and in place of the said Attorney-General, during such absence or the continuance of such incapacity, and thereupon every right, duty, power, and function, conferred or imposed by law upon the Attorney-General, shall and may be exercised and performed by such person as fully and effectually as the same may be exercised by the Attorney-General himself: Provided that nothing herein contained shall be taken to entitle such person to sit and take part in any proceedings in either the Legislative Council or the House of Assembly, nor to confer upon him any privilege, function, or power, possessed by the Attorney-General solely in his capacity as a Minister of the Crown under the provisions of the "Constitution Ordinance Amendment Act, 1872."

In what cases Governor may appoint person to act for Attorney-General.

2. This Act may be cited as the "Attorney-General's Office Act, 1884."

Short title.

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 AUCTION SALES.
 

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|---------------------------------------------------------------------------------------|--|-------------------------------------------------------------------|
| 1. Ord. 6—1844, (Duty and Licences).                                                  |  | 6. Ord. 16—1847, § 21 (Sales by Pound-                            |
| 2. Act 5—1858, (do do).                                                               |  | masters).                                                         |
| 3. ,, 3—1876, (Recognizances).                                                        |  | 7. ,, 6—1848, (Sales by Agricultural                              |
| 4. Ord. 44—1823, (Sales by Magistrates' Messengers).                                  |  | Societies).                                                       |
| 5. ,, 92—1832, (Sales by Sheriff's Officers, Master's Messengers and Market Masters). |  | 8. Act 28—1883, §§ 2, 9, 16, (Sales of Liquor).                   |
|                                                                                       |  | 9. ,, 5—1884, §§ 24—28, (Sales to Agents for Alleged Principals). |



No. 6—1844.—Sd. George Napier.]

[Feb. 28, 1844.

## Ordinance for regulating Sales by Auction.

WHEREAS the law as contained in Ordinance No. 31, 1827, entitled "An Ordinance for abolishing the Office of Vendues, and for

- Ord. 6—1844. imposing certain Duties on Licences to be taken out by all persons acting as Auctioneers, and on Property sold by Auction," requires to be amended: And whereas the said law may be most conveniently amended by repealing the said Ordinance, and enacting other provisions in its room and stead: 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 thereof, that from and after the first day of July, 1844, the said Ordinance No. 31, 1827, shall be, and the same is hereby, repealed, save and except in so far as the same repeals any former laws before that time in force in this Colony, and in so far as relates to, or concerns, the recovery of any duties imposed by virtue of the said Ordinance, or of any sum or sums of money due upon vendue notes or rolls, or in any manner become due by reason of, or in connection with, any public sale which shall be unpaid and in arrear on the said first day of July, 1844.
- Ordinance No. 31 of 1827 repealed.
- Business of auctioneer to be under licence.
- Penalty.
- Things to be deemed immovable property.
2. And be it further enacted, that from and after the said first day of July 1844, it shall be lawful for any person complying with the regulations hereinafter mentioned, to exercise the trade or business of an auctioneer, upon taking out a licence, which shall be in force for one year from the date thereof <sup>(1)</sup>, and no longer, from the commissioner of stamps in Cape Town, or the distributors of stamps in the several districts of the Colony, within their respective districts, on paper stamped, to the value of <sup>(1)</sup> three pounds sterling, and which shall contain the true name and residence of the person taking out such licence; and if any person shall exercise the said trade or business of an auctioneer, without having a licence in force at the time when he shall so exercise the said trade or business, or sell by way of auction as aforesaid, he shall, for every such offence, incur and be liable to the payment of a fine not exceeding one hundred pounds sterling, <sup>(2)</sup> to be recovered in any competent court, one-half of which shall be paid to the informer, and the other half to the Colonial Treasury.
3. [Lapsed].
4. [Repealed by Act 5 of 1858, *infra*.]
5. And be it enacted, that when and as often as any machinery, implements, utensils, or other matters or things belonging to, or intended for, any trade or manufacture, and whether the same shall be fastened to the ground or building upon or in which the same shall be placed, or separable or separated therefrom, as the case may be, or any movable property whatever, shall be put up and sold in one lot together with any immovable property, (whether the immovable property upon or in which the same shall be at the time of the sale or not), then the whole of the said lot shall for the purpose of the payment of auction duty, and of transfer duty, be

<sup>1</sup> But see Tariff 15, Schedule 2, Act 20 of 1884.

<sup>2</sup> See also § 6, Act 13 of 1870. For text of these Acts see under "Stamps and Licences."

deemed and taken to be immovable property, and be chargeable as such.

Ord. 6—1844.

6. And be it enacted, that the several duties aforesaid shall be a charge upon the auctioneer, after the knocking down of the hammer or other closing of the bidding, at every sale by way of auction.

Duty a charge against auctioneer.

7. And be it enacted, that no such licence as aforesaid shall be granted by the commissioner of stamps aforesaid, or any distributor of stamps to any person, until such person shall have produced to such commissioner or distributor, a certificate under the hand of the collector of taxes <sup>(1)</sup> in Cape Town, or the Civil Commissioner of the division, as in the next succeeding section mentioned, that such person has given the security in the said section described, and the said collector of taxes or Civil Commissioner, as the case may be, is hereby authorized and required to accept such security from every person desiring him so to do, and thereupon to grant a certificate under his hand.

Licence to be given after security found.

8. And be it enacted, that every person about taking out such licence as aforesaid, shall enter into a recognizance before the collector of taxes <sup>(1)</sup> in Cape Town, if such person shall reside in Cape Town, and before the Civil Commissioner of the division in which such person resides, if he reside in the country, <sup>(1)</sup> in the sum of one thousand pounds sterling, with two sufficient sureties in the sum of five hundred pounds sterling each, which recognizance, with the condition thereof, shall be in the form in the schedule to this Ordinance prescribed and set forth; and such recognizance shall be acknowledged in the presence of, and shall be signed by, the said collector of taxes or Civil Commissioner, as the case may be.

Amount for which security to be found

9. And be it enacted, that every person who shall have received such licence as aforesaid, or otherwise, the person who acted as his clerk at the sales in the account in the condition of the said recognizance mentioned and set forth, shall make oath <sup>(2)</sup> to the truth of every such account, and every person making such oath, shall, in case the same be false, be deemed to be guilty of the crime of perjury.

Accounts of sale to be upon oath.

10. And be it enacted, that every such recognizance as aforesaid may be put in suit by the collector of taxes, or Civil Commissioner, as the case may be, before whom the same was acknowledged, or by the officer for the time being acting as such collector or Civil Commissioner; and in case of judgment being given against the defendant the licence granted upon such recognizance shall become void.

By whom security may be enforced.

11. [Repealed by Act 28 of 1883 (Liquor Licensing Act)].

12. And whereas it may sometimes happen, that sales at auction of property may be rendered null and void, by reason that the person for whose benefit the same shall be sold, had no title or no

Relief from duty when sale fairly from want of title.

<sup>1</sup> See §§ 3 and 4, Act 3 of 1876 (*infra*). These recognizances to be taken before the Civil Commissioner of the division or the Resident Magistrate of the district in which the person requiring a licence resides.

<sup>2</sup> Declaration substituted for oath by Ord. 6 of 1845. (Oaths).



Ord. 6, 1844.

right to dispose of the same; be it further enacted, that from and after the said 1st day of July, 1844, if any sale by auction of any estate, goods, or chattels, shall be rendered void by reason that the person for whose benefit the same was so sold, had no title to the same, or no right to dispose thereof, then in every such case it shall be lawful for the auctioneer who paid the duty for the property so sold, or for the person for whose benefit the same was so sold, to lay his complaint before the <sup>(1)</sup> collector of taxes, or Civil Commissioner within whose jurisdiction respectively such sale was made, who are hereby required and empowered to hear all such complaints, and to examine all witnesses produced upon oath, and shall report the case for the information of the Governor of this Colony for the time being, in order that the party may be relieved of so much of his payment as shall appear to have been overpaid.

No duty payable on purchases made by exposor.

13. And be it enacted that in case the real owner of any property put up to sale by auction shall become the purchaser by means of his own bidding, or the bidding of any other person on his behalf without fraud or collusion, then the said collector of taxes <sup>(1)</sup> and Civil Commissioner respectively, shall make an allowance to such owner of the duties hereby imposed upon such bidding, provided notice be given to the auctioneer before such bidding, both by the owner and the person intending to be the bidder, of the latter being appointed by the former, and having agreed accordingly to bid at the sale on behalf of the seller, and provided such notice be verified by the oath of the auctioneer, as also the fairness and reality of the said transaction, to the best of his knowledge and belief; and in case any dispute shall arise, whether such purchase by the owner was not made by collusion, or in order to lessen the full sum hereby appointed to be paid, or concerning the fairness of such transaction, then and in such case proof thereof shall lie upon the person acting as auctioneer, and on failure thereof, or in case of any unfair practice, then no such allowance shall be made as aforesaid.

Sales for government may be made without licence.

14. And be it enacted that it shall and may be lawful for any person appointed by His Excellency the Governor in that behalf, to sell by public sale for or on account of the Government of this Colony any property, movable or immovable, belonging to the said Government, without taking out any licence to exercise the trade or business of an auctioneer, or entering into any recognizance or being bound to comply with any of the regulations of this Ordinance, anything contained in any of the former clauses of this Ordinance to the contrary notwithstanding.

SCHEDULE. <sup>(2)</sup>.

Form of recognizance.

Division of \_\_\_\_\_ (or Cape Town as the case may be).  
Before me (collector of taxes in Cape Town or Civil Commissioner for the Division of \_\_\_\_\_) on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, A. B.,

<sup>1</sup> See note to § 7.

<sup>2</sup> Amended by § 4, Act 3 of 1876.

of ———, C. D., of ———, and E. F., of ———, acknowledge themselves to owe to our Sovereign Lady the Queen, that is to say, the said A. B. the sum of £1,000, and the said C. D. and E. F. each the sum of £500, to be made and levied of their goods and chattels respectively.

No. 5—1858.

The condition of the above written recognizance is such that if the said A. B. shall by virtue of or in reference to these presents obtain a licence to exercise the trade or business of an auctioneer, he shall render (to the said collector of taxes or Civil Commissioner as the case may be) an exact and true account in writing of the total amount of the money bid at each sale, and of the several lots which have been there sold, and the price thereof respectively, and for that purpose shall produce to the said collector of taxes or Civil Commissioner (as the case may be) all books kept by him relative to his trade or business on the first day of every month (if to the collector of taxes in Cape Town, but if in a country division, then say, "on the first day of every quarter, to be computed from the first day of July, 1844,") and shall within three months from the date of every such sale make payment of all sums of money imposed upon him by way of duty by this Ordinance; and shall (whenever thereto required by the said collector of taxes or Civil Commissioner as the case may be) truly and justly declare under his hand whether or not he has in any specified period held any sale as such auctioneer as aforesaid; and if he shall so do as aforesaid, then this recognizance to be void, but otherwise to be of full force and effect.

No. 5—1858.]

[June 5, 1858.

## ACT

For Amending certain Ordinance, No. 6, 1844, entitled  
"An Ordinance for Regulating Sales by Auction."

WHEREAS it is desirable that the rate of dues leviable by Ordinance No. 6, 1844, upon property sold by auction in this Colony, be amended: 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. The fourth section of said Ordinance, No. 6, 1844, is hereby repealed, and it is hereby enacted that from and after the first day of July, 1858, a duty of, and at the rate of, two pounds for every hundred pounds sterling of the purchase money shall be imposed on all movable property, and a duty of, and at the rate of, one pound for every hundred pounds sterling of the purchase money on all immovable property which shall be sold by auction in this Colony.

Two per cent. on movable and one per cent. on immovable property.

2. This Act shall commence and take effect from and after the first of July, 1858,

Act, when to commence.

No. 3—1876.]

[July 4, 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.

Preamble.

WHEREAS it is expedient that the duties and functions imposed upon the Treasurer-General by the second section of the Ordinance No. 13 of 1844, intituled "Ordinance for transferring to certain other Officers the duties of the Office of Collector of Taxes," should be transferred to the Civil Commissioner of the Cape Division; that Resident Magistrates should be empowered to perform certain duties under the Ordinance No. 6 of 1844, intituled "Ordinance for regulating Sales by Auction," that the provisions of the said last-mentioned Ordinance as to the recognizance therein mentioned should be amended, and that the payment of transfer duty in the Cape Division should be placed upon the same footing as the payment thereof in other divisions: 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 third and fourth sections of the said Ordinance No. 13 of 1844, the ninth section of the Ordinance No. (1) 18 of 1844, intituled "Ordinance for regulating the Payment of Transfer Duty in this Colony," and so much of any other parts of the said Ordinances and of the said Ordinance No. 6 of 1844, 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.

Duties and function imposed on Treasurer-General by section 2, Ordinance 13, 1844, transferred to civil commissioner of Cape Division.

2. From and after the taking effect of this Act, all and singular the several duties and functions which by the second section of the said Ordinance No. 13 of 1844 were imposed upon and directed to be exercised by the Treasurer-General of this Colony or the officer for the time being acting as such, shall be imposed upon and exercised by the Civil Commissioner of the Cape Division, and all bonds, vouchers, or rights of action, which shall at the time aforesaid be vested in or recoverable by the said Treasurer-General under and by virtue of the said second section of the said Ordinance shall vest in and be recoverable by the said Civil Commissioner.

Resident Magistrate authorized to accept security from auctioneers, and grant certificates under section 7, Ordinance 6, 1844.

3. The Resident Magistrate of the district in which any person about to take out a licence to exercise the trade or business of an auctioneer under the said Ordinance No. 6 of 1844 resides, is hereby authorized and empowered to accept the security and grant the certificate in the seventh section of the said Ordinance mentioned, and such security and certificate shall be of the same force and

<sup>1</sup> Ordinance 18, 1844, is repealed by Act 5 of 1884 (Transfer Duty).

effect as if the same had been accepted and granted respectively by the officer now by law authorized to accept and grant the same.

Ord. 44—1823.

4. The recognizance mentioned in the eighth section of the said Ordinance No. 6 of 1844, shall be entered into and acknowledged before and shall be signed by the Civil Commissioner of the division or the Resident Magistrate of the district in which the person who is to enter into the same resides; and the form in the schedule to the said Ordinance prescribed and set forth shall as to all future recognizances read as if the words "Civil Commissioner for the division of———, or Resident Magistrate for the district of———," were inserted in the recognizance instead of the words "Collector of Taxes in Cape Town, or Civil Commissioner for the Division of———," as the person before whom the recognizance is acknowledged, and as if the Civil Commissioner of the Cape division was mentioned in the condition of the said recognizance in the place or stead of the collector of taxes as often as the last-mentioned name occurs in the said condition.

Recognizances under section 8, Ordinance 6, 1844, to be entered into before civil commissioner or resident magistrate instead of collector of taxes, &c.

5. [Repealed by Act 5 of 1884.]

No. 44.—Sd. Richard Bourke.] [March 19th, 1828.

Ordinance 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.

[Partially repealed by Ordinance No. 4 of 1834.—Repealed by Act No. 20 of 1856,—'save and except in so far as, by the 17th section thereof, the messengers of the Courts of Resident Magistrates are authorized to sell by auction goods taken in execution of the process of such courts.']

\* \* \* \* \*

17. And whereas it is expedient that goods taken in execution, and to be sold by virtue of any process of the said Court, or of the Court of the Resident Magistrate in any district of this Colony, should be sold by the messenger of the said Court or their deputies alone, and without an auctioneer licensed for that purpose: Be it therefore enacted that from and after the passing of this Ordinance, it shall and may be lawful for the messengers of the said Courts, and their deputies respectively, without any licence for that purpose, and they are hereby authorized to sell by public auction, all such goods as shall or may be taken by virtue of any process of the said Courts to them directed respectively, and to be sold in execution thereof—any law or ordinance to the contrary notwithstanding.

Messengers of the court of resident magistrate entitled to sell by public auction without auctioneer's licence goods taken by virtue of process of these courts.

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102 AUCTION (SALES BY SHERIFF'S OFFICERS, MARKET  
MASTERS, &C.)

No. 92.—Sd. G. Lowry Cole.] [June 21, 1832.

Ordinance for enabling certain Persons to sell by auction  
without a Licence.

Preamble.

Auction sales by  
sheriff's officers,  
master's messengers  
and market-masters  
without a licence.

WHEREAS it is expedient that the officers of the High Sheriff of this Colony, the messenger of the Master of the Supreme Court, and the several market-masters throughout the Colony, should be permitted to sell property by auction without taking out any licence in the execution of their several offices and duties respectively: Be it therefore enacted by His Excellency the Governor and Council, that from and after the passing of this Ordinance, all officers to that effect authorized and appointed by the Sheriff, may sell by auction any property taken by the said Sheriff, or his lawful deputy, in execution of any legal process; and the messenger, or other person appointed by the Master of the Supreme Court, may sell by auction any property under the order and direction of the said Master in the execution of his office; and all market-masters now appointed, or hereafter to be appointed, may sell by auction, any goods, wares, and merchandise, in the due execution of the office of market-master, without taking out any licence whatever; and all such persons so authorized to sell by auction as aforesaid, save and except the market-masters aforesaid, shall comply with such regulations as are provided in the tenth section of the Ordinance <sup>(1)</sup> No. 31, and in default thereof shall be liable to the payment of the fine therein mentioned.

Non-liability of  
such persons to pro-  
secutions for former  
sales.

2. And be it further enacted that no officer, or other person hereinbefore authorized to sell by auction without a licence, shall be liable to any action or prosecution for having sold any property in the due execution of his office without a licence, before the passing of this Ordinance, any law or usage to the contrary notwithstanding.

Ord. 16—1847.]

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SALES BY POUNDMASTERS.

Poundmaster's  
right to act as auc-  
tioneer.

21. <sup>(2)</sup> 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.

Prohibition of  
poundmaster to pur-  
chase.

\* \* \* \* \*

<sup>1</sup> Ordinance No. 31 is repealed by Ordinance 6, 1844 Supra.

<sup>2</sup> For full text of this Ordinance, see under Pounds and Trespasses.

No. 6.—Sd. H. G. Smith.]

[June 27, 1848.

Ordinance for enabling certain Public Sales to be held by  
Persons not licensed as Auctioneers, and without the  
Payment of Auction Duty.

WHEREAS certain associations or societies have from time to time been formed in this Colony for the promotion of agriculture and the improvement of live-stock : And whereas the beneficial objects of such associations or societies, whether present or future, will be advanced by enabling them at their respective periodical meetings to hold or authorize public sales of farming produce and live-stock at which such stock and produce may be sold by persons not licensed as auctioneers, and in regard to which no auction duty shall be payable : 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 No. 6, 1844, entitled "Ordinance for regulating Sales by Auction," as is repugnant to or inconsistent with any of the provisions of this Ordinance, shall be repealed, and the same is hereby repealed accordingly.

Preamble.

Repeal of repugnant parts of Ordinance No. 6, 1844.

2. And be it enacted that it shall and may be lawful for the Governor of this Colony for the time being, upon the application of any such association or society as aforesaid, to grant permission to the same to establish during the pleasure of the said Governor fairs or markets to be held upon the occasion of the various meetings thereof, at which fairs or markets it shall be lawful to sell by public sale or auction, horses, mules, asses, horned cattle, sheep, goats, pigs, implements of agriculture or husbandry, and all agricultural and farming produce, and no person holding such sale as aforesaid under or by virtue of any such appointment as is hereinafter mentioned, shall be required to take out or possess any licence in order to act thereat as auctioneer ; nor shall any auction duty be paid or payable in regard to any such sale. Provided always, that not more than four such fairs or markets shall be held in any one year by or in connection with any one association or society : Provided also, that no such fair or market shall continue longer than two days.

Establishment by Governor of agricultural fairs.

Sale without auctioneer's licence.

Frequency and duration of fairs.

3. And be it enacted, that it shall and may be lawful for any association or society which shall have received any such permission as aforesaid, to appoint, subject to the approbation of the Resident Magistrate of the district within which any such fair or market shall be held, some fit and proper person, or so many fit and proper persons, as shall be deemed to be expedient, to conduct, as auctioneer or auctioneers, the sales at such fair or market ; and such Resident Magistrate, with the advice of such association or society, shall approve of and authorize such rate of remuneration for such person or persons as shall appear just and reasonable. Provided

Appointment and remuneration of auctioneer.

always, that no such Resident Magistrate shall by reason of his having approved of such person or persons or of the rate of remuneration which he or they shall receive, be deemed or taken to be in any degree responsible for the acts or conduct of such person or persons in regard to the sales held by him or them.

Time of taking effect.

4. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 28.—1883.

SALES UNDER LIQUOR LICENSING ACT.

Exemptions from operation of this Act.

2. Nothing in this Act shall apply <sup>(1)</sup>

(3) To any person engaged in agriculture who may sell, upon the property occupied by him, intoxicating liquors in quantities of not less than seven gallons at one time, such liquors being the produce of grapes or other fruits respectively of his own growth, or purchased or procured by him: Provided that such liquors shall be distilled or made upon such property and shall not be drunk or consumed on his premises;

(6) To any auctioneer selling by auction liquor in quantities not less than such as are authorized to be sold under a wholesale licence belonging to a licensed dealer upon the licensed premises of such dealer, or belonging to any such person as is mentioned in subsection (3) upon the property occupied by such person.

Licensed places to have entrance to public street, &c.

9. No retail licence or bottle licence shall authorize the sale of liquors in any town or village otherwise than in premises having the bar entrance opening in or towards a public street or thoroughfare. No licence shall authorize the sale by auction of liquors in quantities less than such as may be sold under a wholesale licence.

Auctioneers.

16. Any auctioneer having a wholesale licence may sell by auction liquors at any sale held by him.

No. 5.—1884.

AS TO SALES TO AGENTS FOR ALLEGED PRINCIPALS.

Person bidding as an agent to disclose name of principal.

24. (2) 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,

<sup>1</sup> For full text of this Act see under Liquor Licensing (28—1883).

<sup>\*</sup> For full text of this Act see under Transfer Duty (5—1884).

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.

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 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 bidder refuses to disclose name of principal.

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.

Proceeding where principal repudiates purchase.

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.

Provisions of § 26 to apply *mutatis mutandis* to purchases by agents at sales not being public sales.

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.

Auctioneer forbidden to sell to undisclosed principal.



No. 30—1875.]

[June 30, 1875.

## ACT

## To Provide for the more effectual Audit of the Public Accounts of this Colony. (1)

Preamble.

WHEREAS the present system of auditing the public accounts of this Colony does not afford a sufficient guarantee for the proper expenditure of public money, and is inadequate as a check upon the illegal application of the public revenue, and it is desirable that the Auditor-General should be placed more immediately in communication with the Parliament, and should be independent of the Executive Government: 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 may appoint Controller and Auditor-General, and Assistant.

1. Besides the Auditor-General, which officer shall hereafter be called the "Controller and Auditor-General of Public Accounts," there shall be an officer to be called the "Assistant Controller and Auditor," both of which officers shall be appointed by the Governor with the advice of the Executive Council, and neither of whom shall be capable, while holding the said offices, of holding any other office.

Their salaries.

2. There shall be paid out of the public revenue to the Controller and Auditor-General of Public Accounts a salary of nine hundred pounds per annum, and to the Assistant Controller and Auditor a salary of six hundred pounds per annum.

Tenure of office.

3. The said officers shall hold their offices during good behaviour, subject, however, to their removal on an address praying for such removal presented to the Governor by both Houses of Parliament; provided that when Parliament is not sitting it shall be lawful for the Governor with the advice of the Executive Council to suspend both or either of the said officers from their office for inability or misbehaviour; and when and so often as the same shall happen, a full statement of the cause of such suspension shall be laid before both Houses of Parliament within seven days after the commencement of the next session thereof; and if an address shall at any time during the session be presented to the Governor by both Houses of Parliament praying for the restoration of such officer to his office, such officer shall be restored accordingly, but if no such address shall be so presented it shall be lawful for the Governor with the advice of the Executive Council to confirm such suspension, and to declare the office of such Controller and Auditor-General, or of such Assistant Controller and Auditor, as the case may be, to be, and the same shall thereupon become vacant.

Appointment of successors.

4. On any vacancy occurring in the office of Controller and

<sup>1</sup> As to audit of Expenditure of House of Assembly, see §§ 16-18, Act 13 1883, *infra*.

Auditor-General, or Assistant Controller and Auditor, from death, resignation, or other cause, the Governor with the advice of the Executive Council, may nominate and appoint a successor, who shall have the same powers, authorities, and duties, and who shall be paid the like salary as his predecessor.

No. 30--1875.

5. Anything which under the authority of this Act is directed to be done by the Controller and Auditor-General may in his absence be done by the Assistant Controller and Auditor, except the certifying and reporting upon accounts for the House of Assembly.

Authority of Assistant Auditor.

6. The Controller and Auditor-General is hereby authorized to make from time to time such regulations, not inconsistent with the provisions of this Act, as may appear to be necessary and expedient for the purposes of this Act, and to enable him to exercise and perform the powers, authorities, and duties hereby imposed upon him, provided that all such regulations shall be approved by the Governor with the advice of the Executive Council previously to the issue thereof, and the same shall be laid upon the table of both Houses of Parliament within seven days after the beginning of the Session of Parliament next ensuing.

Regulations may be made subject to approval.

7. After the passing of the Annual Appropriation Act, a copy of the said Act, together with a copy of the Estimates to which the said Act refers, shall be forwarded by the Colonial Secretary to the Controller and Auditor-General, who shall thereupon notify to the Treasurer of the Colony, and to the several Ministers respectively, the sums authorized by Parliament for expenditure by the several departments under each Minister. And such sums shall be issued by the Treasurer or by such persons as the Treasurer shall direct from time to time, on the requisition of the Minister charged with such expenditure, such requisition to be authorized and approved by the Controller and Auditor-General.

Proceedings of Auditor on receipt of estimates.

Duty of Treasurer thereafter.

8. The Controller and Auditor-General shall examine, inquire into, and audit the accounts of all persons entrusted with the collection, custody, receipt, payment, or issue of moneys belonging to the public revenue of this Colony, and all accounts of a public nature which he may be directed by the Government or required by Act of Parliament to examine, inquire into, and audit; and he is hereby empowered to call upon all persons in the service of the Government who may be in charge of public moneys, or of any public body whose accounts he may be directed or required to examine, inquire into, and audit, for all necessary or proper explanations respecting their receipts and expenditure, and respecting all matters necessary to enable him to discharge his duties under this Act; and he shall see that all payments are supported by proper vouchers or proof of payment and are properly authorized.

Duties of Auditor.

9. The Controller and Auditor-General shall cause in every year an account of the revenue and expenditure of the Colony for the financial year ended the 30th June preceding to be prepared; and

Annual accounts of Revenue and Expenditure to be presented to Parliament.

No. 30—1875.

the said account, together with the report of the Controller and Auditor-General thereon, shall be laid before the House of Assembly by the Government on or before the 31st of March in the following year if Parliament be then sitting, and if not sitting, then within one week after Parliament shall be next assembled.

Annual "Appropriation Accounts" to be prepared for Parliament.

10. On or before the 30th September in every year, accounts of the appropriation of the several supply grants comprised in the Appropriation Act of each year shall be prepared by the several departments, and be transmitted for examination to the Controller and Auditor-General; and when certified and reported upon as hereinafter directed, they shall be laid before Parliament; and such accounts shall be called the "Appropriation Accounts" of the moneys expended for the services to which they relate; and the Government shall determine by what departments such accounts shall be prepared and rendered to the Controller and Auditor-General; and the Controller and Auditor-General shall certify and report on such accounts as hereinafter directed, and the report thereon shall be signed by the Controller and Auditor-General: Provided always, and it is the intention of this Act, that the Government shall direct that the department charged with the expenditure of any vote under the authority of the Government shall prepare the appropriation account thereof: Provided also that the term "department," when used in this Act in connection with the duty of preparing the said appropriation accounts, shall be construed as including any public officer or officers to whom that duty may be assigned by the Government.

Description of account.

11. An appropriation account of supply grants shall exhibit on the charge side thereof the sum or sums appropriated by Parliament for the service of the financial year to which the account relates; and on the discharge side thereof the sums which may actually have come in course of payment within the same period; and no advance of the application of which an account may not have been rendered to and allowed by the accounting department, shall be included on the discharge side thereof.

A balance-sheet, if thought necessary by Controller and Auditor-General, or a statement showing the disposition of the balance to accompany the appropriation account.

12. The department charged with the duty of preparing the appropriation account of a grant shall, if required so to do by the Controller and Auditor-General, transmit to him, together with the annual appropriation account of such grant, a balance sheet so prepared as to show the debtor and creditor balances in the ledgers of such department on the day when the said appropriation account was closed, and to verify the balances appearing upon the annual appropriation account: Provided always that the Controller and Auditor-General may, if he thinks fit, require the said department to transmit to him in lieu of such balance sheet a certified statement showing the actual disposition of the balances appearing upon the annual appropriation account on the last day of the period of such account.

13. Every appropriation account when rendered to the Controller and Auditor-General, shall be accompanied by an explanation, showing how the balance or balances on the grant or grants included in the previous account, have been adjusted, and shall also contain an explanatory statement of any excess of expenditure over the grant or grants included in such account, and such statement as well as the appropriation account shall be signed by such department.

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The appropriation account to be accompanied by a statement explaining disposal of balance and cause of excess.

14. Every appropriation account shall be examined and reported on by the Controller and Auditor-General on behalf of the Parliament, and in the examination of such accounts the Controller and Auditor-General shall ascertain, first, whether the payments which the accounting department has charged to the grant are supported by vouchers or proofs of payments, and second, whether the money expended has been applied to the purpose or purposes for which such grant was intended to provide; and in reporting on such accounts, he shall call attention to every case in which it may appear to him that a grant has been exceeded, or that money received by a department from other sources than the grants for the year to which the account relates, has not been applied or accounted for according to the directions of Parliament, or that a sum charged against a grant is not supported by proof of payment, or that a payment so charged did not occur within the period of the account, or was for any other reason not properly charged against the grant.

In what manner the examination of appropriation accounts shall be conducted by the Controller and Auditor-General.

15. In conducting the examination of the vouchers relating to the appropriation of the grants for the several services enumerated in the schedule to this Act annexed, the Controller and Auditor-General after satisfying himself that the accounts bear evidence that the vouchers have been completely checked, examined, and certified as correct in every respect, and that they have been allowed and passed by the proper departmental officers, may admit the same as satisfactory evidence of payment in support of the charges to which they may relate: Provided always, that if the Government should desire any such vouchers to be examined by the Controller and Auditor-General in greater detail, the Controller and Auditor-General shall cause such vouchers to be subjected to such a detailed examination as the Government may think fit to prescribe.

How vouchers of appropriation accounts included in schedule shall be examined.

16. In conducting the examination of the vouchers relating to the appropriation of the grants for any services not enumerated in the schedule, the Controller and Auditor-General shall test the accuracy of the castings and computation of the several items of such vouchers: Provided always, that when any vouchers have been certified to be correct by any officers specially authorized to examine the same, it shall be lawful for the Controller and Auditor-General, with the consent of the Government, to dispense with a second examination of the particular items of such vouchers.

How other vouchers are to be examined.

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Duty of Auditor on failure of Government to submit report of appropriation accounts.

17. If the Government shall not within the time prescribed by this Act present to the Parliament any report made by the Controller and Auditor-General on any of the appropriation accounts or the annual account of revenue and expenditure, the Controller and Auditor-General shall forthwith transmit such report to the Speaker of the House of Assembly, to be by him presented to the said House.

Treasurer and all Sub-Accountants to transmit monthly or when required by Controller & Auditor-General, accounts of moneys received and paid, &c., &c.

18. The Treasurer of the Colony, the Civil Commissioners and all other persons in the public service of this Colony having the custody, receipt, or payment of public money, shall, when and as often as they may be required so to do by the Controller and Auditor-General, and at least once in every month, transmit to the Controller and Auditor-General, a true and correct account of all moneys received, and of all moneys disbursed, issued or expended by such officer during the period to which such account relates, together with all vouchers and authorities relating to such accounts; and every such account shall be in the form from time to time directed by the Controller and Auditor-General, and shall be verified by the solemn declaration of the person whose duty it is to make out such account; and if any such person shall wilfully and corruptly make any such declaration knowing the same, or the account verified by it, to be untrue in any material particular, he shall be deemed to be guilty of the offence of wilfully making a false declaration, and shall, upon conviction thereof, suffer such punishment as shall be by law provided for the crime of perjury.

Treasurer and Sub-Accountants also to furnish such other accounts and returns as may be required.

19. The Treasurer of the Colony, the Civil Commissioners, and all other persons in the last preceding section mentioned, shall also, when and as often as they may be required so to do by the Controller and Auditor-General, without delay, make out and transmit to him such other accounts and such returns as may be desired by him in order to enable him to perform his duties.

Person rendering any account or return to give such explanation regarding it as Controller and Auditor-General may require.

20. If any account or return rendered or made to the Controller and Auditor-General shall appear to him to require explanation, it shall be the duty of the person rendering such account or making such return, upon being requested so to do by the Controller and Auditor-General, to furnish him without delay with such explanation.

On passing an account the Controller and Auditor-General to grant in certain cases a certificate.

21. As soon as any account shall have been signed and passed by the Controller and Auditor-General, he shall transmit to the accountant a certificate in which the total amount of the sums forming respectively the charge and discharge of such account, and the balance, if any, remaining due to or by such accountant, shall be set forth; and every such certificate shall be signed by him, and shall be valid and effectual to discharge the accountant, as the case may be, either wholly, or from so much of the amount with which he may have been chargeable as he may appear by such certificate to be discharged from: Provided always that when any account not being an account current has been signed and

passed by the Controller and Auditor-General, with a balance due thereon to the Crown, he shall not make out or grant any such certificate as aforesaid until the accountant has satisfied him either that he has discharged the full amount of such balance, and any interest that may be payable thereon, or that he has been relieved from the payment thereof, or of so much thereof as has not been paid, by a warrant from the Colonial Secretary.

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22. The Controller and Auditor-General and any person or persons duly authorized by him in that behalf in writing shall have free access at all convenient times to the books of account, vouchers, and documents relating to the accounts of accounting departments or persons, and may make or cause to be made extracts therefrom without the payment of any fee or charge.

Controller and Auditor-General, or person duly authorized by him, to have access to all books of account, &c.

23. The Controller and Auditor-General is hereby empowered to call for all books, vouchers, and documents relating to any account forwarded to him in pursuance of this Act or otherwise for examination or audit, and also to examine witnesses touching the said account; and every public officer is hereby required to produce any such books, vouchers, and documents in his possession or control, and to give such attendance as the Controller and Auditor-General shall order or direct by summons under his hand, stating the object for which such public officer is required to attend, and specifying the books, vouchers, and documents to be produced.

Controller and Auditor-General empowered to call for all books, &c., and all public officers are required to produce them and give such attendance as may be required.

24. Every public officer who without reasonable cause shall fail to attend as required by any such summons or to submit himself to examination or to answer any lawful question which shall be put to him by the Controller and Auditor-General, or to produce any such books, vouchers, or documents as aforesaid, shall for any such offence be liable to a fine of not exceeding twenty pounds, to be recovered in the Court of Resident Magistrate of the district in which the offender resides.

Penalty on failure of public officer to attend or to answer questions put by Controller and Auditor-General.

25. In all cases in which an accountant may be dissatisfied with any disallowance or charge in his accounts made by the Controller and Auditor-General, such accountant shall have a right of appeal to the Government, who, after such further investigation as they may consider equitable, whether by *viva voce* examination or otherwise, may make such order, directing the relief of the appellant wholly or in part from the disallowance or charge in question, as shall appear to the Government to be just and reasonable, and the Controller and Auditor-General shall govern himself accordingly.

Accountants to have in all cases a right of appeal to the Government.

26. This Act shall take effect from and after such date as the Governor shall, by proclamation published in the *Government Gazette*, fix and appoint for that purpose.

Commencement of Act.

27. This Act may be cited for all purposes as the "Audit Act, 1875."

Short title.

No. 13—1883.

SCHEDULE.

Public Works Department.

Railway Department.

And such other departments as the Government, by their minute to be laid before Parliament, may direct.

No. 13—1883.]

\*            \*            \*            \*            \*

(<sup>1</sup>) AND WHEREAS the House of Assembly on the report of its Public Accounts Committee resolved to exercise the sole supervision over the necessary expenditure incidental to its own internal economy : Be it enacted :

Provisions for final audit by the Speaker.

16. The provisions of the Audit Act of 1875 (except as hereinafter mentioned), shall not apply or extend to the audit or control of the accounts and appropriations of the House of Assembly ; and the audit by the Speaker of the accounts of all payments and receipts in reference to all matters affecting the service of the House of Assembly shall be taken to be in all respects good and effectual, anything contained in any Act to the contrary notwithstanding : Provided that the Public Accounts Committee of the House of Assembly shall exercise in regard thereto such powers and give such directions as may from time to time be authorized by any order of the House of Assembly.

Speaker's Requisition for Expenditure authorized.

17. After the passing of the Annual Appropriation Act, the notification by the Controllor and Auditor-General, and the authorization and approval by him of requisitions for expenditure required to be given and issued to the several Ministers respectively, as set forth in the seventh section of the Audit Act of 1875, shall, for the purposes of this Act, apply to and include the Speaker, precisely as if he had been named therein.

Speaker to act not withstanding Dissolution of Parliament.

18. For the purposes of this Act, the person who shall fill the office of Speaker of the House of Assembly at the time of any Dissolution of Parliament shall be deemed to be the Speaker until a Speaker shall be chosen by the new Parliament.

\*            \*            \*            \*            \*

<sup>1</sup> For full text of this Act see under " Constitution "

BANKS.

- |                                                      |                                  |
|------------------------------------------------------|----------------------------------|
| 1. Act 6—1864, (Bank Notes Duty).                    | 6. Ord. 5—1842, (Public Moneys). |
| 2. „ 6—1875, ( do ).                                 | 7. „ 86—1831, (Cape of Good Hope |
| 3. „ 3—1856, (Holidays, Bills of Ex-<br>change, &c). | 8. „ 10—1848, ( do. ).           |
| 4. „ 11—1879, (Limited Liability).                   |                                  |
| 5. „ 19—1865, (Publication of State-<br>ments).      |                                  |

No. 6—1864.]

[July 26, 1864.

ACT

For Imposing a Duty upon Bank Notes.

WHEREAS the privilege enjoyed by the Joint-stock Banks of this Colony of issuing bank notes is one in regard to which a duty, regulated by the average amount of such notes kept in circulation by each bank, may justly be imposed: 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. Every joint-stock bank trading as bankers in this Colony, and issuing bank notes, shall be bound and obliged to transmit to the Treasurer-General of this Colony monthly returns of the amount of bank notes in circulation by such banks: Provided that, for the purpose of this Act, the term “bank notes” shall not include bank post bills.

Monthly return of bank notes to be made.

Definition of term “bank notes.”

2. The first return to be made by every such bank under this Act shall state the amount of the bank notes of such bank outstanding on the last day of September, one thousand eight hundred and sixty-four, and every succeeding return shall state the amount of such notes outstanding on the last day of each succeeding month.

Date of first and succeeding returns.

3. Every such return shall, in attestation of its correctness, be signed by not less than two directors, and also by the cashier of the bank, or person acting as such cashier, and shall be in substance as follows:—

Whoto sign return.

————— BANK.

We, the undersigned, do hereby certify that the bank notes of this bank, outstanding on the —————, 186—, amounted to £—————

Form of return.

And we further certify that this bank has not, during the month ending the ————— day of —————, 18—, paid out or put into use or circulation any such bank notes as are in the tenth section of the “Bank Notes Duty Act, 1864,” described.

Or, should any such notes have been circulated, the return shall run thus: “*And we further certify that this bank*



No. 6—1864.

*has, during the month ending the ——— day of ——— 18—, paid out and put into use or circulation, bank notes such as are in the tenth section of the 'Bank Notes Duty Act of 1864' described, amounting to £———, and no more."*

Dated at ———, this ——— day of ———, 186—.

A B, }  
C D, } Directors.  
E F, Cashier.

Duty chargeable.

4. It shall be the duty of the Treasurer-General aforesaid to preserve all such returns; and every such bank as aforesaid shall be chargeable with a yearly duty to Her Majesty the Queen in her colonial revenue of one pound and ten shillings per centum upon the average issues of each year, ending the thirty-first of December, such average issues to be ascertained by adding together the amounts set forth in the several monthly returns of such bank for such year, and by then dividing the result by twelve: Provided that the duty aforesaid for the year 1864, and every succeeding year, shall be payable upon demand in writing made by the Treasurer-General, and shall be recoverable by him by action in any competent court, together with full costs: Provided, further, that duty shall be payable for the portion of the year 1864 covered by such returns as aforesaid, such duty to be ascertained by adding together the amounts set forth in the monthly returns for the said year, and by dividing the result by twelve: Provided, also, that in case any joint-stock company, person, or co-partnership by this Act required to make such monthly returns as aforesaid, shall first begin to issue notes when a portion of the year shall have elapsed, then the duty to be paid for the residue of such year shall be ascertained in the manner hereinbefore provided.

How recoverable.

Mode of ascertaining duty for portions of any year.

On failure of banks to supply return, Supreme Court may be applied to.

Service of notice in such case.

5. If any such joint-stock bank as aforesaid shall fail or neglect, for the space of one month next after the expiration of any month, to lodge with the Treasurer-General aforesaid the return aforesaid for such last-mentioned month, it shall be lawful for such Treasurer-General to apply by motion, upon notice, to the Supreme Court, or to any judge thereof, for an order commanding the bank so in default to make such return, and the said Treasurer-General shall be entitled to his full costs of such motion: Provided that notice of every such motion may be directed to the bank in default by any name by which it may be known or distinguished, and that service of such notice at the principal place of business of such bank shall be deemed to be good service thereof, and that process for or in regard to disobedience of any order of court made upon such notice shall be directed against the directors of such bank, if any, jointly and severally, as also the manager of such bank if there be one: Provided, further, that such process shall be directed against such manager, whether there shall be directors of such bank or not.

6. If any person or co-partnership, not being a joint-stock bank, shall issue notes payable to bearer, or at sight, or on demand, in which notes the amount for which such notes are made shall not be written, but engraved, printed, or lithographed, such person or co-partnership shall come under the provisions of this Act in like manner as if such person or co-partnership were a joint-stock bank.

No. 6—1864.

Provisions of Act to apply to any person or co-partnership issuing printed notes

7. If any joint-stock company carrying on business as bankers in this Colony shall be managed by a manager, either together with or exclusive of a board of directors, then the returns in the third section of this Act mentioned shall be certified by such manager, instead of by two directors.

Returns to be signed by manager where there is such officer.

8. If any person shall sign any return under this Act, which return shall, to the knowledge of such person, be false, such person shall incur and become liable to a fine not exceeding one hundred pounds.

Penalty for false return.

9. As often as any joint-stock company carrying on business as bankers in this Colony, whether their chief seat of business shall be in this Colony or elsewhere, shall have in this Colony a head office, and one or more branch banks also in this Colony, the monthly returns mentioned in the first section of this Act shall be made as follows, that is to say :

Form of return where branch banks exist.

1. If the branch bank shall issue its own notes, namely, notes purporting to be issued by or at the place of business of such branch bank, then the returns aforesaid shall be made by such branch bank direct, precisely as if such bank were an independent and unconnected bank, and not a branch.
2. No such last-mentioned branch bank shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any bank notes of its head office, or of any other branch of the same bank, which notes such branch bank may happen to have on hand.
3. In like manner, no head office of any bank having one or more branches shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any notes of any of its branches, which notes such head office may happen to have on hand.
4. Should there be at any time in this Colony, a bank having a head office and one or more branch banks, which branch bank or banks shall not issue any such notes as are in the first subdivision of this section described, then the returns aforesaid shall not be made by or from the branch bank or banks, but by or from the head office, and shall include the whole outstanding circulation of the said bank, including all its branches.

10. Every joint-stock bank carrying on business as bankers in this Colony shall, in making its monthly returns for the purpose of this Act, include therein all bank notes of the same or any other

Notes not issued but circulated in the colony to be included in return.

No. 6—1875. bank, which notes shall on the face of them bear to have been issued at or from any place in Africa, or elsewhere, not within the limits of this Colony, and which notes, having come, at any time and in any manner, into the hands of such joint-stock bank, shall, during the month for which any such return shall be made, have been by such joint-stock bank paid out or put into use or circulation: Provided, however, that from and out of such bank notes as aforesaid so to be included as aforesaid may be excepted notes of the Governor and company of the Bank of England: Provided, also, that the transmission of any such bank notes as are first aforesaid by any joint-stock bank to the place where such notes were issued, or to any other place beyond the limits of this Colony, in a closed cover or parcel, shall not be deemed to be a paying out of such notes, or a putting of the same into circulation, so as to require that the bank notes so transmitted shall be included in any such return as aforesaid: And provided, lastly, that the duty imposed by the fourth section of this Act shall be payable upon the amount of all such bank notes as shall, under and by virtue of this section, be included in any monthly return, precisely as if such bank notes so included had been notes of the bank making such return and issued by it at the place of business of such bank by or from which such return shall be made.

Bank of England notes exempted.

What constitutes circulation.

Amount of duty chargeable on such notes.

Short title. 11. This Act may be cited for all purposes as "The Bank Notes Duty Act, 1864."

No. 6—1875.]

[June 30, 1875.]

## ACT

To Repeal the Proclamation of Lord CHARLES SOMERSET, of the 22nd August, 1822, and to substitute other provisions in lieu thereof.

Preamble.

WHEREAS it is expedient that the Proclamation of His Excellency Lord Charles Henry Somerset, formerly Governor of this Colony, dated the 22nd day of August, 1822, should be repealed and the following enactment substituted therefor: 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, 22nd August, 1822, repealed.

Issue of Bank Notes &c., for less than £4 prohibited.

1. The Proclamation aforesaid, bearing date the 22nd August, 1822, is hereby repealed.

2. From and after the taking effect of this Act, it shall not be lawful for any joint-stock bank to issue or utter in this Colony any bank note, bank post bill, promissory note, or other document, whether the same shall be made payable to the bearer (or at sight, or on demand), or to the order of some payee named therein, and whereby the credit of such bank shall be pledged for the payment

of such note or other document (such document not being a cheque as hereinafter described and authorized), for a less sum than four pounds sterling; and any bank note or other document issued or uttered, in contravention of this section, shall be null and void, for any purpose save as evidence in support of a prosecution for a penalty under this Act: Provided that nothing herein contained shall prevent any joint-stock bank from issuing cheques payable to bearer or order, drawn in ordinary form upon any other bank, or upon any person not being a banker, for sums less than four pounds sterling: Provided always that the sum for which any such cheque shall be drawn shall not be engraved, printed, lithographed, or set forth in any similar manner, but be written in ink in the ordinary handwriting of the person who shall write the same.

No. 6—1875.

Not to apply to cheques in which the sum is written by hand in ink.

3. Any joint-stock bank which shall, after the taking effect of this Act, issue or utter in this Colony, any bank note or other document, which is in and by the last preceding section prohibited to be issued or uttered, shall, upon conviction, forfeit for, or in respect of, every such bank note or other document so issued or uttered, the sum of ten pounds sterling.

Penalty for contravening last section.

4. If any person or co-partnership, not being a joint-stock bank, shall issue or utter in this Colony, any note, good for, cheque, or other document, whereby the credit of such person or co-partnership shall be pledged for the payment of such note or other document, which note or other document shall be for a less sum than four pounds sterling, and in which note or other document the sum for which the same is made, shall not be written in ink in the ordinary handwriting of the person who shall write the same, but be engraved, printed, lithographed, or set forth in some similar manner, such person or co-partnership shall, for, and in respect of every such note, good for, or other document issued or uttered, in contravention of this section, forfeit, on conviction, the sum of ten pounds sterling, and such note, good for, or other document, shall be null and void for any purpose, save as evidence in support of a prosecution for a penalty under this Act.

Penalty for issuing cheques, &c., in contravention of section 2.

5. All penalties under this Act may be prosecuted for in the Court of Resident Magistrate, in whose local jurisdiction the accused person may be, or in case the accused be a joint-stock bank, then in the Court of Resident Magistrate, within whose local jurisdiction any branch of the said bank may be, or in any other competent Court, and it shall not be necessary that the party accused shall personally be present before the Magistrate's or other Court, before which any charge under this Act may be brought, but in his absence, or on his appearance by attorney, the Court may, on proof of the service of the summons containing the charge, and on proof of the offence, give judgment for the penalty against him or against such joint-stock bank, which may be levied in manner provided by Ordinance No. 6 of 1839.

Prosecution and recovery of penalties.

No. 3—1856.  
Service of summons.

6. Service of the summons at any branch office, or at the principal office of any such bank or banker as aforesaid, within the usual office hours, or on any servant, clerk, or cashier, of the said bank or banker, shall be deemed good service.

Short title.

7. This Act shall take effect from the date of proclamation thereof, and may for all purposes be cited as the "Bank Notes Act, 1875."

No. 3—1856.]

[June 4, 1856.

### AN ACT

To Declare the Law in relation to Bills of Exchange and Promissory Notes becoming payable upon Holidays.

Preamble.

WHEREAS, by the law of this Colony, Bills of Exchange and Promissory Notes becoming payable upon a Sunday are deemed, for the purposes of presentation for payment, to become due upon the Monday following: And whereas it is expedient to declare what days, not being Sundays, shall be considered as holidays in reference to such presentation as aforesaid, and to apply to such holidays, respectively, the rule or principle of law aforesaid at present applicable to Sundays: 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:—

Bills due on holidays or fast-days.

1. As often as any Bill of Exchange or Promissory Note shall become due and payable upon any of the holidays following, that is to say,—upon New Year's Day, the Queen's Birthday, Good Friday, Easter Monday, Whit Monday, Ascension Day, Christmas Day, or any day appointed by proclamation of the officer administering the Government as a solemn fast or day of thanksgiving, such Bill or Note shall be deemed and taken to become due and payable upon the day next succeeding such holiday, and not sooner, unless such succeeding day shall be a Sunday, in which case such Bill or Note shall be deemed and taken to become due upon the following Monday.

If succeeding day be Sunday.

Notice of dishonour.

2. As often as any Bill of Exchange or Promissory Note shall become due and payable upon the day next preceding any of the holidays aforesaid, it shall not be necessary or competent for the holder of such Bill or Note to give notice of the dishonour thereof until the day next succeeding such holiday.

Bill due on Sunday when next Monday is a holiday.

3. As often as any such holiday as aforesaid shall fall on a Monday, all Bills and Notes which become due and payable upon the next preceding Sunday shall be deemed and taken to become due and payable upon the next succeeding Tuesday, and not sooner. And in regard to all Bills and Notes which become due upon the Saturday next preceding any such holiday which shall fall on a Monday, it shall not be necessary or competent for the

Notice of dishonour.

holder of any such Bill or Note to give notice of the dishonour thereof until the next succeeding Tuesday.

No. 11—1879.

4. This Act shall commence and take effect from and after the promulgation thereof.

Act when to commence.

No. 11—1879.]

[Sept. 11, 1879.

### ACT

To enable Joint-Stock Banking Companies to participate in the provisions of the "Joint-Stock Companies Limited Liability Act, 1861."

WHEREAS it is expedient to abolish the disabilities at present existing against the formation of joint-stock banking companies under the provisions of Act No. 23 of 1861: 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:—

Preamble.

1. The proviso contained in the first section of Act No. 23 of 1861, entitled "An Act to limit the Liability of certain Joint-Stock Companies," excluding the application of such Act from any joint-stock company for the purpose of banking, is hereby repealed.

Proviso of section 1 of Act 23 of 1861 repealed.

2. The several provisions of the Act No. 23 of 1861 (except the proviso thereof in the last preceding section herein repealed, and save and except the three last provisos of the thirteenth section of said Act having special reference to banking companies), shall henceforth apply to all joint-stock banking companies formed in the Colony, and registered under this Act: Provided, however, that where the amount paid up on any bank shares shall exceed one-half of the nominal value of such shares, the execution or other process, in the twelfth section of the Act No. 23 of 1861 mentioned, may, in the case of shareholders in any joint-stock banking company formed under the provisions of this Act, be issued against any of such shareholders to the extent of the amount already paid up on such shares.

Other provisions of that Act to apply to joint-stock banking companies.

3. It shall not be lawful for any joint-stock bank established under the provisions of this Act to have in circulation at any time notes of such bank to a greater amount than its paid-up capital. And any such bank issuing, or having in circulation at any time, notes exceeding in value its paid-up capital, shall forfeit and pay to Government a penalty equal to such excess.

Provision when more than half the capital is paid up.

Limitation of bank notes circulation.

4. Nothing in this Act contained shall exempt any joint-stock banking company (whether formed under its provisions or otherwise) from the duty of making such half-yearly or other statements as are by Act No. 19 of 1865, or by any existing law, required to be made by joint-stock banks in this Colony.

Bank statements to continue to be made.

No. 19—1865. 5. The limit of liability acquired by an unlimited banking company in pursuance of this Act, shall not apply to any debts or liabilities of the company contracted prior to such registration; and such debts and liabilities may be enforced in the same manner in which the debts and liabilities of an unlimited banking company are enforceable.

Limitation not to apply to debts contracted by unlimited company before this Act passed.

Short title. 6. This Act may be cited as the "Joint-Stock Banking Companies Limited Liability Act, 1879."

No. 19—1865.]

[Oct. 10, 1865.

ACT

For Securing the Periodical Publication of Statements showing the Assets and Liabilities and the Names of the Shareholders of Joint-stock Companies trading as Bankers in this Colony.

Preamble. WHEREAS it is expedient that statements of the assets and liabilities of joint-stock companies trading as bankers in this Colony should be periodically published for general information: 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:—

Half-yearly statements of assets and liabilities to be published. 1. From and after the taking effect of this Act, every joint-stock company trading as bankers in this Colony, and being a bank of issue, shall publish or cause to be published half-yearly statements of its assets and its liabilities.

Mode of framing statements. 2. The half-yearly statements aforesaid shall be so framed as to show the assets and liabilities of every such bank as the same shall stand at the close of each of the days following, that is to say, the 31st of December and the 30th of June, in each year.

Date when statements shall be published. 3. Every such statement shall be published not later than fourteen days next after the day to which such statement relates: Provided that in case either of the days in the second section mentioned shall fall upon a Sunday or public holiday, then the statement shall show the assets and liabilities of each bank as they stood on the day next preceding such day: Provided, also, that the first statement under this Act shall be published within fourteen days next after the 31st of December, 1865, and shall show the assets and liabilities at the close of Saturday, the 30th day of December aforesaid.

Date of publication of first statement. 4. As often as any joint-stock company as aforesaid shall commence business in this Colony at any time after the taking effect of this Act, such company shall not be bound to publish any statement under this Act for or in respect of that one of the days in the second section mentioned which shall first arrive after their bank shall have opened in this Colony an office or place of business for the

Statements of banks commencing business after taking effect of this Act, when to commence.

transaction of business, but such company shall be bound to publish a statement for or in respect of every succeeding day in the second section mentioned, precisely as if such bank had been in existence at the time of the taking effect of this Act.

No. 19.—1865.

5. Every such statement as aforesaid shall (except as hereinafter excepted) be published either in the *Government Gazette* or in some public newspaper published in the Fiscal Division in which the bank publishing such statement has its office or place of business: Provided that every joint-stock bank of which the office or place of business shall be in any district in or over which the "Court of the Eastern Districts," established by the "Administration of Justice Act, 1864," now has, or shall hereafter have jurisdiction, and which bank shall not publish any such statement in some newspaper published in the Fiscal Division in which such bank has its office or place of business, shall publish such statement in whatever newspaper in Graham's Town shall, for the time being, be appointed to publish Government notices, instead of publishing the same in the *Government Gazette*: Provided, also, that it shall at all times be competent for any bank which shall, for a time, have published its statements in or according to one of the modes of publication authorized by this Act, to cease to do so, and to publish the said statements in or according to any other mode of publication authorized by this Act.

Mode of publication of statements.

6. The statements aforesaid to be so published as aforesaid shall be signed by not fewer than two directors in attestation of their correctness, and also by some officer or officers of the bank whom the directors thereof shall for that purpose nominate and appoint.

Statements, by whom to be signed.

7. In regard to the statements of any bank of which the chief seat of business shall be elsewhere than in this Colony, the statements of such bank in regard to the assets and liabilities of such bank at the principal office or place of business of such bank within this Colony shall be signed by the general manager or other chief officer acting at such principal office or place of business, and also by such other officer or officers employed at such office or place of business as the said manager or other chief officer shall nominate and appoint.

Signature of statements of banks the head office whereof is extra-colonial.

8. Every branch bank, whether a branch of a bank of which the chief seat of business shall be within this Colony, or be elsewhere than within this Colony, shall publish its statements in like manner as if it were a separate and independent bank, and not a branch bank, and the statements of every branch bank shall be signed by the manager or cashier thereof, and by the officer, if any, who shall be or act as the accountant of such bank.

Publication of statements by branch banks.

9. Any director, manager, or other officer of any bank who shall sign any statement so published as aforesaid, containing any item or particular which such director, manager, or other officer shall know to be false or erroneous, shall upon conviction forfeit any sum not exceeding five hundred pounds, and in default of

Penalty for false statement.



No. 19—1865.

payment shall be liable to be imprisoned, with or without hard labour, for any term not exceeding twelve months.

Penalty for failure to publish statement.

10. If any bank shall fail to publish within the time in that behalf by this Act prescribed any statement by this Act required to be published, then such bank shall pay to the public treasury the sum of twenty-five pounds sterling for every day, after the last day prescribed for such publication, during which the said statement shall remain unpublished ; such sum to be recovered by civil action at the suit of the Civil Commissioner of the division in which such bank in default shall have its office or place of business : Provided that it shall be lawful for the Governor of this Colony, upon the application of any such bank so in default, and upon proof to his satisfaction that such default was not wilful, to remit or reduce the sum to be paid by such bank.

Penalty, how to be recovered.

Governor may remit or reduce penalty

What shall constitute proof of publication.

11. The production of the *Government Gazette*, or other newspaper as aforesaid, containing any such statement as aforesaid, shall be *prima facie* proof that the directors and officer or officers, or the manager or officer or officers whose names are attached to such statement signed the same in order to the publication thereof for the purposes of this Act.

Form of statement.

12. Every such statement as aforesaid shall be, in substance, as follows :—

STATEMENT of the ASSETS and LIABILITIES of the ——— BANK on the ——— day of ———, 186—.

To shareholders for capital paid up . . . . . £—	By coin in the bank coffers . . . . . £—
To reserve fund accumulated . . . . . —	By drafts on the Colonial Treasury . . . . . —
To circulation, viz., notes outstanding this day . . . . . —	By notes on hand of other banks . . . . . —
To post-bills . . . . . —	By balances in other banks . . . . . —
To deposits, fixed . . . . . —	By bank premises . . . . . —
To deposits, floating . . . . . —	By bills and notes under discount and not yet due . . . . . —
To balances due to other banks . . . . . —	By bills and notes overdue and unpaid . . . . . —
	By accounts overdrawn . . . . . —
	By other debts due to the bank, not included under the foregoing heads . . . . . —
	£—

We certify that we have examined the above statement, and that it is true and correct.

No. 19—1865.

A. B., { Directors.  
 C. D., }  
 E. F., Cashier,  
 or  
 A. B., Manager or Cashier.  
 C. D., Accountant.

Provided that in regard to joint-stock banks, of which the chief seat of business shall not be in this Colony, the head office in this Colony shall publish a half-yearly statement in the form by this section set forth, and in regard to the branches of such last-mentioned banks, and to the branches of banks of which the chief seat of business is within this Colony, the half-yearly statement to be published by them may omit the two first items in the statement required by this section, viz :

Statement to be furnished by head office of extra-colonial bank.

Certain items may be omitted in statements of branch banks.

To shareholders for capital paid up, £——  
 To reserve fund accumulated £——.

13. It shall be lawful for any bank to insert in any such statement as many additional items or particulars as such bank shall, in regard to its business or position, deem desirable or necessary.

Additional items may be inserted in statements.

14. In the form of statement aforesaid, the item "coin" shall include gold, silver, and copper coin of British coinage current in the Colony, and not any other coin or thing whatever, and "circulation" shall signify all notes issued by such bank and liable to duty under the "Bank Notes Duty Act, 1864:" (1) Provided that the term "British coinage" shall include all gold coin coined by lawful authority in any of the Australian Colonies of the Crown.

Definition of terms

15. It shall be the duty of the Colonial Secretary to cause to be prepared in his office a tabular statement showing, in a convenient form, the contents of the several half-yearly statements aforesaid for the preceding half-year, and such tabular statement shall be published half-yearly in the *Government Gazette* within one month after the expiration of each half-year respectively.

Tabular statement to be prepared and published.

16. Every such joint-stock bank as in the first section of this Act mentioned shall, as to banks having their chief seat of business in the Colony, thirty days after the 31st of December in each year, and as to banks not having their head office or chief seat of business within the Colony, before the 1st April in each year, file in the office of the Registrar of Deeds in Cape Town a copy written or printed of the instrument under which each such bank is for the time being constituted, together with the list of the names of the shareholders and of the chairman and directors of each such bank, as such list shall have been made up to the 31st day of December preceding; such copy and list respectively to be signed by two

Copy of instrument under which bank is constituted and list of shareholders and directors to be filed with Registrar of Deeds.

How to be signed.

<sup>1</sup> Act 6, 1864 Supra.

No. 5—1842.

directors of the bank if it have its chief seat of business in the Colony, and by the superior officer, under whatever denomination he may hold his office, if the bank have not its chief seat of business in the Colony.

Penalty for failure to file copy of instrument and list described in preceding section.

17. Any bank which shall fail to file, as required by the next preceding section, the copy of the instrument of constitution of the bank, and list of shareholders, chairman, and directors, as required by that section, shall incur the penalty in the tenth section mentioned, under the proviso thereby enacted.

Short title.

18. This Act may be cited for all purposes as the "Joint-stock Banks' Statements Act, 1865."

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No. 5.—Sd. George Napier.]

[May 4, 1842.

Ordinance to provide for the Lodgment elsewhere than in the Government Discount Bank of this Colony of certain Moneys now by Law required to be lodged in the said Bank.

WHEREAS by the Ordinance No. 64, <sup>(1)</sup> entitled "An Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," it is provided that the trustee or trustees of any insolvent estate shall in a certain event in the said Ordinance mentioned, open an account with the Government Discount Bank of this Colony, and shall pay into the said bank the certain sum or sums of money in the said Ordinance particularly stated: And whereas by an Ordinance bearing date the 1st day of September, 1829, <sup>(2)</sup> entitled "An Ordinance for authorizing a Sum of Money to be raised in Shares for erecting an English Church at Cape Town," it is provided that the trustees therein mentioned shall in a certain event therein specified open an account with the said Government Discount Bank, and from time to time pay into the said bank the certain sum and sums of money in the said Ordinance particularly stated; And whereas by an Ordinance bearing date the 11th day of November, 1833, <sup>(3)</sup> entitled "An Ordinance for authorizing a Sum of Money to be raised in Shares for building a Church at Wynberg," it is provided that the trustees therein mentioned shall, in a certain event therein specified open an account with the Government Discount Bank aforesaid or with the Savings Bank in this Colony, and from time to time pay into either of the said banks the sum and sums of money in the said Ordinance particularly stated; And whereas by

<sup>1</sup> Repealed by Ordinance 6, 1843.

<sup>2</sup> No. 4, 1829.

<sup>3</sup> Ordinance 6, 1833.

the Ordinance No. 97 <sup>(1)</sup> (continued or re-enacted by certain other Ordinances), and 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 registered as their Property in the Land Register," it is provided that any sum which should by virtue of certain sections of the said Ordinance be paid to the Registrar of Deeds should forthwith be paid into the said Discount Bank by the said Registrar of Deeds to the credit of certain person or persons in the said Ordinance mentioned; And whereas by the Ordinance No. 8, 1836, entitled "An Ordinance for providing for the better and more effectual management of the Public Library in Cape Town," it is provided that the treasurer of the said library for the time being shall at the period in the said last-mentioned Ordinance provided open an account with the bank aforesaid, and pay over to the cashier thereof the sum and sums of money in the said Ordinance particularly stated: And whereas it is expedient to make provision by law for relieving the said Government Discount Bank from the obligation of receiving the several moneys hereinbefore mentioned, as well as for the paying into some bank or banks other than the said last-mentioned bank, of all and singular the said several moneys: 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 not be incumbent upon the trustee or trustees of any insolvent estate or any trustees of either of the two churches aforesaid, or the Registrar of Deeds in this Colony, or any treasurer of the library aforesaid, for the time being, to open an account with the said Government Discount Bank, or to pay into the said bank any sum or sums of money whatsoever, nor shall it be incumbent upon the said bank to permit or allow the opening of any such account, or to receive from any such trustee or trustees of any insolvent estate, or treasurer of such library, or trustees of either of the said churches, any sum or sums of money whatsoever; anything contained in any of the Ordinances hereinbefore mentioned to the contrary in anywise notwithstanding.

[2-5 relate to the deposit of Funds of Insolvent Estates for which provision has since been made by § 100 Ordinance 6 of 1843.]

6. And be it enacted that the respective trustees for the time being appointed under and acting in pursuance of either of the two Ordinances hereinbefore mentioned, and relating respectively to an English Church at Cape Town <sup>(2)</sup> and a Church at Wynberg, <sup>(3)</sup> shall within fourteen days next after the promulgation of this Ordinance select and appoint some bank or banks in this Colony

No. 5—1842.

Deposits in government discount bank abolished.

Trustees of Cape Town and Wynberg English churches to select bank for deposit.

<sup>1</sup> Repealed by Act 28, 1881.

<sup>2</sup> Ordinance No. 4, 1829.

<sup>3</sup> Ordinance No. 6, 1833.

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other than the said Government Discount Bank, with which bank or banks an account shall be opened and into which the moneys belonging to the Church fund of each of the said Churches respectively shall be payable; and from and after the selection and appointment of such bank or banks the trustees respectively of the said Churches respectively shall open an account with such bank or banks and pay into the same every sum of money received by such trustees, and draw such money out of the said bank or banks under the same conditions, penalties and provisions in all respects precisely as if in the twenty-third and twenty-fourth sections of the said Ordinance relating to the said Church at Cape Town, and in the twenty-second and twenty-third sections of the said Ordinance relating to the said Church at Wynberg, the name or names of such bank or banks so selected and nominated were substituted for the name of the said Government Discount Bank wherever the said last-mentioned name occurs; Provided always, that the trustees of the said Church at Wynberg shall not be obliged to select or nominate any such bank or banks as aforesaid unless they shall deem it expedient so to do; and provided also, that as soon as possible after any such selection and appointment as aforesaid, the said trustees respectively shall and they are hereby authorized by a cheque or order to be signed by the said trustees respectively, or by two of each respective set of trustees, for themselves and co-trustees, to draw out of the said Government Discount Bank all the funds which shall then be deposited therein belonging to either of the before-mentioned Church funds, and to lodge the same in such bank or banks as shall have been selected and appointed; and in case no such selection or appointment shall be made by the trustees of the Wynberg Church aforesaid, the funds to be so drawn as aforesaid out of the said Government Discount Bank shall be lodged in the Savings Bank of this Colony; and provided, lastly, that it shall be lawful for the trustees respectively of the two above-mentioned respective churches, and they are hereby authorized from time to time, as often as they shall think fit, to change the bank or banks in which the Church funds shall be deposited, and from time to time to draw the same by means of such cheques as is in the section mentioned, out of any one bank, and then to lodge the same in any other bank as they shall, in their discretion, deem fit and proper.

7. [This section refers to deposits received under Ord. 97 which has been repealed.]

Deposit bank for  
moneys of the public  
library.

8. And be it enacted that the committee of the Public Library in Cape Town <sup>(1)</sup> shall within fourteen days next after the promulgation of this Ordinance select and appoint some bank or banks within this Colony other than the Government Discount Bank, with which bank or banks the treasurer of the said library shall open

<sup>1</sup> See Ordinance No. 8, 1836.

an account, and into which the said treasurer shall pay all sums which he may receive on the library account as soon as possible after the receipt thereof; and when and as soon as such bank or banks shall be selected and appointed by the said committee, the said treasurer shall and he is hereby authorized by a cheque upon the said discount bank, signed by the said treasurer and countersigned by the chairman of the said committee for the time being, to draw forthwith out of the said discount bank all the funds then deposited therein belonging to the said library, and forthwith to lodge the same in the bank or banks which shall be selected and appointed by the said committee as aforesaid; and it shall be competent for the committee of the said library for the time being to select and appoint from time to time such bank or banks for the deposit of the funds of the said library as they shall deem most expedient, and from time to time, to direct the treasurer of the said library for the time being to remove the said funds from any given bank or banks to any other bank or banks which the said committee shall select and appoint; and the treasurer of the said library for the time being is hereby authorized and required from time to time to pay into such bank or banks as the said committee shall select and appoint, all sums which he may receive on the library account, at such time and under the like penalty in case of default as in the ninth section of Ordinance No. 8, 1836, are mentioned and provided; and the said treasurer for the time being is further authorized and required, whenever he shall be to that effect directed by the committee of said library for the time being, to remove all such funds belonging to the said library as shall be deposited in any particular bank or banks, to such other bank or banks as the said committee shall select and appoint, and such removal of the said funds shall be made as aforesaid by means of cheques to be drawn by the treasurer and countersigned by the chairman of the committee for the time being.

No. 86.—Sd. G. Lowry Cole.]

[June 8, 1831.

Ordinance for establishing and regulating a new Savings Bank in the Colony of the Cape of Good Hope. (<sup>1</sup>)

WHEREAS, at a public meeting of certain persons, inhabitants of this Colony, duly holden at the Commercial Hall in Cape Town on the 22nd day of November in the year of our Lord 1830, it was considered and agreed upon that it is expedient and necessary that a new bank for savings should be forthwith established in this Colony, for the purpose of receiving deposits from benevolent and charitable societies, tradesmen, mechanics, labourers, servants, children, and others, as nearly according to the principles upon

Preamble.

<sup>1</sup> For Post Office Savings Bank, see "Post Office."

No. 86—1831.

which similar institutions have been established in Great Britain, as the circumstances of this Colony will permit: And whereas at the said meeting certain persons were elected to form a society for the establishment and management of a bank in Cape Town, for the purposes aforesaid, according to a plan agreed on at the said meeting; and whereas the said persons have made application to His Excellency the Governor that an Ordinance may be passed to sanction and confirm the plan agreed upon at the said meeting, and to provide for carrying the same into effect, and it is expedient that the same should be done: Now, therefore, be it enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance, it shall and may be lawful to and for the said persons so elected, and for any other persons who shall from time to time in manner hereinafter provided be elected, to be the president, vice-presidents, directors, and managers of the said society, to be and form, and the said persons are hereby constituted and declared to be, a society for the establishment and management of a bank in Cape Town for the purposes aforesaid, which said society shall be called "The Cape of Good Hope Savings Bank Society."

Establishment of  
The Cape of Good  
Hope Savings Bank  
Society.

Constitution of the  
Society.

2. And be it enacted that the said society shall consist of one president, five vice-presidents, ten directors, and at the least sixty managers: Provided always, and be it further enacted that the said society shall not expire, cease, or determine by reason of the death, resignation, removal from or non-acceptance of office of any member or members thereof, so long as there shall be so many members remaining and belonging thereto, and willing to act as shall be sufficient to constitute a committee of management as is hereinafter provided.

Elected vice-presi-  
dents and trustees to  
be first vice-presi-  
dents and trustees.

3. And be it enacted that the persons who at the meeting aforesaid were elected to be the vice-presidents and trustees of the said society, and whose names are inserted in the schedule hereunto annexed, marked A, shall be respectively the first vice-presidents and directors thereof, and that the persons who at the meeting aforesaid, were elected to be the managers of the said society, and whose names are inserted in the schedule hereunto annexed marked B, and all such householders residing in Cape Town, or within eight (<sup>1</sup>) miles thereof as shall at any time hereafter be elected to be managers of the said society, at any general meeting of the said society holden in manner hereinafter provided, or by the committee of management hereinafter provided, at any general meeting thereof, and who shall consent to accept such office, shall be the managers of the said society.

Election of mana-  
gers.

Continuation in  
office of president,  
vice-presidents, and  
directors, until elec-  
tion of others;

4. And be it enacted that the persons hereinbefore provided and declared to be the vice-presidents and directors, and all others who shall hereafter be duly elected to be the president, vice-presidents,

<sup>1</sup> All inhabitants of Cape Town or within ten miles eligible. § 2, Ordinance 10, 1848.

and directors of the said society, shall continue in office as such until the election of other persons to the said office in manner hereinafter provided; and that the persons hereinbefore provided and declared to be, and all others who shall hereafter be duly elected to be the managers of the said society, shall continue in office as such so long as they shall be householders and shall reside in Cape Town, or within eight miles thereof: Provided always, that nothing herein contained shall extend or be construed to prevent any president, vice-president, director, or manager from resigning his said office, on giving seven days' notice of his intention so to do to the committee of management, by writing delivered at the place where the business of the society is for the time transacted, to any officer or manager of the said society in attendance thereat; and provided also, that nothing herein contained shall extend or be construed to prevent any president, vice-president, director, or manager from being removed from his office by any general meeting of the society in manner hereinafter provided.

Of managers as long as they are householders, or until resignation or removal.

5. And be it enacted that every member of the said society shall be liable, as such, to make good any loss or damage which shall or may accrue to or be sustained by the funds of the said society, or to or by any depositor in the said bank, by reason of the dishonesty, bad faith, or gross neglect of such member, and not otherwise.

Responsibility of members for loss arising from dishonesty, bad faith, or gross neglect.

6. And be it enacted that no president, vice-president, director, or manager of the said society shall, either directly or indirectly, receive or derive any salary, allowance, profit or benefit from any of the funds thereof, or from any money deposited in the said bank; and that the persons depositing money in the said bank shall respectively have and receive the whole benefit of the money therein deposited, and of the produce thereof, save and except only so much as may from time to time be required to defray such salaries, allowances, and other necessary expenses as shall in manner hereinafter provided be allowed and expended for the charges of managing the said bank, and for the remuneration of such persons as may be necessarily employed in transacting the business thereof, not being presidents, vice-presidents, directors, or managers of the said society: Provided always, that nothing herein contained shall extend or be construed to prevent any manager of the said society, not being a member of the committee of management, from transacting business with the said bank. <sup>(1)</sup>

Members not entitled to derive any salary or profit from the funds of the bank.

Depositors to receive the whole benefit of money deposited.

Competency of managers to transact business with the bank.

7. And be it enacted that it shall and may be lawful to and for the said society to receive deposits in the said bank of such amount as they shall think fit from any friendly, benevolent, or charitable society, tradesmen, mechanics, labourers, servants, children, and other persons, at their discretion, whether slaves or free persons, and also to reject or refuse to receive deposits in all cases in which they shall think fit so to do, and to lay out and invest upon such

Depositors.

Investment of moneys deposited.

<sup>1</sup> See § 3, Ordinance 10, 1848.



130 BANKS (CAPE OF GOOD HOPE SAVINGS' BANK).

No. 86—1881.

Return of deposits.

Composition of committee of management.

Execution of instruments by quorum of committee.

Funds, &c., of the bank vested in committee.

colonial securities as they shall think fit all moneys deposited in the said bank, together with the interest or produce which shall from time to time accrue thereupon, or so much thereof as shall not be required to defray the necessary expenses of the said bank, or shall not be required by the said depositors, or their representatives; and the said society shall and may, at any time when they shall see fit so to do, and also shall and may, upon the lawful demand of any depositor or his or her representatives, either made in person or by the bearer of an order under the hand of any depositor or his or her representative, attested and signed in such manner as shall be provided by any rule or regulation of the said society, return the whole or any part of such deposits, and the produce thereof, to the depositors or their representatives respectively, deducting only out of the interest or produce of such deposits so much as shall have been required and retained for the purpose of defraying the necessary expense of the said bank; and the receipts of any depositor or his or her representative for the same shall be a good and sufficient discharge to the said society, notwithstanding the minority or coverture of such person.

8. And be it enacted that it shall and may be lawful to and for the said society to conduct and manage the affairs and proceedings thereof by and through a committee of management, which shall consist of the president, the vice-presidents, and the directors of the said society for the time being, and of ten of the managers thereof to be elected out of the whole body of managers in manner hereinafter provided, and that any seven or more of the members of the said committee (of whom three at the least shall be vice-presidents or directors) shall form a quorum, and shall be competent to do and perform all matters and things which may under and by virtue of this Ordinance be done and performed by the said committee, and that the vote or resolution of the major part of such quorum shall in all cases be deemed to be and shall have effect as the vote or resolution of the committee, and that, in the absence of the president, the eldest vice-president present, and in the absence of the vice-presidents, the eldest director present, shall preside at the meetings of the said committee; and that in any case in which the votes or opinions of the members of the said committee shall be equally divided, the person who shall at the time preside at the meeting thereof shall have a casting vote; and that whenever it shall be necessary for the said committee to execute any deed or instrument in writing, such deed or instrument shall be signed in name of the committee by a quorum thereof, or by some two members thereof, appointed for that purpose by such committee, and every such deed or instrument signed in manner herein provided shall have the same force and effect in law as if it had been signed by all the members of the committee of management.

9. And be it enacted that all moneys, goods, and effects what-

soever, and all securities for money, or other obligatory instruments, and all evidences, muniments, and all rights and claims whatsoever belonging to or had by the said society shall be vested in the said committee of management for the time being for the use and benefit of the said society, and of the depositors in the said bank, and their representatives respectively, according to their several claims and interests; and also shall, for all purpose of action or suit, as well criminal as civil, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the committee of management of the said society for the time being, without further description; and such committee shall and they are hereby authorized to bring or defend or cause to be brought or defended, any action or suit touching or concerning any of the property, rights, or claims aforesaid belonging to the said society, in the name of the "Committee of Management of the Cape of Good Hope Savings Bank Society," without specifying the names of the members thereof, and without other description; and no suit or action shall be discontinued or abate by reason of the death or removal from the committee of all or any of the members thereof, but the same shall and may be proceeded in by the succeeding committee of management, any law, usage, or custom to the contrary notwithstanding; and such succeeding committee shall pay or receive like costs as if the action or suit had been commenced by them for the benefit of or to be reimbursed from the funds of the said society.

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Authority of committee to sue and be sued.

10. And be it enacted that meetings of the said committee shall and may be holden at their usual place of business so often as shall be found to be necessary, or as shall be appointed by any rule or regulation duly made as hereinafter provided, for the purpose of transacting the ordinary business of the society, according to the subsisting rules and regulations thereof: Provided always, that the said committee at such ordinary meeting shall not have power or authority to repeal or alter, or to do or cause to be done, any matter or thing which shall be in contravention of any of the existing rules or regulations, or to make any new rules or regulations for the management thereof, or to expend or authorize the expenditure of any of the funds of the society to any extent, or for any purpose to, or for which such expenditure shall not have been previously authorized by a general meeting of the society, or of the committee of management. And be it further enacted that a general meeting of the committee of management shall be holden at the place aforesaid on the first Thursday of every month at the hour of eleven o'clock in the forenoon, and that it shall be lawful for the president, or any two of the vice-presidents or directors, at any time, to call a general meeting of the committee of management by written notices thereof, specifying the purpose for which such meeting is called, delivered to or at the dwelling-

Ordinary meetings of committee.

Monthly general meetings.

132 BANKS (CAPE OF GOOD HOPE SAVINGS' BANK).

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houses or places of business of such members thereof as shall be in Cape Town or within eight miles thereof, not less than twelve hours before such meeting shall be holden. <sup>(1)</sup>

Framing of rules and regulations.

11. And be it enacted that it shall and may be lawful for the committee of management, at any general meeting, to make and establish all necessary and lawful rules and regulations for the management of the said bank and the affairs of the said society as to them shall seem fit, and as shall not be inconsistent with the provisions of this Ordinance, and to enforce the observance of the same by any member or officer of the said society by the imposition of reasonable fines to be paid to and for the benefit of the said society, not exceeding for any one default the sum of one pound sterling; and the said rules and regulations or any of them to repeal, alter, and amend from time to time as occasion may require: Provided always, that all such rules and regulations and every repeal or alteration or amendment thereof shall be entered in a book to be kept by some member or officer of the said society to be appointed for that purpose, and which shall be open at all reasonable times without fee or reward for the inspection of any member or officer of the said society or person making deposits in the said bank, and such rules and regulations, and also any repeal, alteration, or amendment of the same or of any part thereof, shall be fairly transcribed, and such transcript shall be deposited with the clerk of the Court of the Resident Magistrate in Cape Town, who shall forthwith enrol and deposit the same among the records of the said Court, and give to the said committee a certificate thereof, without fee or reward; and provided also that no such rule or regulation or repeal or alteration or amendment shall have any force or effect until the same shall be entered, transcribed, enrolled, and deposited as aforesaid.

Entry of rules in a book open for inspection.

Enrolment of transcript of rules in court of resident magistrate of Cape Town.

Force of rules and regulations.

12. And be it enacted that all rules and regulations for the management of the said society which shall from time to time be duly made and entered, enrolled, and deposited in manner hereinbefore provided, shall be binding on the several members and officers thereof, and on the several depositors in the said bank and their representatives, and that such entry, enrolment, and deposit as aforesaid shall be deemed and taken to be due notice thereof to the said members, officers, depositors, and their representatives respectively.

Appointment of officers.

13. And be it enacted that it shall and may be lawful to and for the committee of management, from time to time as the same may be necessary, to hire apartments and to provide furniture, books, and stationery, and to appoint officers, servants and others necessary for transacting the business of the said society, and to defray the cost and charges of the same respectively out of the produce of any money deposited in the said bank, or out of any funds which may belong to the said society: Provided always,

Payment of expenses.

<sup>1</sup> Amended by § 5, Ordinance 16 of 1848.

and be it further enacted, that it shall not be lawful to defray the same or any part thereof out of the capital of any sum deposited in the said bank.

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14. And be it enacted that the committee of management shall and may require every treasurer, officer, or other person who shall be trusted with the receipt or custody of, or the duty of whose office it shall be to receive or keep any sum or sums of money belonging to the said society, or deposited in the said bank, to become bound by an obligation in writing to the committee of management for the just and faithful execution of such office or trust, in such a sum of money and with such security or surety or securities as the said committee shall think fit; and no such treasurer, officer, or other person shall be permitted to enter on the execution of any such office or trust until he shall in manner hereinbefore provided have become bound to the said committee: Provided always, that nothing herein contained shall extend or be construed to authorize or require the said committee to require or take any such obligation or security as aforesaid from any of the managers of the said society, whose duty it may be, under and by virtue of the provisions of this Ordinance or of any rule or regulation made or established in manner hereinbefore provided, to attend in rotation to receive any sum or sums of money from persons desirous of depositing the same in the said bank.

Security by officers entrusted with money for due execution of their trust.

15. And be it enacted that it shall and may be lawful to and for the committee of management for the time being, at any general meeting thereof, to elect as managers all such good and lawful men, being householders residing in Cape Town or within eight miles thereof, as they shall think fit, and who shall signify in writing their acceptance of the said office; and upon the death, resignation, or removal from office or departure from this Colony of any president, vice-president, or director, or of any of the other members of the committee of management, to elect some fit, proper, and qualified person in his stead: Provided always, that in the event of three or more vacancies in the committee of management occurring by reason of any of the causes aforesaid at one and the same time, it shall not be lawful for the committee to elect any person to fill up the said vacancies, but such committee shall and may call a general meeting of the said society in manner hereinafter provided, at which meeting fit, proper, and qualified persons shall be elected to fill up the said vacancies; and provided also, that in the event of so many vacancies in the committee of management occurring by any of the causes aforesaid that there shall not remain a quorum of the said committee willing to act as such, it shall be lawful for any member of the said committee, or for any five managers of the said society, to call a general meeting thereof in like manner as it is hereinafter provided that such general meetings may be called by the said committee, at which meeting fit, proper, and qualified

Election of managers by committee at a general meeting thereof.

Such election, in the event of three or more vacancies, at a general meeting of the society.

Proceedings in the event of there being no quorum of the committee.

No. 86--1831. persons shall be elected to fill up the said vacancies. And provided also, that the ten managers to be elected members of the first committee of management of the said society, shall be elected at a general meeting of the society, to be holden for that purpose within fifteen days after the publication of this Ordinance in the *Government Gazette* of this Colony.

Election of first committee.

Mode of calling general meetings of the society. 16. And be it enacted that it shall and may be lawful for the committee of management to call a general meeting of the said society whenever they shall think fit, and that the said committee shall be thereunto required by any writing signed by ten of the managers and delivered at the usual place of business of the said committee to any officer or manager of the said society in attendance thereat, to call a general meeting of the said society, seven days' previous notice whereof and of the time and place and purpose of holding the same shall be given by the said committee by advertisement in the *Government Gazette* of this Colony.

Annual general meeting in March of each year. 17. And be it enacted that a general meeting of the said society shall be publicly holden in the month of January <sup>(1)</sup> in each year, at some convenient time and place in Cape Town, to be appointed for that purpose by the committee of management, fourteen days' previous notice whereof shall be given by the said committee by advertisement in the *Government Gazette* of this Colony, and at such general meeting the said committee shall lay before the said society a report of the transactions of the society and of the state of the accounts thereof, and shall furnish to the said meeting all such other information as shall be required and which the major part of the members then present shall consider to be proper to be given, and that at such annual general meeting the managers of the said society and the members of the committee of management then present, shall elect a president, five vice-presidents, and ten directors, for the ensuing year, and shall also elect ten managers to be members of the committee of management for the ensuing year: Provided however, that if such election as to all or any of the said officers shall not take place, then the persons last in office as president, vice-presidents, directors, or members of the committee of management, and to whom a successor in office shall not be chosen, shall respectively continue in their said offices for the ensuing year.

Report of transactions and state of accounts of the society.

Election of committee, &c.

Proceedings in case of non-election.

Power of the members at general meetings. 18. And be it enacted that it shall be lawful for the members of the said society at any general meeting thereof, to give to the committee of management all such directions relative to the transaction of the business of the society as to the said meeting shall seem fit, and as shall not be inconsistent with the provisions of this Ordinance or with any subsisting rule or regulation for the management of the said society, and to confirm, repeal, alter, or amend any such rules or regulations as shall have been made in manner hereinbefore provided by the committee of management

<sup>1</sup> March, see § 6, Ordinance 10 of 1848.

or by any general meeting of the said society, and to make any such new rules and regulations for the purpose aforesaid as to the said meeting shall seem expedient, and to elect all such good and lawful men being householders, residing in Cape Town, or within eight miles thereof, as they shall think fit, and who shall signify in writing their acceptance of the said office, and to elect fit, proper, and qualified persons to fill up any vacancies which may have occurred in the offices of president, vice-president, or director in the committee of management, in any case in which it is hereinbefore provided that such vacancies shall be filled up by the election of a general meeting of the said society, and to remove from office any president, vice-president, director, member of the committee of management, or manager, for any cause which shall to such meeting appear sufficient: Provided always, that it shall not be lawful for the members of the said society at any general meeting thereof to make any new rule or regulation, or to repeal, alter, or amend any subsisting rule or regulation as aforesaid, or to remove any person from office as aforesaid, unless notice that a motion to that effect will be made at such general meeting, shall have been given seven days previous to such meeting by some member of the society, either publicly at some general meeting thereof, or in writing, and delivered at the usual place of business of the committee of management to some officer or manager in attendance thereat, and where such motion shall be to remove any person from office, then such previous written notice thereof shall also be either delivered to such person or left at his dwelling-house: and provided also, that every new rule or regulation and every repeal, alteration, or amendment of any subsisting rule or regulation established or made by any such general meeting, shall be entered, transcribed, enrolled, and deposited in like manner as it was hereinbefore provided that any rules, regulations or repeals, alterations or amendments thereof, made by the committee of management should be entered, transcribed, enrolled, and deposited, and no rule or regulation, or repeal, alteration, or amendment thereof made at any general meeting of the said society shall have any force or effect until the same shall be entered, transcribed, enrolled, and deposited as aforesaid.

19. And be it enacted that the vote or resolution of the major part of any general meeting of the said society shall in all cases be deemed and taken to be and shall have effect as the vote or resolution of such meeting, and that in absence of the president the eldest vice-president, and in the absence of the vice-presidents the eldest director, and in the absence of the directors the eldest member of the committee of management, and in their absence the eldest manager present shall preside at the general meetings of the said society, and that in every case in which the votes or opinions of any such meeting shall be equally divided the person who shall preside at such meeting shall have a casting vote, and

Rules of order, &c.,  
at general meetings.

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that in all cases when the election to any office or offices is to be made by any such general meeting, the mode of election shall be by signed lists given in by the members present, and the person or persons who shall (by a committee of scrutiny to be chosen by such meeting) be found to have the most votes in his or their favour shall be deemed and taken to be and shall be duly elected.

Receipt and pay-  
ment out of deposits  
by two or more  
managers in rotation

20. And be it enacted that two or more managers of the said society shall attend at the office or place of business thereof in rotation, in such manner and at such times as shall be appointed by any rule or regulation to that effect duly made in manner hereinbefore provided, for the purpose of receiving and paying out deposits and transacting such other business of the said society as shall be committed to them by the said committee (1).

Declaration of de-  
positor respecting  
distribution of his  
deposits after his de-  
cease, signed by him  
and duly attested by  
managers, valid as a  
will to be adminis-  
tered by the com-  
mittee.

21. And be it enacted that it shall and may be lawful for any depositor in the said bank at the time of making any deposit to declare to the managers who shall receive such deposit, or at any time afterwards to declare to the managers who shall for the time be in attendance at the usual place of business of the said society for the purpose of transacting the business thereof, in what manner and to and amongst what persons the said depositor will have the amount of his or her deposits and the produce thereof distributed by the committee of management in the event of his or her decease without making any other legal disposition of the same, and the said committee shall cause every such declaration to be entered in a book to be kept by them for that purpose, and to be signed by the said depositor or by some one for and on behalf and by authority of the said depositor, and in his or her presence and in the presence of and attested by two or more of the managers of the said bank, and the said declaration so made, entered, and attested shall be valid and effectual in law as the will of the said depositor respecting such property, and the said committee are hereby authorized and required, and upon due proof of the decease of such depositor as aforesaid, and provided no other legal disposition of such property by the said depositor shall be produced, and after the payment of the just debts of the said depositor, to administer and distribute the same according to such declaration, any law or usage of the Colony to the contrary notwithstanding. And be it further enacted that such administration and distribution of the said committee shall be entirely free and discharged from all stamps and Government fees and duties whatsoever. And be it further enacted that the managers of the said society who shall at any time receive a deposit from any person then for the first time making a deposit in the said bank, shall inform such person that he or she may make and shall inquire whether such depositor is willing to make such declaration as aforesaid. (2)

<sup>1</sup> See § 4, Ordinance 10 of 1848.

<sup>2</sup> See § 7, Ordinance 10 of 1848.

22. And be it enacted that in case any depositor in the said bank shall die leaving a sum of money in the said bank which with the interest due thereon shall not exceed in the whole the sum of £50, it shall and may be lawful to and for the said committee of management, and they are hereby authorized and required, provided that the said deceased depositor shall have made no such declaration as aforesaid, to cause public notice to be given forthwith in the *Government Gazette* of this Colony of the death of such depositor, of the amount due to him at the time of his death, and of the period fixed for payment thereof, which period shall be fixed according to the circumstances of the case at the discretion of the said committee. And if no will of such depositor shall be proved before the period so fixed, it shall and may be lawful for the said committee at any time thereafter, and after paying the just debts of such depositor, to pay and divide such money as aforesaid, by and with the consent of the Attorney-General of this Colony, to and among such person or persons as shall appear to him and them to have the best claim thereto; and every such payment shall be a valid and effectual discharge against any demand or claim made upon the funds of the said society or upon the said committee, or upon any member of the said society by any other person or persons, as being the lawful representative or representatives of such depositor; and such person or persons so claiming as aforesaid shall have their remedy by recourse against the person or persons who shall have received such payments, and not otherwise; and such administration or distribution by the said committee shall be entirely free and discharged from all stamps and Government fees and duties whatsoever. Provided always, that in case no claims be made on any such money as aforesaid, or if made shall not be admitted by the said committee, or by the determination and adjudication of one of the judges of the Supreme Court or of the Resident Magistrate for Cape Town made in manner hereinafter provided, then and in every such case such money shall remain under the administration of the said committee, and the interest thereof shall be applied for the general purposes of the said society, until further provision be made for the application and disposal of such money by any law for that purpose to be hereafter made and provided.

23. And be it enacted that in case any difference shall arise between and amongst the managers of the said society, or between the said managers or any person concerned in the management of the said society and any depositor in the said bank, or any executor, administrator, next of kin, or any party claiming as such, or otherwise, to be entitled to the effects of any deceased depositor in the said bank, then and in every such case the matter so in dispute shall be referred to the summary decision of such one of the judges of the Supreme Court, or the Resident Magistrate of the Cape District as shall be mutually agreed upon by the parties in dispute;

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Proceedings in case of death of depositor who has not made such declaration.

Reference of differences between managers, or between committee of management and other persons to the arbitration of a judge of the supreme court, or resident magistrate of the Cape district.



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and in case the parties shall not mutually agree thereon then to such judge or magistrate aforesaid as shall be determined on by the committee of management (such judge or magistrate being willing to accept the said reference), and the said judge or magistrate is hereby authorized to inquire and determine the said matter in dispute, and also to adjudge by whom the costs and expenses of the said reference shall be paid, and his determination and adjudication on the premises shall be final and conclusive, and binding on the said parties to all intents and purposes whatsoever.

Establishment of  
branch banks.

24. And be it enacted that it shall be lawful for the members of the said society, at any general meeting thereof duly holden for such purpose in manner hereinbefore provided, to establish branch savings banks for the like purposes for which the said bank is hereinbefore declared and provided to be established in any district, town or place within this Colony, wherein it shall appear to any such meeting expedient that a savings bank should be established, and wherein there shall be a sufficient number of fit and proper persons able and willing to undertake the management and transact the business of such bank, and to make all necessary rules and regulations for the management of such branch banks.

Repeal of procla-  
mation of 11th Octo-  
ber, 1822.

25. And be it enacted that from and after the publication of this Ordinance in the *Government Gazette* of this Colony, the proclamation of the 11th October, 1822, shall be and the same is hereby repealed, and the branch opened in the discount bank, under and by virtue of the provisions of the said proclamation, shall thenceforth cease and be discontinued, and that all accounts relating to deposits of money made by any person in the said branch shall within one month from and after the publication of this Ordinance in the *Government Gazette* of this Colony, be adjusted and settled, and that all balances which shall be found or appear to belong to any person or persons in respect of any such deposits or any interest accruing thereon, together with all books, accounts, documents, and vouchers relating or appertaining thereto, shall at the expiration of the said period of one month be transferred to the discount bank, and the president and directors of the said bank shall cause accounts to be opened in the books of the said bank in the names of the persons to whom such balances shall be found or appear to belong respectively, and shall in such accounts give credit for such balances to such persons respectively: Provided always, that after such balances shall have been transferred as aforesaid, no interest shall be allowed thereon by or may lawfully be claimed or demanded from the said discount bank.

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SCHEDULE A, SEC. 3.

President :

First vice-presi-  
dents and trustees. Vice-presidents : The Hon. Sir John Truter, the Hon. Lieut.-Colonel John Bell, the Hon. J. W. Stoll, Esq., Anthony Oliphant, Esq., J. Smuts, Esq.

Trustees: W. W. Bird, C. Burton, J. B. Ebden, W. Hawkins, J. A. Joubert, D. Kuys, H. G. Muntingh, J. Nisbet, C. Pillans, Esquires, Major Rogers. No. 10—1848.

SCHEDULE B, SEC. 3.

Managers: C. Ludwig, Advocate Cloete, Advocate Brand, Advocate de Wet, Advocate Hofmeyr, G. H. Maasdorp, J. F. Dreyer, F. Collison, C. M'Kenzie, G. J. Vos, G. Thompson, A. Thomson, H. Murphy, W. Hayward, A. de Smidt, J. H. Tredgold, H. Buckton, R. Hoets, H. E. Rutherford, D. F. Lehman, jun., W. Hawkins, W. Hunt, T. Ansdell, J. Deane, G. Rietz, H. Hancke, T. Elliott, F. Russouw, sen., T. Sutherland, H. Ross, A. J. van Breda, W. Liesching, R. J. van der Riet, J. C. Gie, M.s., E. Norton, J. Bance, A. Chiappini, A. Jardine, L. Twentyman, P. Serrurier, J. Simpson, J. D. Gregory, G. Greig, F. S. Watermeyer, G. W. Prince, R. J. Jones, A. Robertson, P. H. Polemann, J. Syme, F. Stegmann, T. Tennant, R. A. Zeederberg, B. Phillips, J. Clark, R. W. Eaton, W. Gadney, W. Bridekirk, W. Heideman, E. Christian, W. Dickson, J. Lawton, W. Billingsley, M. de Kock, L. Herman, F. Hertzog, P. Roux, W. Heyward, R. Waters, J. Saunders, P. M. Brink, J. G. Muller, H. Hewitt, J. Marshall. First managers.

No. 10.—Sd. H. G. Smith. [June 27, 1848.]

Ordinance for amending the Ordinance No. 86, entitled  
 “Ordinance for establishing and regulating a new  
 Savings Bank in the Colony of the Cape of Good  
 Hope.”

WHEREAS the Ordinance No. 86, entitled “Ordinance for establishing and regulating a new Savings Bank in the Colony of the Cape of Good Hope,” requires in some respects to be amended: Preamble.  
 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 said Ordinance 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. Repeal of inconsistent parts of Ordinance No. 86.

2. And be it enacted that all inhabitants resident in Cape Town or within ten miles thereof, shall be eligible to be elected and become managers of “the Cape of Good Hope Savings Bank Society.” Qualification of managers.

3. And be it enacted that no person by reason merely that such person is a member of the said society, shall be deemed or taken to be debarred from making deposits in the said savings bank or deriving interest or profit from the funds so deposited in like manner as if such depositor were not a member of the said society. Deposits, &c., by members.

4. And whereas the attendance of two or more managers as in the twentieth section of the Ordinance aforesaid mentioned, is at times irregular, and it is desirable to provide for greater punctuality Remuneration of managers.

No. 10—1848.

in the dispatch of the business devolving upon such managers; Be it enacted that it shall and may be lawful for the committee of management of the said society by any resolution thereof, from time to time to authorize and direct the payment, out of the surplus funds of the said society, of a fee or allowance not exceeding the sum of five shillings to each manager not exceeding two who shall attend at the office or place of business of such society at such time as shall be appointed by any rule or regulation of the said society. And it shall and may be lawful for the said committee of management by any resolution thereof, to provide as they shall see fit for the mode in which other managers or another manager shall be called in in case of non-attendance at the proper time of both or either of the managers in their order of rotation, and to determine that the fee or allowance which would have belonged to the person or persons absenting himself or themselves had he or they attended, shall be received by the person or persons attending in manner and form as the said committee shall by resolution fix in his or their room and stead.

General meetings  
of committee of  
management.

5. And be it enacted that the general meeting of the committee of management in the tenth section of the said Ordinance mentioned, and therein directed to be held on the first Thursday in every month, may be lawfully held upon such day in the first week of every month as shall by any rule or regulation of the said committee of management be fixed and appointed.

General meetings  
of the society.

6. And be it enacted that the general meeting of the said savings bank society in the seventeenth section of the Ordinance aforesaid mentioned and therein directed to be holden in the month of January in each year, shall be held not in the said last-mentioned month, but in lieu and stead thereof in the month of March in each year. Provided always, that the said seventeenth section shall, in all other respects remain and continue in full force and effect, and that the committee of management now existing, shall continue to act until their successors shall be elected at the next general meeting aforesaid, which will be held in the month of March, 1849.

Attestation of cer-  
tain declarations.

7. And be it enacted that for the purpose of attesting any such declaration as is in the twenty-first section of the said Ordinance mentioned, any office-bearer in the said society shall be taken and construed to be a manager, and, as such, to be competent to attest any such declaration.

Time of taking  
effect.

8. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 34—1883.]

[March 18, 1884.

## ACT

## To Provide for the Disannexation of Basutoland from the Colony of the Cape of Good Hope.

WHEREAS it is desirable that Basutoland should cease to form part of the Colony of the Cape of Good Hope; and whereas Her Majesty's Imperial Government has expressed its willingness to provide for the future Government of Basutoland upon certain conditions; and whereas it is expedient that due provision should be made for relieving this Colony from all responsibility for or in connection with the Government of Basutoland: 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 No. 12, 1871, intituled "An Act for the Annexation to the Colony of the Cape of Good Hope of the Territory inhabited by the tribe of people called Basutos," shall be and the same is hereby repealed.

Repeal of Act No. 12, 1871.

2. From and after the taking effect of this Act, there shall be paid annually to Her Majesty's High Commissioner, or such other officer as Her Majesty may be pleased to appoint in that behalf, as a contribution towards any deficiency that may arise in the revenues of the Government of Basutoland, out of the public revenue of this Colony, such sum, not exceeding twenty thousand pounds, as may be hereafter from time to time agreed upon by and between Her Majesty's Imperial Government and the Government of this Colony.

Annual contribution, not exceeding £20,000, towards any deficiency in the revenues of Basutoland.

3. This Act shall come into operation when the Governor shall by Proclamation (<sup>1</sup>) declare that Her Majesty has been pleased to allow and confirm the same.

To come into operation by Proclamation.

4. The short title of this Act shall be "The Basutoland Disannexation Act, 1883."

Short title.

No. 9—1869.]

[October 18, 1869.

## ACT

## For the Better Protection of Bees.

WHEREAS it is expedient, with a view to increasing the production of honey and bees' wax in this Colony, to prevent, by legal enactment, the wasteful destruction of bees and the nests or hives of bees, whether wild or domesticated: Be it therefore enacted by the Governor of the Cape of Good Hope, with the

Preamble.

<sup>1</sup> Proclamation in Gazette 18th March, 1884.

No. 9—1869.

Property in nests or hives of bees vested in occupier of land on which formed.

Exception.

Penalty for removing hives, or contents thereof, without permission, or injuring or destroying the same.

Penalty for unlawful possession of beehives or contents thereof.

Costs of prosecution.

Right of proceeding under common law of the Colony not affected.

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

1. Every nest or hive of bees, whether wild or domesticated, which shall be formed or made or kept on any land the property of a private individual, in this Colony, or on leased Crown land during the continuation of such lease, together with all the bees and honey and wax that may be contained in any such nest or hive, shall be deemed to be the property of the person occupying such land, unless by contract with the true owner of such nest or hive of bees, in case the same be domesticated, the person occupying such land shall have agreed that such nest or hive shall be or remain on such land without prejudice to the right of ownership of such owner in such nest or hive, and the bees, honey, and wax thereof, or any of such things respectively.

2. Any person who shall remove, or attempt to remove, any such nest, hive, bees' wax, or honey, not being the true owner thereof under contract as aforesaid, without the permission of such occupier, or who shall wilfully injure or destroy the same, may on conviction be fined any sum not exceeding three pounds sterling, and in default of payment of the same may be imprisoned, with or without 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.

3. Any person having in his possession or conveying in any manner any bees' nest or hive, or bees, or honey, or wax, which may reasonably be suspected to have been stolen or unlawfully obtained, and who shall not give an account to the satisfaction of the Resident Magistrate how he came by the same, may be fined any sum not exceeding three pounds sterling, and in default of payment of the same may be imprisoned, with or without 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.

4. No payment shall be made out of the public revenue for the expenses of any prosecution to be instituted under this Act; but it shall be lawful for the Magistrate, in any case in which he shall see cause, to adjudge the person convicted to pay the costs of prosecution.

5. Nothing in this Act shall be held to prejudice or affect the rights of any true owner of any hive of domesticated bees to assert his property therein, save as is hereinbefore expressly provided, at the common law of this Colony, or to alter the common law in respect to theft of any such hive, or the honey, wax, or bees thereof, or to injury done to any property therein, save that the remedies herein provided shall be deemed to be concurrent with and in addition to those provided by the common law,

No. 10.—Sd. P. Maitland.]

[May 14, 1845.

Ordinance for punishing the Concealment of the Birth of Children.

WHEREAS the concealment by mothers of the birth of their children is a highly suspicious and reprehensible proceeding; And whereas such concealment is not by the law of this Colony deemed to be a crime; And whereas it is expedient that such concealment should be constituted and declared to be a crime: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof that if any woman shall be delivered of a child and shall by secret burying or otherwise disposing of the dead body of the said child endeavour to conceal the birth thereof, every such woman so offending shall be deemed to be guilty of the crime of concealing the birth of her child, and being convicted thereof, shall be liable to be imprisoned with or without hard labour for any term not exceeding five years.

Preamble.

Definition of offence of concealing child-birth.

Penalty.

2. And be it enacted that upon the occasion of the trial of any person charged with the commission of the said crime, it shall not be necessary to prove whether the child died before, at, or after its birth.

Proof of time of child's death not necessary.

3. And be it enacted that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof; (but it shall not be necessary to prove whether the said child died before, at, or after its birth); and thereupon it shall and may be lawful for the Court to pass upon her any such sentence as might have been lawfully passed upon her if she had been convicted upon an indictment for the crime of concealing the birth of her child.

Conviction of concealment on indictment for murder.

4. 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. 20—1880]

*Repealed by Act 7, 1894*  
ACT

[July 30, 1880.

To provide for the Voluntary Registration of Births within the several Divisions of this Colony.

WHEREAS it is expedient to provide for the voluntary registration of births within the several divisions of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the

Preamble.

Repealed

No. 20—1880.

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

Civil commissioners to keep "Births Registration Books."

1. From and after the first day of September, 1880, there shall be kept at the office of every Civil Commissioner within this Colony, a book, to be called the "Births Registration Book," in which shall be entered and registered by such Civil Commissioner (or other person lawfully deputed by him for that purpose), in manner and form hereinafter provided, the particulars of all such births occurring within the division for which he shall act as such Civil Commissioner, as the parents, or in case of their decease or inability to act, the next of kin of, or other person interested in, the child or children so born, shall desire to have so entered and registered.

Particulars therein as in schedule.

2. The "Births Registration Book" aforesaid shall contain the particulars and be in the form set forth in the first schedule to this Act annexed.

Births to be registered within two calendar months.

3. Every such registration as aforesaid shall take place within two calendar months from the date of the birth of the child so desired to be enregistered: Provided that after the expiration of the said period of two calendar months such registration may still take place upon payment of double the amount of fee payable as is in the fifth section hereof hereinafter provided for or in respect of every such registration made within the said period of two calendar months: Provided, also, however, that after the expiration of twelve calendar months from the date of birth, no registration thereof shall upon any pretence be made, except in such cases as are in the seventh section hereof hereinafter provided for.

Solemn declaration as in schedule.

4. Before making any such registration as aforesaid, the Civil Commissioner, or his deputy as aforesaid, shall require the person desiring such registration to make and subscribe before any Justice of the Peace the solemn declaration set forth in the second schedule to this Act annexed, and such declaration shall be filed in the office of the said Civil Commissioner.

Fees of registration.

5. There shall be payable to the said Civil Commissioner in respect of every such registration as aforesaid, by the person desiring the same, a fee of one shilling (except in cases where as is in the third section hereof hereinbefore provided for the same shall be double that amount), and at the time of such registration the said Civil Commissioner shall furnish such person with a certificate thereof, signed by the said Civil Commissioner in the form set forth in the third schedule to this Act annexed, which certificate shall, on production, either before any court of justice or elsewhere, be deemed and taken to be *prima facie* legal evidence of the birth, the due registration of which is therein certified to.

Right to inspect registration books.

6. It shall be competent for any person at any time after the said first day of September, 1880, and during ordinary office hours, to inspect the said "Births Registration Book," and also for any person, upon payment of a fee of one shilling, to obtain from the

Fees for inspection and certificates.

*Repealed*

said Civil Commissioner (or his deputy as aforesaid) a certificate signed by the said Civil Commissioner (or his deputy as aforesaid) of any entry contained therein, and such certificate shall be similar in all respects to that granted at the time of the making of such registration, and for all purposes of evidence shall be deemed and taken to be of the same force and effect as such original certificate so granted as aforesaid.

No. 20-1880.

7. And be it further enacted, anything in the third section hereof contained to the contrary notwithstanding, that within six calendar months from the said first day of September, 1880, it shall be lawful and competent for any person to obtain, upon payment of the aforesaid fee of one shilling in the same manner and subject to the same requirements (in so far as the same are applicable), in all respects as hereinbefore mentioned, the registration of the birth of any child not exceeding on the said first day of September, 1880, the age of six years, and to obtain the certificate of such registration in manner hereinbefore provided for, which certificate or any duplicate thereof which may be obtained as is hereinbefore also provided for, shall be of the same force and effect in all respects as if such registration had taken place within two calendar months from the date of the birth, the due registration of which is therein certified to.

Births of children born not more than six years prior to 1st September, 1880, may be registered.

8. All fees payable under this Act shall be discharged by affixing a stamp or stamps of the value of such fee to any certificate by this Act required.

Fees by stamps.

9. This Act may be cited for all purposes as "The Voluntary Births Registration Act, 1880."

Short title.

FIRST SCHEDULE.

BIRTHS REGISTRATION BOOK.

Division of \_\_\_\_\_

No. of Entry.	Date of Registration.	Name in full.	Sex.	Declared Day of Birth.	Parents' Names in full.		Abode of Parents at time of Child's Birth.	Quality, Trade, or Profession of Father.	By whom Declaration of Birth made.	By whom Registered.
					Father.	Mother.				



## SECOND SCHEDULE.

## Voluntary Births Registration Act, 1880.

## FORM OF DECLARATION.

Name of child in full \_\_\_\_\_.

Date of birth \_\_\_\_\_.

Name in full of mother \_\_\_\_\_.

" " of father \_\_\_\_\_.

Abode of parents at time of child's birth \_\_\_\_\_.

Quality, trade, or profession of father \_\_\_\_\_.

I, \_\_\_\_\_, of \_\_\_\_\_, do solemnly and sincerely declare that the particulars above set forth respecting the birth of the said \_\_\_\_\_, are within my own knowledge, and are true and correct. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6 of 1845, intituled "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 \_\_\_\_\_, 18 \_\_\_\_\_.

Before me \_\_\_\_\_.

## THIRD SCHEDULE.

EXTRACT FROM THE BIRTHS REGISTRATION BOOK FOR THE DIVISION OF \_\_\_\_\_.

No. of Entry.	Date of Registration.	Name, in full.	Sex.	Declared Day of Birth.	Parents' Names in full.		Abode of Parents at time of Child's Birth.	Quality, Trade, or Profession of Father.	By whom Declaration of Birth made.	By whom Registered.
					Father.	Mother.				

I hereby certify the above to be a true extract from the Births Registration Book for the Division of \_\_\_\_\_.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_

\_\_\_\_\_, Civil Commissioner.

Dec. 31, 1824.]

## THE BOEKHOO PLANT.

## PROCLAMATION

By His Excellency General the Right Hon. Lord CHARLES  
HENRY SOMERSET, &c., &c.

WHEREAS I have been given to understand that the medicinal qualities of the Boekhoo (Boego) plant are held in great estimation in Europe, and that it is probable the demand for that article may increase to an extent which may prove very beneficial to the interests of this Colony, provided the necessary measures be taken for its preservation :

And whereas it has been represented to me that the persons employed in collecting this article, not satisfied with gathering the leaves, or even cutting the shoots, of this plant, are in the habit of pulling it up entirely by the roots, or of cutting and hewing it so low down and in such a manner as to destroy the plant itself ; I have deemed it necessary, for the general interests of the Colony, to order and declare, and it is hereby ordered and declared accordingly, that any person who may be convicted before a competent tribunal, of tearing up the Boekhoo (Boego) plant by the roots, or of burning it, or cutting it in such a manner as to injure the further growth of the plant, shall be deemed guilty of a misdemeanour, and be fined in a penalty of not less than twenty nor more than fifty rixdollars for every such offence, one-third of which shall go to the informer (provided always, that the property so injured or destroyed be not the private property of individuals, and cut or pulled up or burnt by their orders) : And in the event of the inability of the offender to pay the fine awarded, that he be liable to imprisonment at hard labour for a certain period not exceeding two months for every such offence.

And that no person may plead ignorance hereof, this shall be published and affixed in the usual manner.

No. 5.—Sd. B. D'Urban.] [June 1, 1836.

Ordinance for defining the Limits of and securing from injury the Cape Flats and Downs.

WHEREAS the provisions of a publication bearing date the 29th September, 1803, for the preservation of the tract of country commonly called "the Cape Flats and Downs," have been found to be insufficient ; And whereas many parts of the said lands are unlawfully used and occupied by various persons who, by rooting up the bushes growing thereon, have caused great damage and injury to the said lands, inasmuch as the drifting sands have so greatly

- Ord. 5—1836. accumulated as to threaten to lay waste great part of that country, and the farms contiguous thereto, thus increasing the difficulties of land carriage and endangering the maintenance of the baiting or outspan-places and watering dams established on the lines of public roads through those flats and downs; And whereas it is expedient to fix and define the limits of the said tract of country, and to provide for its security from further damage and injury: 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 1st of July next, the publication of the Governor J. W. JANSSENS in Council, bearing date the 29th September, 1803, shall be and the same is hereby repealed save in so far as the same repealed the several laws and ordinances therein set forth.
- Repeal of previous proclamation. 2. And be it further enacted that from and after the date of this Ordinance, all the lands situate to the eastward of the Salt and Swart Rivers to the Sand Valley near Muizenburg; thence along the shore of False Bay to the mouth of the Eerste River; thence ascending the right bank of the Eerste River to the place of Mr. Faure, at the lower drift of that river; thence to the place of Mr. Neethling, at the Kuils River; thence to Stiekland; thence to Tyger Valley and the place the Grendel, at the foot of Tygerberg; and thence to the Compagnies Dam, under the Blueberg, to the sea, shall for the purposes of this Ordinance, be deemed and taken to be included in the general terms of the Cape Flats and Downs. [§§ 3 and 4 repealed by Ord. 28 of 1846.]
- Cape Flats and Downs defined. 5. And be it further enacted that any person who shall drive or send or cause to be driven or sent any sheep, goats, or swine, to graze on the aforesaid crown lands, save and except such sheep, goats, or swine as may be going to or from a market, shall be liable upon conviction to a fine not exceeding five pounds.
- Grazing of sheep, &c., prohibited. 6. And be it further enacted that it shall and may be lawful for the Civil Commissioners of the Cape and Stellenbosch districts respectively, to grant to any person applying for the same a licence to graze horned cattle, horses, or mules for one whole year upon the aforesaid crown lands not being outspan-places; which licence shall commence and take effect from the first day of July of each year, and shall set forth the greatest number of cattle, horses, or mules allowed to graze under and by virtue of the same; and which licence shall be paid for at and after the rate of sixpence sterling for every horse, mule, or head of horned cattle.
- Licences for grazing cattle, &c. 7. And be it further enacted that it shall be lawful for the said Civil Commissioners respectively to grant to any person applying for the same a licence to cut and carry away from such crown lands, thatching reeds or rushes; which said licence shall set forth the quantity of bundles of reeds or rushes intended to be cut, and which licence shall be paid for at and after the rate of ninepence sterling for every one thousand bundles, and which licence shall
- Licences for cutting reeds, &c.

have effect for the term or space of three calendar months and no more from the date of the said licence.

Ord. 5—1836.

8. And be it further enacted that any person who shall graze horned cattle, horses, or mules, or cut thatching reeds or rushes upon any part of the said crown lands without having taken out a licence as hereinbefore mentioned, or who shall graze a greater number of horned cattle, horses, or mules upon the aforesaid lands, or who shall cut or carry away therefrom a larger quantity of thatching reeds or rushes than is set forth in his said licence, or who shall make use of the said licence after the expiration of the term for which it shall have been granted, shall be liable upon conviction to a fine not exceeding five pounds for each offence.

Penalty for being without or abusing licences.

9. And be it further enacted that the Civil Commissioners aforesaid shall as soon as may be after granting the said licences, transmit to the Secretary to Government for publication in the *Government Gazette*, a list of all persons having taken out licences for grazing and cutting thatching reeds; and the said Civil Commissioners shall transmit a like notice to the several Field-cornets whose wards or any part thereof are situated within the Cape flats and downs; and the said Field-cornets are hereby expressly enjoined and required to enforce to the utmost of their power the provisions of this Ordinance, and to report to the respective Clerks of the Peace for immediate prosecution all persons who shall be found contravening or who shall have contravened the same.

Publication of licences.

Enforcement of licences.

10. And be it further enacted that the Civil Commissioners aforesaid shall fix the boundaries of the several outspan-places now existing in the said crown lands and situate within their respective districts, and shall cause the extent thereof to be marked and defined in such manner as to afford to all persons having lawful occasion to use the same the full benefit of such outspan-places.

Outspan-places to be defined.

11. And be it further enacted that any person (*bona fide* travellers excepted) who shall graze any animals whatsoever upon those parts of the said crown lands which now are or may hereafter be appropriated as outspan-places, or who shall water such animals at any of the public watering dams attached or hereafter to be attached to such outspan-places, shall be liable upon conviction to a fine not exceeding five pounds; and it shall be lawful for any person whomsoever who shall find any such animals trespassing on the said outspan-places or watering dams, to seize and drive them, or cause them to be seized and driven, to the nearest pound.

Illegal use of outspan-places.

12. And be it further enacted that all offences under this Ordinance shall be tried before the Resident Magistrate of the district within which the offence shall have been committed; and in default of payment of any fine imposed, it shall be lawful for the said Magistrate to sentence the person adjudged and making default to pay such fine, to imprisonment with or without hard labour as such Magistrate shall direct, for any period not exceeding three calendar months.

Enforcement of ordinance.

No. 28.—Sd. P. Maitland.]

[October 3, 1846.]

Ordinance for preventing the Mischiefs arising from the cutting, rooting up, and destroying of Trees, Shrubs, and Bushes growing on the Cape Flats and Downs.

Preamble.

WHEREAS it has become an object of the utmost importance to this Colony, to preserve from the effects of drifting sands the new hard road constructed over or across the Cape flats or downs; And whereas a mischievous and illegal practice prevails of cutting down, rooting up, and carrying away from the said flats or downs, for the purpose of firewood, the trees, shrubs, or bushes growing there, by means of which practice the sands are loosened and exposed, and are carried by the wind to, and deposited upon, the said road, to the serious detriment, if not total destruction of certain parts thereof: And whereas no efforts made or to be made by the Central Board of Commissioners of Public Roads to bind and fix those portions of the said flats or downs from which the sands are carried by causing them to be planted with trees, shrubs, bushes, or other vegetable productions, have been or can be of any avail, so long as the mischievous and illegal practice aforesaid shall be permitted to continue; And whereas in order as much as may be to suppress the said practice and protect the road aforesaid, it is expedient to amend the law relative to the removal of trees, shrubs, and bushes from the said flats or downs. 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 third and fourth sections of Ordinance No. 5, 1836, entitled "Ordinance for defining the limits of and securing from injury the Cape Flats and Downs," shall be repealed, and the same are hereby repealed accordingly.

Repeal of part of former law.

Penalties on destroying trees, shrubs, &c.

2. And be it enacted that if any person (except persons travelling as hereafter is excepted) shall cut, root up, burn, break, destroy, or carry away any tree, shrub, or bush growing upon any part of the crown lands situate within the Cape downs or flats, or shall engage or employ any other person so to do (whether such last-mentioned person shall actually do so or not); or shall take upon himself to sell or dispose of or authorize to be carried away any such tree, shrub, or bush, such person shall upon a first conviction for the said offence forfeit any sum not exceeding five pounds; and upon non-payment thereof shall be imprisoned for any term not exceeding one month; and upon a second conviction for the said offence shall forfeit any sum not exceeding ten pounds and not less than five pounds; and upon non-payment thereof shall be imprisoned for any term not exceeding three months and not less than one month; and upon a third or any subsequent conviction for the said offence shall forfeit any sum not exceeding twenty pounds and not less than ten pounds, and upon non-payment

Second and subsequent convictions.

thereof shall be imprisoned for any term not exceeding six months and not less than three months. Provided always, that every such imprisonment as aforesaid shall be with hard labour unless the Magistrate committing shall otherwise award. And provided also, that every person travelling through or over the flats or downs aforesaid shall be at liberty without incurring any of the penalties or forfeitures aforesaid to cut down and collect such trees, shrubs, or bushes as shall be needed for the purpose of any fire which such person shall require or desire to kindle or keep at any outspan-place within the said flats or downs, such person doing no unnecessary damage in the cutting or collection of the same.

Ord. 28—1846.  
Exemption of travellers.

3. And be it enacted that every person being the owner, lessee, or other occupant of any land being private property situate wholly or in part within the said flats or downs who shall deliver to or permit to be carried away upon any wagon, cart, or other carriage any trees, shrubs, or bushes which shall have grown upon such private property, shall grant and deliver to the person in charge of such wagon, cart, or other carriage, a certificate or note in writing signed by such owner, lessee, or other occupant certifying in substance that the trees, shrubs, or bushes carried in or upon such wagon, cart, or other carriage have been obtained from the person signing the same; and every owner, lessee, or occupant who shall neglect to give such certificate or note in writing to the person in charge of every wagon, cart, or other carriage carrying away with his knowledge and consent any such trees, shrubs, or bushes as aforesaid, shall for every such neglect forfeit any sum not exceeding twenty shillings.

Certificates by owners of private property in flats to persons carrying away trees, shrubs, &c.

Penalty on neglect of such certificates.

4. And be it enacted that no person being the owner, lessee or other occupant of any land being private property situate wholly or in part within the said flats or downs and lying to the westward of an invisible line supposed to be drawn from the beach of Table Bay at the point where a line drawn due west from Duiker Vallei would touch the said beach to the said Duiker Vallei, thence to the seventh milestone on the hard road across the flats, thence to Jackal's Vallei, thence to the house commonly called Mannenberg's, thence to the Vaderlandsche Riet Vallei, thence to the northern end of Zeekoe Vallei, thence to the southern end of Zeekoe Vallei, and thence in a straight line due south to the beach of False Bay, shall deliver or permit to be carried away in or upon any wagon, cart, or other carriage, any trees, shrubs, or bushes having grown upon such private property without having previously obtained a licence in writing from the Civil Commissioner of the Cape division or officer acting as such, authorizing him to remove the trees, shrubs, or bushes growing upon such private property. And any such owner, lessee or occupant as is in this section mentioned, who shall without having obtained such licence permit any trees, shrubs, or bushes to be carried away in or upon any wagon, cart

Licences by civil commissioner to owners of certain portions of flats to carry away trees, &c., on their property.

Penalty on so carrying away without licence.

Ord. 28—1846.

or other carriage, shall for every such offence forfeit any sum not exceeding forty shillings and not less than one pound; and upon non-payment thereof shall be imprisoned for any term not exceeding one month.

Conditions of licence.

5. And be it enacted that the Civil Commissioner aforesaid shall upon the application of any such owner, lessee, or other occupant as is in the last preceding section mentioned, grant such licence as aforesaid as often as such Civil Commissioner shall be satisfied by inspection or otherwise that there are growing upon the private property in question trees, shrubs, or bushes which might be removed without thereby loosening or exposing sands in such a manner as to occasion the drifting of the same. And every such licence shall be revocable by such Civil Commissioner, and shall be by him revoked whenever it shall appear that the said private property and the trees, shrubs, or other bushes thereupon are in such a condition that the further removal of the latter would produce injurious consequences. Provided always, that every such licence may be framed in such a manner as to authorize the removal of such trees, shrubs, or bushes as aforesaid from a part or parts only of any private property instead of the entire. And provided also, that when and as often as any owner, lessee, or other occupant applying for such a licence as aforesaid shall be wholly refused the same or shall be allowed a licence covering a part or parts only of his property, it shall and may be lawful for such owner, lessee, or other occupant to require compensation from the Central Board of Commissioners of Public Roads for any losses which he may allege himself to have sustained, and thereupon such proceedings shall be had as if such claim were a claim for compensation preferred under and by virtue of the tenth section of Ordinance No. 8, 1843, (1) entitled an "Ordinance for improving the Public Roads of this Colony."

Compensation on refusal of licence.

Evidence of contravention of second section.

6. And be it enacted that when and as often as any wagon, cart or other carriage shall be found within or upon any part of the said flats or downs (not being private property) or upon the said hard road or any other road or place to which the said wagon, cart, or other carriage shall have come from any place eastward of the Salt River having in or upon such wagon, cart or other carriage, trees, shrubs or bushes of a species or description commonly found growing on the said flats or downs, it shall and may be lawful for any person finding the same to require the person in charge thereof to produce and show such a certificate or note in writing as aforesaid; and his refusal or neglect so to do shall be deemed and taken for the purpose of the penalties by this Ordinance provided to be conclusive evidence that the said trees, shrubs, or bushes were carried away by the person so neglecting or refusing, from crown land as in the second section of this Ordinance mentioned, and thereupon such person may lawfully be

<sup>1</sup> Repealed by Act 9, 1858.

required, and if he shall refuse may, if necessary, be forcibly compelled to proceed forthwith to the nearest Resident Magistrate or Road Magistrate, there to be dealt with according to law in the exercise of the jurisdiction hereinafter conferred. Provided always, that if it shall be proved to the satisfaction of such Resident Magistrate or Road Magistrate that the certificate or note in writing by law required was really given and received, and afterwards lost or mislaid, the person accused shall be acquitted, or if he shall have paid any fine imposed upon him previous to such proof being given, shall have the same returned to him, or if in prison by reason of default made in the payment of any such fine shall be forthwith discharged by an order under the hand of the committing magistrate.

Ord. 28—1846.

7. And be it enacted that the Court of the Resident Magistrate of Cape Town and the district thereof, and the Cape District, and the Court of the Resident Magistrate of the district of Wynberg, and the Court of the Judge and Superintendent of Police of Cape Town, shall respectively have jurisdiction to inquire into and determine all cases and questions of fines, forfeitures, or penalties by this Ordinance provided.

Jurisdiction in all cases under the ordinance.

8. And be it enacted that every Road Magistrate resident within the division of the Cape shall have jurisdiction in regard to every offence in the second section of this Ordinance mentioned, whenever any wagon, cart, or other carriage shall be brought before him under and by virtue of the sixth section of this Ordinance, and shall in regard to the prosecution of any such offence proceed in manner and form as by law would have been fit and proper had such wagon, cart, or other carriage been brought before him under and by virtue of the twentieth section of Ordinance No. 9, 1846, entitled "Ordinance for the better preservation of the Public Roads and the prevention of Accidents thereon," charged with having contravened any of the provisions of the third section of the said last-mentioned Ordinance.

Jurisdiction as to offences under second section.

9. And be it enacted that if any person shall forge or alter any such certificate or note in writing as aforesaid, or if any person in charge of any wagon, cart, or other carriage shall knowingly produce and show as genuine, any forged or altered certificate or note in writing as aforesaid, or any paper purporting to be such a certificate or note in writing as aforesaid, which shall not bear and shall by the person producing and showing the same be known not to bear the signature of any person by the provisions of this Ordinance authorized and entitled to grant such a certificate or note in writing, or if any person so authorized and entitled as last aforesaid, shall knowingly put or affix any wrong date to any such certificate or note in writing as aforesaid, or if any such last-mentioned person shall deliver to any other person any such certificate or note in writing, save only for the use and protection of some wagon, cart, or other carriage then actually loaded with or

Penalty on forging certificate.



No. 3—1869.

loading, or about to load the trees, shrubs, or bushes referred to in and intended to be protected by such certificate, such person so offending shall upon conviction of any such offence be liable to forfeit any sum not exceeding twenty pounds, and upon non-payment thereof shall be imprisoned for any term not exceeding six months.

Time of taking effect.

10. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 3—1869.]

[Oct. 18, 1869.

## ACT

## For regulating the Execution of Capital Punishment.

Preamble.

WHEREAS it is desirable that, whenever circumstances will admit of it, capital punishment should in this Colony be carried into effect within the gaols: 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 direct sentence of death to be carried out within walls of gaol.

1. In any and in every case in which, after the passing of this Act, any prisoner shall be sentenced to death, it shall be lawful for the Governor, if he shall be satisfied that fitting arrangements for the same can be made within the gaol in which such prisoner shall for the time being be confined, to order, by warrant under his hand, that the sentence of death shall be carried into effect within the walls of such gaol.

Who required to be present at such execution.

2. The High Sheriff or Deputy Sheriff charged with the execution, and the surgeon, gaoler, and such other officers of such gaol as the High Sheriff or Deputy Sheriff may require, shall be present at such execution, and any Justice of the Peace for the division in which such gaol may be situated, and any minister of religion residing therein, and such relatives of the prisoner or other persons as the High Sheriff or the Deputy Sheriff may deem proper, may be admitted within such gaol, for the purpose of being present at such execution.

And who may be admitted to witness execution.

Surgeon to certify death, and, declaration to be signed by all persons present at execution.

3. As soon as may be after judgment of death has been executed on the offender, the surgeon of the gaol shall examine the body, and shall ascertain the fact of death, and shall sign a certificate thereof, and deliver the same to the High Sheriff or Deputy Sheriff; and all other persons who shall be present under the provisions of the preceding section, together with the High Sheriff or Deputy Sheriff, shall sign a declaration to the effect that judgment of death has been executed on the offender, and such certificate and declaration shall be forthwith transmitted to the Colonial Secretary, to be filed of record in his office.

4. The Governor may from time to time make such rules and regulations as to him may appear expedient, for the purpose of guarding against any abuse in such execution, and of giving greater solemnity to the same, and of making known without the walls of the gaol the fact that such execution is taking place.

No. 18—1882.  
Governor may make rules to be observed on execution of judgment of death.

5. The omission to comply with any provision of this Act shall not make the execution of judgment of death illegal in any case where such execution would otherwise have been legal.

Saving clause as to legality of execution.

No. 18—1882.]

[June 22, 1882.]

### ACT

#### To Provide for the Management of the Reserved Commonage of Carnarvon.

WHEREAS on the 16th November, 1860, two grants of land were made by the Governor of the Colony, one granting the then present and future proprietors of erven in the village of Harmsfontein, now called Carnarvon, certain commonage known as the inner commonage of Carnarvon; and the second granting to the Schietfontein and Praamberg Kafir proprietors of certain erven in the said village of Harmsfontein certain other commonage, known as the outer or reserved commonage of Schietfontein: and whereas the management of the inner commonage is duly provided for by municipal regulations approved of by the Governor, but no legal provision exists for the management of the outer or reserved commonage: and whereas it is desirable to provide for the good management of such commonage: 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 Act No. 17 of 1880, entitled an "Act to Provide for the Management of the Outer or Reserved Commonage of Schietfontein," is hereby repealed.

Repeal of Act 17 of 1880.

2. The proprietors for the time being of such of the erven in the village of Harmsfontein, now called Carnarvon, as are entitled to grazing rights over the said land known as the outer or reserved commonage, shall be entitled to elect from amongst themselves a Committee of Management for the purpose of regulating and controlling the use of the said commonage.

Who to elect a Committee of Management.

3. The said committee shall consist of five persons, who shall be styled the "Committee of Management of the Carnarvon Outer Commonage," and three of such persons shall form a quorum.

Name of Committee.

4. Every proprietor of one or more erven having such rights as are in the second section mentioned, shall be eligible to be elected

Who eligible to be member of Committee.

- No. 18—1882. a member of the said committee, and qualified to hold office as such so long as he shall continue to be such proprietor.
- Qualification of electors. 5. Every such proprietor shall be qualified to vote at elections for members of the Committee of Management, and in respect of all matters affecting the rights of proprietors which shall be submitted to the decision of any meeting of proprietors duly convened for that purpose.
- Proportion of votes. 6. Every such proprietor shall be entitled to one vote in respect of every erf or lot held by him, not exceeding three, and if two or more persons shall be joint proprietors of any erf or lot, 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 or lot.
- When election to take place. 7. The election of the first Committee of Management shall take place within three months after the taking effect of this Act, at such time and place as may be appointed for that purpose by the Resident Magistrate of Carnarvon.
- Term of office. 8. The members of the Committee of Management shall hold office for a period of three years from the date of their election, and shall then be succeeded by members, who shall be elected and continue in office for a like period, and so on, at the expiration of every successive period of three years: Provided that every retiring member shall be eligible to be re-elected if he shall then be qualified to be elected.
- “Villages Management Act, 1881,” incorporated. 9. Except as to the qualification of voters and as is otherwise in this Act specially provided, the provisions of the “Villages Management Act, 1881,” are hereby incorporated, and shall, *mutatis mutandis*, extend and apply to the said outer commonage: and the said Committee of Management shall have and exercise all the powers by the said Act conferred upon a Board of Management erected under its provisions.
- Further regulations authorized. 10. In addition to the purposes for which regulations may be made under the provisions of the nineteenth section of the said “Villages Management Act, 1881,” it shall be lawful for the said Committee of Management, subject to the provisions of the said Act, to frame regulations for all or any of the purposes following:—
- (1). For the levying and collection of water rates.
  - (2). For improving and collecting grazing dues to be paid by the proprietors of erven and others, in respect of stock depastured upon the said commonage.
  - (3). For regulating the use of and providing for the letting of such portion of common lands as is capable of being brought under irrigation and cultivation.
  - (4). For defining such parts of the common lands as may be necessary to be allotted to erfholders for building purposes, and for providing for the terms and conditions upon which such allotment may take place subject to the consent of a majority of erfholders present at any meeting of

erholders duly convened for the purpose of considering the propriety of such allotment.

No. 14—1870.

(5). For carrying out all or any of the conditions contained in or endorsed upon the grants or title deeds of the erven or lots of ground in Harmsfontein, so far as the said conditions relate to the said outer commonage.

(6). Generally for the control and management of the said commonage, and the preservation and regulation of the rights of the proprietors of erven entitled thereto.

11. The provisions of the ninth section of the "Vagrancy Act, 1879," shall extend and apply to the said reserved commonage, in respect of any squatters found trespassing thereon.

Squatters on commonage: Vagrancy Act to apply to.

12. This Act may be cited as the "Carnarvon Reserved Commonage Act, 1882."

Short title.

## CATTLE REMOVAL.

No. 14—1870.]

[May 5, 1870.

### ACT

To Regulate the Removal of Cattle <sup>(1)</sup> within the Colony.

WHEREAS in consequence of the frequency of stock thefts in certain of the divisions of the Colony, it is necessary that means should be devised for regulating the removal of stock from place to place, with the object of rendering the removal of stolen animals more difficult and the detection of offenders more easy: 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. This Act shall apply to such divisions of this Colony as shall be proclaimed in manner hereinafter mentioned, and no other.

Divisions to which Act shall apply.

2. It shall be the duty of every person desiring the removal of stock from any place to any other place distant therefrom more than ten miles, to procure a certificate, signed by any Resident Magistrate, Justice of the Peace, Field-cornet, or Landholder, stating the date upon which the same is granted, the name of the owner, and the number and description of the stock to be removed, the name of the place from which the same is being removed, and of the place to which it is being sent; and also the name or names of the driver or drivers thereof.

Certificate for removal of stock beyond ten miles to be obtained.

3. It shall be the duty of any landholder to grant, free of charge, such certificate as aforesaid, written in such language, whether English, Dutch, or native, as such landholder may be able to

Duty of landholder to grant certificate for removal of stock from his land.

<sup>1</sup> The term Cattle, Stock or Animals in this Act to include Domesticated Ostriches, see Act 12, 1885.

No. 14—1870.

How, if landholder  
refuses.

write intelligibly, to any person who, being in the lawful possession of any stock, desires to remove the same from land occupied by such landholder; and the refusal by the master of any servant or apprentice to grant, in regard to any stock of such servant or apprentice lawfully running or being upon the land of the said master, such a certificate as is in this Act mentioned, shall be deemed and taken to be, for the purpose of the twenty-first (<sup>1</sup>) section of chapter 5 of the Act No. 15, 1856, commonly called the Masters and Servants Act, a refusal by such master to deliver such stock or to permit the same to be taken away; and the provisions of the said twenty-first section shall apply to such case as fully as if the same were herein again set forth.

Who required to  
grant certificates.

4. It shall be the duty of any Magistrate, Justice of the Peace, Field-cornet, or Landholder, to whom application is made for such certificate as aforesaid, to grant a certificate, written in such language, whether English, Dutch, or native, as the person applied to may be able to write intelligibly, to the person applying for the same: Provided that the Magistrate, Justice of the Peace, Field-cornet, or landholder to whom application is made shall be satisfied that the stock for the removal of which the certificate is required are the property or in the lawful possession of the person about to remove the same.

Persons driving  
stock may be re-  
quired to produce  
certificate.

5. It shall be lawful for any Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or Landholder, who shall find any person driving stock, to call upon such person to produce such certificate as aforesaid, and if such person shall fail to produce such certificate, or if the stock being removed shall not correspond in all material respects with the certificate produced, or if the direction in which such person is proceeding with the stock shall not correspond with the direction indicated in such certificate, or if the name of the person driving the stock shall not correspond with that in the certificate, then such Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or Landholder, if he shall be able to read such certificate, and if he shall know that such stock have been removed ten miles or more from the place from which the same were removed, may take possession of such stock and cause the same to be conveyed to the nearest pound, there to remain until liberated by order of the Resident Magistrate, or otherwise disposed of as hereinafter provided.

On failure to pro-  
duce, &c., stock may  
be seized and im-  
pounded.Particulars, &c., of  
stock impounded to  
be advertised by  
poundmaster.

6. The person causing any stock to be impounded as aforesaid shall communicate to the poundmaster the circumstances under which the same were seized, and the poundmaster shall forthwith notify, by advertisement to be published or made known in the manner in which the pound notices for such district are published or made known, the number and description of the stock, and such information regarding the same as the person impounding the stock shall have communicated to him.

<sup>1</sup> This Section is repealed by § 21, Act 18, 1873, but see § 15 of latter Act,

7. Any person claiming stock so impounded as his property, or lawfully in his possession, may apply to the Resident Magistrate or any Justice of the Peace of the district for an order for the liberation thereof, and such Magistrate or Justice of the Peace shall inquire into the case, and if satisfied that such stock is the property of the claimant, or was lawfully in his possession, then such Magistrate or Justice of the Peace shall give an order, in writing, directing the poundmaster of the pound in which such stock shall be impounded to deliver the same to the claimant upon payment of the pound fees and charges; and the poundmaster shall, at the time of the delivery of the stock, grant a certificate for the protection of such stock until the arrival thereof at the place to which it is intended to remove the same.

No. 14—1870.

Person claiming impounded stock, may apply to magistrate, and proceedings thereupon.

Poundmaster to grant certificate for stock released.

8. Should the person claiming any stock so seized and impounded as aforesaid fail to show to the satisfaction of such Magistrate or Justice of the Peace that the stock claimed is his property, or was lawfully in his possession, or should the stock be unclaimed for a period of one month after notice given by such poundmaster as aforesaid, then the same shall be dealt with in all respects as if such stock was impounded under the provisions of the Ordinance No. 16, 1847, entitled "Ordinance for the better regulation of Pounds and prevention of Trespasses," as the same Ordinance is, or may hereafter be, altered or amended by any Act or Acts of Parliament; and the proceeds of sale of any such stock shall be paid into the public treasury.

Ordinance No. 16 1847 to apply to stock not released.

9. If any person found driving stock shall, upon being thereto required, produce to the person requiring the same a certificate under the provisions of this Act, or if the stock so driven shall not have been removed ten miles, and notwithstanding the stock found with such person shall be conveyed to the pound upon the allegation that the certificate produced is not proper and sufficient, or that such stock have been removed ten miles or more, then the owner of the stock shall be entitled to recover compensation from such person for any damage which he shall have sustained by reason of the impounding of such stock, including all pound fees payable or already paid.

Owner entitled to compensation for stock wrongfully impounded.

10. Any person who shall wilfully and maliciously, and without probable cause, wrongfully impound any stock under colour of the provisions of this Act, shall be deemed guilty of a crime, and shall upon conviction be liable to be imprisoned, with or without hard labour, and with or without spare diet, for any term not exceeding three months, or, if the Court shall see fit, to pay a fine not exceeding in amount ten pounds sterling, and further to pay to the owner of such stock such amount to cover expenses and damages as the Magistrate before whom the case is brought shall award, and as shall not have been awarded under the ninth section of this Act.

Penalty on wilful or malicious impounding of stock.

11. Any person who shall by force or violence, or by threatening to use force or violence, prevent or attempt to prevent any

Penalty on forcible interference with stock proceeding to

No. 14—1870. **Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or Landholder from conveying to the pound any stock which he shall have a right under this Act to convey to the pound, or who shall rescue, or attempt to rescue, such stock against the will of the person in charge thereof, after the same shall have been impounded with any poundmaster, shall, upon conviction, be fined any sum not exceeding ten pounds, and shall, in default of payment, be imprisoned, with or without hard labour, for any term not exceeding two months.**

**Penalty on false certificate.** 12. Any person who shall knowingly grant any such certificate as aforesaid which shall contain any wilfully false statement or description in respect of any matter material to be stated or described therein, or who shall fraudulently alter any such certificate as aforesaid, shall upon conviction be imprisoned, with or without hard labour, for a period not exceeding six months.

**Definition of word "stock."** 13. The word "stock" in this Act shall mean any horse, gelding, mare, colt, filly, mule, or ass, or any bull, ox, cow, heifer, or calf, or any sheep or goat: Provided that stock under saddle, or pack-saddle, cattle employed in drawing any vehicle, whether inspanned or outspanned, or stock in the possession of the police shall not be deemed to be stock within the meaning of this Act.

**Governor may proclaim Act to be in force, and may suspend its operation.** 14. It shall be lawful for the Governor, at the request of the Divisional Council of any division, from time to time to put this Act in force in such division by proclamation published in the *Government Gazette*; and upon the like request, and in like manner, or when to the Governor it shall seem expedient, to suspend the operation of the Act for such time as the Governor may deem necessary: Provided that certificates for the removal of stock granted by Resident Magistrates, Justices of the Peace, Field-cornets, or Landholders in places where this Act shall not be in operation shall be good, valid, and effectual in any division in which this Act shall be in force; and as often as this Act shall be in force in any division of the Colony, then the third and fourth sections of this Act shall be in force throughout the entire Colony.

**Certificates granted in places not under operation of Act, valid.**

**Sections 3 and 4 to apply to whole Colony.**

**Powers of seizing stock suspected to have been stolen not affected.**

15. No certificate which shall be issued under the provisions of this Act shall be construed to prevent any Magistrate, Justice of the Peace, Police Officer, or Constable from seizing or detaining any stock which he may have reasonable ground for supposing to have been stolen; but every such Magistrate, Justice of the Peace, Police Officer, and Constable shall possess such and the same powers in respect to the seizure and detention of such stock as he possessed before the passing of this Act.

**Short title.**

16. This Act may be cited for all purposes as "The Cattle Removal Act, 1870."

CATTLE THEFTS.

<p>1. Act 16—1864, (Cattle Thefts Repres- sion). 2. „ 21—1876, § 6 ( do ). 3. „ 17—1867, ( do ). 4. „ 17—1874, § 1 ( do ). 5. „ 18—1879, ( do ). 6. „ 32—1883, (Ostrich Feathers and Skins).</p>	<p>7. Act 13—1885, (Ostrich Feathers, Skins, Wool &amp; Mohair). 8. „ 13—1886, §§ 4 and 5 ( do ). 9. „ 19—1884, (Wool, Mohair and Slaughtered Carcasses). 10. „ 12—1885, (Domesticated Os- triches, included under Cattle, &amp;c.)</p>
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No. 16—1864.]

[July 26, 1864.

ACT

For the Better Repression of Thefts of Sheep and Cattle. (1)

WHEREAS the crimes of cattle-stealing and sheep-stealing have for some time prevailed extensively in various parts of this Colony, to the great loss and damage of the inhabitants: And whereas it is expedient to make better provision for the punishment of persons convicted of the said crimes, as also for enabling the owners of the stolen animals to recover from such thieves as may be able to make good the same the value of such animals: 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. [§§ 1—3 repealed by Act 17—1867.]

4. (2) As often as any person shall be committed for trial by any Resident Magistrate upon the charge of stealing any horse, mule, ass, head of horned cattle, sheep, or goat, it shall be lawful for the said Magistrate, at, or as soon as may be after, the time of such committal, upon the request of the owner of the animal or animals stolen, or of any person authorized, in writing, by such owner, to inquire summarily and without pleadings, but in the presence of the person accused, into the value of the animal or animals for the theft of which the accused person shall have been so committed; and such Magistrate, upon proof made to his satisfaction of the value of such animal or animals and of any damages which the said owner shall have sustained by the loss of such animal or animals, or by the cost of a search for, or other endeavour to recover the same, shall give judgment in favour of such owner and against the accused, for such value as aforesaid, together with such damages, if any, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted: Provided, that no Resident Magistrate shall give any such

Value of stolen animal and damages may be recovered from accused person after committal.

But the proof to be such as would entitle the owner to a judgment in a civil action.

<sup>1</sup> The terms Cattle, Animal or Stock in this Act to include Domesticated Ostriches, see Act 12, 1885.

<sup>2</sup> See Acts 9, 1867, § 2, and 21, 1876, § 6. (Criminal Procedure).



No. 16—1864.

Exception where animal is recovered.

Judgment not to exceed £40.

No execution to issue where sufficient security is tendered by accused person.

Nor unless owner give security to refund, if so required.

In case of acquittal where security shall have been given, judgment to be void.

Right of civil action reserved to owner.

In case of acquittal after execution has issued, judgment may be summarily given for amount levied under such execution and damages.

Where necessary, further proof as to value of stolen animal than is shown in the preparatory ex-

judgment as aforesaid in any case except one in which the proof of the guilt of the accused, given in the preparatory examination, shall be such as would, in the opinion of such Magistrate, if given in a civil action founded upon the same theft, require such Magistrate to give judgment in favour of the owner and against the accused: And provided that nothing in this section, or in this Act, relating to any such judgment as in this Act mentioned, shall extend to any case in which the animal or animals stolen shall, before the committal for trial, have been recovered by the owner: Provided, also, that no Resident Magistrate shall give any such judgment for any sum exceeding forty pounds sterling.

5. No such judgment as aforesaid shall be put in execution if the accused person will give security, to the satisfaction of the said Magistrate, to pay the amount thereof, should he be afterwards convicted, in due form of law, of the theft of the animal or animals which he is charged with stealing. Nor shall any such judgment be put into execution unless and until the owner of the said animal or animals shall give security, to the satisfaction of the Magistrate, to refund, in case he shall, by law, be required so to do, any sum of money which shall be levied under or upon such judgment, and to make good such damages, if any, as the accused person shall have sustained by the execution of such judgment.

6. If any accused person who shall have given such security as in the last preceding section mentioned, shall ultimately be acquitted of the theft in regard to which he was committed, then the judgment aforesaid shall be null and void: Provided, however, that nothing in this Act contained shall deprive the owner of the animal or animals aforesaid of any right of civil action which he may, by law, be entitled to have or maintain, notwithstanding such acquittal, against the person so acquitted.

7. As often as any such judgment, as aforesaid, shall have been put into execution, and the person against whom such judgment was given shall ultimately be acquitted, then the Court by or before which such person shall have been tried shall, upon application of, or on behalf of, such person, give judgment, summarily and without pleadings, for such sum as shall have been levied under such execution, and such damages, if any, as aforesaid, unless it shall be found by such Court upon considering the evidence in the criminal case and any other evidence which may be given by the owner aforesaid and the person acquitted, or either of them, that, upon grounds of law, applicable to the decision of civil actions, the said owner was and is rightfully entitled to have and retain such judgment as aforesaid against the person acquitted, notwithstanding such acquittal.

8. In case the value of any animal or animals charged to have been stolen, and the amount of such damages as aforesaid, shall not sufficiently appear upon the depositions taken on the preparatory

examination, and further proof of such value or such damages shall be tendered on the part either of the owner or of the accused, such further proof shall be taken down in writing, and shall by such Magistrate be preserved.

9. As often as any charge of theft, in regard to which any such judgment as aforesaid shall have been given by any Resident Magistrate, shall be tried in the Supreme or any Circuit Court, it shall be the duty of the Resident Magistrate who gave such judgment to deliver, or cause to be delivered to the registrar of such Court, a copy of such further proof, if any, of value and damages as such Magistrate shall have taken, over and above the preparatory examination, together with a statement of the date and amount of the said judgment, as also a statement of the amount, if any, levied thereupon, and the said registrar shall before, during, or immediately after the trial, lay the same before the presiding judge for his inspection.

10. In case any such owner as aforesaid shall not have obtained from the committing Magistrate any such judgment as aforesaid, and the prisoner committed for trial shall be afterwards convicted, before the Supreme or any Circuit Court, then the judge before whom such conviction shall have taken place may, upon the like request as that in the fourth section of this Act mentioned, but in the presence of the prisoner, inquire summarily, and without pleadings, into the value and damages therein referred to, and give judgment for the same, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted.

11. Should any case in which any such judgment as aforesaid shall have been given by any Resident Magistrate be afterwards remitted to the Court of such Resident Magistrate, under the Act No. 12 of 1860, such Magistrate shall, in forwarding the record of the proceedings in such case to the Registrar of the Supreme Court, to be laid before a judge in chamber for his consideration, forward with such record the same particulars regarding such judgment as such Magistrate is, under and by virtue of the ninth section of this Act, enjoined to deliver, or cause to be delivered, in cases in which the person accused is tried in the Supreme or any Circuit Court.

12. If, in any case, the Attorney-General, upon considering the preparatory examination, shall decline to prosecute any person against whom any such judgment as aforesaid shall have been given, then, unless the owner in whose favour such judgment was given shall undertake to prosecute, as a private prosecutor, the person accused, and give security to the satisfaction of the Magistrate that he will carry on such prosecution, the judgment aforesaid shall become and be null and void, and the Resident Magistrate shall give judgment summarily and without pleadings for such sum, if any, as shall have been levied in execution of the

No. 16—1864.

amination may be admitted.

Registrar of Supreme Court to be furnished with copy of such further proof, together with particulars of magistrate's judgment and the proceedings thereon.

Where magistrate has given no judgment for value of stolen animal, such judgment may be obtained from the judge after conviction.

Where case is remitted to magistrate for trial, the particulars as to judgment for value of stolen animal is to accompany his record of proceedings.

Judgment given for value of stolen property to become void where Attorney-General declines to prosecute unless security for private prosecution is given.

No. 16—1864.  
But not to bar civil  
action.

said judgment, together with such damages, if any, as are in the fourth section of this Act described: Provided that the avoidance of the judgment aforesaid against the person accused, and the giving of judgment as aforesaid against the owner aforesaid, shall not prevent such owner from having and maintaining a civil action against such accused person, precisely as if neither of the said two judgments had been given.

Powers conferred  
on magistrates by  
section 42 of Act No.  
20 of 1856, to try  
cases of cattle thefts,  
restricted.

13. Except as hereinafter is excepted, no Resident Magistrate shall, after the taking effect of this Act, try, under his ordinary jurisdiction, <sup>(1)</sup> as conferred by the forty-second section of the Magistrates' Courts Act, No. 20, 1856, any case in which any person shall be accused of the theft of any horse, mule, ass, head of horned cattle, sheep, or goat: Provided that as often as it shall be made manifest to such Magistrate that the delay consequent upon taking a preparatory examination for the purpose of a trial in the Supreme or Circuit Court, would, by reason of the inevitable, or probably inevitable, absence of necessary witnesses at such future trial, or any other clearly sufficient cause, be obviously calculated to frustrate the ends of justice, such Magistrate shall, with the consent of the owner of the animal or animals stolen, try the alleged offender under the ordinary jurisdiction of such Magistrate, reporting to the Attorney-General, in case of a conviction, the nature of the case and the sentence pronounced: Provided, further, that such Magistrate shall, in case of a conviction in any such case so tried by him under his ordinary jurisdiction, be competent to give judgment as hereinbefore in the fourth section of this Act mentioned, by like manner precisely as if the person so convicted had been committed for trial.

Where delay is  
calculated to defeat  
the ends of justice,  
magistrate may pro-  
ceed with trial.

On conviction by  
magistrate, section  
No. 4, as regards re-  
covery of value of  
stolen property, to  
apply.

Particulars of  
judgment for value  
or damages to accom-  
pany record of pro-  
ceedings forwarded  
to registrar of Su-  
preme Court.

14. As often as any Resident Magistrate shall in, under, and by virtue of the forty-seventh section of the Act No. 20, 1856, forward to the Registrar of the Supreme Court the record of the proceedings in any case tried by him under and by virtue of the immediately preceding section, such Magistrate shall forward, with such record, the same particulars regarding any judgment for value or damages which may have been given by such Magistrate against the person convicted, as such particulars are in the ninth section of this Act mentioned or referred to.

Act to apply to re-  
ceivers of stolen  
cattle in like manner  
as to thieves.

15. All and singular the several provisions of the first and every succeeding section of this Act relating to the theft of any horse, mule, ass, head of horned cattle, sheep, or goat, or of any particular number of such animals, shall extend to the crime committed by receiving such animal or animals, knowing it or them to have been stolen, precisely as if, wherever such theft is mentioned or referred to, such crime committed by receiving the animal or animals stolen had been mentioned in place and stead of the theft thereof.

<sup>1</sup> But see Act 17, 1867, § 2.

16. As often as more persons than one shall be committed for trial for any such theft or for any such receiving as are in this Act specified, or one or more persons shall be committed for such a theft, and one or more other persons shall be committed for receiving the same stolen animal or animals, then any such judgment as may be given for value and damages or value without damages, by any magistrate, or judge, against such persons jointly, shall be deemed to be joint and several, and may be executed against the property of any one or more of the persons who shall have been committed for trial: Provided that it shall be lawful to give judgment against any one or more of a number of persons committed for trial, without including in that judgment any of the other persons committed for trial for or in regard to the same animal or animals.

No. 16—1864.  
Value of stolen property recoverable from one or more persons concerned in theft or receipt of stolen goods.

17. Nothing in this Act contained shall be construed so as to oblige any owner of any animal or animals stolen to apply for any such judgment aforesaid, or to deprive him of any right of civil action which he may have against the accused person for or on account of the theft of such animal or animals: Provided, also, that the fact of having obtained from any Resident Magistrate a judgment for the sum of £40, shall not prevent the owner who obtained such judgment from suing in any competent Court for any damages by him sustained over and above the said sum of £40.

Owner not obliged to apply for judgment, but may proceed by civil action.

And whereas, in the several native locations upon the Eastern frontier of this Colony, the principle of holding each kraal or distinct community collectively responsible for the value of stolen cattle traced into such kraal or distinct community has been approved of by the Government of the Colony, and acted upon since the original establishment of such locations, and could not at present be abrogated or interfered with without very serious detriment to the public interest: Be it enacted as follows:

Where damages exceed £40, owner may sue for such excess.

18. No action, suit, or proceeding at law, criminal or civil, shall be capable of being instituted or maintained in any Court of the Colony, by or on behalf of any native resident in any native location in this Colony for or on account of any cattle of such native which shall, by order of the acting superintendent or chief officer of such location, acting in conformity with the regulations and local customs of such location, as sanctioned by the Governor, have been taken and applied to make compensation for stolen cattle traced into the kraal or distinct community to which such native belongs; but, on the contrary, every such taking, whether before or after the taking effect of this Act, shall be deemed and taken to have been lawful.

Principle of holding native kraal responsible for stolen cattle traced to it confirmed.

19. For the purpose of the last preceding section the term "cattle" shall comprise horses, mules, asses, horned cattle, sheep, and goats.

Definition of term "cattle."

20. It shall be lawful for the Governor, by proclamation, from time to time, to specify the native locations to which the provisions

Governor may proclaim the native locations to which the

No. 17—1867. of the two last preceding sections shall apply, and from and after  
 two preceding sec- such proclamation the said sections shall apply to the locations  
 tions shall apply. mentioned therein.

Short title.

21. This Act may be cited for all purposes as "The Cattle Theft Repression Act, 1864."

No. 21—1876.]

[July 4, 1876.

\* \* \* \* \*

Section 4, Act 16 of 1864, to apply to summary convictions of stealing or receiving stolen cattle.

6. (1) 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 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.

\* \* \* \* \*

No. 17—1867.]

[August 16, 1867.

### ACT

To Amend the Criminal Law in regard to Thefts of Stock.

Preamble.

WHEREAS it is expedient and necessary to make other provision than now exists for the more effectual and speedy punishment of persons convicted of cattle, sheep, and goat-stealing, and, to this end, to amend in certain respects Act No. 16, 1864, entitled "Act for the better Repression of Thefts of Sheep and Cattle:" Be it enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. The first, second, and third sections of Act No. 16, 1864, entitled "The Cattle Theft Repression Act, 1864," are hereby repealed; as also any other sections of the said Act, or of any other Act or Ordinance, in so far as the same shall be repugnant to or inconsistent with any of the provisions of this Act.

<sup>1</sup> Printed in full under "Resident Magistrates' Courts."

2. (1) From and after the taking effect of this Act, the Courts of Resident Magistrates shall, respectively have jurisdiction, in all cases in which any person may be accused of the theft, of any cattle, (2) sheep, goat, or goats: Provided that it shall not be lawful, save as is hereinafter excepted, for any such Court to punish any person convicted of any such theft in any higher or other manner than 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 twenty-five, in any case in which no former conviction of the offender for the theft of any cattle, sheep, or goat shall be charged and proved against him, and not exceeding thirty-six lashes in any case in which any such former conviction shall be charged and proved: Provided that no former conviction shall be capable of being charged or proved for the purposes of this Act, except a conviction had and obtained within the space of three years next before the conviction in regard to which sentence shall be about to be pronounced: Provided, also, that no offender sentenced under this Act 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 Act, 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 conformity with such regulations and restrictions, the particular days or times during which the offender shall be subject to spare diet. But nothing herein contained shall be construed to prevent any Court of Resident Magistrate from exercising the powers conferred upon it by the second section of an Act passed during this present Session of Parliament, intituled "An Act to amend the Law relating to the Trial and Punishment of Criminals for Theft and for Receiving Stolen Goods knowing the same to have been stolen."

No. 17—1867.  
Jurisdiction of court of resident magistrate.  
Limitation of punishment.

When former conviction may be charged.

Limitation as to infliction of spare diet.

Restrictions to be observed in infliction of spare diet.

Powers conferred by section 2 of Act 9 of 1867 not affected.

3. In the trial of cases under this Act the Courts of Resident Magistrates shall (except as hereinafter is excepted) proceed in like manner as in criminal cases falling within their ordinary jurisdiction: Provided that in all cases under this Act, the Magistrate shall take down in writing, or cause to be taken down in writing, the evidence in the case, the judgment of the Court, and should such judgment be a judgment of "guilty," the sentence pronounced upon the offender.

Trial to be conducted in ordinary manner, but record to be kept.

<sup>1</sup> Printed as amended by § 4 Act 21, 1876.

<sup>2</sup> See Act 17, 1874, § 1, *infra*.

No. 17—1867.

Plea of guilty and sentence thereupon to be recorded.

4. On the day of the hearing of any case under this Act, the Magistrate shall read over, or cause to be read over, to the accused person the charge or complaint against him, and shall ask him if he pleads "guilty" or "not guilty" to the offence set forth in such charge or complaint; and should such person plead "guilty," his said plea shall be recorded as shall also the sentence pronounced upon the offender.

Sections 43, 47, 48, and 49 of Act No. 20 of 1856 to apply.

5. The provisions of the forty-third, forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20, 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, whether upon a plea of "guilty" or after a plea of "not guilty," and whatever may be the period of imprisonment or the number of lashes to which the offender shall have been sentenced.

Magistrate in certain cases empowered to commence preparatory examination.

6. (1) As often as any charge of the theft of cattle, sheep, or goat shall be brought under the notice of any Resident Magistrate, which charge shall from its nature or magnitude appear to such Magistrate to be unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such Magistrate, instead of proceeding to try the case under this Act, to commence and take a preparatory examination, in like manner precisely as if this Act had not been passed: Provided, however, that if upon such preparatory examination the prisoner shall have voluntarily confessed himself guilty of the crime charged against him, then the provisions of the Act No. 12, 1860, and of the twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth sections of the Criminal Law Amendment Act, 1861, shall extend and apply to such case; Provided, also, that if upon such preparatory examination, the prisoner shall not have so confessed his guilt, but the Attorney-General, upon consideration of the preparatory examination, shall be of opinion that the evidence is such as to require that the prisoner shall be put upon 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 pronounce upon him any sentence to which he might have been subjected under this Act, in case he had been tried under this Act without any preparatory examination having been taken.

Provisions of Act No. 12 of 1860 and of sections 25, 26, 27 and 28 of Criminal Law Amendment Act, 1861, to apply.

Attorney-General may remit case for trial.

Procedure when case is so remitted.

Magistrate may stop trial and turn proceedings into preliminary examination.

7. When, in the course of any trial under this Act in any Court of any Resident Magistrate, it shall appear to the Resident Magistrate, from the facts disclosed by the evidence, that the case is one

<sup>1</sup> Printed as amended by Act 18, 1879, § 1.

which from its nature or magnitude is unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such Court to stop the trial, and to take, or turn proceedings into, a preparatory examination; and thereupon all and singular the provisions of the last preceding section shall apply to such preparatory examination, precisely as if such trial as aforesaid had never been commenced.

No. 17—1867.

8. (1) All and singular the provisions of the second and every succeeding section of this Act relating to the theft of any cattle, sheep, or goat, shall extend to the crime committed by receiving any such animal, knowing it to have been stolen, or by receiving the carcass, or any portion thereof, of any such animal, knowing that such animal had been stolen precisely as if, whenever such theft is mentioned or referred to, the crime of such receiving as aforesaid had been mentioned in place or stead of the theft thereof.

Act to apply to crime of receiving stolen cattle.

9. It shall be lawful for the Attorney-General, upon considering any such preparatory examination as is in the sixth section of this Act mentioned, in reference to which preparatory examination the accused person shall have been committed for trial upon the charge of stealing any animal or animals, to remit the case for trial to the Court of the Resident Magistrate, upon the charge of receiving such animal or animals knowing the same to have been stolen; which charge of "receiving" may be either in addition to, or in substitution for, the charge of "theft;" and, conversely, when any accused person shall have been committed for trial upon the charge of receiving any animal or animals knowing the same to have been stolen, to remit the case upon the charge of stealing the same animal or animals, which charge of "theft" may be either in addition to, or in substitution for, the charge of "receiving;" and upon the remittal of any such case as is in this section mentioned, the Court of Resident Magistrate shall try such accused person upon the charge or charges upon which the case shall have been remitted, precisely as if such accused person had been committed for trial upon such charge or charges.

Power of Attorney-General in remitting cases of theft or receiving stolen goods to prefer both or either of those charges.

10. The word "cattle" (2) in this Act shall be taken to mean any horse, mare, gelding, colt or filly, mule or ass, or any bull, cow, ox, heifer, or calf.

Definition of term "cattle."

11. This Act may be cited for all purposes as "The Cattle Theft Repression Amendment Act, 1867."

Short title.

No. 17—1874.]

[July 30, 1874.

1. All and singular the provisions of the second and every succeeding section of "The Cattle Theft Repression Amend-

Provisions of Act No. 17 of 1867 extended to thefts of skins, &c.

<sup>1</sup> Printed as amended by Act 18, 1879, § 2.

<sup>2</sup> To include domesticated Ostriches, Act 12, 1885.



No. 18—1879.

ment Act, 1867," relating to the theft of any cattle, sheep, or goat, shall extend to the crime of theft of the skin of any such animal, and to the crime of attempting to steal any such animal or the skin thereof, precisely as if whenever such theft is mentioned or referred to in the said Act, the crime of theft of the skin of any such animal, or of attempting to steal any such animal or the skin thereof, had been mentioned in place or stead of the theft of such animal. <sup>(1)</sup>

\* \* \* \* \*

No. 18—1879.]

[Sept. 11, 1879.]

## ACT

To Provide for the better Repression and Punishment of Thefts of Stock. <sup>(2)</sup>

Preamble.

WHEREAS it is desirable to alter and amend, in certain respects, the law relating to the thefts of stock, in order to provide for the better repression and punishment of such thefts: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Alteration of section 6 of Act No. 17 of 1867.

1. The words contained in the first proviso of the sixth section of Act No. 17 of 1867, beginning with the words "save and except," and ending with the words "are hereby substituted," shall be expunged, and the said section and proviso shall henceforth be read precisely as if such words had never been inserted therein.

Also of section 8 of same Act.

2. After the word "stolen," in the eighth section of the said Act, and between such word and the word "precisely" immediately following it, shall be introduced the following words:—"Or by receiving the carcase, or any portion thereof, of any such animal, knowing that such animal had been stolen;" and such section shall henceforth be read precisely as if such last mentioned words had originally been inserted therein, and formed part thereof.

Short title.

3. This Act may be cited as the "Cattle Thefts Extended Punishment Act, 1879."

No. 32—1883.]

[September 27, 1883.]

## ACT

To Provide for the Repression of Thefts of Ostrich Feathers and of Skins.

Preamble.

WHEREAS the Theft of Ostrich Feathers prevails extensively throughout the Colony and is increasing, and whereas the Theft of

<sup>1</sup> See also § 6, Act 32, 1883 and Act 13, 1885, *infra*. For full text of this Act see "Criminal Procedure."

\* To include Domesticated Ostriches, Act 12, 1885.

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:—

No. 32—1883.

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.

Buyers of Ostrich Feathers to be licensed.

2. Every purchaser of ostrich feathers under a licence as in the last preceding section provided, shall keep a book in which he shall forthwith enter, or cause to be entered, as to ostrich feathers purchased by him

To keep special book. Entries therein.

- (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.

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.

Form in Schedule.

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. <sup>(1)</sup>

Penalty for contravening the above.

4. There shall be payable annually the sum of Five Pounds for the licence in the first section of this Act mentioned. <sup>(1)</sup>

Licence £5.

5. If there be reasonable grounds to believe that any person is or has been in unlawful possession of ostrich feathers, it shall be 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, <sup>(2)</sup> 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

Suspected persons may be apprehended without warrant.

Penalty for possession of feathers not properly accounted for.

<sup>1</sup> Printed as amended by Act 13, 1886, § 4, *infra*.

<sup>2</sup> See Act 13, 1886, § 5.

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No. 32—1883.

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.

Persons with hides and skins 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.

Penalty.

Penalty for wrongful, &c., arrest.

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.

Short title.

8. This Act may be cited as the "Ostrich Feathers and Skins Theft Repression Act, 1883."

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.

[ B. ]

No. 13—1885.

*Form of Entry to be kept by Licensed Buyer.*

Register of Ostrich Feathers purchased by.....,  
a Licensed Buyer.

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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.

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:—

Preamble.

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.

Purchase of feathers, skins, or hides between sunset and sunrise prohibited, except at public sales

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.

Penalty for contravention of foregoing section.

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,

Act not to apply to contract of sale where price not less than £100.

174 CATTLE-THEFTS (OSTRICH FEATHERS AND SKINS).

No. 19—1884.

Act to be in force in any division upon proclamation after request of council by vote of three-fourths at special meeting.

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.

Short title.

5. This Act may be cited as the "Ostrich Feathers and Skins Theft Further Repression Act, 1885."

No. 13—1886. (1)]

[June 18, 1886.

\* \* \* \* \*

Section 3 of Act 32 of 1883 amended.

4. The "Ostrich Feathers and Skins Theft Repression Act, 1883," shall be read as if all the words in the third section which follow the words "penalty of not exceeding" were omitted and "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" were inserted; and as if all the words in the fourth section which follow the words "first section of this Act mentioned" were omitted.

Resident Magistrates to have jurisdiction under Acts 32 of 1883 and 13 of 1885.

5. The Resident Magistrate of the district in which any offence against the provisions of "The Ostrich Feathers and Skins Theft Repression Act, 1883," or of "The Ostrich Feathers and Skins Theft Further Repression Act, 1885," is committed, shall have jurisdiction to impose the penalty provided in respect of such offence.

\* \* \* \* \*

No. 19—1884.]

[July 25, 1884.

ACT

To Provide for the Better Repression of Thefts of Wool, Mohair, and Slaughtered Carcasses.

Preamble.

WHEREAS the provisions of the "Ostrich Feathers and Skins Theft Repression Act," being Act No. 32 of 1883, do not extend or apply to theft of wool, mohair, and the slaughtered carcasses of sheep, goats and oxen; and it is desirable that such, or similar,

<sup>1</sup> For Full Text of this Act see under "Criminal Procedure."

provisions should extend to such last mentioned thefts: 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. 19—1884.

1. If there be reasonable grounds for believing that any person is or has been in unlawful possession of any wool, mohair, slaughtered carcasses, or parts of slaughtered carcasses of sheep, goats, or other animals, (<sup>1</sup>) it shall be competent for any Justice of the Peace, Field-cornet, Landholder, or Police Constable to apprehend such person without warrant, and convey him in custody before any Resident Magistrate having jurisdiction, and if it be found that he is or has been in possession of any wool, mohair, slaughtered carcasses or parts of carcasses as aforesaid, and is not able to give a satisfactory account of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft, and shall thereupon be dealt with as if he had originally been charged with such crime.

Suspected person may be apprehended without warrant.

2. If any person is reasonably suspected to be carrying and conveying away in any sack, knapsack, or other covering, any wool, mohair, carcasses, or portions of carcasses of slaughtered sheep, goats, or other animals, it shall be lawful for any Justice of the Peace, Field-cornet, Landholder, or Police Constable to stop such person and examine the contents of such sack, knapsack, or other covering, and in case such person shall, upon such examination, be found to be in possession of any of the articles aforesaid, it shall be lawful for such Justice of the Peace, Field-cornet, Landholder, or Police Constable to apprehend him without warrant and to convey him before any Magistrate having jurisdiction, and in case he shall be unable to give a satisfactory explanation of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft, and shall be thereupon dealt with as if he had been originally charged with such crime.

Sacks, &c., of persons suspected to be conveying Wool, &c. may be searched, and persons apprehended without warrant.

If unable to give explanation to be deemed guilty of theft.

3. 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 arrest.

4. This Act may be cited as the "Wool, Mohair, and Carcasses Theft Repression Act, 1884."

Short title.

<sup>1</sup> To include Domesticated Ostriches, Act 12, 1885.

No. 12—1885.]

[July 31, 1885.

ACT

To Include Domesticated Ostriches within the several meanings of the terms Cattle, Stock, and Animal, employed in certain Acts of Parliament.

Preamble.

WHEREAS it is expedient that domesticated ostriches should be included within the several meanings of certain terms employed in certain Acts 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:—

Domesticated ostrich included under cattle, stock, animal in certain Acts.

1. From and after the passing of this Act, and notwithstanding anything to the contrary contained in the several Acts hereinafter mentioned, the several terms cattle, stock, and animal shall each of them be deemed to denote and include domesticated ostriches wherever any one of the said terms shall be employed in any portion of any one of the following Acts:—Act No. 16 of 1864, Act No. 17 of 1867, Act No. 14 of 1870, Act No. 21 of 1876, Act No. 18 of 1879, and Act No. 19 of 1884.

Short title.

2. This Act may be cited for all purposes as the “Cattle and Stock Definitions Amendment Act, 1885.”

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CIVIL COMMISSIONERS.

1. Ord. 43—1828, (Duties of).  
2. „ 77—1830, ( do ).

3. Ord. 13—1844, Preamble and § 2.  
4. Act 3—1876, § 2.

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No. 43.—Sd. Richard Bourke.

[Feb. 28, 1828.

Ordinance for empowering the Collector of Taxes in Cape Town, and the Civil Commissioners of the Country Districts, to collect the several Taxes and Duties now or hereafter to be imposed, and payable within the Colony.

Preamble.

WHEREAS certain of the taxes now payable in this Colony have been heretofore collected and got in by the landdrosts, landdrosts and commissioned heemraden, deputy landdrosts, deputy landdrosts and commissioned heemraden, residents, and residents and commissioned heemraden, of the several districts, sub-districts, and residencies, respectively; and certain others of the said taxes have heretofore been collected by and got in by the late burgher senate: And whereas the offices of landdrost, deputy landdrost, and resident, have now ceased and determined, and the said burgher

senate has been abolished, whereby the revenue can no longer be collected as heretofore, and it is therefore necessary to make some other provision in that behalf: Be it therefore enacted by His Honour the Lieutenant-Governor in Council that the several taxes and duties heretofore payable to, and levied by, the said burgher senate shall, from and after the passing of this Ordinance, be payable to, and levied by, the collector of taxes in Cape Town; and the several taxes and duties heretofore payable to, and levied by, the landdrosts, deputy landdrosts, and residents of the several districts, sub-districts, and residencies, and all taxes hereafter to be imposed shall, from the time aforesaid, be payable to, and levied by, the said collector and the Civil Commissioners respectively within their respective jurisdictions; and the said collector and Civil Commissioners shall have full right and power to collect all taxes and duties, and arrears thereof, and to sue for and recover the same by any action or suit to be brought by them in any competent Court.

Ord. 77—1830.

Taxes heretofore levied by the Burgher Senate payable to the collector of taxes.

Taxes heretofore levied by landdrost payable to civil commissioners.

2. And be it further enacted that the said collector of taxes and the said Civil Commissioners shall take the following oath before the Chief Justice, or any of the Judges of the Supreme Court, or any Resident Magistrate (who are hereby empowered and required to administer the same), before they act in pursuance of the provisions of this Ordinance:

Collector of taxes and civil commissioners to take oath.

I, A. B., do swear that I will act truly, faithfully, impartially, and honestly, according to the best of my skill and knowledge, in collecting the several taxes which I am empowered to do by an Ordinance marked No. 43, bearing date the 28th day of February, 1828; and that I will act in all matters and things which shall be brought before me in collecting the said taxes, without favour or affection. So help me God!

No. 77.—Sd. G. Lowry Cole.]

[October 13, 1830.]

Ordinance for the better defining and fixing the Duties and Functions of the Civil Commissioners in this Colony.

WHEREAS the office of landdrost was abolished on the 31st day of December, 1827; and whereas certain officers have been appointed to perform, respectively, the duties and functions which were formerly discharged by the landdrosts; and whereas Civil Commissioners have been appointed and instructed to perform divers of the said duties, but no Ordinance has hitherto been made defining the duties so to be performed by the said Civil Commissioners: Be it therefore enacted by His Excellency the Governor in Council, that from and after the passing of this Ordinance, the Civil Commissioners of the districts respectively

Preamble.

N



Ord. 13—1844.  
Civil commissioners  
to perform duties of  
landdrosts.

shall perform all such duties as were formerly performed by the said landdrosts, and which have not by any Ordinance been appointed to be performed by the Resident Magistrates or other officers, respectively; and all matters and things which have been done and performed by the said Civil Commissioners in pursuance of the instructions aforesaid shall be as valid and of the same force and effect as if the same had been done and performed by virtue of this Ordinance.

No. 13.—Sd. P. Maitland.]

[August 28, 1844.

Ordinance for transferring to certain other Officers the Duties of the office of the Collector of Taxes.

Preamble.

Ordinance No. 43  
and Ordinance No. 6,  
1844, repealed, in as  
far as inconsistent.

WHEREAS by reason of the intended abolition of the office of the collector of taxes in Cape Town it has become necessary to provide for the performance after the abolition of the said office of such of the duties heretofore performed by the collector of taxes in Cape Town as shall still remain to be discharged: 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 first day of January, 1845, so much of the Ordinance No. 43, entitled "An Ordinance of His Honour the Lieutenant-Governor in Council for empowering the Collector of Taxes in Cape Town and the Civil Commissioners of the Country Districts to collect the several Taxes and Duties now or hereafter to be imposed and payable within the Colony;" and so much of the Ordinance No. 57, entitled "An Ordinance for repealing certain Taxes and Duties and imposing certain others in lieu thereof;" and so much of the Ordinance No. 6, 1844, entitled "An Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for regulating Sales by Auction;" and so much of any former law or ordinance, if any, as is repugnant to or inconsistent with any of the provisions of this Ordinance, shall be repealed and the same are hereby repealed accordingly.

Substitution of  
Treasurer-General  
for collector of taxes  
in Cape Town.

2. (1) And be it enacted that from and after the said first day or January, 1845, all and singular the several duties and functions (except in the case hereinafter excepted) now imposed upon or exercised by the collector of taxes in Cape Town, shall thenceforth be imposed upon and exercised by the Treasurer-General of this Colony for the time being or the officer for the time being acting as such Treasurer-General, and by no other person, as fully and completely to all intents and purposes as if the said Treasurer-General or officer acting as such had been duly appointed by such style and title to be the collector of taxes in Cape Town; and all

<sup>1</sup> Amended by § 2 Act 3, 1876.

bonds, vouchers, or rights of action which shall upon the said first day of January, 1845, be vested in or recoverable by the said collector of taxes in his capacity as such collector, shall thenceforth vest in and be recoverable by the said Treasurer-General or officer acting as such and by no other person whomsoever: Provided that nothing herein contained shall be construed so as to require the said Treasurer-General or officer for the time being acting as such, to take or use in regard to any matter or thing herein referred to any other or additional style, title, or official designation.

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3. [Sections 3 and 4 repealed by Act 3, 1876.]

No. 3—1876.]

[July 4, 1876.

2. (1) From and after the taking effect of this Act, all and singular the several duties and functions which by the second section of the said Ordinance No. 13 of 1844 were imposed upon and directed to be exercised by the Treasurer-General of this Colony, or the officer for the time being acting as such, shall be imposed upon and exercised by the Civil Commissioner of the Cape Division, and all bonds, vouchers, or rights of action, which shall at the time aforesaid be vested in or recoverable by the said Treasurer-General under and by virtue of the said second section of the said Ordinance shall vest in and be recoverable by the said Civil Commissioner.

Duties and functions imposed on Treasurer-General by section 2, Ordinance 13, 1844, transferred to Civil Commissioner of Cape Division.

No. 42—1885.]

[Feb. 9, 1886.

ACT

To Define and Regulate the Civil Service of the Colony.

WHEREAS it is expedient to define the Civil Service of the Colony, and to provide for the framing of rules regulating admission thereto, leave of absence, the maintenance of discipline, superannuation, security for the efficient discharge of duty, and other matters connected therewith: 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.

CIVIL SERVICE DEFINED.

1. The Civil Service of the Colony shall consist of all persons holding any office mentioned in the Schedule to this Act, excepting persons holding office on probation, and persons below the

Civil Service defined.

<sup>1</sup> This Act is printed in full under "Auction."

No. 42—1885.

rank of third class clerks who shall not have had ten years continuous service, as in the Schedule provided, and of all persons holding offices of like rank which the Governor may from time to time direct to be placed in such Schedule, not being persons holding offices mentioned in the next succeeding section hereof: Provided

- (1) That such persons are not remunerated solely by fees or allowances.
- (2) That their whole time is devoted to the public service, except in the cases of the Solicitor-General, the Crown Prosecutor at Kimberley, the Assistant Law Adviser to the Crown, and any other persons to whom superannuation allowances may be granted under the provisions of the thirty-seventh section hereof.

Who not to be deemed Civil Servants under this Act.

2. Judges of the Supreme Court and their clerks, private secretaries to the Governor or aides-de-camp to the Governor, and officers of either House of Parliament shall not, for the purposes of this Act, be deemed to be in the Civil Service of the Colony.

## ADMISSION.

Admission to Civil service.

3. No person shall be accepted as a candidate for the Civil Service of the Colony

- (1) Unless he is over seventeen and under twenty-five years of age.
- (2) Unless he is free from any physical defect or disease which would be likely to interfere with the proper discharge of his duties.
- (3) Unless he is of good character and free from any legal disability:

Provided that any person who has been employed in the permanent civil service, and whose services have been dispensed with by reason of the reduction of establishments, may be re-employed without reference to the provisions of this Act: Provided further that judge's clerks who shall be such at the date of the taking effect of this Act, shall be eligible as candidates for the Civil Service even if their age shall exceed twenty-five years.

Civil Service Examination.

4. All candidates for admission into the Civil Service of the Colony shall be required to pass an examination (to be styled the Civil Service Examination) in such subjects as the Governor shall from time to time prescribe: Provided that the Governor may, by the regulations to be framed under the eighth section hereof, exempt candidates who are graduates of any university of recognised standing, or undergraduates of the University of the Cape of Good Hope, from the necessity of being examined in any one or more of such subjects.

Official lists of passed candidates to be kept in Colonial Office.

5. Official lists of candidates who have passed the Civil Service Examination shall be kept in the office of the Colonial Secretary, and shall show the percentage of the maximum number of

marks obtained by each candidate in the several subjects of examination. No. 42—1885.

6. As soon as any candidate shall have attained the age of twenty-five years, or shall have been appointed on probation, his name shall be removed from such official lists. On attaining age of 25 or appointment on probation name to be removed from list.

7. The Council of the University of the Cape of Good Hope is required to hold from time to time a Civil Service Law Examination. Civil Service Law Examination.

nation in the following subjects:—

- (1) Elements of Dutch law.
- (2) Elements of English law.
- (3) Selections from colonial statute law, including
  - (a) The law of evidence.
  - (b) Procedure in criminal cases.
  - (c) Procedure in civil cases.

And such Council shall from time to time frame bye-laws and regulations for the conduct of such examinations, and for establishing, in regard to the prescribed subjects, the standards of qualification to be applied to the candidates, and shall appoint the times and places for holding examinations.

8. The Governor shall from time to time appoint the persons by whom the examinations mentioned in the fourth section hereof shall be held, and shall frame rules and regulations for the conduct of such examinations, the times and places for holding them, and for establishing the standards of qualification to be applied to candidates. Governor to frame regulations for examinations.

9. All persons in the Civil Service of the Colony, whether serving on probation or on the fixed establishment, and all persons whose names appear in the official lists of candidates, shall be eligible as candidates for the Civil Service Law Examination. Who eligible for law examination.

10. Lists of candidates who have passed the Civil Service Law Examination shall be kept in the office of the Colonial Secretary, and in these lists shall be included the names of persons in the Civil Service of the Colony who, having passed any existing Law Examination of the University of the Cape of Good Hope, may have requested that their names should be included in such lists. List of those who have passed to be kept.

11. Such lists shall further show the percentage of the maximum number of marks which the persons named therein shall have obtained in the Law Examination or Examinations which they shall have passed. Lists to show numbers of marks.

12. Whenever it becomes necessary to admit a person into the Civil Service, the ministerial head of the department in which the appointment is to be made shall select from the official lists of candidates the person in his opinion best fitted to fill the office, and shall submit the name of such person to the Governor for appointment on probation; provided that the person so selected as aforesaid shall not be placed on the fixed establishment of the Civil Service until he shall have served on probation for a period of at least six months, and until he shall have satisfied the How appointments to be made.

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Six months probation before being placed on fixed establishment.

Cases in which a minister may appoint a person who has not passed Civil Service Examination.

ministerial head of his department of his fitness to be permanently employed in that department, and that his conduct and diligence during probation have been uniformly satisfactory.

13. Whenever the permanent head of a ministerial department, in which it is necessary to fill any office, reports that, for reasons set forth in such report, the qualifications requisite for such office are wholly or in part professional, or otherwise peculiar, and not ordinarily possessed or to be acquired in the Civil Service, or possessed by candidates who have passed the Civil Service Examination, and that the requisite qualifications are not possessed in sufficient degree, by any available person then in the Civil Service of the Colony, it shall be lawful for the Governor, on the recommendation of the ministerial head of the department, to appoint to such office such other person possessed of such qualifications as shall be deemed best fitted to fill the vacancy, and to dispense wholly or partially with the examination prescribed in this Act, and to substitute therefor such other examination as, with reference to the special requirements necessary, he may see fit to prescribe, or entirely to dispense with any examination. The Governor shall, within thirty days after the meeting of Parliament in each year, cause to be laid on the table of both Houses a return of all appointments made under the provisions of this section up to the date of the preparation of such return.

Return of all appointments made under this section to be laid before Parliament.

No magistrate to be appointed after 1st January, 1886, unless after 10 years service or Civil Service Law Examination.

14. From and after the first day of January, 1887, it shall not be lawful permanently to appoint to any office of Resident Magistrate, or Assistant Resident Magistrate, any person who, at that date, shall not have served ten years or upwards in the Civil Service of the Colony, unless his name shall appear in the lists of candidates mentioned in section ten: Provided always that no such appointment shall be made unless any such person to be so appointed shall possess a sufficient knowledge of the Dutch language.

#### GENERAL.

Governor may frame rules for the Civil Service.

15. It shall be lawful for the Governor to frame or approve of rules for the Civil Service, not inconsistent with the provisions of this Act, specifying the duties of officers, the hours of attendance, the conditions on which leave of absence and superannuation allowances may be granted, and regulating the maintenance of discipline and other matters connected with the discharge of the public duties of all officers in the service; and from time to time alter and amend such rules as circumstances may require.

Suspension, reduction, or dismissal for breach of rules.

16. If any officer be guilty of any breach of such rules, the minister of any department may suspend such officer pending examination by order of the Governor, and the Governor may, according to the nature of the offence, reduce him to a lower rank in the public service, or to a lower salary, or, with the consent of the Executive Council, dismiss him from the public service.

17. No person who is proved to the satisfaction of the Governor to be habitually using intoxicating beverages to excess shall be appointed to or retained in the public service.

No. 42—1885.  
Drunkenness.

18. If any officer is convicted of any crime, and sentenced to imprisonment without the option of a fine, or become insolvent, he shall be deemed to have forfeited his office, and thereupon cease to perform his duties or receive his salary.

Conviction of crime.

19. When any officer has forfeited his office by reason of pecuniary embarrassment as aforesaid, if he prove to the satisfaction of the Governor that such embarrassment has not been caused or attended by any fraud, extravagance, or dishonourable conduct, the Governor may reinstate such officer in his former position, but no uncertificated insolvent shall be so reinstated.

Pecuniary embarrassment.

#### SUPERANNUATION.

20. It shall be lawful for the Governor, if to him it shall appear expedient, to call upon any person on the fixed establishment of the Civil Service of this Colony who shall have attained the age of sixty years, to vacate his office on condition of being paid the superannuation allowance which may be granted to such person in consideration of his past services by virtue of any regulations in force for the time being; and thereupon the office held by such person shall be deemed to be vacant, and some other person may be duly appointed to fill the same.

Superannuation.—  
Allowances thereon.

21. Subject to the exceptions and provisions hereinafter contained, the superannuation allowance which may be granted, after the taking effect of this Act, to any person who shall have served on the fixed establishment of the Civil Service of the Colony, and for whom provision shall not otherwise have been made by Act of Parliament, or who may not be specially excepted by the authority of Parliament, shall be as follows:—

Rates of such allowances.

To any person who shall have served ten years and upwards, and under eleven years, an annual allowance of ten-sixtieths of such salary and emoluments;

And, in like manner, a further addition to the annual allowance of one-sixtieth in respect of each additional year of service, until the completion of a period of service of forty years, when an annual allowance of forty-sixtieths may be granted; and no addition shall be made in respect of any service beyond forty years.

22. Except as is hereinafter provided, it shall not be lawful to grant superannuation allowance under the provisions of this Act to any person who shall be under sixty years of age, unless upon medical certificate, to the satisfaction of the Governor, that he is incapable, from infirmity of mind or body, to discharge the duties of his office, and that such infirmity is likely to be permanent.

No allowance to officers under 60 except in cases of illness, &c.

23. It shall be lawful for the Governor to grant to any person who, being the holder of an office in respect of which a superan-

Gratuities in case of bodily injury while on duty.

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nuation allowance may be granted, is compelled, before the completion of ten years' service, to quit the public service by reason of severe bodily injury, occasioned, without his own default, in the discharge of his public duty, a gratuity not exceeding three months' pay for each year of service, or a superannuation allowance not exceeding ten-sixtieths of the annual salary and emoluments of his office.

Allowance to officers incapacitated by infirmity.

24. It shall be lawful for the Governor to grant to any person who, being the holder of an office in respect of which a superannuation allowance may be granted, is constrained, from infirmity of mind or body, to leave the public service before the completion of ten years' service, such sum of money by way of gratuity as the said Governor may think proper, but so as that no such gratuity shall exceed the amount of one month's pay for each year of service.

Allowance to widows and children of officers dying from injuries while on duty.

25. Should any person, being the holder of an office in respect of which a superannuation allowance may be granted, die from bodily injury, occasioned, without his own default, in the discharge of his public duty, it shall be lawful for the Governor to grant to the widow or minor children of such person, or to his parents, if dependent on him for their maintenance, a gratuity not exceeding one month's pay for each year of service. <sup>(1)</sup>

Allowances on abolition of office.

26. It shall be lawful for the Governor to grant to any person retiring or removed from the public service in consequence of the abolition of his office, such special annual allowance, not exceeding two-thirds of the salary and emoluments of the office, by way of compensation, as on a full consideration of the circumstances of the case may seem to the said Governor to be a reasonable and just compensation for the loss of office: Provided that such special annual allowance shall not exceed the amount which might be granted under the scale provided in this Act:—

If to persons who shall have served twenty years and upwards, ten years were added to their actual service;

If to persons who shall have served under twenty years and not less than fifteen years, seven years were added to their actual service;

If to persons who shall have served under fifteen years and not less than ten years, five years were added to their actual service;

If to persons who shall have served under ten years and not less than five years, three-sixtieths were added to as many sixtieths of the salary and emoluments of the office as the person has served a complete number of years;

If to persons who shall have served under five years, one-sixtieth were added to as many sixtieths of the salary and emoluments of the office as the person has served a complete number of years:

Provided always that the number of years to be added shall in no case exceed such number as would, if added to the actual age of the person retiring or removed, make up sixty-five.

<sup>1</sup> See also § 4, Act 22, 1879, *infra*.

27. Every person to whom a superannuation or compensation allowance shall have been granted before he shall have attained the age of sixty years, shall, until he has attained that age, be liable to be called upon to resume his duties in his former office, or to fill any public office or situation in the Colony for which he is qualified; and if he shall decline, when called upon to do so, to take upon him such office or situation, or shall decline or neglect to execute the duties thereof satisfactorily, being in a competent state of health, he shall forfeit his right to the compensation or superannuation allowance which had been granted to him.

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 Person enjoying allowances under 60 may be called on to serve again.

28. In case any person enjoying any superannuation allowance, in consequence of his having retired from office on account of age, infirmity, or any other cause, or enjoying any compensation for past services upon the abolition or reduction of office, shall be appointed to fill any office in any public department in this Colony or elsewhere, such allowance or compensation shall cease to be paid for any period subsequent to such appointment, if the annual amount of the salary and emoluments of the office to which he shall be appointed be equal to those of the office formerly held by him, and in case they shall not be equal to those of his former office, then no more of such superannuation allowance or compensation shall be paid to him than what, with the salary of his new appointment, shall be equal to that of his former office.

Allowance to cease on appointment to office of a value equal thereto.

29. It shall be lawful for the Governor, on the ultimate retirement of any person who may have been re-employed under the twenty-fourth section, to grant to such person a retiring allowance, not exceeding forty-sixtieths of his salary and emoluments, based on his periods of actual service before and after his temporary retirement, precisely as if such periods had formed continuous service.

Calculation of term of service of officers reappointed under § 24.

30. It shall be lawful for the Governor to grant to a person any superannuation, compensation, gratuity, or other allowance of greater amount than the amount which might be awarded to him under the foregoing provisions, when special services rendered by such person, and requiring special reward, shall appear to him to justify such increase, but so that such allowance shall in no case exceed the salary and emoluments enjoyed by such person at the time of his retirement: Provided that the minute detailing the circumstances under which such increase was recommended to the Governor shall be laid before both Houses of Parliament before it be granted, and it shall be lawful for the Governor to grant to any person any such allowance of less amount than otherwise would have been awarded to him, when his defaults or demerits in relation to the public service appear to him to justify such diminution.

Special cases in which larger allowances may be granted.

31. Any superannuation or compensation allowance which may be granted to any person after the passing of this Act shall not be computed upon the amount of the salary and emoluments enjoyed

How superannuation allowances are to be calculated.



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by him at the time of his retirement, unless he shall have been in the receipt of the same for a period of at least three years immediately before the granting of such superannuation allowance; and in case he shall not have enjoyed his then existing salary for that period, such superannuation or compensation allowance shall be calculated upon the average amount of salary and emoluments received by such person for the three years next preceding the commencement of such allowance: Provided that, if at the date of his retirement the whole period of service of such person be less than three years, any superannuation or compensation allowance which may, under the provisions of this Act, be granted to him, shall be calculated on his average salary and emoluments during his whole period of service: Provided, also, in the case of a person re-employed under the twenty-fourth section hereof, that, if, at the date of his ultimate retirement, his whole period of service subsequent to the date of his re-employment shall have been less than three years, his superannuation or compensation allowance shall be calculated upon his average salary and emoluments during the last three years of his actual service, precisely as if a period of temporary retirement had not existed.

Continuous services required in calculation of allowances.

32. Service in respect of which superannuation or compensation allowances may be granted must in all cases be continuous, unless interrupted by reduction of office, leave of absence, or other temporary suspension of employment, not arising from misconduct or voluntary resignation; and in computing the amount of any superannuation or compensation allowance, the term salary and emoluments shall be taken to include house rent or house allowance, or the annual value of quarters in any buildings belonging to the Crown which an officer may be allowed to occupy, to an extent not exceeding one-sixth of the average salary and other emoluments of the office during the three years preceding; the net amount of fees to an extent not exceeding one-fourth of such salary; the value of rations; and any other unquestionable remuneration for personal service; but it shall not include local allowances contingent on the high cost of living in certain localities, or allowance for horse keep, or travelling, or stationery, or any other allowance contingent on the particular nature and actual transaction of the business of the office, and presumably spent in the discharge of such business: Provided that the net amount of fees shall be obtained by deducting from the average gross amount of fees received during the three years next preceding the average office expenses during such three years personally defrayed by the officer.

No leave of absence beyond one month to officers about to retire on pension.

33. It shall not be lawful to grant leave of absence for any period exceeding one month to any person who purposes to retire on pension at or within six months of the termination of such leave; and should any person who has obtained leave of absence for any period exceeding one month, voluntarily retire on pension during

such leave, or within six months after its termination, any superannuation allowance which may lawfully be granted to him under the provisions of this Act shall be calculated on his period of service up to the date from which such leave commenced: Provided if it be established by medical certificate, to the satisfaction of the Governor, that such person is incapable, from infirmity of mind or body, of resuming the duties of his office at the termination of his leave, or of continuing to serve for six months thereafter, and that such infirmity is likely to be permanent, it shall be lawful for the Governor, should he see fit, to direct that the period of service of such person shall be reckoned up to the date of his ultimate retirement.

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Exceptions.

34. Except in so far as it is otherwise by law provided, it shall not be lawful to grant any superannuation allowance to any person who is paid entirely by fees or allowances.

No pension to officers paid by fees.

35. In the computation of superannuation or compensation allowances, no fractional part of a month and no increase of salary or emoluments granted after the date of the application to be allowed to retire, shall be taken into consideration.

Fractional part of month not to count.

36. It shall not be lawful to grant a superannuation or compensation allowance to any person holding more than one appointment or office until he shall retire from all the offices held by him.

Pension not claimable by person not retiring from all the offices held by him.

37. For the purpose of calculating any superannuation or compensation allowance, absence on leave on full or half-pay in accordance with this Act shall be regarded as service, and the person during such absence on leave shall be deemed to have drawn his full salary and emoluments, but any absence on leave without salary shall not be reckoned in the period of service.

Absence on leave to count as service if on full or half-pay.

38. After a pension or superannuation allowance has been awarded to any person, the same may thereafter be rescinded, in case it shall appear that during his tenure of office he was guilty of any such grave offence as would have led to his dismissal.

When pension awarded may be stopped.

39. Should any person, serving in a capacity to which a pension calculated according to the scale of one-fiftieth of yearly pay may be granted for each year of service, be transferred to the Civil Service of the Colony, or *vice versa* from the Civil Service to service in such capacity, then, on the ultimate retirement of such person, it shall be lawful for the Governor to grant to him a pension or superannuation allowance according to the rules of the service from which he retires, allowing, however, one-sixtieth of the amount on which such pension or superannuation allowance may be calculated in respect of each year in which he shall have served in the Civil Service, and one-fiftieth of such amount for each year in which he shall have served in such other capacity: Provided that no pension or retiring allowance may be granted under this section, unless the aggregate number of years of service of such person shall have been at least ten years, if he shall at the time of his retirement have been serving in the Civil Service; or at least

Pensions of persons transferred to or from the Civil Service.

No. 42—1885.

fifteen years, if at such time he shall have been serving in such other capacity, and shall, further, have served in such other capacity for at least ten years.

Pensions only to persons whose duties occupy their whole time.

40. Except as hereinafter is excepted, it shall not be lawful to grant any superannuation allowance to any person holding an office, the duties of which are not such as to require that the holder should give his whole time to the public service; but nothing herein contained shall prevent the Governor from granting a retiring allowance, under the preceding sections of this Act, to the Solicitor-General, the Crown Prosecutor at Kimberley, the Assistant Law Adviser to the Crown, or to the holder of such other office as he may from time to time see fit to direct: Provided that no such direction shall be of force and effect until the expiration of thirty days from the date on which a minute, embodying the reasons on which it was made, shall have been laid before both Houses of Parliament; or shall extend or apply to any holder of an office unless made not later than twelve months after the date of the appointment of such holder.

Exceptions.

Pension to be calculated on actual service.

41. Save as may in this Act be excepted, the superannuation allowance to be granted to any person holding office in the Civil Service of the Colony shall be calculated according to the actual period of service of such person, and no addition shall on any pretext whatsoever be made to such period: Provided that nothing in this section contained shall be taken to prejudice the rights under existing superannuation regulations of any person who may at the time of the taking effect of this Act be on the fixed establishment of the Public Service.

#### SECURITY.

Security to be given by public officers.

42. It shall be the duty of the Treasurer of the Colony to fix and determine the amount of security to be given by the holder of every office in the public service of the Colony involving the receipt, custody, or payment of public money, or the receipt, issue, or custody of stamps, and to frame a schedule for the guidance of public officers, showing the amount so fixed in respect of such offices, and from time to time to amend such schedule as circumstances may require: Provided that in determining the amount of security to be required of the holder of any such office the said Treasurer shall act in conjunction with the ministerial head of the department in which such office may happen to be.

“Public Service Guarantee Fund.”

43. In order to provide proper security for the faithful and punctual discharge of the duties of the holders of offices from whom security is required, and to enable the practice heretofore followed of obtaining the guarantee of private persons, or of a public company to be discontinued, a fund shall be created to be styled the “Public Service Guarantee Fund,” which shall provide such security for all persons who shall contribute thereto under the provisions of sections forty-two to forty-six hereof, both inclusive.

44. All contributions or other moneys payable to the said fund shall be lodged in the Treasury and shall be accounted for by the Paymaster-General of the Colony.

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Payments thereto to be lodged in Treasury.

45. Whenever any person who has not previously contributed to the Public Service Guarantee Fund, in respect of any appointment previously held by him, is appointed to any office in the public service of the Colony, the holder of which is required to give security, a deduction of one-eighth per cent. on the amount for which he is required to give security shall be made on account of such fund from the first payment of salary in respect of such office, and such person shall further contribute to such fund at the rate of one-eighth per cent. per annum on such amount from the date of his entering on the discharge of the duties of such office.

Deductions in case of officers not hitherto called on to give security.

46. Should any person hereafter appointed to any such office have contributed to such fund in respect of an office previously held by him, then, in case the amount of security required in respect of his new office shall be either less than or equal to that required in respect of such former office, he shall contribute to such fund at the rate of one-eighth per cent. per annum on the amount of security required in respect of such new office, and such contribution shall accrue from the termination of the period for which he shall have already contributed, or if such period shall have already terminated, then from the date of his entering on the discharge of the duties of such new office; and in case the amount of security required in respect of his new office shall be greater than that required in respect of his former office, a deduction at the rate of one-eighth per cent. on the increase in the amount for which the security is required shall be made on account of such fund from the first payment of salary in respect of such new office, and such person shall further contribute to such fund at the rate of one-eighth per cent. per annum on such higher amount of security from the date of his entering on the discharge of the duties of such new office: Provided that if the period for which he shall have previously contributed shall not have expired, a portion of such previous contribution, proportionate to such unexpired period, shall be deducted from the first contribution required by this section.

Adjustment of contributions to fund where a less or greater security for new office required.

47. Any person who at the time of taking effect of this Act holds an office in respect of which security has been given, shall from and after the 31st March, 1886, contribute to the said fund as if then first appointed to such office, and on his so doing his sureties shall be relieved from all responsibility in respect of his subsequent transactions: Provided that any person may, should he desire, so contribute at any time before that date.

Case of officer already under security.

48. Every person who at the date of the taking effect of this Act holds an office in the public service of the Colony in respect of which, in the opinion of the Treasurer of the Colony, security

Cases in which security not hitherto required.

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should be given, but who has not been required to give, or, if so required, has not given, any security, shall contribute to the Public Service Guarantee Fund, as if he had been first appointed to such office at such date.

First contribution to fund regulated.

49. In respect of every first annual contribution to the said fund, an amount proportionate to the period between the date from which it commences to accrue, and the 31st of March next ensuing, shall be deducted from the first payment of salary payable to the holder of the office in respect of which security is given, and thereafter the annual contribution shall be payable in advance, on the 31st of March in each year, and shall be deducted from the payment of salary for the said month of March, and should any deduction not be made as prescribed in this Act, the amount shall be forthwith recovered from the person in default.

Initial deductions may be altered by Parliament.

50. The rates of initial deduction and annual contribution, set forth or referred to in the sections of this Act, from the forty-second to the forty-sixth inclusive, may from time to time be altered and amended by resolutions of both Houses of Parliament, and thereafter such amended rates shall be substituted for the rates set forth or referred to in such sections, as if the same had been originally inserted therein.

Recovery from person who has rendered the fund liable to pay for his default.

51. Should any person who has become a contributor to the Public Service Guarantee Fund cause any pecuniary loss to the public revenue of the Colony, by reason of any wrongful act or omission the amount of such loss shall be charged against such person, and shall, as far as possible, be recovered from him, in such manner as the Governor may direct; and in case the amount recovered shall be insufficient to cover such loss, it shall be lawful for the Paymaster-General, on being authorized so to do by the Treasurer of the Colony, to pay out of the aforesaid fund such sum as shall be sufficient to make good the amount of loss sustained by the said revenue, not exceeding however the amount for which security was given by the defaulter: Provided that if any amount be subsequently recovered from such defaulter, such amount shall be applied, firstly, to make good the deficiency (if any) still remaining due to the revenue, and secondly, to the reimbursement of such fund.

Interest at 4 per cent. on quarterly balance of fund.

52. It shall be lawful for the Governor to cause interest to be paid from and out of the public revenue, at the rate of four per cent. per annum, on the balance at the close of each quarter to the credit of the fund in the books of the Paymaster-General.

Power to invest balance.

53. It shall be lawful for the Treasurer of the Colony to invest any portion of the balance to the credit of the fund, in Government debentures or stock, and to sell any such debentures or stock which may have been previously purchased.

Statement of accounts of fund to be laid before Parliament,

54. A statement of all moneys received and disbursed under the provisions of the fortieth to the fiftieth sections of this Act inclusive, and of all investments and sales under the provisions of

the last preceding section, shall be laid before both Houses of Parliament annually.

No. 42—1885.

55. At the end of every period of five years, the first period being reckoned from the taking effect of this Act, a complete statement of all moneys received and disbursed under the provisions of the fortieth to the fiftieth sections of this Act inclusive, and of the position of the Public Service Guarantee Fund, together with all such further particulars connected therewith, as may be required for full investigation into the working and condition of the said fund, shall be prepared by the Assistant Treasurer, and laid before both Houses of Parliament, during the first session after the expiration of every such period.

Complete statement of moneys, &c., to be prepared every 5 years and laid before Parliament.

#### MISCELLANEOUS.

56. The several departments of the Civil Service of the Colony shall be considered and treated as one service; and every person serving therein shall be liable at any time to be transferred or removed by the Governor from one office or department to another, and from one station to another, on promotion or otherwise, whenever the interests of the service may require it; and when so transferred or removed, except at his own request, the actual reasonable travelling expenses of himself and family shall be paid on production of proper vouchers: Provided that no person, unless disgraced, shall be transferred without his own consent to an office of a lower grade or one to which a lower salary, inclusive of house rent but exclusive of local allowances, is attached.

All departments to be considered as one service.

57. Any officer on the fixed establishment of the Civil Service, who may desire to resign his appointment, shall be required to give such notice, not exceeding three months, of his intention so to do, as the ministerial head of his department may require; and any such officer leaving the service without having given such notice shall forfeit such sum, not exceeding three months' salary, as the Governor may determine.

Resignation.

58. The ministerial head of any department may appoint to such department such officers not mentioned in the Schedule to this Act as may be necessary for the efficient conduct of the public service; provided always that due provision shall have been made by Parliament for the salaries of the persons so to be appointed. And when any such person shall have been employed on a monthly or annual salary for at least ten years, it shall be lawful for the Governor to assign him such pension as he would be entitled to if he were an officer on the fixed establishment of the Civil Service, subject to the same regulations as are in this Act provided for with respect to pensions. If at any time the ministerial head of a department shall deem it expedient in the interests of the public service to dispense with the services of any person employed in such department under the provisions of this section, not being a person on the fixed establishment, he shall be at liberty to do so;

Appointment of officers not mentioned in schedule.

May receive pension.

Services may be dispensed with.

- No. 42—1885. and if such person shall have served for a less period than ten years, it shall be lawful to pay him by way of gratuity any sum not exceeding one month's salary for every year of the period during which he shall have served continuously, and in such case no pension shall be assigned to such person: Provided always that no person dismissed for misconduct shall receive any pension or gratuity.
- May be paid a gratuity.
- Civil servants not to be prejudiced by employment in office not mentioned in schedule. 59. If any officer on the fixed establishment shall be employed to fill any office in the public service not mentioned in the Schedule to this Act such employment shall not be construed to his prejudice.
- Act No. 4 of 1878, repealed. 60. The Act No. 4 of 1878, entitled "An Act for the Better Regulation of the Public Service of the Colony," is hereby repealed.
- Civil servants not exempt from deductions on salaries for pension fund. 61. Nothing in this Act contained shall entitle any civil servant to claim exemption from the operation of any Act that may be passed hereafter, <sup>(1)</sup> requiring annual deductions from the salaries of civil servants for the purpose of establishing a pension fund.
- Short title. 62. This Act may be cited as the "Civil Service Act, 1885."

Schedule.

## SCHEDULE.

Under-Colonial Secretary.  
 Assistant Treasurer of the Colony.  
 Secretary to the Law Department.  
 Assistant Commissioner of Crown Lands.  
 Under Secretary for Native Affairs.  
 Secretary for Lands and Mines.  
 Civil Commissioners.  
 Resident Magistrates.  
 Controller and Auditor-General.  
 Clerk to the Executive Council.  
 Registrar of Deeds.  
 Controller and Accounting Officer, Ordnance Department.  
 Superintendent-General of Education.  
 Postmaster-General.  
 Commissary of Ordnance.  
 Collector and Sub-Collectors of Customs.  
 Solicitor-General.  
 Crown Prosecutor.  
 Masters and Registrars of Superior Courts.  
 High Sheriff.  
 General Manager of Railways.  
 Hydraulic Engineer.  
 Surveyor-General.  
 Chief Inspector of Public Works.  
 Special Magistrate Northern Border.  
 Chief Magistrates of Native Territories.

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<sup>1</sup> See Act 23, 1886, *infra*.

Officers of and above the rank of 3rd Class Clerks in the departments of the foregoing, and all other employés in the department of the General Manager of Railways and the Postmaster-General, including the Telegraph Department, who shall have had ten years continuous service, and who shall have received a certificate of efficiency and good conduct from the head of their department.

No. 23—1886.

Surgeons Superintendent and Resident Surgeons of Hospitals and Lunatic Asylums, and Assistant ditto.

Deputy Inspectors of Colleges and Schools.

Chief Inspector of Excise.

Interpreters of Superior Courts.

Superintendents of Convict Stations and Resident Chaplains.

Port Captains, Port Officers, and Harbour Masters at the Principal Ports.

Conservators of Forests.

Veterinary Surgeon.

Inspectors and Assistant Inspectors of Roads.

Keeper of the Archives.

No. 23—1886.]

[June 29, 1886.

## ACT

## To provide for the Establishment of a Civil Service Pension Fund.

WHEREAS it is desirable to provide against any increase of the amount now paid out of the general revenue for pensions to persons who have retired from the Civil Service of the 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:—

Preamble.

1. From the salary of every person to whom, on his retirement from the public service, a pension or gratuity may lawfully be assigned under the provisions of the "Civil Service Act, 1885," there shall be made a monthly deduction at the rate of three pounds per centum per annum on such salary; and all sums so deducted shall be paid into the Colonial Treasury to the credit of a separate account, to be called "The Civil Service Pension Fund:" Provided that nothing in this section contained shall apply to any person who was on the fixed establishment of the Civil Service of the Colony on the 10th August, 1885.

Monthly deduction to be made from salaries of certain officers:

and to be paid into Civil Service Pension Fund.

Exemption.

2. For the purposes of the last preceding section the word "salary" shall be taken to include all emoluments in respect of which superannuation or compensation allowances can be granted under the provisions of the thirty-second section of the "Civil Service Act, 1885;" provided that when the amount of any fees receivable by any officer cannot be definitely ascertained before-

"Salary" defined for purposes of preceding section.



No. 23--1886.

hand the deduction aforesaid shall be made upon the average amount of such fees received annually during the three financial years next preceding.

The amount voted by Parliament for certain pensions to be paid into the fund and all such pensions to be paid out of the fund.

3. The amount which shall from time to time be voted by Parliament for the payment of pensions to persons who have already retired from the public service, or who may hereafter become entitled to any pension or gratuity under the provisions of the "Civil Service Act, 1885," shall be paid into the said Fund out of the general revenue in quarterly instalments, payable in advance; and all pensions or gratuities payable to any such persons shall be paid out of the said Fund.

Interest to be allowed on annual balance of the fund.

4. Interest at the rate of five pounds per centum per annum on the balance of the said Fund in the Treasury on the thirtieth day of June in each year shall be paid into the said Fund out of the General Revenue.

Governor, with consent of Parliament, may alter rate of deduction.

5. The rate of deduction mentioned in the first section of this Act may from time to time be altered by the Governor, provided that no such alteration shall take effect until the Legislative Council and House of Assembly shall have communicated to the Governor their concurrence therein.

Treasurer may invest balance in Debentures or Stock.

6. It shall be lawful for the Treasurer of the Colony to invest any portion of the balance to the credit of the Fund in Government Debentures or Stock, and to sell any such Debentures or Stock which may have been previously purchased.

Statement of transactions of Fund to be laid before Parliament annually.

7. A statement of all moneys received and disbursed under the provisions of this Act, and of all investments and sales under the provisions of the last preceding section, shall be laid before both Houses of Parliament annually.

At the end of every five years, actuarial enquiry to be made into working of the Fund.

8. At the end of every period of five years, the first period being reckoned from the taking effect of this Act, a complete statement of all moneys received and disbursed under the provisions of this Act, together with all such further particulars connected therewith as may be required for a full investigation into the working and condition of the Fund, shall be submitted by the Treasurer of the Colony to a competent actuary, and the report of such actuary shall be laid before both Houses of Parliament during the first session after the expiration of such period.

Short title and time of taking effect.

9. This Act may be cited as "The Civil Service Pension Fund Act, 1886," and shall come into operation on the first day of July, 1886.

No. 22—1879.]

[Sept. 11, 1879.

## ACT

To Provide for the Payment of Pensions to Widows of Officers on the Fixed Establishment of the Public Service of this Colony. (1)

WHEREAS Act No. 25 of 1874 has never been put in force by the proclamation thereof, as provided in the tenth Section of such Act: And whereas it is desirable to repeal the said Act in order to make better and more effectual provision than is therein contained for the payment of pensions to widows of officers on the fixed establishment of the public service 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. The Act No. 25 of 1874, intituled "An Act to Provide for the Payment of Pensions to Widows of Officers on the Fixed Establishment of the Public Service of this Colony," is hereby repealed.

Repeal of Act 25 of 1874.

2. From and after the taking effect of this Act, there shall be deducted from and out of the salary (2) of every officer who may now, or shall hereafter, hold an appointment on the fixed establishment of the public service of this Colony, and from and out of the pension of every officer who may now, or shall hereafter, hold any such appointment, and who may retire on pension, one per centum per annum of such salary or pension, together with such further sums of money as any such officer shall agree to have deducted from his salary or pension as hereafter mentioned: Provided that as to any such officer as aforesaid who may hold an appointment as aforesaid at the time of the taking effect of this Act, no such deduction as aforesaid shall be made unless such officer shall within one year after the taking effect of this Act have signified to the Treasurer-General his consent that such deduction shall be made, and if such officer shall not signify such consent within the time aforesaid his widow shall not be entitled to any of the privileges or benefits conferred by this Act.

One per cent. to be deducted from salaries of Government officers.

Except from those of existing officers, unless with consent.

3. All moneys deducted from salaries or pensions under the provisions of this Act shall be paid into, and form part of, the public revenue of this Colony, and shall be deemed in the calculation of the scale referred to in the fourth clause of this Act to bear interest reckoned at the rate of five per centum per annum, and the capital and interest so accruing shall be placed to a separate account, to be called "The Widows' Pension Fund."

Money so deducted, and interest, to form "Widows' Pension Fund."

4. From and out of the public revenue aforesaid there shall be

Scale of pensions to widows.

<sup>1</sup> Amended by Acts 3, 1880, and 14, 1882, *infra*.

<sup>2</sup> See § 2, Act 3, 1880, and Act 14, 1882, *infra*.

No. 22—1879.

paid to the widows of all officers from whose salaries or pensions deductions shall have been made under the provisions of this Act, such pensions as may be prescribed by the Governor, depending upon the respective amounts deducted from the salaries and pensions aforesaid according to a scale calculated on tables of mortality, approved by the Governor, interest being reckoned at the rate of five per centum per annum, and subject to such regulations as shall from time to time be fixed by the said Governor, and published in the *Government Gazette*: Provided that no scale calculated as aforesaid shall be adopted unless and until such scale shall have been submitted to and approved by a competent actuary resident within Great Britain: Provided, further, that no annual pension paid to any widow under the provisions of this Act shall exceed one-third of the salary of her deceased husband during the year immediately preceding his retirement from the public service, or death as the case may be, nor shall any such pension exceed the sum of two hundred and fifty pounds sterling per annum.

Steps to be taken by officers desirous of securing higher pensions for widows.

5. Every officer of the public service who shall be desirous of securing a pension for his widow under the provisions of this Act, beyond what the deduction of one per centum as aforesaid would secure under the provisions of the fourth section hereof, shall, at the time of his proposing to have a further sum beyond the one per cent. aforesaid deducted from his salary or pension, produce to the Treasurer-General the certificate of some duly qualified medical practitioner in this Colony, approved by the Governor for the purpose, as to his state of health; and it shall be competent for the Treasurer-General, in case such medical practitioner shall not certify that such officer is in sound health, either to refuse his application altogether, or to require such a deduction from the salary or pension of such officer, greater than if he were in sound health, as such officer and the Treasurer-General may agree upon, and in case they may not be able to agree, the application shall be considered as refused.

Pension not assignable or transferable.

6. No pension payable under this Act shall be assignable or transferable, nor shall the same be attached, arrested, or levied upon, for or in respect of any debt or claim due by the deceased husband of such recipient.

Act not to apply to Governor or Lieutenant-Governor.

7. Nothing in this Act contained shall apply to the salary or pension of any Governor or Lieutenant-Governor of the Colony, or of any officer in the public service, not on the fixed establishment thereof, nor to any public officer as aforesaid, who may be in receipt of a yearly salary or pension less than one hundred pounds (£100): Provided, however, that if any person whose yearly salary shall have been one hundred pounds (£100) or more, and from whose salary as aforesaid deductions shall have been made in accordance with the said Act, shall subsequently be placed on a yearly pension of less than one hundred pounds (£100), then if such person shall desire it, and shall notify his desire to the

Nor to officers with salaries below £100.

Treasurer-General, the provisions of the said Act shall continue to apply to his case.

No. 22--1879.

8. A statement of all moneys deducted from salaries and pensions, and of all pensions paid under the provisions of this Act during each year, together with the interest, reckoned at the rate of five per centum per annum, shall be laid before both Houses of Parliament at every session thereof.

Annual statements to be laid before Parliament.

9. At the end of every period of five years, the first period being reckoned from the time of the taking effect of this Act, complete statements of all moneys deducted from salaries and pensions, of all pensions paid, and of all liabilities incurred under the provisions of this Act, shall be submitted by the Treasurer-General to a competent actuary, together with all such particulars connected therewith as such actuary shall require for a full investigation into the working and effect of this Act, and the report of such actuary shall be laid before both Houses of Parliament during its first session which shall be held after receipt of such report.

At end of five years enquiry to be made into working of this Act.

10. This Act may be cited as "The Public Service Widows' Pension Act, 1879."

Short title.

No. 3—1880.]

[July 26, 1880.

## ACT

To amend and explain in certain respects the Act No. 22 of 1879, intituled "An Act to provide for the Payment of Pensions to Widows of Officers on the Fixed Establishment of the Public Service of this Colony."<sup>1</sup>)

WHEREAS doubts have arisen as to the true meaning of the words "widows of officers on the fixed establishment of the public service of this Colony," in the Act No. 22 of 1879, and the word "salary" in the second section thereof, and it is therefore expedient that such doubts should be removed and the true interpretation thereof declared: Be it therefore 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. The benefits of the Act No. 22 of 1879 shall apply only to the widows of officers who were at the date of the taking effect of the said Act, or were thereafter or may hereafter be serving in the permanent civil service of the Colony, or who were then or thereafter, or may be hereafter, pensioners of the said permanent civil service.

Act 22 of 1879 to apply only to widows of officers in permanent civil service.

2. The percentage provided for under the second section of the said Act shall be deducted not only from the amount of the actual

Percentage to be on emoluments of officer besides salary.

<sup>1</sup> Amended by Act 14, 1882, *infra*.

- No. 14—1882. salary of each officer, but also from the amount of such emoluments (if any) as may be derived by him from allowances which would be taken into computation in fixing the superannuation allowances from time to time made to any such officer.
- Short title. 3. This Act may be cited as the "Civil Service Widows' Pensions Amendment Act, 1880."

No. 14—1882.]

[June 21, 1882.]

## ACT

## To Alter and Amend the Laws relating to the Pensions of the Widows of Civil Servants.

- Preamble. WHEREAS it is desirable to make better provision for the effectual working of Act No. 22 of 1879, being the "Public Service Widows' Pension Act, 1879," and the Act No. 3 of 1880, being the "Civil Service Widows' Pensions Amendment Act, 1880": 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. Such of the provisions of the Acts No. 22 of 1879 and No. 3 of 1880 as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.
- Deductions from salary yearly in advance, except monthly deductions desired when  $2\frac{1}{2}$  per cent. to be added. 2. The deductions from the salaries of the Government officers authorized to be made by the second section of Act No. 22 of 1879, shall be made annually in advance, unless any such officer shall desire that the same shall be made, in regard to his salary and allowances, monthly in advance, in which case, however, there shall be added to the deduction made from the first month's salary and allowances, a sum equal to two and a half per centum upon the yearly contribution of such officer to the fund.
- Leave of absence not to exclude deductions. 3. No deduction from the sums payable by any Government officer under the provisions of the Acts No. 22 of 1879 and No. 3 of 1880 shall be made by reason of such officer having been absent on leave and receiving, during such absence, less than the fixed salary and allowances of his office.
- In case of increase or decrease of salary. 4. Whenever any deduction shall have been made under the provisions of this Act, whether for the whole year or for any portion thereof, and the officer from whose salary such deduction has been made shall thereafter be in receipt of a greater or less salary and allowances than he enjoyed at the time of such deduction, an adjustment of the contribution in proportion to such increased or decreased salary and allowances shall be made by the Treasurer-General.
- What officers may take advantage of this Act. 5. Any officer who held an appointment on the fixed establishment of the public service of the Colony at the time of the taking effect of the "Public Service Widows' Pension Act 1879," and any

officer who came upon such fixed establishment upon the taking effect of the "Griqualand West Annexation Act, 1877," may, within twelve months from the taking effect of this Act, signify to the Treasurer-General his consent that the deduction mentioned in the second section of such first-mentioned Act shall be made, and the widow of every such officer so consenting shall be entitled to the privileges or benefits conferred by the said Act: Provided that no such officer whose age shall exceed fifty years and who shall not produce a satisfactory medical certificate as to his state of health shall be entitled to take advantage of the provisions of this section.

No. 14—1882.

6. For the better and more effectual working of the said Acts No. 22 of 1879 and No. 3 of 1880, and of this Act, it shall be lawful for the Governor from time to time to make, alter, or revoke such rules and regulations as to him may seem advisable, and such rules and regulations shall take effect from the date of the publication thereof in the *Government Gazette*: Provided that until any such rules and regulations shall have been so made, the rules and regulations contained in the Government Notice No. 1,141, dated the 27th October, 1879, published in the *Government Gazette*, shall be and continue in force.

Governor to make or alter rules and regulations.

7. This Act may be cited as the "Civil Service Widows' Pensions Amendment Act, 1882."

Short title.

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## COMPANIES.

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1. Act 23—1861, (Joint Stock, Limited Liability).	10. Act 25—1885, (Kimberley Water Works).
2. Ord. 13—1846, (do Loans on Shares).	11. Ord. 7—1836, (Port Beaufort Mercantile Establishment).
3. Act 3—1873, (do Property held in trust for).	12. Act 34—1861, (Sea Point Water Works).
4. ,, 12—1868, (do Winding-Up).	13. ,, 17—1875, (South African Association).
5. ,, 17—1859, Board of Executors, Cape Town).	14. ,, 47—1882, (Table Mountain Water Supply).
6. ,, 9—1865, (do Malmesbury).	15. ,, 32—1861, (Union Fire and Marine Insurance & Trust Company).
7. ,, 34—1884, (do do).	
8. ,, 31—1861, (General Estate and Orphan Chamber).	
9. ,, 20—1863, Guardian Loan and Investment Company).	

No. 23—1861.]

[August 14, 1861.

### ACT

To Limit the Liability of Members of certain Joint-stock Companies.

WHEREAS it is expedient to enable members of certain joint-stock companies to limit the liability for the debts and engage-

Preamble.

No. 23—1861.

ments of such companies to which they are, or may be, subject: 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:—

Meaning of term  
“joint-stock com-  
pany.”

1. The term “joint-stock company” in this Act shall mean every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without the express consent of all the partners; and also every partnership which at its formation, or by subsequent admission, shall consist of more than twenty-five members: <sup>(1)</sup>

How limited lia-  
bility may be obtain-  
ed by future com-  
panies.

2. Any joint-stock company may obtain a certificate of registration, with limited liability, from the Registrar of Deeds of the Colony, upon complying with the conditions following, that is to say:

1. The directors, or provisional directors, shall in their application to the Registrar of Deeds for such registration, state that such company is to be formed with limited liability.
2. The word “limited” shall be the last word of the name of the company.
3. The deed of settlement shall contain a statement to the effect that the company is formed with limited liability.
4. The deed of settlement shall be executed by shareholders, not less than twenty-five in number, holding shares to the amount in the aggregate of not less than three-fourths of the nominal capital of the company, and there shall have been paid up by each of such shareholders, on account of his shares, not less than ten pounds per centum.
5. The payment of the above percentage shall be acknowledged in, or endorsed on, the deed of settlement, and the fact of the same having been *bonâ fide* so paid, shall be verified by a declaration of the directors, or provisional directors, or any two of them, made before a Justice of the Peace, under the provisions and penalties of Ordinance No. 6, 1845, for “substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits,” and a true copy of such deed of settlement, and of the names of all the persons who shall at the time the company applies for a certificate of registration with limited liability hold shares in the company, with their places of residence and the number of shares held by each, attested as such true copy by a declaration of the directors or provisional directors, or any two of them, made before a Justice of the Peace, under the provisions and penalties of the said Ordinance No. 6, of 1845, shall be lodged with the said

<sup>1</sup> Printed as amended by § 1, Act 11, 1879, for which see “Banks.”

Registrar of Deeds, to be kept by him for future reference.

No. 23--1861.

And upon such conditions being complied with, and such other matters and things done, the Registrar of Deeds shall grant a certificate of registration with limited liability to any such company.

3. Any joint-stock company, except as aforesaid, already established, may obtain a certificate of registration, with limited liability, in manner and subject to the conditions following, that is to say: The directors of such company may—with the consent of not less than three-fourths in number and value of its shareholders who may be present personally or by proxy (where proxies are allowed by the deed of settlement) at any general meeting summoned for that purpose by a notice of not less than six weeks in the *Government Gazette* and in some one or more papers published at the place, or if there is no paper published thereat, in some one or more papers published in the town or village nearest to the place, where the business of such company is carried on—make such alteration in the name, the amount of capital paid up, and in the deed of settlement of the company generally, as may be necessary for enabling it to comply with the conditions hereinbefore mentioned with respect to joint-stock companies seeking to obtain certificates of registration with limited liability; and upon compliance with such conditions the Registrar of Deeds shall grant to such company, by its new name, a certificate of registration, with limited liability; and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers.

How by companies already established.

4. Every company that has obtained a certificate of registration with limited liability, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, cheques, orders for money, bills of parcels, invoices, receipts, letters, and other writings used in the transaction of the business of the company.

Regulations to be observed when certificate of registration has been obtained.

5. If such company do not paint or affix, and keep painted or affixed, its name in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding five pounds, for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any director or other officer of the company, or any person on his behalf, use any seal purporting to be a seal of the company,

Penalties for non-observances of regulations.



No. 23—1861.

whereon its name is not so engraved as aforesaid, or issue or authorize the issue of any notice, advertisement, or other official publication of such company, or of any bill of exchange, promissory note, cheque, order for money, bill of parcels, invoice, receipt, letter, or other writing used in the transaction of the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of twenty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money, for the amount thereof, unless the same shall be duly paid by the company.

Increase to nominal capital to be registered.

6. No increase to be made in the nominal capital of any company that has obtained a certificate of registration with limited liability, shall be advertised or otherwise treated as part of the capital of such company until it has been registered with the Registrar of Deeds; and no such registration shall be made unless a deed is produced to the Registrar executed by shareholders holding shares to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company, nor unless it is proved to the Registrar by such acknowledgment and declaration as hereinbefore mentioned, that upon each of such shares there has been paid up by the holder thereof an amount of not less than ten pounds per centum; and if any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty of fifty pounds; and the payment of the above percentage shall be acknowledged in or endorsed on the deed so produced, and the fact of the same having been *bonâ fide* so paid shall be verified by a declaration of the directors, or any two of them, made before a Justice of the Peace, under the provisions and penalties of Ordinance No. 6, 1845, for "substituting declarations in the place of certain oaths, and for the suppression of voluntary and extrajudicial oaths and affidavits."

Penalty.

Copies of new or supplementary deed of settlement to be registered.

7. Within one month after the date of any new or supplementary deed of settlement, which may at any time or times during the continuance of any joint-stock company which has obtained a certificate of registration with limited liability under this Act, there shall be transmitted by the directors of every such company to the Registrar of Deeds a true copy of such new or supplementary deed of settlement, attested as such true copy in the manner aforesaid, and to be kept for future reference as aforesaid. And in the months of January and July in every year, the directors of every such joint-stock company which has obtained a certificate of registration with limited liability shall make or cause to be made the following return to the Registrar of Deeds, namely:

Half-yearly returns of transfers of shares to be made to Registrar of Deeds.

A return, according to the schedule hereunto annexed, and containing the particulars therein set forth of every transfer

of any share in such company which shall have been made in the share transfer list or book kept by the said company since the preceding half-yearly return, or, in the case of the first of such returns made by such company, since the registration thereof as aforesaid by the Registrar of Deeds, and also of the changes in the names of all shareholders of such company whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the registration of the company by the Registrar of Deeds, as the case may be.

And if within any such period any such return be not made, then every director of such company shall be liable to a fine not exceeding twenty pounds: Provided that, if any joint-stock company which has obtained a certificate as aforesaid shall have its chief place of business in any division of the Colony other than Cape Town and the district thereof, and the Cape division, then a true copy of the aforesaid return, attested as such true copy in the manner aforesaid, shall, besides being transmitted to the Registrar of Deeds, be transmitted to the Civil Commissioner of such division; and in case such return shall not be so transmitted in the months aforesaid, every director of the company so failing to make such return shall be liable to a fine not exceeding twenty pounds.

Penalty for default.

Copy of return to be sent to civil commissioner.

Penalty.

8. If at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith on such request the directors shall make the same accordingly: Provided, however, that the directors may require the party making such request to defray any expense they may be put to in making the return aforesaid.

Return of single transfer may be made.

9. Every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said Registrar of Deeds and Civil Commissioners in pursuance of the provisions of this Act; and there shall be paid for such inspection such fees as may from time to time be appointed by the Governor, with the advice and consent of the Executive Council, in that behalf, not exceeding one shilling for each such inspection; and any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said Registrar of Deeds; and there shall be paid for such certified copy or extract such fee as the Governor, with the advice and consent of the Executive Council, may from time to time appoint in that behalf, not exceeding ninepence for each folio of such copy or extract; and that in all courts of the Colony every such copy or extract so certified shall be received in evidence, without proof of the signature thereto or of the seal of office affixed thereto.

Returns, &c., to be open to inspection.

Fees for inspection and for taking copy.

10. Every company shall, on being registered or on receiving a certificate of registration with limited liability, pay to the Registrar of Deeds the following sums:—

Fees for registration of company.

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When the nominal capital shall be five thousand pounds or under, the sum of ten pounds.

When the nominal capital shall be above five thousand and not exceeding twenty thousand pounds, the sum of twenty pounds.

When the nominal capital shall be above twenty thousand pounds, the sum of thirty pounds.

And besides these sums and the fees hereinbefore provided to be paid, there shall be paid by such joint-stock companies registered as aforesaid such other fees in respect of any services to be performed by the Registrar of Deeds under this Act as the Governor, with the advice and consent of the Executive Council, may from time to time appoint in that behalf.

Members of company not liable for any debts except as provided for by this Act.

11. The members of any joint-stock company which has so obtained a certificate of registration with limited liability, after such certificate is granted shall not be liable (any law to the contrary notwithstanding) under any judgment, decree, or order which shall be obtained against such company, or for any debt or engagement of such company, further or otherwise than is herein-after provided.

Effect of execution against company.

12. If any execution, or other process in the nature of execution, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the shareholders to the extent of the portions of their shares respectively in the capital of the company not then paid up; but no shareholder shall be liable to pay in satisfaction of any one or more such execution or other process a greater sum than shall be equal to the portion of his shares not paid up: Provided, always, that no such execution shall issue against any shareholder except upon an order of the Court or of a Judge of the Court in which the action, suit, or other proceeding shall have been brought or instituted; and such Court or Judge may order execution to issue accordingly, with the reasonable cost of such application and execution, to be taxed by the taxing officer of the said Court; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

If there be no goods to satisfy an execution against the company former shareholders may be proceeded against.

13. If any execution or other process in the nature of execution shall have been issued against the property or effects of any shareholder for the time being, and there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any former holder or holders of the shares held by such shareholder for the time being for such amount as such shareholder for the time being shall have failed to pay in satisfaction of the execution, or other

process in the nature of execution, issued: Provided, however, that nothing herein contained shall be taken to render any such former holder or holders of shares aforesaid liable for any larger amount than he or they would have been liable for under the provisions of this Act if he or they had been, at the time of the issuing of such execution, or other process in the nature of execution, the holder or holders of such shares: Provided, also, that in the case of execution against any former shareholder, such shareholder shall have been a shareholder at the time when the contract or engagement for which such judgment, decree, or order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained: Provided, further, that in no case shall execution be issued on such judgment, decree, or order against the person, property, or effects of any such former shareholder, after the expiration of two years next after the return of the transfer of the shares of the person or persons sought to be charged shall have been made to the Registrar of Deeds, as provided in sections seven and eight of this Act: And provided, further, that the provisions of this section shall (anything in this Act to the contrary notwithstanding) apply to every joint-stock company established for the purpose of banking: Provided, however, that in no case shall execution be issued on any judgment, decree, or order against the person, property, or effects of any former shareholder in such banking company after the expiration of two years next after the shares of such former shareholder sought to be charged shall have been transferred in the books of the said company, upon the approval of the directors of the said company, and the said former shareholder shall have given notice in the *Government Gazette*, and in some one or more newspapers (if there be any) published in the town or village where such banking company has its chief place of business, if such chief place of business be in any division of the Colony other than Cape Town and the district thereof, and the Cape Division, that he has ceased to be a shareholder in such banking company: And provided, also, that every such shareholder in any such banking company shall, as such former shareholder, be liable to the same amount as if this Act had never been passed.

Excepting such as have transferred their shares for upwards of two years.

14. If the directors of any such company shall declare and pay any dividend when the company is known by them to be insolvent, or any dividend the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office: Provided that the amount for which they shall be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend,

If dividends be made the directors knowing the company to be insolvent, they shall be severally liable.

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or shall object thereto, and shall file their objection, in writing, with the clerk of the company, they shall be exempted from the said liability.

Notes of shareholders not receivable as instalments on shares.

15. No note or obligation given by any shareholder to the company whereof he is a shareholder, whether secured by any pledge or otherwise, shall be considered as payment of any money due from him on any share held by him.

Rights of creditors of existing companies preserved.

16. Where any company established previous to the taking effect of this Act shall obtain a certificate of registration with limited liability, the grant of such certificate shall not prejudice or affect any right which previously to the grant of such certificate has accrued to any creditor or other person against the company in its corporate capacity, or against any person then being, or having been, a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being, or having been, a member of such company, as he would have been entitled to in case such certificate had not been obtained.

Change in the name of a company under this Act not to affect its rights nor those of other parties.

17. No alteration made by virtue of this Act in the name of any company shall prejudice or affect any right which previously to such alteration has accrued to such company as against any other company or person, or which has accrued to any other company or person as against such company, but every such company as against any other company or person, and every other company or person as against such company and the members thereof, shall be entitled to all such remedies as they or he would have been entitled to if no such alteration had been made, and no such alteration shall abate or render defective any legal proceeding pending at the time when such alteration is made.

Certain companies excluded from the operation of this Act.

18. Every company in which the liability of the shareholders shall have been limited by any special Act passed during the present or any previous Session of Parliament, or by any Ordinance of any former Legislature of this Colony, shall be subject to the provisions of sections four, five, six, seven, eight, nine, ten, thirteen, fourteen, fifteen, and seventeen of this Act, in so far as these provisions are not repugnant to the provisions of any such special Act or Ordinance aforesaid; and the directors and other officers of every such company shall be liable to the penalties in the said sections of this Act provided in case of their neglecting or failing to comply with the provisions of the said sections. And the word "Limited" shall, as is provided in the case of all joint-stock companies coming within the operation of this Act, be the last word of the name of every such company, anything in any special Act or Ordinance aforesaid to the contrary notwithstanding: Provided, however, that it shall not be necessary for any such company to receive from the Registrar of Deeds a certificate of registration with limited liability, or to pay to the said Registrar the sums mentioned in section ten to be paid by every company on

being registered, or on receiving such certificate of registration with limited liability: Provided that nothing in the Ordinance No. 8, 1839, entitled "Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary," or in the Ordinance No. 11, 1844, entitled "Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name as Trustees or Tutors, and to sue and be sued in the name of their Secretary," or in the Act No. 9, 1855, entitled "Act for Incorporating the South African Association," or in an Act passed during this present Session of Parliament, entitled "An Act for Incorporating the Union Fire and Marine Insurance and Trust Company, and enabling them to sue and be sued in the name of their Secretary," or in another Act passed during this present Session, entitled "An Act for the Regulation of the Affairs of the General Estate and Orphan Chamber," shall be taken or construed to limit the liability of the shareholders or members of any of the said companies or associations, or to bring the said companies or associations, or any of them, under any of the provisions of this Act.

No. 23—1861.

19. This Act may be cited for all purposes as "The Joint-stock Companies' Limited Liability Act, 1861." Short title.

SCHEDULE.—*See Section 7.*

Return, made pursuant to the "Joint-stock Companies' Limited Liability Act, 1861."

TRANSFER OF SHARES.

Name of Company.	Business or Purpose.	Place (or Principal Place, if more than one) of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	Distinctive Numbers of the Shares transferred.	Date of Transfer.

208 COMPANIES (JOINT-STOCK—LOANS ON SHARES).

Ord. 13 - 1846.

SHAREHOLDERS WHOSE NAMES HAVE BECOME CHANGED BY MARRIAGE OR OTHERWISE.

Former Name.	Former Place of Abode.	Present Name.	Present Place of Abode.	Distinctive Number of Shares.

(Date) \_\_\_\_\_

(Signature) \_\_\_\_\_

No. 13.—Sd. P. Maitland.]

[March 25, 1846.

Ordinance for facilitating Loans on security of Shares in Joint-stock Companies.

Preamble.

WHEREAS a number of banking, and other joint-stock companies exist in this Colony, constituted respectively by and under respective deeds of co-partnership or association, commonly called trust deeds: And whereas in all or most of such deeds as aforesaid a certain clause or provision is contained by which it is stipulated and agreed between the parties thereto, that proprietors should assign and transfer their shares by endorsement upon the certificates thereof, but that no such endorsement should be valid to transfer any interest in, or right or title to, any share until such endorsement should have been registered and certified in manner and form as by the said deeds, provided: And whereas in all or most of the said deeds, a certain other clause or provision is contained, limiting, and determining the number of shares which it shall be competent for any person to hold or possess: And whereas the two certain clauses or provisions aforesaid, were devised and intended to apply to and govern cases of sale and purchase, and are inapplicable to cases in which shares are sought to be only pledged, seeing that in such cases, it would be inconvenient to require that a complete and entire change of ownership should be *ab initio* effected, while, moreover, the second of the clauses or provisions aforesaid, limiting and determining the number of shares to be held or possessed by any one person, would, in many instances, tend to prevent such complete and entire change from being effected: And whereas it may be apprehended, that the title of any person to or with whom any certificates of shares of any such

joint-stock company as aforesaid, may be pledged, might, whether such certificates have endorsed thereon, fitting words of cession from the person pledging to the person receiving the pledge, or are only indorsed in blank by such first-mentioned person; or are by him pledged and deposited without either cession or endorsement, but with a collateral power to sell conferred upon the person receiving the pledge to be executed in case of default made by the person pledging; be drawn into question and disputed by execution creditors or creditors, in an insolvent estate; so long as no assignment or transfer as aforesaid, has been as aforesaid, registered and certified. And whereas any such apprehension may tend to impede the freedom of raising money upon security of certificates of shares; and it is therefore expedient to remove the same, and to facilitate transactions tending to promote the interest and convenience of traders and others requiring from other persons temporary advances, or forbearance of their demands; Be it therefore enacted, by the Governor 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 legal holder of any share of the capital stock of any joint-stock company now existing, or to be hereafter established, within this Colony, to pledge, or to have pledged, such share for any purpose, object, or consideration for which movable property may lawfully be pledged, by pledging, or having pledged, in manner and form as in the next succeeding section mentioned, the certificate of such share, and the person receiving such pledge, (called hereafter in this Ordinance the pledgee) shall be deemed and taken as against the pledger and his creditors, whether in execution or insolvency, and all persons claiming from, through or under him, or them, to have a good and valid hypothec, or lien upon the said certificate, and upon the said share, and to be in the same plight and condition, in regard to such share as if the same like the certificate thereof, were a thing capable of being actually handed over and deposited with such person, and had actually so been; Provided always, that nothing herein contained shall extend to alter or affect the mutual rights or claims of the company in which such share exists and the owner of any such share, which rights or claims, notwithstanding any such pledge, shall be deemed and judged of precisely as if such pledge had never been effected. And provided also, that nothing in this Ordinance contained, shall extend to supersede, invalidate, or otherwise affect any special provision in any trust deed contained, touching and concerning the manner and form in which alone pledges of shares, shall be constituted and effected.

Pledge of shares by  
pledge of certificates  
of shares.

2. And be it enacted, that every such share as aforesaid, shall be deemed and taken, as against the pledger, his heirs, and creditors, to be or to have been lawfully and effectually pledged, when and as often as the certificate of such share shall be, or shall have been, delivered into and detained in the actual custody and possession of

Manner of pledge  
ing certificates.



Ord. 13—1846.

the pledgee; having endorsed thereon, in fitting words, a cession of the said share made in favour of the pledgee, by the person entitled to cede the same, or having thereon the blank endorsement of such person so entitled, or otherwise, when in reference to the certificate so delivered and detained as aforesaid, some instrument, note, or memorandum in writing, shall be, or shall have been, made containing a description of the share pledged, and a statement of the purpose, object or consideration, for which the same shall have been pledged. Provided always, that nothing herein contained shall be construed so as to deprive any pledge sought to be effected in any manner or form other than is in this section mentioned, of any force or validity which it might otherwise have had. And provided also, that nothing in this Ordinance contained, shall be deemed, or taken to abridge, alter or affect the right, if any, of any pledgee of any share to retain the same for or account of any future or other debt or demand, not contemplated at the time of the original pledge, or mentioned in any such instrument, note or memorandum as aforesaid, which right shall be judged of and determined according to the ordinary rules of law relative to the detention of movables pledged, for the security of future or other debts or demands.

Issue of fresh certificates on proof of loss of originals.

3. And whereas certificates of shares which have been pledged, or otherwise delivered, upon good consideration, may, through fraud, be alleged, or through mistake be supposed, to be lost or destroyed, and thereupon application for fresh certificates may be made to the directors of the company in which the shares exist: And whereas a sudden or secret compliance with any such application might tend to the prejudice of pledgees or other persons, and it is therefore expedient, to provide for the protection of such pledgees or other persons, and, at the same time, to provide, for the issue of fresh certificates in cases where the original certificates shall appear to have been really lost or destroyed; Be it enacted, that in every case in which any such application as aforesaid shall be made to the directors of any joint-stock company, such directors, in case they shall not have knowledge or notice that the share in regard to which the fresh certificate is applied for is in pledge, or otherwise disposed of, shall, (but at the cost and charge of the applicant) insert an advertisement in the *Government Gazette*, and in such one of the newspapers in the Colony as they shall select, stating that an application has been made for a fresh certificate for the share numbered — and issued to — as the proprietor thereof, upon the ground that the original or former certificates of the said share has been lost or destroyed (as the case may be), and that, should no objection be lodged at the office of the company on or before some certain day to be fixed in such advertisement, (not being less than fourteen days from the date of the last publication of the said advertisement), the said fresh certificate will be issued as requested.

4. And be it enacted, that in case no such objection as aforesaid shall be lodged, it shall and may be lawful for the said directors to issue, or cause to be issued, the fresh certificate applied for, and such directors shall not, nor shall the company, incur thereby any liability whatsoever: Provided always, that if any pledgee of any certificate and share shall have at any time before the application for a fresh certificate, given notice in writing at the office of the company, that the same has been pledged to him, or if the pledgee of any certificate and share shall lodge an objection in pursuance of any such advertisement, and the directors shall, nevertheless, without the consent of such pledgee, or the decree of some competent Court, issue such fresh certificate, such directors shall be personally responsible to such pledgee for any loss or damage which he may thereby sustain.

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Non-liability of company on issue of fresh certificates.

Personal responsibility of directors in certain cases.

5. And be it enacted, that in case the pledgee of any original or former certificate of any share of which a fresh certificate is applied for as aforesaid, shall not have given notice in writing of such pledge at the office of the company, or after such advertisement as aforesaid shall have been duly published, shall not within the time in that behalf specified, lodge an objection to the issue of any fresh certificate, and the directors shall, in consequence, have issued or caused to be issued such certificate to the person applying for the same, every subsequent purchaser or pledgee dealing *bonâ fide*, and without notice of the older pledge, upon the faith of the fresh certificate as evidence of the ownership of the share which it represents, shall be entitled to be preferred to the full extent of his claims and demands above or before the original pledgee: Provided, however, that such original pledgee shall still be entitled to be preferred above or before the person by whom, or in whose right or supposed right any such fresh certificate shall have been obtained, and above or before his heirs, and above or before his creditors, whether in execution or insolvency, but so, however, as not to require any execution creditor to refund any moneys actually paid out to him, or to require the creditors of any insolvent estate to refund any dividends by them actually received.

Order of preference between pledgee of original certificate and *bonâ fide* pledgee or purchaser on faith of fresh certificate.

6. And be it enacted, that in the interpretation of this Ordinance the term person, shall embrace any co-partnership or company, 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.

Interpretation clause.

7. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal.

Exclusion of Natal.

8. 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. 3—1873.]

[June 26, 1873.

## ACT

To Remove Doubts as to the Ownership of Immovable Property held in Trust for Unincorporated Joint-stock Companies and other Bodies, and for the Appointment, when necessary, of Trustees for such Companies or Bodies.

Preamble.

WHEREAS in and by the trust deeds or deeds of settlement of divers unincorporated joint-stock companies formed in this Colony for trading purposes, it is amongst other things provided that all and singular the properties and effects belonging to such companies, respectively, shall be, and that the same are thereby, vested in trustees, to be from time to time appointed in manner and form as in the said deeds, respectively, set forth: And whereas as often as any such company purchases, or becomes otherwise entitled to, any immovable property for its use or benefit, the practice in this Colony has been to transfer such immovable property to the trustees of such company and to the trustees thereof for the time being: And whereas immovable property, acquired for the uses and purposes of religious, charitable, and educational associations, has been from time to time granted or transferred to certain office-bearers or other trustees for such associations, and to such office-bearers or other trustees for the time being: And whereas doubts have recently arisen whether, in regard to such joint-stock companies and to such associations, it is not necessary, in order that the ownership of immovable property granted or transferred in manner aforesaid shall pass to and vest in the trustees or office-bearers for the time being, that the out-going office-bearers or other trustees should make transfer in the Deeds Registry to their successors as often as any change in the persons of such office-bearers or other trustees takes place: And whereas it is expedient to remove such doubts by declaring that no such successive transfers shall be necessary: 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 terms following shall have the meanings respectively assigned to them:

1. The term "company" shall comprise any company or co-partnership carrying on any trade or business in this Colony, whereof the capital stock shall be divided into shares transferable without express consent of all the shareholders or co-partners and any mutual assurance society, and whereof the shareholders or co-partners shall consist of not fewer than twenty-five persons.
2. The term "association" shall comprise any congrega-

tion, society, or denomination, Christian or otherwise, united for the public worship of Almighty God, as also every missionary society or other agency engaged in promoting the spread of religion and civilization amongst the native races; and every school for the education of the poor, and every hospital for the relief of the sick, and every library, and every museum, which school, hospital, library, or museum shall be supported wholly or in part by subscriptions or donations, and be under the management of a committee or other board periodically chosen by the subscribers or donors. The term "association" shall also comprise every benefit society, masonic body, or other institution, not carrying on any trade or business, and consisting of not fewer than twenty-five members.

3. The term "office-bearers" shall, in regard to associations for the public worship of Almighty God, and in regard to missionary societies and other agencies for the spread of Christianity and civilization amongst the native races, comprise bishops of Episcopal churches, moderators of Presbyterian churches, ministers of Congregational churches, general superintendents of Wesleyan districts and superintendents of Wesleyan circuits, consistories, elders, deacons, and generally all functionaries by whatsoever name called who hold office in any church or denomination, whether Christian or not, or in any missionary society, or who form or act for any other such agency as aforesaid.
4. The term "trustee" shall comprise the persons in whom by the provisions of any trust deed or deed of settlement of any such company as aforesaid, the property, estate, and effects of such company shall for the time being be vested in trust for such company; and all persons not designated as office-bearers, in whom the property, estate, and effects of any such association as aforesaid shall for the time being be vested in trust for such association, as also the persons in whom the property, estate, or effects belonging to any such school, hospital, library, or museum as aforesaid shall by the rules and regulations thereof as agreed upon or established by the subscribers or donors to such school, hospital, library, and museum, be vested for the purposes thereof.
2. As often as any immovable property shall be or shall have been granted or transferred to the trustees of any company, in their capacity as such trustees, and to the trustees of such company for the time being, the trustees for the time being of such company shall be, and they are hereby declared to be, the owners in their

Trustees for the time being of any "company" to be owners of property held in trust without fresh transfer.

No. 3—1873.

said capacity of such property, as fully and absolutely as if the transfer of such property had been originally made to them, in their said capacity, by their own proper names; and no transfer in the Deeds Registry from any former trustee to any new trustee shall be necessary.

Office-bearers of any association to be owners in like manner.

3. As often as any immovable property shall be, or shall have been, granted or transferred to any office-bearer or office-bearers of any association, and to the bearer or bearers of such office or offices for the time being for the objects or purposes of such association, or to any trustees of or for any association, and to the trustees for the time being, for the objects or purposes aforesaid, such office-bearer or office-bearers or such trustees for the time being shall be, and they are hereby declared to be, the owner or owners, in his or their capacity, of such property, as fully and absolutely as if the grant or transfer of such property had been originally made to him or them in their said capacity, by his or their own proper name or names; and no transfer in the Deeds Registry from any former office-bearer or trustee to any new office-bearer or trustee shall be necessary.

Governor in Council may extend the provisions of the preceding section in certain cases.

4. It shall be lawful for the Governor, with the advice of the Executive Council, to extend the provisions of the last preceding section so as to embrace the office-bearer or office-bearers, or the trustees of any charitable or educational association, not being such a school, hospital, library, or museum as aforesaid, to which association it shall seem right and proper, and in unison with the spirit of this Act, to extend such provisions; and a certificate signed by the Colonial Secretary and deposited in the Deeds Registry, to the effect that the association named in such certificate has been by the Governor, with the advice of the Executive Council, placed under the provisions of the last preceding section of this Act shall for all purposes be conclusive evidence that such association has been so placed.

This Act not to extend to companies managed by any Ordinance or Act of Parliament.

5. Nothing in this Act contained shall extend to any company or association which shall, at the time of the taking effect of this Act, be regulated or managed under the provisions of any Ordinance or any Act of Parliament, or which may hereafter be regulated or managed under any such Act.

And whereas it is expedient that provision should be made for the appointment by the Court of new trustees for any such company or association as aforesaid which may stand in need of such new trustees, and be without other means of lawfully appointing them, be it enacted as follows:—

Supreme or Eastern Districts Court may be moved to appoint new trustees when no other means of supplying vacancy exists.

6. As often as by death, unsoundness of mind, resignation, failure to elect, absence from the Colony, or other cause, the trustees, or any of them of any such company or the office-bearers or other trustees of any such association as is in this Act described, or of any association which, under the provisions of the fourth section of this Act shall be placed under the provisions of this Act, shall

become incapable of acting in the execution of the trusts for such company or association, it shall be lawful for any person who shall be a member of or interested in such company or association to apply by petition to the Supreme Court, or (in case such company or association shall be one established within any of the districts over which the Court of the Eastern Districts has jurisdiction) to the Court of the Eastern Districts, for such order as he shall conceive himself entitled to, and he may by affidavit give such evidence in support of such petition as he shall think fit, and may serve notice of such petition upon such person or persons as he may think it needful or expedient to serve with such notice: Provided that upon or before the hearing of such petition the Court in which it shall be pending may order service of notice of such petition upon any person or persons whom the Court shall think fit, and may order such notice to be published in the *Government Gazette*.

7. Upon the hearing of such petition the Court may take such evidence by affidavit or *viva voce* as such Court shall deem necessary, and by order appoint trustees for the time being for such company or association, and may by such order direct how new trustees for such company or association shall be afterwards from time to time appointed; and the trustees for the time being may be nominated and appointed by their proper names, or may be described as persons filling for the time being certain specified offices or positions, according as the Court having regard to the nature and circumstances of the company or association then in question shall deem expedient and direct; and the Court may by such order make such provision, if any, as may in the particular case appear to be required for the more effectual performance by the trustees of the trusts reposed in them.

In such cases Court may appoint trustees and regulate future appointments.

8. If in any case it shall happen that any immovable property shall have been granted or transferred to any unincorporated society or body established for religious, charitable, or educational purposes by the name borne by such society or body, and not through the instrumentality or intervention of office-bearers or other trustees acting for and representing such society or body, it shall be lawful for any person who shall be a member of, or interested in, such society or body, to apply by petition in manner and form as hereinbefore in the sixth section of this Act mentioned for the appointment of trustees for such society or body; and the Court to which such petition shall be presented, proceeding in manner and form as in the sixth and seventh sections of this Act mentioned, may, if satisfied that the appointment of trustees to act for and represent such society or body is expedient, appoint such trustees; and the provisions of the seventh section shall in substance apply to the appointment of such trustees, and to the power of providing how new trustees shall be afterwards from time to time appointed, and to all other matters in the said seventh section contained.

Mode in which trustees may be appointed to unincorporated societies.

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Trustees appointed under 7th and 8th sections to be owners of property as in the 2nd and 3rd sections of this Act.

And invested in trust with all rights and liabilities of such company, &c.

Short title.

9. The trustees for the time being appointed under or in conformity with the provisions of the seventh or eighth sections of this Act shall be and are hereby declared to be the owners in trust of all the immovable property granted or transferred to, or for the benefit or purposes of, the company, association, society, or body for which such trustees shall have been appointed agreed to in like manner as is hereinbefore in the second and third sections provided in regard to the trustees and office-bearers therein mentioned; and shall also be, and are hereby declared to be, the owners in trust of all movable property belonging to such company, association, society, or body; and shall also be, and are hereby declared to be, invested in trust with all the rights, and entitled to all the claims, of such company, association, society, or body, and to be subject as such trustees to all the liabilities of and demands against the same.

10. This Act may be cited for all purposes as "The Companies' and Associations' Trustees Act, 1873."

No. 12—1868.]

[Sept. 2, 1868.

## ACT

To make Provision for the winding up of Joint-Stock Companies.

Preamble.

WHEREAS it is expedient that provision should be made for the winding up of joint-stock companies in this Colony, in cases where it is desirable that such companies should be wound up: 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:—

Definition of term joint-stock company.

1. The term joint-stock company in this Act shall mean every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without express consent of all the partners, and also every partnership which at its formation, or by subsequent admission, shall consist, or have at any time consisted of, more than seven members.

When company may be wound up.

2. Every joint-stock company may be wound up under the following circumstances, that is to say:

1. Whenever the company has passed a special resolution that the same shall be wound up.
2. Whenever the company does not commence its business within one year from its incorporation, or suspends its business for the course of a year.
3. Whenever the number of members is reduced below seven.
4. Whenever three-fourths of the subscribed capital have

been lost or become unavailable for the business of the company.

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5. Whenever the company is unable to pay its debts.
6. Whenever the Court is of opinion that it is just and equitable that the company should be wound up.
3. A joint-stock company shall be deemed to be unable to pay its debts—
  1. Whenever any person shall have obtained any judgment, decree, or order of any Court of competent jurisdiction for the payment of money against such joint-stock company or any officer of the same, as such officer on behalf of or as representing such joint-stock company, and such judgment, decree, or order shall remain unpaid or unsecured without the consent of the creditor for a space of thirty days.
  2. Whenever to any writ or warrant of execution of any competent Court there shall be a return of no effects, or no sufficient effects to answer the amount of the writ, or other return to the like effect.
  3. Whenever any creditor of the company has sued out any summons or other process of any competent Court for the recovery of any debt or money demand to the amount of ten pounds or upwards against such company or any officer thereof, as such officer as representing such company, and such creditor shall file in the Supreme Court an affidavit of such suing out of such summons or other process, and that the debt or money demand for the recovery whereof such summons or other process shall have been issued is justly due to him, and such company shall not within twenty-one days after the service of notice of such affidavit, and the like number of days after service of such summons or other process upon them, which shall last happen, have paid or secured or otherwise arranged to the satisfaction of such creditor for such debt, or have made it appear to the satisfaction of a Judge of the Supreme Court that it is the *bonâ fide* intention of such company to defend such action on the merits thereof, and that there is reasonable ground for such defence, and shall not within twenty-one days after the service of such notice and summons or other process have caused appearance to be entered to such action.
  4. Whenever it shall be proved by any means to the satisfaction of the Court that the company is unable to pay its debts.
4. Every application to the Court for winding up of a company under this Act shall be by petition to the Supreme Court, and may be presented by the company, if incorporated in the Colony, or by any officer of the company, if not incorporated in this Colony,

When company shall be deemed unable to pay its debts.

Application for winding up company, how and by whom to be made.



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authorized to sue in the name or on behalf of the company, or by one or more than one creditor of the company, or by one or more than one member of or contributory to the company, or by all or any of the above parties; and every order for winding up which shall be made on such petition shall have the same effect, no matter on whose petition the same shall be made.

Order for winding up to have effect from date of presenting petition.

5. The winding up shall have relation to the date of the presenting of the petition for winding up on which any order for winding up shall be made.

Court may stay all proceedings against company pending decision on petition for winding up.

6. The Court may at any time after the presentation of a petition for winding up a company, and either before or after making an order for winding up the company, upon the application of the company or of any person interested as creditor, contributory, or otherwise, restrain the commencement of, or any further proceedings in any action, suit, or other proceeding, nominally or actually, against the company, either absolutely or upon such terms as the Court shall deem right, and may also at any time after the presentation of such petition, and before the appointment of general liquidators, appoint a provisional liquidator or liquidators of the estate and effects of the company, with all or such of the powers of general official liquidators as the Court shall order.

And may appoint provisional liquidators.

Powers of court on hearing petition.

7. Upon the hearing of any petition for winding up, the Court may dismiss the same with or without costs, or may adjourn the hearing thereof conditionally or unconditionally, and may make such interim or interlocutory order on the same, and may direct such inquiries or generally may make such order as may seem just.

Order for winding up to bar suits, &c., against company.

8. When any order shall have been made for winding up a company, no action, suit, or other proceeding shall be brought or further prosecuted against the company, except by leave of the Court, and under such conditions, if any, as the Court may impose.

Court may stay or suspend proceedings under order on cause shown.

9. The Court may at any time after such order, on the application of the liquidator or liquidators, either general or provisional, or of any creditor of or contributory to such company, or other person showing an interest in the matter, and upon proof to the satisfaction of the Court that all or any proceedings in relation to such winding up ought to be stayed either absolutely or conditionally, or suspended for any time, make order accordingly, subject or not subject to conditions, or any other order of the same nature as shall to the Court seem just.

Court may take into consideration wishes of creditors or contributories.

10. The Court may in all matters under this Act give such weight as shall seem just to the wishes of creditors or contributories to any company on the subject of any proceeding under this Act, and may regard the wishes or votes of such creditors and contributories, or of any particular classes of such, respectively, as respects number and as respects value, and as respects the power of voting given by the trust deed or articles of association of the company, if any, according as may seem just with regard to the

matter before the Court, and may direct meetings of creditors or of contributories, or of both, or of any particular classes thereof, to be called, held, and conducted in such place and in such manner as may seem just, for the purpose of ascertaining their wishes, and may appoint the person to act as chairman of any such meeting and to report to the Court the result thereof.

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11. For the purpose of conducting the proceedings in winding up a company, the Court may appoint a person or persons to be called an official liquidator, or official liquidators, and may make such appointment for any time and subject to any conditions which shall seem right. In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all, or any one or more of such persons. The Court shall determine also whether any and what security shall be given by any official liquidator on his appointment. If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed in the custody of the Court; and in any indictment for theft thereof, or of any part thereof, under such circumstances, or for any similar purpose, the property may be laid in the Master of the Supreme Court.

Court may appoint official liquidator.

And where more than one are appointed shall define duties to be done by each.

And shall determine the security to be given.

Property of company to be in custody of court till appointment of liquidator.

12. Any official liquidator may resign, or may be removed by the Court on due cause shown, and any vacancy in the office of official liquidator may be filled by the Court, and not otherwise.

Resignation or removal of official liquidator.

13. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, and dependent on his good behaviour in his office, as the Court may direct, and if more liquidators than one are appointed such remuneration shall be distributed among them in such proportions as the Court shall direct.

Remuneration to official liquidators.

14. The official liquidator or official liquidators shall be described by the style of the official liquidator or official liquidators of the company in respect of which he or they shall be appointed, and not by his or their individual name or names. He or they shall take into his or their custody or under his or their control all the property, effects, and things in action or possession to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the Court.

Designation of official liquidators.

Duties of official liquidators.

15. The official liquidator shall have power, with the sanction of the Court, to do the following things:

Powers of official liquidator.

1. To bring, defend, prosecute or continue, or to continue the defence of, any action, suit, or proceeding, civil or criminal, in the name and on behalf of the company.
2. To carry on the business of the company so far as may be necessary for the beneficial winding up of the same.

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3. To sell the movable and immovable property and effects and things in action or possession belonging to the company, by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels.
4. To do all acts, and to execute in the name and on behalf of the company all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal, if any.
5. To prove, rank, claim, and draw dividend in the matter of any insolvency of any debtor or contributory to the company for any balance against the estate of such debtor or contributory, and to take and receive dividends in respect of such balance in the matter of the insolvency as a separate debt due from such insolvent, and rateably with his other creditors or with preference, as the case may be.
6. To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, wherever the company itself was authorized to draw, accept, make, or endorse such bills or notes, respectively, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill or note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof.
7. To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or his estate, which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself.
8. To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Court may authorize exercise of powers without its intervention, and may restrict powers of provisional liquidator.

16. The Court may provide by any order that the official liquidators may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator

is provisionally appointed may limit and restrict his powers by the order appointing him.

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17. The official liquidator may, with the sanction of the Court, appoint an attorney-at-law to assist him in the performance of his duties.

Official liquidator may obtain assistance of an attorney-at-law.

18. As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

Court to settle list of contributories, and to cause company's assets to be collected and applied.

19. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others.

Court to distinguish between contributories.

20. The Court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, all moneys, books, papers, estate, or effects which happen to be in his hands for the time being and to which the company is *prima facie* entitled.

Court may make order for delivery to official liquidator of books, papers, effects, &c., of company.

21. The Court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made in manner in the said order mentioned of any moneys due from him, or from the estate of the person whom he represents, to the company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Act; and it may, in making such order, when the company is not limited, allow to such contributory, by way of set-off, any moneys due to him, or the estate which he represents, from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit: Provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Court may make order on contributory directing payment of moneys due by him to company irrespective of his liability under this Act.

And may allow as set-off moneys due by company to contributory.

22. The Court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of

Court may make call on contributories

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the rights of the contributories amongst themselves, and shall, in making any call, consider the rights of such contributories amongst themselves, and so make such call as to conduce to the ultimate adjustment of such rights without prejudice to the paramount rights of creditors and others, if any; and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Court may order all moneys to be deposited in the bank.

23. The Court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same to some bank to be named by the Court, to an account to be opened therewith in the name of the official liquidator, as such in the fourteenth section of this Act is provided, instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator; and the liquidator may, in like manner, be ordered to pay into the like bank any sum or sums of money in his hands, or to come into his hands, on behalf of the company, to the like account.

Moneys, &c., so deposited subject to order of court with respect to its administration.

24. All moneys, bills, notes, and other securities paid, and delivered into such bank as aforesaid shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of, the same, as the Court may direct.

Official liquidator may recover out of estate of deceased contributory.

25. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, the official liquidator shall be deemed entitled to claim as a creditor on the estate of such deceased contributory in respect of the sum so ordered to be paid, and shall be entitled to take proceedings as such creditor for recovering such sum out of the estate of such deceased contributory.

Order of court sufficient proof of debt.

26. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are *primâ facie* to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Court may fix day for proving debts.

27. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims or be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust rights of contributories and distribute surplus.

28. The Court shall adjust the rights of the contributories amongst themselves and distribute any surplus that may remain amongst the parties entitled thereto.

Payment of costs when assets are insufficient to meet liabilities.

29. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred

in winding up any company, in such order of priority as the Court thinks just.

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30. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Company to be dissolved by order of court.

31. Any order so made shall be published in the *Government Gazette* and in such newspaper as the Court may direct within ten days after the making of such order.

Order to be published in Government Gazette.

32. If the official liquidator makes default in publishing as aforesaid the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds sterling for every day during which he is so in default.

Official liquidator in neglecting to publish order liable to penalty.

33. The Court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company, and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Court may summon before it persons deemed capable of giving information, and may direct production of books, &c.

Persons neglecting to attend liable to be apprehended.

Production of papers, &c., not to prejudice lien.

34. The Court may cause to be examined upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid, or whom it may be desired to examine, concerning the affairs, dealings, estate, or effects of the company, and may cause to be reduced into writing the answers of every such person and require him to subscribe the same.

Evidence may be taken on oath.

35. The Court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony or otherwise abscond, or to remove or to conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until

Contributory may be arrested by court and seizure of effects made on suspected intention to abscond.

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But bail may be taken.

such time as the Court may order. But bail may be accepted by the Court, if it shall seem fit, for due payment of any calls due by him, or for the production of such books, papers, securities, goods, and chattels, or any of such matters; and on such bail being given to the satisfaction of the Court, such person may be released from custody, or such books, papers, securities, goods, and chattels, or any of them, from seizure, as to the Court may seem right.

Powers conferred on court by this Act to be deemed to be additional, and not restrictive.

36. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly.

How appeals from decision of court may be had.

37. Reviews of, and appeals from any, order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which reviews and appeals may be had respectively from any order or decision of the same Court in cases within its ordinary jurisdiction.

Transactions with company in process of being wound up void unless court order otherwise.

38. Where any company is being wound up under this Act all dispositions of the property, effects, and things in action of the company, and every transfer of shares or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up, shall, unless the Court otherwise order be void.

Books, &c., of company and of liquidator to be taken *prima facie* to be correct.

39. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books, accounts, &c., of company wound up and dissolved.

40. Where any company has been wound up under this Act, and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in such way as the Court shall direct.

Court may make order for inspection of company's books, &c.

41. When an order has been made for winding up a company the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by the creditors or contributories in conformity with the order of the Court, but not otherwise.

Contingent debts and claims admissible to proof.

42. In the event of any company being wound up under this Act, all debts payable on a contingency and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear a certain value; and in proving or claiming debts against

any company in course of winding up under this Act, save where it is herein otherwise provided, the principles regulating the proof of debts in case of the judicial insolvency of any individual shall, so far as may be, be followed and observed.

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43. The liquidators may, with the sanction of the Court, pay any classes of creditors in full, or make such compromise or other arrangement as they may, with the like sanction, deem expedient with creditors, or persons claiming to be creditors, or persons having or alleging themselves to have a claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

Liquidators may, with sanction of court, pay claims in full or compromise.

44. The liquidators may, with the sanction of the Court, compromise all calls and liability to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Liquidators may, with sanction of court compromise all debts and liabilities due to company.

45. Where any company is being wound up under this Act, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Attachment or sequestration void where company is being wound up.

46. Any alienation, transfer, cession, delivery of goods, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and any payment of money which would, if made or done by or against any private person, in the event of his insolvency, be deemed to have been made or done by way of undue preference, under and by virtue of Ordinance No. 6 of 1843, entitled "Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall be deemed to correspond with the order for the compulsory sequestration of the estate of a private person under the fifth section of the Ordinance No. 6 of 1843 aforesaid; and any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of its creditors shall be void to all intents.

What shall be deemed undue preference.

Presentation of petition for winding up to be deemed to correspond with order for compulsory sequestration.



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Powers of court on proof of misapplication of moneys by officers of company or liquidator.

47. Where, in the course of winding up any company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the Court thinks just, or to contribute such sums of money to the assets of the company, by way of compensation in respect of misapplication, retainer, misfeasance, or breach of trust, as the Court may think just.

Penalty on mutilation, falsification, &c., of registers, books, &c.

48. If any director, officer, or contributory of any company wound up or being wound up under this Act shall destroy, mutilate, alter, or falsify any books, papers, writings, or securities, or shall make, or be privy to the making of, any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall, upon conviction, be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Court may order prosecution of officers or members of company.

49. Where any order is made for winding up a company under this Act, if it appear in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company, for which he is criminally responsible, the Court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Costs of prosecution to be paid out of company's assets.

Penalty for giving false evidence.

50. If any person, upon any examination upon oath or affirmation under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, shall wilfully and corruptly give false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Meetings of creditors and contributories may be held under direction of court.

51. The Court may in the course of any winding up, in any case in which it shall see fit, direct that meetings shall be held, either of the creditors or contributories, or of both, and may direct that votes shall be taken either in person or by proxy, or in person and by proxy, and may direct that the majority may be estimated either by number or value, or by both, and may generally direct what shall be submitted to any such meeting, and how the proceedings thereof shall be carried on, and who shall preside

thereat, but shall not be bound by any resolution of any such meeting.

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52. The judges of the Supreme Court may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company as may from time to time seem necessary, and may provide by such rules for the performance of such functions of the Court, and the exercise of the jurisdiction of the Court, in such cases and for such purposes under this Act, by the Court in Chambers, or by a Judge in Chambers, as to such judges shall seem just and convenient.

Judges of Supreme Court may make rules regarding proceedings for winding up a company.

53. This Act may be cited as the "Winding-up Act of 1868."

Short title.

No. 17—1859.]

[July 8, 1859.]

### ACT

## For the Regulation of the Affairs of the Board of Executors

WHEREAS certain persons did by a deed bearing date at Cape Town, in this Colony of the Cape of Good Hope, the twenty-second day of August, One Thousand Eight Hundred and Thirty-eight, enter into a contract of co-partnership for the purpose of administering such property and estates as they might be lawfully appointed to, as executors, administrators, tutors, or curators; and whereas a certain Ordinance was duly made and passed in this said Colony, No. 8, 1839, and entitled "Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary;" and whereas the joint-stock or capital sum of ten thousand pounds sterling, mentioned in the preamble to the said Ordinance, divided into fifty shares at the time of the passing of the said Ordinance, was vested in the directors of the said Board of Executors to serve as an available fund to satisfy any claim or demand which any person might have upon the said co-partnership, has since been annually increased according to the provisions in the said deed contained, and now amounts to the sum of sixteen thousand five hundred pounds, and the number of shares has in accordance with the said provisions been increased to sixty. And whereas the said Ordinance will expire on the first day of May, 1860: And whereas the following are the persons who now constitute the shareholders of the said Board, that is to say: William George Anderson; Henry Aston; Johannes Christoffel Berrangé; Kenne Nicholaas van Breda; Andries Brink, Daniel's son; Cornelis Petrus Brink, Andries' son; Petrus Michael Brink, the younger; Dirk Gysbert van Breda; Philippus Albertus Brand; William Luck Blore; Johannes Hendrik Beyers; Joseph Barry; Louis Petrus Cauvin; Ewan Christian; John Deane; Johannes Jacobus George Fischer; Diederich

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Heinrich Fraenkel, Doctor of Medicine; Johannes Coenraad Gie, Johannes' son; Johannes Coenraad Gie, Michael's son; Michael Coenraad Gie; George Clement Gie; William Hiddingh, LL.D.; Johannes Hendrick Hofmeyr, Hendrick's son; Hendrik Johannes Hofmeyr, the elder; Jan Hendrik Hofmeyr, senior; Arend Hermanus Hofmeyr; Laurens Johannes de Jongh; Rice Daniel Jones; Gilles Johannes de Korte; Anthony David Krynauw; Jan Hendrik Lezar; Helperus Ritsema van Lier; Charl Marais; Gysbert van Reenen Muller; Joshua Metcalfe; Wilhelmus Cornelis Arendse Möller; Samuel Oliver; Isaac Petrus van der Poel; Albertus Johannes van der Poel; Charles Pritchard; John Reid; Paul Johannes Roux, Paul's son; Johan Coenraad Schiekerling; Vespasius Schönberg; George Wolfgang Spengler; Johannes Petrus Serrurier; Johannes Wilhelmus Bernardus Aldolph Stuckeris; Johannes Jacobus Tesselaar; Johannes Tromp; Oloff John Truter; Michiel Christiaan Vos, the elder; Johan Andries Heyse Wicht; Carl Frederick Joubert Watermeyer; Fredrik Stephanus Watermeyer; Harrison Watson; Johannes Carolus de Wet; Jacobus Marthinus Wentzel; Jacobus Petrus de Wet; Jacobus Alexander de Wet; Mauritz Herman Otto Woeke:

Resolutions of shareholders to amend deed of agreement.

And whereas the said shareholders did, at a meeting duly held upon the twenty-eighth day of March, last past, resolve that the said deed should become void on the first day of October, one thousand eight-hundred and fifty-nine, and a new deed should be framed which should embrace the provisions of the said first-mentioned deed and certain alterations and additions which have, from time to time, been made in and to the said deed, which resolutions were confirmed by the shareholders at a meeting duly held upon the first day of April, and which deed has been duly adopted, and will come into force on, and be the deed of the said company, from and after the first day of October, 1859.

Incorporation and style of company.

And whereas the said persons have applied for an Act to incorporate the said Board of Executors, as constituted under the said last-mentioned deed; and in order the better to enable them to carry the said objects into effect—to take effect from and after the said first day of October, 1859: Be it therefore enacted by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly,—that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said sum of sixteen thousand five hundred pounds, and of all such sums as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of "The Board of Executors."

Authenticated copy of deed, and list of shareholders to be

2. A copy of the said deed, duly authenticated by the secretary of the said Board of Executors, appointed under the provisions of

the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope, within one month after the passing of this Act; and in like manner, a return of the names of the several persons at the time, being members of the said Board of Executors, with their respective places of abode, and the name and place of abode of the chairman, and of each director thereof, and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office.

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filed with Registrar  
of Supreme Court.

3. A copy of all alterations in, or additions to, the said deed which may at any time be made in conformity with the provisions therein contained, shall, within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed in the office of the said Registrar.

Subsequent altera-  
tions in or additions  
to deed to be filed in  
like manner.

4. Whenever the transfer of any share in the said co-partnership or company shall be made, a return in like manner authenticated, shall within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer, the name and place of abode of the person to whom or in whose behalf such transfer is made.

Also transfers of  
shares.

5. A return in like manner authenticated, shall, from time to time as occasion shall render it necessary, be filed in the office of the said Registrar, of the name and place of abode of any person, who shall have been appointed chairman, director, or secretary, in place of any former chairman, director, or secretary, within one month after such appointment shall have been made.

And names and re-  
sidences of chairman,  
director, and secre-  
tary.

6. A copy made from the copy of the said deed, or, if any alteration on, or addition thereto, which may have been made and filed as aforesaid; and a copy of any such return of any such chairman, director, secretary, or member certified under the hands of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence or proof of such deed, or of any such alteration or addition as aforesaid, or of the authority of the officer named in any such return, and also of the fact that all persons therein named as members, were such at the date of such return.

Copy of alteration,  
addition, or return,  
certified by Registrar,  
to be admissible in  
evidence.

7. All appointments under and by virtue of any last will and testament codicil, or, of any deed or act which shall have been at any time previous to the passing of this Act, or which shall hereafter be duly made and executed, of the directors of the Board of Executors, or of the secretary of the Board of Executors, as executors administrators, tutors, curators, or agents, or as executor, administrator, tutor, curator, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the Board of Executors hereby constituted.

Appointments of  
directors or secre-  
tary, as executors,  
administrators, &c.,  
to be valid.

8. In all actions, suits, and proceedings, whether civil or

Evidence of any

No. 17—1859.  
 officer or member to  
 be admissible.

criminal, the evidence of any person being a member of the said Board of Executors, shall be admissible in like manner as if such person were not a member thereof.

Actions may be  
 brought by secretary.

9. All actions and suits, and all other proceedings at law, to be commenced or instituted for and on behalf of the said Board of Executors, against any person or persons, bodies politic or corporate, or others (whether members of the said Board of Executors or, otherwise), for recovering any debts, or enforcing any claims or demands due to the said Board of Executors, or for any other matter relating to the concerns of the said Board of Executors, shall, and lawfully may, after the passing of this Act, be commenced or instituted, and prosecuted to a final judgment or sentence in the name of the secretary of the Board of Executors, as the nominal plaintiff, applicant, or petitioner, for, and on behalf of the said Board of Executors; and shall, and lawfully may, subject to the provisions of any Act, Law, or Ordinance which, may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against, or with intent to defraud the said Board of Executors, or the members thereof, jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceedings, as the case may be; and that all actions, and suits, and proceedings at law, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said Board of Executors or otherwise, against the said Board of Executors, or against the said members thereof, jointly, shall, and lawfully may be commenced, instituted, and prosecuted, to a final judgment or sentence against the said secretary of the said Board of Executors, as the nominal defendant or respondent for and on behalf of the said Board of Executors, or for the members of the said Board of Executors aforesaid, and not against the Board of Executors, or against the members or any of them.

Secretary may  
 bring action against  
 any member.

10. It shall and may be lawful for the secretary of the said Board of Executors to bring and maintain any action, suit, or other proceeding at law, against any person being an officer or member of the said Board of Executors, for or on account of any claim or demand which the said Board of Executors may have against such person, in like manner as if he were not an officer or member thereof.

Any officer or  
 member may bring  
 his action against the  
 secretary.

11. It shall and may be lawful for any person, being an officer or a member of the said Board of Executors, to bring and maintain any action, suit, or other proceeding at law, against the secretary of the said Board of Executors, for or on account of any claim or demand which he may have against the said Board of

Executors, in like manner as if such person were not a member of the said Board of Executors.

No. 9—1865.

12. No claim or demand which any member of the said Board of Executors may have in respect of his share of the capital stock of the said co-partnership, or of any dividends, interests, or profits, payable in respect of such shares, shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share, or dividends, or profits, against any demand which the said Board of Executors may have against such member on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends interests or profits payable in respect thereof.

Claim of members not to be set off against capital stock or dividend, &c.

13. It shall and may be lawful for any two directors of the said Board of Executors to execute any bond or other act, for and on behalf of the said Board of Executors, to draw up and execute any inventory or liquidation, distribution, or other account; and all such bonds, acts, inventories, and accounts so executed, shall be equally valid as if the same had been done and executed by every one of the members thereof.

Any two directors may execute bonds, inventories, accounts &c.

14. The said Ordinance shall cease to be of any force and effect from and after the said first day of October, 1859.

Termination of Ordinance 8, 1839.

15. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all judges, magistrates, and others, without being specially pleaded.

This Act to be a public Act.

No. 9—1865.]

[Oct. 10, 1865.]

### ACT

For Incorporating the Malmesbury Board of Executors and Trust Company, and enabling them to sue and be sued in the name of their Secretary. (<sup>1</sup>)

WHEREAS under a deed bearing date at Malmesbury, the fourth day of October, in the year of our Lord one thousand eight hundred and sixty-four, certain persons have become co-partners together in a certain joint-stock company, called the Malmesbury Board of Executors and Trust Company, for the purpose of managing all such property and estates as the said board may from time to time become legally appointed to administer, as executors, administrators, guardians, curators, or trustees, either by virtue of any order or decree of any competent court, the lawful authority of any public officer, or the valid last will and testament, procuration, or other deed, document, or instrument of any person or persons whatever, whether residing in the Colony or otherwise,

Preamble.

<sup>1</sup> See Act 34, 1884, *infra*.

No. 9—1865.

subject to and under the rules, regulations, limitations, conditions, provisions, and agreements contained in the said deed, or to be in the future agreed and fixed in the manner therein provided: And whereas in and by the said deed it is stipulated and agreed that the capital of the said company shall be twelve thousand five hundred pounds sterling, divided into one hundred and twenty-five shares of one hundred pounds each, whereof eighty shares have been allotted, and the remaining forty-five shares have been reserved for the benefit of the shareholders of the said company: And whereas the directors of the said company, acting for and on behalf of the said shareholders, and being enjoined and required thereto by the provisions of the said trust deed, have applied for an Act to incorporate the said company, and to enable the company to sue and be sued in the name of the secretary for the time being, and for the more effectually legalizing, carrying out, and fulfilling the objects of the company:

Institution of proprietors.

1. 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: That it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said capital of twelve thousand five hundred pounds sterling, <sup>(1)</sup> and of all such other sum or sums of money as they may hereafter acquire under the provisions of the said deed.

Incorporation of and title of company.

2. The several persons who are or shall become shareholders in the said company, their respective heirs, executors, and administrators, shall be and are hereby united into one body corporate, under the name and title of the Malmesbury Board of Executors and Trust Company. <sup>(2)</sup>

Capital stock.

3. The capital stock of the company shall consist of shares of the value of one hundred pounds sterling each, which said sum of one hundred pounds sterling shall be paid and satisfied in the manner following, that is to say: The sum of ten pounds sterling, upon the allotment of each share, in cash, and the remaining ninety pounds per share either in cash or otherwise by special or general mortgage, or otherwise by a promissory note or acceptance under pledge or security of shares in public companies in this Colony, or by such other security as shall be approved and accepted by the directors. <sup>(2)</sup>

Shares, how to be paid up.

Directors may call up full amount due on shares.

4. It shall be lawful for the directors, in the terms of the said deed, and subject to the provisions of the same, and under the restrictions therein contained, upon a resolution of shareholders to that effect, from time to time to call upon such shareholders as shall not have paid up the full amount of their shares in cash for

<sup>1</sup> Capital increased to £20,000. See Act 34, 1884, *infra*.

<sup>2</sup> But see §§ 3 to 5, Act 34, 1884.

the payment of further instalments, not exceeding ten pounds at any one time. <sup>(1)</sup> No. 9—1865.

5. Every shareholder who shall pay in cash the whole amount of his share, being one hundred pounds, or any sums on account of his said share in excess of the ten pounds, or any additional sum so called up by the directors, shall upon the balance paid up by him in excess of ten pounds, or of the total amount of the calls respectively made upon the shareholders, be entitled to receive from and out of the capital stock of the company interest calculated from the date of such payment made by him, at and after such rate as the directors for the time being of the said company shall determine. When interest shall be payable on shares.

6. A copy of the trust deed of the said company, duly authenticated by the secretary of the same, appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope within one month after the passing of this Act; and in like manner a return of the names of the several persons at the time being members of the said Board of Executors, with their respective places of abode, and the name and place of abode of the chairman and of each director thereof, and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office. Trust deed, list of shareholders, &c., to be filed with registrar of Supreme Court.

7. A copy of all alterations in or additions to the said deed, which may at any time be made in conformity with the provisions therein contained, shall within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed at the office of the said Registrar. Alterations or additions in deed to be similarly filed.

8. Whenever the transfer of any share in the said co-partnership or company shall be made, a return in like manner authenticated shall, within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer the name and place of abode of the person to whom or in whose behalf such transfer is made. Transfer of shares.

9. A return in like manner authenticated shall, from time to time, as occasion shall render it necessary, be filed in the office of the said Registrar of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, in place of any former chairman, director, or secretary, within one month after such appointment shall have been made. Names and abodes of chairman, directors and secretary to be filed.

10. A copy made from the copy of the said deed, or of any alteration in or addition thereto which may have been filed as aforesaid, and a copy of any such return of any such chairman, director, or secretary, or member, certified under the hands of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence or proof of such deed, or of any Certified copy of extract of deed or return may be used in evidence.

<sup>1</sup> But see §§ 3 to 5, Act 34, 1884.



No. 9—1865.

Appointments under wills, &c., in favour of company valid.

such alteration or addition as aforesaid, or of the authority of the officer named in such return, and also of the fact that all persons therein named as members were such at the date of such return.

11. All appointments under and by virtue of any last will and testament, codicil, or of any deed or act which shall have been at any time previous to the passing of this Act, or which shall hereafter be, duly made and executed, of the directors of the said Board of Executors, or of the secretary of the same, as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, curator, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the said Malmesbury Board of Executors and Trust Company hereby constituted.

Evidence of members admissible.

12. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a member of the said Board of Executors shall be admissible, in like manner as if such person were not a member thereof.

Company to sue and be sued in name of secretary.

13. All actions and suits, and all other proceedings at law, to be commenced or instituted for and on behalf of the said Board of Executors, against any person or persons, bodies politic or corporate, or others (whether members of the said Board of Executors or otherwise), for recovering any debts or enforcing any claims or demands due to the said Board of Executors, or for any other matter relating to the concerns of the said Board of Executors, shall and lawfully may, after the passing of this Act, be commenced or instituted and prosecuted to a final judgment or sentence in the name of the secretary of the Board of Executors, as the nominal plaintiff, applicant, or petitioner for and on behalf of the said Board of Executors, and shall and lawfully may, subject to the provisions of any Act, Law, or Ordinance which may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against or with intent to defraud the said Board of Executors or the members thereof jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such case, action, suit, or other proceedings, as the case may be; and that all actions, and suits, and proceedings at law to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said Board of Executors or otherwise, against the said Board of Executors, or against the said members thereof jointly, shall and lawfully may be commenced, instituted, and prosecuted to a final judgment or sentence against the said secretary of the said Board of Executors, as the nominal defendant or respondent for and on behalf of the said Board of Executors, or for the members of the said Board of Executors

aforesaid, and not against the Board of Executors or against the members, or any of them.

No. 9—1865.

14. It shall and may be lawful for the secretary of the said Board of Executors to bring and maintain any action, suit, or other proceeding at law against any person being an officer or member of the said Board of Executors, for or on account of any claim or demand which the said Board of Executors may have against such person, in like manner as if he were not an officer or member thereof.

Officers and members of company may be sued by board.

15. It shall and may be lawful for any person being an officer or member of the Board to bring and maintain any action, suit, or other proceeding at law against the secretary of the said Board of Executors, for or on account of any claim or demand which he may have against the said Board of Executors, in like manner as if he were not an officer or member of the said Board.

And may sue board.

16. No claim or demand which any member of the said Board of Executors may have in respect of his share of the capital stock of the said co-partnership, or of any dividends, interests, or profits payable in respect of such shares, shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share, or dividend, or profits, against any demand which the said Board of Executors may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interest, or profits payable in respect thereof.

Shares or dividends not to be set off against debts due to board.

17. It shall and may be lawful for any two directors of the said company to execute any bond or other act for and on behalf of the said Board of Executors, to draw up and execute any inventory, or liquidation, distribution, or other account; and all such bonds, acts, inventories, and accounts so executed shall be equally valid as if the same had been done and executed by every one of the members thereof.

Bonds or other acts executed by two directors valid.

18. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all Judges, Magistrates, and others, without being specially pleaded.

Public Act.

No. 34—1884.]

[July 25, 1884.

ACT

To Alter and Amend Act No. 9 of 1865, entitled "An Act for Incorporating the Malmesbury Board of Executors and Trust Company, and enabling them to sue and be sued in the name of their Secretary."

WHEREAS a company styling themselves the Malmesbury Board of Executors and Trust Company was incorporated by Act 9 of

Preamble.

No. 34—1884.

1865, and has heretofore carried on business under the provisions and stipulations in the said Act contained: and whereas by the trust deed of the said company it is provided *inter alia* that the said co-partnership shall continue for a period of ten years, and thereafter for a further period of ten years: and whereas the said period of twenty years will expire on the third day of October, 1884: and whereas at a meeting of the shareholders of the said company, held at Malmesbury on the 15th day of January, 1884, it was resolved to alter and amend the trust deed of the said company in certain respects, to increase the capital of the company to be incorporated by this Act from twelve thousand five hundred pounds sterling to twenty thousand pounds sterling, and to enable the said Malmesbury Board of Executors and Trust Company to continue for a further period of twenty years: And whereas the directors of the said company are desirous of more effectually legalising the provisions and stipulations in the said amended trust deed contained, and of having the conditions and limitations under which the business of the said co-partnership is to be conducted, during the said extended period, incorporated under the provisions of this 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:—

Act No. 9 of 1865 incorporated.

1. So much of the provisions of Act No. 9. of 1865 as are not repugnant to or inconsistent with the conditions and stipulations of this Act are hereby incorporated, and shall, *mutatis mutandis*, apply to the Malmesbury Board of Executors and Trust Company established under the provisions of this Act.

Institution of Proprietors.

2. It shall and may be lawful for the said persons, and such others as may become entitled to the privileges of Act No. 9 of 1865, and of this Act under the provisions of the said amended deed, to be and continue joint-stock proprietors of the capital of twenty thousand pounds sterling, and of all such other sum or sums of money as they may hereafter acquire under the provisions of the said last-mentioned deed.

Incorporation of and title of company.

3. The several persons who are or shall become shareholders in the said company, their respective heirs, executors, and administrators, shall be and are hereby united into one body corporate under the name and title of "The Malmesbury Board of Executors and Trust Company."

Capital stock.

4. The capital stock of the company shall consist of two thousand shares of the value of ten pounds sterling each, which said sum of ten pounds sterling shall be paid and satisfied in the manner following, that is to say:—

The sum of five pounds sterling upon signing the said amended trust deed, and the remaining five pounds sterling as provided in the sixth Section of the Trust deed aforesaid.

Directors may call up full amount due on share.

5. It shall be lawful for the directors, in terms of the said amended deed, and subject to the provisions of the same and

under the restrictions therein contained, upon a resolution of three-fourths of the shareholders present at any special general meeting, from time to time to call upon shareholders to pay up the full amount of their shares not exceeding one pound sterling per share at one and the same time, and at intervals of not less than two months between each call.

6. This Act may for all purposes be cited as "The Malmesbury Board of Executors and Trust Company Incorporation Amendment Act."

No. 31—1861.

Short title.

No. 31—1861.]

[August 14, 1861.]

## ACT

For the Regulation of the Affairs of the General Estate and Orphan Chamber.

WHEREAS certain persons did, by a deed bearing date at Cape Town in this Colony of the Cape of Good Hope, the ninth day of March, one thousand eight hundred and fifty-six, enter into a contract of co-partnership for the purpose of administering all such property and estates as they might be lawfully appointed to as executors, administrators, tutors or curators, and trustees, under the style or title of, in English, "The General Estate and Orphan Chamber," and in Dutch, "De Algemeene Boedel en Weeskamer:" And whereas the joint stock or capital sum of twenty thousand pounds sterling, mentioned in the said deed, divided into one hundred shares, was vested in certain trustees appointed from the directors of the said General Estate and Orphan Chamber to serve as an available fund to satisfy any claim or demand which any person might have upon the said co-partnership, has since been annually increased according to the provisions in the said deed contained, and now amounts to the sum of twenty thousand five hundred and seventy-eight pounds: And whereas the following are the persons who now constitute the shareholders of the said Chamber, that is to say: John Addey, Henry Mathew Arderne, Emily Susan Arderne, Richard Labrun Attwell, Christian Friedrich Barth, Johannes Arnoldus Bartman, Anthony Joseph Becker, Charles Davidson Bell, Michael Benjamin, Oloff Marthinus Bergh, Marthinus Adrianus Bergh, Christina Jacoba Vos Bergh, Dorothea Henrietta Bergh, Henry Bickersteth, M.D., Joseph Blackburn, Christian Hendrik Bösenberg, Christian Jacobus Bosman, William Boyes, George David Brunette, Jonathan Calf, James Carey, René Julien Clement, senior, René Julien Clement, junior, Henry Anthony Cooke, Robert James Crozier, Margaretha Wilhelmina Cruywagen, John Thomas Deane, William Wallace Dickson, George Christopher Dodd, Charles Robert Eaton, Hendrik Pieter

Preamble.

Names of shareholders.

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No. 31—1861.

Ekermans, Matthew Farrall, Ryk le Sueur Fischer, William Fisher, James Forrester, Jan Daniel Frieslich, Henry Hall, John Harris, Mary Harris, Widow of Albert Pieter Hiebner, Rev. John William van Rees Hoets, Rev. Nicolas Servaas Hofmeyr, Rev. Servaas Hofmeyr, Johannes Jacob Hofmeyr, Stephanus Johannes Hofmeyr, J. H. son, Edward Hull, Rice Daniel Jones, Wid. of Petrus Johannes Keeve, William Kuhr, Agatha Katharina van der Lingen, Adriaan Johannes Louw, Jacobus François Malan, senior, Jacobus Johannes Malan, J. F. son, Gideon Joshua Malherbe, Johannes Ramner Marquard, Leopold Marquard, junior, Nicolas Wollaston Meyer, Isaac Joshua Minnaar, Tobias Mostert, David Mudie, Gysbert van Reenen Muller, Benjamin Norden, Johanna Maria van Rheede van Oudtshoorn, Archibald Penney, Michiel Pentz, J. F. son, Petrus Johannes Pentz, J. F. son, Jacobus Fredricus Gerhardus Pietersen, Barend Pieter du Plessis, Isaac Petrus Henricus van der Poel, Marthinus Melck van Reenen, Jan Daniel Karnspek Reitz, Pierre Gille François Rocher, François Joseph Rocher, Isaac Albertus Johannes Roos, Tieleman Roos, Frederick Foulger Rutherford, Bernard Scheitlin, Carl August Wilhelm Schmieterloew, John Shepherd, Johan Conrad Silberbauer, Martha Fredrica Silberbauer, Carel Jacob Smuts, Carel Pieter Spolander, Rev. Johan Melchior Kloek van Staveren, Johan George Steytler, junior, Dorothea Henrietta le Sueur, Rev. Henry Sutherland, Anna Susannah Syfret, George Henry Syme, M.D., David Tennant, Jacobus Gerhardus Tier, Guillian Johannes du Toit, E. son, David Pieter du Toit, E. son, Henry Knight Tredgold, Jan Stephanus de Villiers, junior, David Andreas de Villiers, Abraham Barend de Villiers, P. J. son, Willem Weideman, Thomas James Welch, Petrus Jacobus de Wet : And whereas under the provisions of the said deed the directors are authorized and empowered to obtain an Act to incorporate the said General Estate and Orphan Chamber ; and, in order the better to enable them to carry the said object into effect : Be it therefore enacted by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said sum of twenty thousand five hundred and seventy-eight pounds, and of all such sums as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of "The General Estate and Orphan Chamber."

Trust deed and list of shareholders to be filed with Registrar of Deeds.

2. A copy of the said deed, duly authenticated by the secretary of the said General Estate and Orphan Chamber, appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope within one month after the passing this Act ; and in

like manner a return of the names of the several persons at the time being members of the said General Estate and Orphan Chamber, with their respective places of abode, and the name and place of abode of the chairman, and of each director thereof, and of the secretary thereof, in the same manner authenticated shall be at the same time filed in the said office.

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3. A copy of all alterations in or additions to the said deed which may at any time be made in conformity with the provisions therein contained, shall within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed in the office of the said Registrar.

Alterations in deed to be similarly filed.

4. Whenever the transfer of any share in the said co-partnership or company shall be made, a return in like manner authenticated shall, within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer, the name and place of abode of the person to whom or in whose behalf such transfer is made.

Transfers of shares.

5. A return in like manner authenticated shall, from time to time as occasion shall render it necessary be filed in the office of the said Registrar, of the name and place of abode of any person who shall have been appointed chairman, director, or secretary; within one month after such appointment shall have been made.

Name and abodes of chairman, directors, and secretary.

6. A copy made from the said deed, and of any alteration in or addition thereto, which may have been made and filed as aforesaid; and a copy of any such return of any such chairman, director, secretary, or members certified under the hand of the Registrar of the Supreme Court, shall in all proceedings, civil or criminal, be received in evidence or proof of such deed, and of any such alteration or addition as aforesaid, and of the authority of the officer named in any such return, and also of the fact that all persons therein named as members were such at the date of such return.

Certified copy or extract of deed or return may be used in evidence.

7. All appointments under and by virtue of any last will and testament, codicil, or of any deed or act which shall have been at any time previous to the passing of this Act, or which shall hereafter be duly made and executed, of the directors of the General Estate and Orphan Chamber, or of the secretary of the General Estate and Orphan Chamber as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, or agent as the case may be, shall be deemed and taken to be a valid appointment of the General Estate and Orphan Chamber hereby constituted.

Appointments by Chamber valid.

8. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a member of the said General Estate and Orphan Chamber shall be admissible in like manner as if such person were not a member thereof.

Evidence of members admissible.

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Actions by the Chamber to be brought in the name of the secretary, and to be sued in the same manner.

9. All actions and suits and all other proceedings at law to be commenced or instituted for and on behalf of the said General Estate and Orphan Chamber against any person or persons, bodies politic or corporate, or others (whether members of the said General Estate and Orphan Chamber or otherwise), for recovering any debts or enforcing any claims or demands due to the said General Estate and Orphan Chamber, or for any other matter relating to the concerns of the said General Estate and Orphan Chamber, shall, and lawfully may, after the passing of this Act, be commenced or instituted and prosecuted to a final judgment or sentence in the name of the secretary of the General Estate and Orphan Chamber as the nominal plaintiff, applicant, or petitioner for and on behalf of the said General Estate and Orphan Chamber, and shall and lawfully may, subject to the provisions of any Act, Law, or Ordinance which may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against or, with intent to defraud the said General Estate and Orphan Chamber or the members thereof jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceedings as the case may be; and that all actions and suits and proceedings at law, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said General Estate and Orphan Chamber, or otherwise, against the said General Estate and Orphan Chamber, or against the said members thereof, jointly, shall, and lawfully may be commenced, instituted, and prosecuted to a final judgment or sentence against the said secretary of the General Estate and Orphan Chamber as the nominal defendant or respondent for and on behalf of the said General Estate and Orphan Chamber, or for the members of the said General Estate and Orphan Chamber aforesaid, and not against the General Estate and Orphan Chamber or against the members or any of them.

Officers or members may be sued.

10. It shall and may be lawful for the secretary of the said General Estate and Orphan Chamber to bring and maintain any action, suit, or other proceeding at law, against any person being an officer or member of the said General Estate and Orphan Chamber for or on account of any claim or demand which the said General Estate and Orphan Chamber may have against such person, in like manner as if he were not an officer or member thereof.

And may bring actions against the Chamber.

11. It shall and may be lawful for any person being an officer or a member of the said General Estate and Orphan Chamber to bring and maintain any action, suit, or other proceeding at law, against the secretary of the said General Estate and Orphan

Chamber for or on account of any claim or demand which he may have against the said General Estate and Orphan Chamber, in like manner as if such person were not a member of the said General Estate and Orphan Chamber.

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12. No claim or demand which any member of the said General Estate and Orphan Chamber may have in respect of his share of the capital stock of the said co-partnership, or of any dividends, interests, or profits payable in respect of such shares shall be capable of being set off: and no claim in reconvention shall be brought on account of any such share or dividends or profits against any demand which the said General Estate and Orphan Chamber may have against such member on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock or of any dividends, interests, or profits payable in respect thereof.

Shares or dividends not to be set off against debts due to Chamber.

13. It shall and may be lawful for any two directors of the said General Estate and Orphan Chamber to execute any bond or other act, for and on behalf of the said General Estate and Orphan Chamber to draw up and execute any inventory or liquidation, distribution, or other account: And all such bonds, acts, inventories, and accounts so executed, shall be equally valid as if the same had been done and executed by every one of the members thereof.

Two directors to execute deeds, &c.

14. This Act shall be deemed and taken to be a public Act and shall be judicially taken notice of by all judges, magistrates, and others, without being specially pleaded.

Public Act.

No. 20—1863.]

[July 28, 1863.

ACT

For incorporating the Eastern Province Guardian Loan and Investment Company, and enabling them to sue and be sued in the name of their Secretary.

WHEREAS, by a deed bearing date at Graham's Town, the seventeenth day of December, in the year of our Lord one thousand eight hundred and sixty-one, certain persons did become co-partners together in a certain joint-stock company, called the Eastern Province Guardian Loan and Investment Company, for the purpose of carrying on a business to consist of and to be confined to the following objects, that is to say:

Preamble.

1. The investment of the capital stock of the said company and all such other stock, capital, or funds as may hereafter be added to the said stock, or belong to the said company, or be under the administration of the said company, upon mortgages of immovable property, of

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No. 20—1863.

capital stock in any joint-stock company, or of Government debentures, or upon such other security, as by the directors for the time being may be deemed safe and advantageous.

2. The borrowing and taking up upon the security of the capital stock, funds, and assets of the said company of such moneys, in the Colony or elsewhere, as the directors for the time being shall deem it to be for the advantage of the said company to borrow and take up, for the purpose of investing the said moneys for the benefit of the said company, in the manner hereinbefore in the last preceding clause mentioned.
3. The administration and management of such estates and other property as the said company shall be duly appointed to administer or manage as executors, tutors, guardians, curators, trustees, assignees, or agents, either under and by virtue of a decree or order of any competent Court, or by directions of the Master for the time being of the Supreme Court of this Colony, in his official capacity, or by the last will or testament, or any valid act or deed of any person or persons whomsoever, or by virtue of any marriage settlement, power of attorney, or otherwise; but such administration shall in no case whatsoever be extended to the conduct and management of any mercantile speculation or trade whatsoever, with the capital stock or funds of the said company. And whereas in and by the said deed it was stipulated and agreed that the capital of the said company should be two hundred thousand pounds sterling (£200,000) divided into twenty thousand (20,000) shares of ten pounds sterling (£10) each, whereof four thousand (4,000) shares in the said company have been allotted, and upon which the sum of nine pounds has been paid by the holders thereof, as and for part of the capital stock of the said company, and the remaining sixteen thousand (16,000) shares have been reserved for the benefit of the shareholders of the said company. And whereas the directors of the said company, acting for and on behalf of the said shareholders and being duly authorized by them in that behalf, have applied for an Act to incorporate the said company as constituted under the said deed, and in order the better to enable them to carry into effect the object of the said company:

Style of company

1. 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, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the

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provisions of the said deed, to be and continue joint-stock proprietors of the said capital sum of two hundred thousand pounds sterling (£200,000), and of all such other sum or sums of money as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of the "Eastern Province Guardian Loan and Investment Company."

No. 20—1863.

2. A copy of the said deed, duly authenticated by the secretary of the said company, together with a return, authenticated as aforesaid, of the names and places of abode of the several persons at the time being shareholders of the said company, and of the name and place of abode of the chairman and of each director thereof and of the secretary, shall, within one month after the passing of this Act, be filed in the office of the Registrar of Deeds of this Colony.

Trust deed and list of shareholders to be filed with Registrar of Deeds.

3. A copy, authenticated as aforesaid, of all alterations in or additions to the said deed which may at any time be made in conformity with the provisions therein contained, shall, within three months thereafter, be filed in the said office.

Alterations in deed to be similarly filed.

4. Whenever and as often as the transfer of any share or shares in the said company shall be made, a return, authenticated by the secretary of the said company appointed under the provision of the said deed, shall, within three months after such transfer, be filed in the said office, which return shall contain the date of such transfer and the name or names and place or places of abode of the person or persons to whom or in whose behalf the same is made.

Transfer of shares.

5. Whenever and as often as any person shall be appointed chairman, director, or secretary of the said company, in the place of the present or any future chairman, director, or secretary, a return, authenticated as last aforesaid, of such appointment shall within three months thereafter be filed in the said office.

Names of chairman, directors, or secretary.

6. A copy of or extract from the copy of the said deed, and of any alterations therein or additions thereto which may have been made and filed as aforesaid, and a copy of or extract from any such returns as aforesaid which may have been made and filed as aforesaid, purporting to be certified under the hand of the Registrar of Deeds, shall in all proceedings, civil or criminal, be received in evidence as *prima facie* proof of all the matters contained or recited in such certified copy or extract, and of the authority and appointment of the person or persons named therein, whether as shareholder, director, chairman, secretary, or otherwise, and of the fact of their being such at the date of such certificate; and such certified copy or extract shall be received in evidence without any proof of the handwriting of the said registrar or of his appointment.

Certified copy or extract of deed or return may be used in evidence.

7. All appointments by any competent Court or authority, or under and by virtue of any last will and testament, codicil, marriage settlement, power of attorney, or any other act or deed

Appointments by company valid.

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which shall have been at any time previous to the passing of this Act, or which shall be hereafter duly made and executed of the directors or secretary of the said company, as trustees, assignees, executors, administrators, tutors, curators, guardians, or agents, or as trustee, assignee, executor, administrator, tutor, curator, guardian, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the said company.

Evidence of mem-  
bers admissible.

8. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a shareholder of the said company shall be admissible, in like manner as if such person were not a shareholder thereof.

Company to sue  
and be sued in name  
of their secretary.

9. All actions, suits, and proceedings at law to be brought for or on behalf of the company against any person or persons, bodies politic or corporate, or others (whether shareholders of the said company or otherwise), for or on behalf or in respect of any debt, claim, or demand due to the said company, or for or on account or in respect of any other matter or thing relating to the concerns of the said company, shall and may after the passing of this Act be brought and maintained in the name of the secretary of the said company, as the nominal plaintiff, applicant, or petitioner for and on behalf of the said company; and all proceedings of a criminal nature for any fraud, crime, or offence committed against the said company or their property, or with intent to injure or defraud the said company, shall and may be, subject to the provisions of any Act, Law, or Ordinance which may be in force, or which may hereafter be enacted in that behalf, be prosecuted for and on behalf of the said company by and in the name of such secretary as aforesaid, as nominal prosecutor; and in any indictment or information it shall be sufficient to describe the property of the said company as the property of such secretary; and any offence against or with intent to injure or defraud such secretary as aforesaid, and all actions, suits, or proceedings at law by any person or persons, bodies politic or corporate, or others (whether shareholders of the said company or otherwise) against the said company, shall and may be brought and maintained against such secretary as aforesaid, as the nominal defendant or respondent for and on behalf of the said company, and not against the said company, or the directors or shareholders thereof, or any of them, anything to the contrary thereof in the said deed notwithstanding; and no action, suit, or proceeding as aforesaid shall abate or discontinue, to be rendered ineffectual, by the reason of the death, removal, or resignation of such secretary; but in any such event, and as often as the same may occur, the name of the secretary for the time being shall be substituted in the subsequent proceedings.

Officers or mem-  
bers may be sued.

10. It shall and may be lawful for the secretary of the said company to bring and maintain any action, suit, or other proceeding at law against any person being an officer or shareholder of the said company, for or on account of any claim or demand

which the said company may have against any person, in like manner as if he were not an officer or shareholder thereof.

No. 20—1863.

11. It shall and may be lawful for any person being an officer or shareholder of the said company, to bring and maintain any action, suit, or other proceeding at law against the secretary of the said company for or on account of any claim or demand which he may have against the said company, in like manner as if he were not an officer or shareholder thereof.

And may bring actions against the company.

12. No claim or demand which any shareholder of the said company may have in respect of his share of the capital stock of the said company, or of any dividends, interest, or profits payable in respect of any such share, shall be capable of being set off, and no claim in reconvention shall be brought on account of any such share, dividends, interest, or profits, against any claim or demand which the said company may have against such shareholder on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interests, or profits payable in respect thereof.

Shares or dividends not to be set off against debts due to company.

13. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, magistrates, and others, with or without being specially pleaded.

Public Act.

No. 25—1885.]

[August 11, 1885.

### ACT

#### To Amend the Kimberley Waterworks Company (Limited) Ordinance No. 12 of 1880.

WHEREAS, owing to the imperfect wording of section No. twenty-two of the Griqualand West Ordinance No. 12 of 1880, entitled "The Kimberley Waterworks Company (Limited) Ordinance, 1880," doubts have arisen as to powers thereby conferred on the said company with reference to the making of bye-laws: And whereas it is necessary that these doubts should be removed: And whereas it has been found necessary to amend in certain other respects the aforesaid section of the said 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. Section twenty-two of the Griqualand West Ordinance No. 12 of 1880, entitled "The Kimberley Waterworks Company (Limited) Ordinance, 1880," shall be and is hereby repealed, and the following sections shall be taken to be inserted in its place:—

Repeal of section 22 of Ordinance No. 12 of 1880.

2. It shall be lawful for the Board of Directors for the time being from time to time to make such bye-laws as they shall see fit, for the purpose of regulating the conduct, whilst on duty, of the

Company to have power to make bye-laws.

- No. 25.—1885. officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatever, and in such bye-laws to provide penalties for any breach thereof by any person or persons whomsoever, and from time to time to alter and repeal such bye-laws and to make others.
- Certain bye-laws to be approved by Governor. 3. No bye-laws or regulations other than those imposing penalties upon servants of the company shall be of any force or effect until they shall have been submitted to the Borough Council of Kimberley and the Town Council of Beaconsfield for consideration, and have been approved of by the Governor and published in the *Government Gazette*.
- Notice of penalties under bye-laws how to be published. 4. The company shall cause the short particulars of the several offences for which any punishment or penalty is provided by the Ordinance or by any bye-law affecting persons other than the shareholders, officers or servants of the company and of the amount of every such penalty, to be painted on a board, or printed on paper or linen and posted 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.
- Short title. 5. This Act may be cited for all purposes as “The Kimberley Waterworks Company (Limited) Ordinance Amendment Act, 1885.”

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No. 7.—Sd. B. D’Urban.]

[June 27, 1836.]

Ordinance for explaining and extending the Powers of the Trustees appointed for the Management of a Mercantile Establishment at Port Beaufort.

Preamble.

WHEREAS several persons, being desirous of forming a mercantile establishment at Port Beaufort situate at the mouth of the Breede River, have built by subscription at that place a store or warehouse: And whereas upon the thirty-first day of January, one thousand eight hundred and thirty-one, His Excellency General the Honourable Sir Galbraith Lowry Cole, then Governor of this Colony, was pleased to grant in freehold unto Messrs. Ewan Christian, Joseph Barry, and Francis Collison, as trustees for the management of a mercantile warehouse for themselves and the subscribers thereto, a piece of land situate at the mouth of the Breede River, for the purpose of maintaining thereupon a warehouse on the following conditions, to wit: That the right of access over this ground to Port Beaufort and to the subscription store, and to any public passage which is or may hereafter be established over the Breede River, as well as of unyoking cattle on such unoccupied land as shall be fixed upon for that purpose, shall be secured

to the public; that the part adjoining the river in front of the said store shall neither be cultivated nor built upon; and with full powers and authority to them or to the trustees to be from time to time chosen by the subscribers to the said grant to possess said piece of land for the above purpose, and such further purposes as to a majority of a meeting of subscribers to be called for the purpose by public advertisement may appear to them most for the general interest; and for the greater security and convenience of the several shareholders to authorize and direct the trustees to grant a certificate to each holder of a share, which certificate will be transferable by endorsement, and the property in the said land as also a share of the said buildings and the remaining unappropriated land thereby vested in the said endorsee, provided such endorsement be first registered in the office of the Registrar of Deeds, and that the usual duties of transfer be previously paid thereon. The land granted being further subject to such duties and regulations as are either already or may in future be established with regard to such land. And whereas doubts have arisen as to the nature and extent of the powers to be exercised by the said trustees under and by virtue of the said grant: And whereas the said trustees have made application that an Ordinance be passed to explain more fully the objects of the said grant and to give further and more ample powers to the said trustees, and to provide for carrying the same into effect: Be it therefore enacted by His Excellency 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 and may be lawful for the said subscribers, their heirs and assigns to become shareholders of the said mercantile establishment and land in the said grant contained, according to the number of shares for which such persons respectively shall have subscribed, and to make application to the trustees for that purpose: Provided however, that if any such subscriber shall have failed to signify his desire to become such shareholder and shall have failed to pay his proportion, according to his number of shares, of the expenses which have been already incurred or which shall be incurred in obtaining the said grant, and in securing to such subscriber his share or shares therein at the expiration of one year after the passing of this Ordinance, such subscriber shall forfeit all claim to become such shareholder.

2. And be it further enacted that it shall and may be lawful for the said trustees to dispose of such shares as shall after the expiration of one year after the passing of this Ordinance not have been paid for by any subscriber to such persons as shall apply for the same, and on such terms as to the said trustees shall appear expedient; and the person so purchasing any shares shall in such case enjoy the same privileges under the said grant as the original subscribers.

Ord. 7—1836.

Shares in warehouses, &amp;c., legalized.

Unpaid shares to be sold.

Ord. 7—1836.

Roads may be marked off.

3. And be it further enacted that it shall and may be lawful for the trustees to mark off so much of the land in the said grant contained and in such direction as they shall deem fit and expedient for a road or roads from any part of the said land to any other part thereof; Provided that if such land so marked off shall form part of the erf of any shareholder in manner hereinafter provided to be allotted, such reasonable satisfaction shall be given for the damage which such shareholder shall thereby sustain as shall be agreed upon between the trustees and such shareholder; and if the said trustees and such shareholder cannot agree concerning the amount of such damages, then the same shall be finally assessed, determined, settled, and adjusted by arbitration in manner provided by the twentieth section of this Ordinance.

Division of erven.

4. And be it further enacted that as soon as conveniently may be after the passing of this Ordinance, a general meeting of the subscribers shall be holden at Cape Town, notice whereof shall be given by advertisement in one of the public newspapers of this Colony, twenty-one days at least before the said meeting is appointed to be holden, for the purpose of submitting to the subscribers for their ratification a plan for dividing so much of the said land as to the said trustees shall appear expedient into eighty-five erven to be allotted among the said subscribers according to the number of shares which each subscriber respectively shall have agreed to take, the same to be held by them in freehold; and in case the subscribers at such meeting by a majority of votes shall not ratify the said plan, it shall and may be lawful for the trustees to adjourn the said meeting to a future time, and from time to time and as often as shall be necessary to submit an amended plan and to obtain a vote of the majority of the subscribers present at such adjourned meeting ratifying such amended plan.

Allocation of erven.

5. And be it further enacted that at such meeting or adjourned meeting after such plan shall have been ratified, so many erven as there shall be subscribers who shall have signified their desire to become shareholders and who shall have paid each his proportion of the expenses then incurred shall be allotted among such subscribers, of each of which erven the choice shall be determined by ballot; Provided that the partners belonging to the firm of Robertson, Venning, and Moodie, and Joseph Barry, shall respectively be entitled to select for their erven the land upon which they have respectively built stores; upon condition, however, that the said firm of Robertson, Venning, and Moodie, and Joseph Barry, in consideration of such preference, shall pay a fine the amount of which shall be fixed by the decision of two indifferent persons, one to be chosen by the said trustees and the other by the said Robertson, Venning and Moodie, and the said Joseph Barry, respectively.

Future share-holders.

6. And be it further enacted that it shall and may be lawful for any subscriber who shall after the said meeting or adjourned

meeting and before the expiration of one year after the passing of this Ordinance express his desire to the trustees to become a shareholder and pay his proportion of the expenses at such time incurred according to the priority of his application, to select such erf or erven as shall then have been unallotted.

Ord. 7, 1836.

7. And be it further enacted that the said trustees shall keep a book wherein shall be entered the names of all the shareholders and the description of each erf, and every shareholder respectively shall sign his name in a column opposite to the said erf in acknowledgment of the truth thereof; and the said trustees shall deliver to every shareholder of every such erf a certificate thereof signed by the said trustees; which certificate the shareholder, his heirs, executors, administrators, or the holder, may transfer by endorsement, and the property in the said erf; and his interest as a shareholder under the said grant shall be thereby vested in the said endorsee, provided such endorsement be registered in the book so kept by the trustees and in the office of the Registrar of Deeds, and provided the duties of transfer be paid thereon.

Registry of erf and shareholders.

Transfer of erven.

8. And be it further enacted that a general meeting of the shareholders shall be holden on the first Wednesday of August in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony twenty-one days at least before the same is to be holden; and it shall and may be lawful for the trustees at any time to call a general meeting of the shareholders upon giving the like notice thereof; and it shall and may be lawful for the said trustees and they are hereby required to call a general meeting, being thereunto required by any writing signed by ten of the shareholders and delivered to the said trustees, upon the like notice thereof being given by the said trustees.

Annual and other general meetings of shareholders.

9. And be it further enacted that the resolutions of the shareholders at any public meeting duly called carried by a majority of votes shall be binding upon the whole of the shareholders, in like manner as if each had been present and had consented to such resolution; and in every case in which the votes of any such meeting shall be equally divided the person who shall preside at such meeting shall have a casting vote.

Resolution of meetings, effect of.

10. And be it further enacted that the subscribers at the first general meeting and the shareholders at all subsequent public meetings of the shareholders shall have the right of voting in all matters relating to the objects of this Ordinance according to the number of their respective shares, that is to say,—the holder of one share shall be entitled to one vote; the holder of three shares to two votes; the holder of ten shares to three votes; and the holder of eleven or more shares to five votes; and it shall and may be lawful for any shareholder to empower any other shareholder by authority in writing to that effect given, to vote in his absence:

Votes of shareholders.

Votes by proxy.



250 COMPANIES (PORT BEAUFORT MERCANTILE ESTABLISHMENT).

- Ord. 7, 1836. but such shareholder so empowered shall be entitled to one vote and no more for every such shareholder being absent; provided that no shareholder shall be entitled to vote for a greater number than ten, such shareholders being absent.
- Accounts of trustees. 11. And be it further enacted that the trustees shall keep a book wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account shall be laid before the shareholders for their inspection at the general annual meetings.
- Quorum of trustees. 12. And be it further enacted that two trustees shall be a quorum and shall be competent to do and perform all matters and things which may be done under and by virtue of this Ordinance by the trustees, and that the vote of two trustees shall in all cases be deemed to be and shall have effect as the vote or resolution of the trustees; Provided however, that in the event of the death, resignation, or removal from office of two of the said trustees it shall and may be lawful for the remaining trustee to call a public meeting of the shareholders upon giving the like notice thereof; and it shall and may be lawful for any ten of the shareholders to call a public meeting in the event of the death, resignation or removal from office of all the trustees upon giving the like notice thereof as the trustees would have been required to give.
- Calling of meetings. 13. And be it further enacted that the said trustees shall continue in office until the first Wednesday of August, one thousand eight hundred and thirty-seven, and that at the annual public meeting then to be holden three trustees shall be elected in their place and stead from the whole number of shareholders, and the trustees then to be elected and all others who shall afterwards be elected shall continue in office for the period of three years, and shall be succeeded by three trustees to be elected at the annual public meeting to be holden upon the first Wednesday of August in the year when such period expires: Provided however, that nothing herein contained shall prevent the said trustees or any shareholder afterwards to be elected to such office from being elected or re-elected to the said office; and provided that in the event of the death, resignation, or removal from office of any trustee or trustees before the expiration of such period, it shall and may be lawful for the shareholders at a public meeting for that purpose called to elect a trustee or trustees in his or their place and stead, such trustee or trustees to continue in office until the expiration of the period for which such trustee or trustees so dying, resigning, or being removed had been elected, and no longer.
- Tenure of office by trustees. 14. And be it further enacted that it shall and may be lawful for the trustees for the time being to let on lease for a period not exceeding nineteen years the whole or any part of the land in the said grant contained and not appropriated for the purposes hereinbefore mentioned, and to authorize any person or persons to graze
- Vacancies in office of trustee.
- Leases of unappropriated land.

their cattle upon the said land, and also to dig for, work, and carry away any limestone or other stone for the purpose of building that may be found upon the said land; and it shall and may be lawful for the said trustees, upon being duly authorized by the shareholders at a public meeting to be held for that purpose, to sell to any person or persons the whole or any part thereof and to deliver to such person or persons a certificate of such purchase, which certificate the purchaser, his heirs, executors, administrators, or the holder may transfer by endorsement, and the property therein shall be vested in the said endorsee, provided such endorsement be registered in a book to be kept by the trustee for that purpose and in the office of the Registrar of Deeds, and provided the duties of transfer be paid thereon.

Ord. 7, 1836.

Sales of unappropriated land.

15. And be it further enacted that it shall and may be lawful for the said trustees to repair, alter, or enlarge the said store or warehouse, and to let the same or any part thereof to any person for the purpose of receiving any goods or merchandize, and also to receive into the said store or warehouse the goods and merchandize of any person or persons, and to receive a reasonable sum for warehouse-room for the same.

Repairing and leasing of warehouse.

16. And be it further enacted that the trustees for the time being shall stand and be possessed of all sums of money received for any of the purposes aforesaid, upon trust, to pay and apply the same in the first place, to pay thereout all expenses incurred or which shall be incurred in obtaining the said grant and in securing to each shareholder his respective share; secondly, to keep in proper repair the said subscription store or warehouse; thirdly, to pay such sums as they shall be authorized by the shareholders at any public meeting; fourthly, to pay to each shareholder in an equal rate according to each share such dividends of profits or gains as may hereafter arise, after payment of all expenses incurred on account of and in discharge of their trust.

Trusts of moneys received.

17. And be it further enacted that it shall and may be lawful for the trustees as such, at all times when they shall see fit, to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of their trust against any person whatsoever, and such suits and actions shall and may be brought by them in the name of the trustees without specifying the names of the said trustees, and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions by trustees.

18. And be it further enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement, or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said shareholders or purchasers or other persons claiming under the said grant or under any of the pro-

Actions against trustees or shareholders.

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visions of this Ordinance jointly with the said shareholders, shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders, or other persons as aforesaid; and in the event of such trustees having no funds to enable them to defray the expenses of such suits or actions they shall be authorized and empowered to call upon each shareholder to pay the same according to his respective number of shares, and to call upon each purchaser as aforesaid for a just proportion thereof.

Removal of trustees.

19. And be it further enacted that it shall and may be lawful for the shareholders at any public meeting duly called for that purpose to remove any trustee or trustees for insolvency or any misconduct in the discharge of his or their trust, or on account of absence from the Colony for a period not less than three months.

Differences between trustees and shareholders.

20. And be it further enacted that in case any difference shall arise between and amongst the trustees or between the trustees and any of the shareholders or any other person claiming under any of the provisions of this Ordinance, touching or concerning any matter or thing under and by virtue of any of the provisions thereof, the same shall be finally determined, settled and adjusted by the award, determination or arbitration in writing of two indifferent persons, one to be chosen by each party in dispute; and in case the said arbitrators shall not make or deliver their award, determination, or arbitrament within such time as they shall be limited for doing thereof then the said parties shall abide by and perform such award, umpirage and final determination in writing of such umpire as shall be chosen by the said arbitrators, made and delivered within such time as shall be limited by the said arbitrators touching all such matters in difference between the said parties.

Repugnant provisions of grant to be void.

21. And be it further enacted that such provisions of the said grant as are at variance with or repugnant to the enactments of this Ordinance shall be null and void, and the remainder of the said grant shall continue in full force and effect.

Saving rights of others.

22. And be it further enacted that nothing herein contained shall extend or be construed to extend to interfere with or in any way affect the rights of our Sovereign Lord the King, his heirs and successors, or of any body, politic or corporate, or of any other person or persons excepting those for whose especial benefit this Ordinance is made, and all persons claiming by, from, through, and under them.

No. 34—1861.]

[August 14, 1861.]

## ACT

## To Incorporate the Sea Point Waterworks Company.

WHEREAS it is desirable and expedient, for the better supply of water to the inhabitants of Sea Point and Green Point, that a company should be formed and incorporated for the purpose of laying a line of water-pipes from a certain stream running now below the Round House on the property of His Honour Sir William Hodges, Chief Justice, across the waste and pasture land of said property; thence across ground the property of the Cape Town Municipality or Her Majesty's Board of Ordnance; thence in a north-easterly direction across other waste land the property of the Cape Town Municipality; thence in a northerly direction across the lower part of the grazing land of the estate "Clifton," the property of J. D. Thomson, Esq.; thence across waste land the property of the Cape Town Municipality; thence in a north-westerly direction across the grazing ground on the lower part of the farm "Botany Bay," the property of Thomas Watson, Esquire; thence across the arable land of His Honour Sir William Hodges to the reservoir to be constructed as marked upon the diagram lodged in the Deeds Registry Office: And whereas a provisional contract has been entered into with the said Sir William Hodges, whereby he has consented to yield to the company such rights as he possesses in and over the stream, upon condition that a certain quantity and proportion of the said water therein shall belong to him and his assigns, and be placed by the company at his and their disposal from and out of the reservoirs or from and out of the mains of the said company, in the manner hereinafter provided: And whereas it has been made to appear from surveys and estimates duly made and prepared that the cost of laying the aforesaid line of water-pipes with its necessary adjuncts will not exceed two thousand two hundred pounds: 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:

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 united into one body corporate, under the name and title of the "Sea Point Waterworks Company," for the purpose of laying a line of water-pipes from a certain stream running now below the Round House on the property of His Honour Sir William Hodges, Chief Justice, across the waste or pasture land of said property; thence across ground the property of the Cape Town Municipality or Her

Creation and style of company.

Direction of line of water-pipes.

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Majesty's Board of Ordnance; thence in a north-easterly direction across other waste land the property of the Cape Town Municipality; thence in a northerly direction across the lower part of the grazing land of the estate "Clifton," the property of J. D. Thomson, Esq.; thence across waste land the property of the Cape Town Municipality; thence in a north-westerly direction across the grazing ground on the lower part of the farm "Botany Bay," the property of Thomas Watson, Esquire; thence across the arable land of His Honour Sir William Hodges to the reservoir to be constructed as marked upon the diagram lodged in the Deeds Registry Office; 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 two thousand five hundred pounds, in five hundred 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, and obligations of subscribers.

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 Sea Point Waterworks 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 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.

Liability of each shareholder limited.

4. No more than five pounds in all, shall be due and 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.

How shares to be paid up.

5. The amount of the shares in the said company shall be paid in manner following, namely,—ten shillings per share in cash on subscribing, and the remaining four pounds ten 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 notice to that effect of not less than one month in the *Government Gazette* and one or more of the local newspapers.

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6. So soon as three hundred and fifty shares shall have been subscribed for, and the deposit of ten shillings paid per share, and no sooner, it shall be competent for the directors to commence the works contemplated in this Act, always, however, excepting the expenditure which may be incurred in procuring this Act of incorporation, and other necessary expenses in establishing the company.

When works may be commenced.

7. 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.

Shareholder failing to pay instalment may be sued.

8. 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, 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 forfeited.

9. The general management of the affairs of the company shall be vested in five 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.

Directors how to be elected, and who eligible.

10. That Aaron de Pass, Carl Simon Poppe, Johan George Steytler, Johannes Leibbrandt, and Wilhelmus Johannes van de Ven, shall be appointed 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.

11. At the meeting 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 five shares, one vote.

„ of not less than ten shares, two votes.

„ of not less than twenty shares and upwards, three votes, and no more.

12. Any director becoming insolvent or otherwise incapacitated to act in that behalf, or being absent from the Colony for six

What to disqualify director from retaining his seat.

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Director may be removed from office.

months, or who shall cease to be the holder of ten shares as aforesaid, shall become disqualified, and his seat be declared vacant.

13. 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 one half of the shareholders holding not less than two hundred shares, be prejudicial to the interests of the company, and notice thereof shall have been given to the directors in writing by at least twenty-five shareholders holding two hundred shares, 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 purposes 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.

Directors to be elected annually.

14. 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.

Permanent chairman to be chosen. In his absence, temporary chairman.

15. The directors at their first meeting shall appoint a chairman from 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.

Quorum.

Annual meeting of shareholders.

16. The annual general meeting of shareholders shall be held either in Cape Town or at Green Point during the second 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 preceding year.

Special meetings.

17. 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 twenty-five shareholders holding collectively not less than two hundred 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 forth in the published notice shall be brought before any such meetings.

18. 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 auditor unless he shall be the proprietor of at least ten shares in the capital stock of the company.

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Auditors to be appointed.

19. It shall and may be lawful for the said directors of the said company, and they are hereby authorized, to enter upon and take possession of such water, lands, and roads, subject to the provisions and stipulations contained in this Act, as may be required for the laying of the water-pipes and the construction and maintaining of the said water-works, and for any other necessary purpose relating to the execution of this Act, and also 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 water-works: And provided, further, that the proprietors of the said water, lands, or materials so taken, used, and carried away shall be paid by the directors a reasonable sum by way of recompense for the value of such water, 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 or 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

Directors may enter upon lands and appropriate waters.

Owners to be compensated.

Arbitration.



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If party claiming recompense decline to proceed to arbitration or reject award.

Contract with Sir William Hodges confirmed.

Supply of water to Sir William Hodges' estate secured.

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 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 water, 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.

20. And whereas by the aforesaid provisional contract the company have agreed to supply the said Sir William Hodges and his assigns with two thousand gallons of water per diem, and if the daily supply brought at any time to the reservoir shall exceed twenty thousand gallons per diem, then one-tenth part of the whole quantity so brought: Be it enacted that the said contract is hereby confirmed, and the said company shall, and are hereby required, at all times hereafter to supply, free from all charge, the said quantity or proportion of water, as the case may be, to the said Sir William Hodges, or to the person or persons for the time being claiming under him or his assigns, any portion or portions of the before-mentioned daily supply; the same water and portions thereof respectively to be supplied by the company from and out of the said reservoir, or at the option of the party entitled to any water from and out of the mains of the company, on the present estate of Sir William Hodges at Sea Point: Provided that the said Sir William Hodges, and the person or persons so claiming to be supplied with the said water or any portion or portions thereof, shall bear the expense of the various water-leadings from and out of the said reservoir or mains respectively: And provided, also, that the said Sir William Hodges and such person or persons as aforesaid shall be subject to all reasonable rules and regulations which the company may make for supplying the said water in a convenient and proper manner; and in case any difference shall arise between the said Sir William Hodges or any such person or persons as aforesaid and the said company as to the reasonableness of any such rule or regulation, or as to any other matter relating to the water hereby reserved as aforesaid, the same shall be decided by three arbitrators, to be appointed in

the manner provided by section nineteen; and the award shall be made a rule of the Supreme Court, and shall be binding and conclusive between the parties.

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21. The said Sir William Hodges, and every person entitled to take any portion or portions of the said water, as in the foregoing section is mentioned, shall at all reasonable times have free access to the reservoirs of the company for the purpose of ascertaining the quantity of water daily delivered therein.

Certain persons to have access to reservoirs.

22. The company shall be at liberty to build and maintain a reservoir at the point marked A on the plan lodged in the Deeds Registry Office, and a reservoir at the point marked H on the plan lodged in the Deeds Registry Office. And the said reservoir (H) shall be surrounded by a wall and railing of not less than six feet in height, which enclosure shall hereafter be maintained and repaired by the company: Provided always that with the consent of the said Sir William Hodges, or his assigns, the sites of the said reservoirs may be changed.

Company may build and maintain certain reservoirs.

23. 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.

Shareholders to be registered for three months before they can vote.

24. Any shareholder residing beyond three miles of the town or place where any meetings of the company shall be held, shall be allowed to vote by proxy, and the proxy of such shareholder shall be in effect as follows:

Proxy.

I, A. B., of \_\_\_\_\_, one of the shareholders of the Sea Point Water-works 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,

Witness my hand, at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

A. B.

25. All resolutions of shareholders at meetings shall be determined by a show of hands, but any shareholders 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 at meeting of shareholders.

26. A full and complete register of the shareholders in the 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

Register of shareholders to be open for inspection.

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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 in the Sea Point Waterworks Company.  
 This is to certify that A. B., of ———, is proprietor of ——— shares in the Sea Point Waterworks 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—.

Transfers of shares how to be made.

27. 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 until the assignee or transferee shall either in person or by attorney acknowledge his proprietorship, in substance as follows:

I, C. D., do hereby acknowledge to have received by transfer from E. F. —— shares, No. —— in the Sea Point Waterworks Company, subject to the conditions, regulations, and provisions of the Act of incorporation of the said company.

Liability transferred with share.

28. 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 dismiss them.

29. 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 and working of the said waterworks, and may also appoint and employ such officers and 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.

Directors when empowered to borrow money.

30. 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 works and the future calls on the share-

holders and of the expected earnings of the water supplies, the interest on such loan to be a first claim upon the net profits of the working of the said waterworks.

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31. 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.

32. The right to, and property in all, and singular, the materials, stock, and everything appertaining to the said waterworks 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 Sea Point Waterworks 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.

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.

35. That the directors shall and may make such rules, orders, regulations, and bye-laws for carrying on the business and management of the said company as to them shall seem just and expedient: Provided the same be not repugnant to law, and to the provisions of this Act, and shall be consented to by the majority present at a general meeting of the shareholders convened upon fourteen days' notice in the *Government Gazette* and one other local newspaper, to consider such rules, orders, regulations, and bye-laws.

Directors to make rules for management of company's business.

36. That should it at any future time be deemed expedient for the extension of the operations of the said company to increase the capital stock of the company, it shall be competent for a majority of five-sixths of the then existing shareholders, at a general meeting convened after notice given for the purpose, to create and issue such additional shares or by increasing the value of the original shares as shall be considered by them necessary to carry out such extension.

Additional shares when to be issued.

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

Liability of additional shareholders limited.

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original shares, and the further future liability of any shareholder arising out of any extension of the said waterworks 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.

Sixth and seventh sections to apply to additional shares.

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.

Short title.

39. This Act may be cited for all purposes as the "Sea Point Waterworks Company Act, 1861."

No. 17—1875.]

[June 30, 1875.

ACT

To Continue Act No. 9, 1855, intituled "An Act for Incorporating the South African Association."

Preamble.

WHEREAS by the 51st section of the Act No. 9, 1855, intituled "An Act for Incorporating the South African Association," it is enacted that the said Act shall continue in force for the term or period of twenty-one years from and after the promulgation thereof, which term or period will expire on the 12th June, 1876; And whereas it is expedient to continue the provisions of the said Act, with such alterations and amendments, as have by experience been found to be desirable: And whereas for this purpose it is expedient to repeal the Act aforesaid, as also the Act No. 9, 1868, intituled "An Act to amend the Act No. 9, 1855," and to re-enact such of the provisions thereof as it may be fitting to re-enact, together with all necessary alterations and amendments: 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:—

Act 9 of 1855 and Act 9 of 1868 repealed.

Repeal not to affect rights or claims existing at the time of taking effect of this Act.

1. The Acts aforesaid No. 9, 1855, and No. 9, 1868, are hereby respectively repealed.

2. Notwithstanding the repeal aforesaid, every right or claim of, or against, the said Association, existing at the time of the taking effect of this Act, shall survive for or against the said Association, continued under this Act, and shall be judged of as if this Act had not been passed.

Style or title of Association.

3. The said Association shall be carried on in Cape Town under the style or title of the "South African Association for the Administration and Settlement of Estates."

Its constitutional object.

4. The constitution and object of the said Association shall be for the administration and settlement of such estates and other property as they shall be duly appointed to administer, as executors, administrators, tutors, curators, trustees, or agents, either

under and by virtue of any last will or other testamentary disposition, or by virtue of any order or decree of any competent Court, or by any power of attorney or other valid instrument.

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5. The capital stock of the said Association shall consist of the sum of twenty-nine thousand four hundred pounds sterling, which shall be divided into eighty-four shares of three hundred and fifty pounds each.

Its capital stock.

6. No shareholder shall be capable of holding more than one share, save and except any shareholder who shall at the taking effect of this Act be in possession of two shares.

Number of shares a person may hold.

7. No shareholder entitled as aforesaid to hold two shares shall be capable of holding more than one share at any time, after he shall sell or assign to any person or persons either or both of his said shares.

Persons entitled to hold two shares, not to hold more than one after selling either or both.

8. Any shareholder wishing to sell or assign his share in the capital stock of the Association, shall be bound to deliver the same to the directors, to be disposed of by them by public tender, for account and benefit of such shareholder, to such person as the said directors shall think proper, to the best advantage of the seller and the Association, and the said directors shall, on such sale being effected, as the agents of such shareholder, assign and transfer the said share to the purchaser thereof, by endorsement upon the certificate thereof, and thereupon such shareholder shall cease to have any claim or interest therein, provided that the said directors shall be entitled to deduct from the purchase amount a commission of one and a half per centum, together with all expenses incurred in advertising the sale of the said share.

How shares may be sold.

9. In case of the insolvency of any shareholder, the trustee of his insolvent estate shall in like manner be bound to deliver the share of such insolvent shareholder to the directors, to be disposed of by them in the manner as provided in the preceding section.

Same course to be pursued in case of insolvency.

10. Any shareholder may bequeath the share or shares belonging to him at the time of his death, to his surviving widow (if any); and such share or shares shall be regarded and registered as if assigned to such widow, by endorsement upon the certificate thereof.

Shareholder may bequeath his share.

11. In case any shareholder shall die, without having bequeathed his share or shares to his surviving widow, then the executor or other legal representative of the estate of such deceased shareholder shall be bound as aforesaid to deliver the said share or shares to the directors to be by them disposed of in like manner as provided in the 8th section of this Act.

If shareholder dies without bequeathing it, section 8 to apply.

12. Any male shareholder shall have the right to demand that his name be submitted to the ballot, as a member at the then next ensuing general meeting, by giving notice to the directors to that effect, at least fourteen days before the day of holding such meeting.

Any male shareholder may be elected member.

13. No person not being a shareholder shall be eligible to become a member, until he shall have deposited in the hands of

How person not being a shareholder may become a member.

- No. 17--1875. the directors the amount or value of the share which shall be required to constitute him, upon his election, a member, or until he shall have given security to the satisfaction of the directors that, in the event of his election, he shall pay for such share.
- General meeting of members to be held quarterly. 14. A general meeting of the members of the Association shall be held on the last Monday in the month of January, April, July, and October, in each year, for the purpose of general business.
- Directors to call a general meeting on requisition made by not less than fifteen members stating object. 15. The directors for the time being shall call a general meeting of the members of the Association, whenever required so to do by a requisition, in writing, signed by not less than fifteen members, and setting forth the object for which such meeting is to be called. Such requisition shall be delivered to the secretary, at the office of the Association, and the meeting thereby required shall be called by the directors within five days after the delivery of such requisition, and a notice of such meeting shall be given to each member, not less than eight days before the day of meeting.
- Directors may call a general meeting on notice of eight days for any special purpose. 16. The directors may, at any time, upon a previous notice of eight days, as is in the last preceding section mentioned, call a general meeting of the members of the Association, for the purpose of submitting to their consideration any question or matter concerning the interests of the said Association.
- No other subjects to be considered at such meetings. 17. It shall not be competent at any general meeting, held under the provisions of either of the two preceding sections, to consider any business other than that for the consideration of which such meeting shall have been convened.
- No general meeting competent unless twenty members be present. 18. No general meeting of members shall be constituted or be competent to enter upon any question or business whatever, unless twenty members shall be present, and all questions at any general meeting shall be decided by a majority of votes.
- Every meeting may be adjourned. 19. Every general meeting duly constituted may, upon question put and carried, be adjourned till some future day, to be fixed upon by such meeting.
- Each member to have one vote and no proxies allowed. 20. No member shall be allowed to vote by proxy, and no member present shall have more than one vote.
- Who to preside at general meetings. 21. The president, hereinafter in the 24th section of this Act mentioned, shall, when present, preside at all general meetings, and, in his absence, the director who shall, of the directors present, stand highest upon the list of directors, shall take the chair; and whenever it shall happen that the votes of the members shall be equally divided, then the member presiding shall, besides his individual vote, also have a casting vote.
- Association to be managed by five directors. 22. The affairs of the Association shall be entrusted to, and carried on by, five directors, being members of the Association residing in or within ten miles of Cape Town: Provided, however, that when by death or other reason, the seat of any director shall become vacant, the remaining directors shall have full power to carry on the business of the Association, until the board shall be again composed of five members.

23. The said five directors shall annually choose from among themselves a president, who shall (and in case of his absence the director next in seniority shall) preside at all their meetings; and in case of an equality of votes, the president or director so presiding shall have a casting vote.

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President to be elected from among themselves annually, who shall have a casting vote.

24. The following members shall be the first directors under this Act, this is to say:—The Hon. James Christie, M.D., Jacobus Christoffel Overbeek, the Hon. Gilles Johannes de Korte, Gerhard Myburgh and Isaac Horak de Villiers, of whom the said James Christie, shall be president; and such directors shall remain in office until the 30th April, 1876; and thenceforth until some other directors shall be appointed in their room and stead.

First directors under this Act.

25. Upon the 30th April, 1876, the said Jacobus Christoffel Overbeek shall go out of office as a director and shall, unless re-elected, be replaced by another member to be chosen by the general meeting of members to be held on the last Monday in the said Month of April, and upon the 30th day of April, 1877, the said James Christie shall in like manner go out of office, and shall, unless re-elected, be replaced by another member to be chosen at the general meeting on the last Monday of the said last mentioned month, and upon the 30th day of April, 1878, the said Gilles Johannes de Korte shall go out of office and shall, unless re-elected, be replaced by another member to be chosen as aforesaid, and upon the 30th day of April, 1879, the said Gerhard Myburgh shall go out of office, and shall, unless re-elected, be replaced by another member to be chosen as aforesaid, and upon the 30th day of April, 1880, the said Isaac Horak de Villiers shall go out of office, and shall, unless re-elected, be replaced by another member, to be chosen as aforesaid, and in like manner the senior director shall go out of office in each year, and shall, unless re-elected, be replaced by another member to be chosen as aforesaid at the annual meeting to be held as aforesaid; Provided that any member elected under and by virtue of the 31st section of this Act to supply any casual vacancy, shall, for the purpose of this section, be ranked in regard to seniority in the same place as that which was filled by the director by whom the vacancy was created. Directors vacating office as aforesaid shall be eligible to be re-elected.

Dates on which they respectively vacate office.

26. No member shall be capable of being a director who shall hold any office of profit under the Colonial Government: nor shall any two members, carrying on business as co-partners in any firm or related to each other in or within the second degree of consanguinity or affinity, both be capable of being directors at the same time.

Who may not be elected director.

27. The directors shall meet once in each week, and oftener, if necessary, at the office of the Association, in Cape Town, for the dispatch of business, and three directors shall form a quorum, and all questions or matters which shall come before the directors shall be decided by a majority of votes of the directors present.

Meetings of directors



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Deeds, &c., may be executed by two directors on behalf of Association.

28. It shall and may be lawful for any two of the directors to make and execute, for and on behalf of the directors and the Association, any deed, inventory, liquidation, or distribution account, or any account, act, or instrument; and every such deed, inventory, account, act, and instrument shall be as valid and effectual, to and for all intents and purposes as if the same had been made and executed by all the directors for the time being.

Disqualifications for office of director.

29. Any director who shall cease to be a member, or who shall be absent from the board of directors for three months, except by leave of the said board, shall thereby become disqualified, and his office shall cease and become vacant; Provided that it shall not be competent for any director to sell or in any manner dispose of his share or shares so as to cease to be a member, until he shall have obtained the consent so to do of a general meeting of the members, periodical or special, anything in the ninth section of this Act contained notwithstanding.

Mental incapacity or misconduct of director.

30. In case any director shall become mentally incapacitated, or in case the conduct of any director shall at any time be such that his continuance in office shall appear to, at least, fifteen of the members of the Association, to be prejudicial to the interests of the Association, and that notice thereof shall by them be given to the directors, in writing, the directors shall forthwith call a general meeting of the members for the purpose of determining whether such director shall continue in office, upon eight days' notice being given by the said directors to the said director and to the members severally, such notice to set forth the purpose for which such meeting is called; and it shall and may be lawful for the members present at such meeting, by a majority of votes, not less in number than a majority of all the members of the Association at the time being, to remove such director from his office.

Mode of filling vacancies caused by death, &c., of director.

31. In case any director shall die or desire to resign his said office, or shall be removed as aforesaid, or be or become disqualified under or by virtue of the 26th or the 29th section of this Act, the surviving or other directors shall forthwith call a general meeting of the members for the purpose of electing a director in his place, of which meeting eight days' previous notice shall be given by the directors to the members severally, and of the purpose for which such meeting is called; and it shall and may be lawful for the members present at such meeting to elect a director in place and stead of such director, who shall continue in office, until the expiration of the period for which such director so dying, resigning, being removed, or being disqualified, had been elected and no longer: Provided that no director shall be allowed to resign, or be capable of resigning, until the members, at some general meeting thereof, shall have consented thereto.

Capital stock shall be vested in directors, who shall put it out at interest.

32. The capital stock of the said Association under the provisions of this Act, shall be vested in the hands of the directors,

for the benefit of the Association, to be by the said directors lent out on interest upon good and sufficient security of landed or other property, as to the directors shall appear most conducive to the interests of the Association; and the said capital stock shall be liable to satisfy such claims and demands as have accrued or may accrue to any person against the said Association.

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33. The directors shall call a special general meeting, to be held in the month of May, or in the first week in June, in each year, of which meeting eight days' notice shall be given to the members severally, and the directors shall lay before such meeting, for its approval,—1st, a balance sheet of the books of the Association; 2ndly, an abstract from the balance sheet, showing, under appropriate headings, the gross liabilities of the Association, as also the capital and interests due to, and the other assets of the said Association, or under its administration; and 3rdly, a detailed account of profit and loss during the past year; all which accounts shall be settled and balanced up to the last day of April in each year, and shall, previous to such meeting, be examined and compared by the auditor or auditors, for the time being, with the books of the Association, and with the bonds and other securities in the hands of the directors, and shall, by such auditor or auditors, be attested as correct, and shall lie open for the inspection of the shareholders three days before such meeting: Provided that, in making up the accounts in this section mentioned, shareholders and members shall be allowed interest upon the book value of their shares, at the rate of interest for the time being current in this Colony.

Special general meeting to be held May or June each year, to receive statements of accounts from directors.

34. As soon as the accounts in the last preceding section mentioned shall have been approved by the meeting in the said section mentioned, the directors shall appropriate and divide the net profits of the Association for the preceding year as exhibited by such accounts into four equal parts, whereof three parts shall form a dividend, to be divided among the members in proportion to the shares possessed by each, and the remaining part shall be set apart as a reserve fund to meet any loss that may be sustained by the Association: Provided, however, that should any loss have been sustained whereby the said reserve fund shall be absorbed, and the capital stock be reduced below the aforesaid sum of twenty-nine thousand four hundred pounds sterling, then no interest and no dividend shall be paid so long as the capital stock shall remain less than the sum of twenty-nine thousand four hundred pounds sterling; And provided also that when the said reserve fund shall amount to five thousand pounds sterling, then and so long as the said fund shall not fall below such last-mentioned sum no further additions need be made thereto, and in that case the whole of the net profits (after allowing interest to shareholders, as provided in section 33) shall be divided between the members in proportion to the shares possessed by each of them.

Mode of dividing profits after approval of accounts.

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- Shareholder not being a member to receive interest only on book value of his share.
35. As often as any person shall be registered as the holder of any share, then, until he shall be elected a member of the Association, he shall be entitled to receive interest on the book value thereof at the rate of interest for the time being current in this Colony as the only profit or interest to be derived by such shareholder.
- Directors may purchase shares for benefit of Association.
36. It shall and may be lawful for the directors to purchase any share or shares which shall be offered, and to hold such share or shares for the benefit of the Association; and the said directors shall be entitled, in respect of such share or shares, to the same benefit and profits as any member is and shall be in respect of any share or shares held by him. And every share so purchased by the said directors shall be reported to the stated general meeting of members held next after such purchase, and shall be disposed of in such manner as such general meeting, or any subsequent general meeting shall determine.
- Auditors to be elected.
37. The members assembled at the general meeting to be held on the last Monday in April in each year shall elect one or more members, not being directors, to serve as auditor or auditors for the ensuing year.
- Directors may appoint secretary, &c.
38. The directors may from time to time appoint a secretary, cashier, bookkeeper, and such other officers as shall, to such directors, seem to be required, at such salary as they may fix from time to time, and to suspend or dismiss such officers, or any of them, from time to time as they may think proper.
- Members to determine amount of remuneration.
39. The members may, at any general meeting, from time to time, determine the amount of remuneration which shall be paid to the directors and auditor or auditors.
- List of shareholders to be laid before every general meeting.
40. An alphabetical list of the names, additions and residences of all the shareholders in the capital stock, shall be made out, and laid upon the table at every general meeting of the members of the Association, which list shall be filed and kept by the secretary at the office, in Cape Town, where any person or persons shall, upon cause, from time to time, have liberty to inspect the same.
- Directors to charge fees for administering estates.
41. It shall be lawful for the directors, acting for and on behalf of the Association, to charge the estates and properties administered by them with such fees and charges as shall be agreed upon, or which, when the same shall not be agreed upon, shall be just and reasonable.
- How Association may sue and be sued.
42. The said directors, by and in the name of the secretary of the South African Association for the Administration and Settlement of Estates, shall and may prosecute or defend any action for or in respect of any sum or sums of money, dues, titles, claims, or demands whatsoever, of or relating to the affairs of the Association, or order the discontinuance or nonsuit thereof, and shall and may compromise or submit to arbitration the matters in question, or otherwise act in any manner as they shall think fit and conducive to the benefit of the said Association, and shall and may, subject

to the provisions of the Ordinances Nos. 40 and 73, or of any Law or Act which may hereafter be enacted or then be in force in that behalf, prosecute any criminal action for any crime or offence committed against or with intent to defraud the said Association, and that no action, or other proceeding shall abate, discontinue, or be rendered ineffectual, by reason of the death, removal, or resignation of such secretary, but that the secretary for the time being shall always be, and be deemed to be, the plaintiff, defendant, or prosecutor in any such action or proceeding, as the case may be; and, in like manner, the said Association may be sued by and in the name of the secretary aforesaid.

43. The directors are empowered and required forthwith to frame and establish all necessary bye-laws, rules, or regulations, as shall be necessary for the conduct of the said Association and the management thereof, and as shall not be contrary to this Act, or any other law: Provided, however, that all such bye-laws, rules, and regulations, shall be laid before the next ensuing general meeting of the members for their confirmation, disallowance, or amendment; and in the event of such bye-laws, rules, and regulations being confirmed, with or without amendment, the same shall continue in force until they shall be repealed, or amended by any subsequent general meeting, of which meeting, and the object thereof, not less than fourteen days' previous notice shall be given to the several members, which notice the said directors may give, when and as often as they shall think fit, and which notice the said directors shall be bound to give, when and as often as any three members shall, in writing, inform the secretary to the Association of their intention to move, at the next general meeting, competent to entertain the question, that such bye-laws, rules, and regulations, or any of them, which such members specify, shall be repealed or amended. And as often as any such meeting shall repeal or amend any bye-law, rule, or regulation, the same shall be repealed or amended accordingly. And all such bye-laws, rules, and regulations, which shall in any way relate to the public business of the Association, or to the charges to be made in respect thereof, shall, within three weeks after the same shall have been passed or amended, be published in the *Government Gazette* of this Colony, and when so published shall have the same force and effect as if herein inserted.

44. The Association hereby incorporated shall have a common seal for the use of the said Association, in transacting the business thereof, which seal shall be under the care and custody of the directors.

45. The Association hereby incorporated shall continue to exist so long as there shall remain so many as thirty members; but it shall and may be lawful for the whole of the members, at any time, by their unanimous vote at a general meeting, duly held, and whereof one month's notice shall have been given by the

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Bye-laws to be framed by directors and approved at general meeting, & published in *Government Gazette*.

Association to have common seal.

Duration of Association.

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directors to the several members residing within the Colony, to declare that the said Association shall be dissolved, whereupon the same shall be dissolved accordingly, in such manner that the said Association shall not afterwards enter upon the administration of any estate or property; or should the members be at any time reduced to twenty-nine or less, and three months thereafter elapse without the election of any new member, so as to compose thirty members at the least, the said Association shall be deemed to be in like manner dissolved: Provided, nevertheless, in either event the members of the Association at such time being shall continue to administer such estates as they shall have previously entered upon, until the same shall be finally settled; And provided that the capital stock of the said Association shall remain vested in the directors then being, or thereafter to be elected by the members, until such estates and property shall be finally administered and settled.

Construction of terms.

46. In the construction of this Act, as often as months are mentioned, the same shall mean calendar months; and when a notice of a certain number of days is mentioned, the same shall mean clear days; and unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and the masculine gender shall include females as well as males.

This Act to be a public Act.

47. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, magistrates, and others, without being specially pleaded.

Time of taking effect.

48. This Act shall commence and take effect from and after the 15th of April, 1876, and shall continue in force for the term or period of twenty-one years thereafter.

No. 47, 1882.]

[June 30, 1882.

ACT

To Incorporate the Table Mountain Water Supply Company (Limited.)

Preamble.

WHEREAS it is expedient and desirable that a company should be formed and incorporated for constructing, maintaining and working waterworks for supplying the inhabitants of Wynberg, Claremont, Newlands, Rondebosch, Mowbray, Papendorp, New Brighton, and Cape Town, with good water: And whereas surveys have been made and measurements taken, by which it is shewn that a considerable portion of the water now flowing from Table Mountain and its slopes into Hout Bay can be utilized for the benefit of the said villages and city: 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 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 the House of Assembly thereof, as follows:—

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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 Table Mountain Water Supply Company” (Limited), for the purpose of collecting, impounding, storing, and distributing the supply of water furnished by those parts of Table Mountain which at present discharge their water into Hout Bay, and constructing and maintaining the necessary waterworks, and supplying with water the villages of Wynberg, Claremont, Newlands, Rondebosch, Mowbray, Papendorp, New Brighton, and the City of Cape Town, and such other places as the directors of the said company shall deem fit, 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, and possessions and all other property, movable and immovable, or effects whatsoever; and such lands or other property 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.

The Company in-  
corporated.

Its objects.

2. The capital of the company shall be fifty thousand pounds sterling in two thousand five hundred shares of twenty 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: Provided, however, that the directors of the said company may increase the capital of the said company by the issue of new shares, not exceeding five thousand in number, thereby making the said capital amount to a sum not exceeding one hundred and fifty thousand pounds.

Capital and shares

3. The head office of the said company shall be at Cape Town.

Head Office.

4. 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 Table Mountain Water Supply Company (Limited), incorporated by Act of Parliament, and to take each of us the number of shares set opposite our respective names:” and every such

Subscription lists.

- No. 47—1882. 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 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.
- Extent of shareholders liability. 5. No more than twenty 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.
- How shares to be paid for. 6. The shareholders shall pay the amount of their several shares in manner following, namely, five pounds per share in cash on subscribing and the remaining fifteen pounds by instalments not exceeding five pounds 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 local newspapers: Provided, however, that the resolution of directors making the said call be advertised at least twice in one of the Cape Town newspapers.
- In case of failure to pay call. 7. 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 such company to sue such shareholder for the amount thereof in any Court having competent jurisdiction, and to receive 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.
- When shares may be declared forfeited. 8. Should any shareholder, after subscribing one of the lists in the fourth section mentioned, fail to pay the said sum of five pounds per share, or to pay the instalments of five pounds per share in the said section mentioned, or should any shareholder for the time being fail to pay any of the instalments or calls, as provided in the said section for the space of one month after the same shall have become payable, it shall be lawful for the directors of the company for the time being to declare by a resolution, in writing, signed by not less than three directors, at any meeting of such directors, the share or shares of such shareholder in respect of which he shall have made such default as aforesaid to be forfeited, and the same shall be forfeited accordingly, and any money which shall have been paid thereon shall become the property of the company, and the said directors may thereupon dispose of such forfeited share or shares to any other person or persons, and if needful issue fresh certificates to the persons purchasing such forfeited shares.
- When works may be commenced. 9. So soon as one thousand shares shall have been subscribed for and the sum of five thousand pounds paid on such subscribed shares, and no sooner, it shall be competent for the directors to commence the works contemplated in this Act, always, however,

excepting the expenditure which may be incurred in procuring this act of incorporation, and other necessary expenses in establishing the company.

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10. 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 of the said company who shall not possess in his own right ten shares in the stock of the said company.

Management of company.

11. The Hon. Alfred Ebdon, M.L.C., William Fleming, M.L.A., William Mortimer Maynard Farmer, M.L.A., William Wallace Dickson, Ludwig Wiener, John Spence, and John Ramner Marquard, shall be appointed the first directors, and shall so continue until other directors are appointed in their places, or they or any of them die, resign, or be removed and become incapacitated, as hereafter mentioned, shall go out of office, and seven directors shall be elected in their stead, and in like manner the whole of the directors shall go out of office annually, and shall be succeeded by seven directors to be then elected in their stead: Provided, however, that if from any cause whatever no election shall on such day in any year take place, the directors then in office shall remain until other directors shall be elected and consent to act; and provided that the directors who shall go out of office shall be eligible for re-election.

First directors.

12. 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:—

Votes of shareholders.

- The holder of five shares one vote,
- The holder of not less than ten shares two votes,
- The holder of not less than twenty shares three votes,
- The holder of not less than thirty-five shares four votes,
- The holder of not less than fifty shares five votes,
- The holder of not less than one hundred shares seven votes and no more.

13. Any director becoming insolvent or otherwise incapacitated to and in that behalf, 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.

When director's office vacated.

14. 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

When director may be removed from office.



- No. 47—1882. such meeting by a majority of votes to remove such director from his office.
- Proceedings in case of vacancy. 15. Upon any vacancy in the board of directors occurring by any such means as abovementioned 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.
- Chairman to be chosen. 16. The directors at their first meeting shall appoint a chairman from 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 and also to have 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.
- Annual meetings. 17. The annual general meeting of shareholders shall be held in Cape Town on the first Wednesday in February 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 preceding year.
- Special meetings 18. The directors of the company, or the majority of them, may at any time call a special general meeting of the shareholders for the purpose of submitting to their consideration any question or matter concerning the interest of the company, and the directors shall, and may, call a special general meeting of the shareholders of the company, in addition to the annual general meeting, whenever required so to do by a requisition in writing to be left at the place of business of the company in Cape Town, signed by not less than ten of the shareholders, each of whom shall have been a registered shareholder for at least three months and representing in the aggregate not less than twenty votes, in which requisition the object for which such meeting is required to be called shall be fully explained, and the said meeting shall be called within twenty-one days after such requisition shall have been so left as aforesaid: Provided, that if the directors for the time being do not convene the same within the time specified, the requisitionists, or any other members holding the required number of shares, may themselves convene a meeting: Provided always, that notice of all such special general meetings, together with the purpose thereof, shall be published in the *Government Gazette* and one or more of the local newspapers at least fourteen days previous to the day upon which the meeting is to be held; and provided also, that no business except that described and set forth in the published notice shall be brought before any such meeting.
- What shareholders may vote at such meetings. 19. At any meeting of 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 one month previous to such meeting. An alphabetical list

of the then shareholders of the company shall be made out and laid on the table previous to the commencement of any meeting of the shareholders.

No. 47—1882.

20. No shareholder, residing at the time of holding any general meeting of shareholders within ten miles of the place where such meeting shall be held, excepting females, shall be entitled to vote by proxy; but any shareholder not being at the time of holding such meeting within ten miles of the said place of meeting, and any females holding shares in their own right or in right of their children being minors, shall be entitled to appoint a person to vote for him or her by proxy; but no vote or act by proxy shall be admitted unless the person appointed to vote be a shareholder duly qualified to vote, and the appointment of such proxy shall be in the form or to the effect in the schedule to this Act set forth.

When votes may be given by proxy.

21. All questions relating to any business or matter to be transacted or discussed at any general meeting of the shareholders, shall in the first instance be decided by a show of hands of the shareholders in the usual manner: Provided that any shareholder qualified to vote may demand that any question, then submitted, shall be put to the vote by ballot, in which case such question shall be decided by a majority of votes, to be taken by ballot from signed lists of the shareholders, and according to the number of votes which each shareholder may possess, as set forth in the thirteenth section of this Act; and that whatever resolution shall be adopted or negatived by a majority of votes so taken at such meeting, to be certified in writing by scrutineers to be appointed by the said meeting previously to taking such ballot, shall be binding upon every shareholder, and the same question shall not be reopened or proposed, nor any meeting called for the purpose of discussing such question at any time before the next annual general meeting; and provided, also, that the aforesaid demand for a ballot shall be made immediately after the show of hands, and that the ballot so demanded shall forthwith be taken, and shall not remain open for more than two hours.

How questions at meetings to be decided.

22. Should the shareholders at any general meeting, as aforesaid be unable to come to any decision upon the question duly brought before them, or should the scrutineers be unable to declare the result of the ballot on the day, or should any other circumstances render it desirable so to do, it shall be competent for the chairman at such meeting to adjourn the same until the following or some future day, in such manner as the shareholders present shall determine by show of hands, and so on from time to time as often as may be necessary. In the event of votes being equally divided the chairman of the meeting shall decide the question by his casting vote.

When meetings may be adjourned.

23. The minutes of the proceedings of every meeting of the shareholders shall be entered in a proper book, to be kept for that purpose, and shall be signed by the chairman presiding thereat.

Minutes.

- No. 47—1882.  
Accounts. 24. 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.
- Register of shareholders. 25. The directors shall keep a register of shareholders, wherein they shall enter the names and places of abode of all the shareholders, and the proper number of each share to be entered in a book to be kept for that purpose, to be called the "Share Registry Book," and every shareholder shall be entitled to a certificate or certificates at his option, specifying the share or shares held by him, and the certificate shall be in the form set forth in the schedule to this Act, 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.
- 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 until the assignee or transferee shall either in person or by attorney acknowledge his proprietorship in substance as follows :  
I, C. D., do hereby acknowledge to have received by transfer from E. F. shares, No. in the Table Mountain Water Supply Company (Limited), subject to the conditions, regulations, and provisions of the Act of incorporation of the said company
- Shareholder transferring released from liability. 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.
- Power to make contracts. 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 and working of the said waterworks, and may also appoint and employ such officers and 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.
- After £50,000 paid up power to borrow further. 29. So soon as the £50,000 of the capital of the company 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 works and the future calls on the shareholders and of the expected earnings of the water supplies

and the interest on such loan shall be a first claim upon the net profits of the working of the said waterworks.

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30. The directors shall and may make such rules, orders, regulations, and bye-laws for carrying on the business and management of the said company as to them shall seem just and expedient: Provided the same be not repugnant to law, and to the provisions of this Act, and shall be consented to by the majority present at a general meeting of the shareholders convened upon fourteen days' notice in the *Government Gazette* and one other local newspaper, to consider such rules, orders, regulations, and bye-laws.

Rules and by-laws may be made.

31. Should it at any future time be deemed expedient for the extension of the operations of the said company to increase the capital stock of the company, it shall be competent for a majority of two-thirds of the then existing shareholders present, personally or by proxy, at a general meeting convened after notice given for the purpose, to create and issue such additional shares or by increasing the value of the original shares as shall be considered by them necessary to carry out such extension.

Power to increase capital of company.

32. No more than £20 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 waterworks shall be and hereby is limited, in case of such extension, to the payment of a sum not exceeding £20 per additional share, or the amount of the increased value of the original share as the case may be.

Liability in respect of shares limited.

33. The amount of the additional shares or of the increased value of the original shares shall be paid as in manner provided in the sixth section of this Act, and may be recovered or forfeited as in manner provided in the seventh and eighth sections of this Act.

Payment for additional shares, &c.

34. The right to, and property in, all and singular, the materials, stock, and everything appertaining to the said waterworks constructed under this Act, shall be vested in the board of directors for the time being.

Property vested in directors.

35. In any suit or action which may be brought by or against the said company or against the said directors of the said company in their capacity as such, it shall and may be lawful for such company or for such directors to sue or to be sued by the style or description of "The Table Mountain Water Supply Company (Limited)." Provided 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.

How company to sue and be sued.

36. 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.

Payment of directors.

No. 47—1882.  
Dividends—how de-  
clared and settled.

37. 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.

Powers of acquisition, diversion, &c.,  
of water.

38. The said company shall be empowered to take, impound, divert, appropriate and convey the Back or Hout Bay River and its tributaries, in the Cape Division, and from surface area, the drainage from which shall flow into the said Back or Hout Bay River in any of its tributaries or into Hout Bay, 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, to grant to the said company, in full and free property, on such conditions as may be agreed upon, all Government land draining into Hout Bay, 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 that if such taking, impounding, diversion, appropriation, or conveyance shall deprive any person of any water or right of water, or any right of water which he may at the time of the taking effect of this Act possess or be entitled to, 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 forty-fifth section of this Act is 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.

Rights given to  
Town Council of  
Cape Town in re-  
gard to water from  
Houts Bay sources.

39. Notwithstanding anything in the last preceding section contained, the Town Council of Cape Town shall have the right to, and be entitled within three years from the completion of the works, as certified on the certificate of such person as the Governor shall appoint, to take one-third of the whole quantity of the daily run or supply of the springs or streams rising in the Hout's Bay Valley for the use of the inhabitants of Cape Town, and may lead such water into Cape Town, and in so leading the water into Cape Town, the said Council shall *mutatis mutandis*, have the same rights and powers and be subject to the same obligations as the said company has, and is subject to, under the provisions of this Act: Provided, however, that upon taking the said water, the said Council shall pay to the said company one-third of the compensation paid by the said company for the expropriation of land in the said Hout's Bay Valley, one-third of all compensation paid by the company for water rights in the said valley, one-third of the cost of all works that have been carried out by the company for

the collection of water above the intakes, and one-third of the cost of maintaining the said works above the intakes: Provided, further, that in case the said Council and the said company shall not be able to agree as to the sum to be so paid, the question of the amount of such payment shall be settled by arbitration in the manner provided in the forty-fifth section of this Act: Provided, however, that the said Town Council shall take the said water, at the points selected by the said company for their intakes.

No. 47—1832.

40. The said company is hereby empowered to construct and make, or cause to be constructed and made, all such works as may in the opinion of the directors of such company 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, wells 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 said villages, or for the city of Cape Town, and for the shipping visiting Table Bay, as well as for such irrigation and other purposes as the said company may deem necessary and expedient.

Company's power of construction and maintenance.

41. The said company 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," 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 the farm Orange Kloof and any land, the private property of any person or persons whomsoever, which may be required for the construction or maintenance 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 farm or 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 and the said farm 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 entry on and taking of Government lands, and of "Orange Kloof" lands.

42. It shall be lawful for the said company to acquire and take possession, in manner hereinbefore and hereinafter provided, of any land, whether belonging to Her Majesty the Queen, commonly called "Crown Lands," or land set apart for glebe or commonage as aforesaid, or land belonging to private persons that may be

Power to acquire other lands, Government and private.

- No. 47—1882. required for the purpose of protecting the sources of the said Back or Hout 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.
- To lay down pipes, &c. 43. The said company is hereby 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 land as a street or thoroughfare, without making or being liable to any compensation in respect thereof: Provided however that when the said company shall open any street or thoroughfare under the provisions of this or any other section of this Act, the said company shall restore the street or thoroughfare so opened to the same condition in every respect as it was in before being so opened.
- Rights of access. 44. It shall be lawful for the said company, 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 company acquired or to be acquired under the provisions of this Act, for the purpose of aiding, repairing, relaying, or supervising the said works or for any other purpose whatsoever, that may be deemed expedient by the said company in or about the carrying out the purposes of this Act.
- Arbitration clause. 45. Any person or persons from whom any 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 to send in to the secretary of the company, at his office, in Cape Town, 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 stone, gravel, or other material, water, right of water, land, or right of way, 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 plans, specifications, and reports in connection with the said works shall lie at the head office in Cape Town of the said company, during its 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 company by any means or proceeding whatever. And in case the said company shall not consent or agree to pay the amount of such or any claim or claims, then the said company 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 company, 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 company 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 company or other person aforesaid, and for that purpose to transmit to the said company or other person aforesaid, within a reasonable time, to be specified in the lastmentioned notice, the name of some person whom he or they shall select to be an arbitrator; and the said company 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 company 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 company 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 company or other person as aforesaid may lodge in some joint-stock bank in Cape Town 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 company or other person as 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 company 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.



No. 47—1882.  
Lands of minors  
and others.

46. In case the said company or other person aforesaid shall require to take or use any water on 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 company 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 by agreement or by arbitration be payable by the said company or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the said company 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 appraisal 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.

Lands of persons  
absent from the  
Colony or undis-  
coverable.

47. And in case the said company 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 company, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, and one or more local newspapers 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 company 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 company 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 company, 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 company within the said period, then it shall be lawful for the said company 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 a solemn declaration, under and by virtue of the provisions of Ordinance No. 6 of 1845, before some Justice of the Peace that he has, to the best of his judgment, fairly appraised such value, and thereupon it shall be lawful for the said company 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 company 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 company sufficient title to the use of, or property in the land or materials as aforesaid had been duly done and performed.

48 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 company 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, providing 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

Penalties for injuring company's party and works.

No. 47—1882.

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 defiling water.

49. Any person who shall bathe or wash himself in any dam or reservoir belonging to the said company or in any stream flowing into such dam or reservoir, by means of any watercourse constructed by the company, or shall wash, throw, or cause to enter therein any dog or other animal, or shall piace 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 company 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.

Tariff of charges.

50. The company 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 for domestic, irrigating, industrial, and other purposes shall be regulated, and the payment for such supply shall be in accordance with such tariff: Provided, nevertheless, that the said company, or any person duly authorized by the said company, shall have access at all reasonable times to inspect and regulate all such private water leadings.

Rules and bye-laws in regard to water supply.

51. It shall be lawful for the directors of the said company to frame from time to time such regulations and bye-laws as they shall deem necessary for regulating the system of water supply to the said villages, and to impose penalties to prevent waste or damage to the conduits, reservoirs and pipes of the company: Provided, however, that all regulations and bye-laws framed under the provisions of this section of this Act shall be published in the *Government Gazette*, and in some one local newspaper, and shall not less than three weeks after the publication thereof be submitted to the Governor for approval, alteration or amendments, and shall, together with such alterations and amendments as the Governor may deem fit to make therein, be published in the *Government Gazette*, and shall thenceforth have the force of law: And provided also, that it shall be competent for the said directors of the company from time to time to alter and 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 have the force of the law. Any person contravening any of the regulations made and published as in this section provided shall be liable to a penalty of five pounds sterling or imprisonment for two weeks unless the fine imposed be sooner paid.

To be submitted to Governor and published.

52. It shall be lawful for the company's inspector to enter any premises supplied with water by the said company, between the hours of ten a.m. and four p.m., and it shall be lawful for the company to cut off the supply to any house on giving twenty-four hours' notice in writing of their intention to do so: Provided, however, that the water supply be not cut off for a period longer than may actually be required for the purpose of detecting waste or making the necessary repairs.

No. 47—1882.  
Power of entry on premises supplied with water.

53. The cost of the house connection with shut off cocks and suitable house fittings shall be borne by the owners or occupiers of the immovable property to whom the water is supplied; but the materials for the same shall be purchased from or approved by the directors of the company, and shall be laid down by the workmen of the company or under the control of the inspector of the company: Provided always, that where the water is supplied by meter the work up to and including the meter shall be done by the servants of the company and the work and fittings on the consumer's side of the meter may be done by the consumer in such way as he may deem fit.

Cost of house connection with shut-off cocks.

54. At any time after the expiration of twenty years from the date of the said waterworks being completed, the Colonial Government shall, if so disposed, have the right to purchase from the said company all the land, water, water rights, buildings, conduits, pipes, plant, machinery and every other matter or thing belonging to or connected with the said company; and the said company shall, if required thereto, be bound to sell to the Colonial Government the said land, water, rights to water, buildings, conduits, pipes, plant, machinery and every matter or thing belonging to or connected with the said company upon such terms as may be agreed upon between the said Colonial Government and the said company; and if the Colonial Government and the said company cannot agree upon the terms upon which such purchase shall be made, all questions in dispute between the Colonial Government and the said company relative thereto shall be submitted to three arbitrators, one to be nominated by the said company and one by the Colonial Government, and such two arbitrators so appointed shall select a third arbitrator, and if the two arbitrators appointed under this section shall not agree on the selection of the third arbitrator within four days after their appointment, then and in that case it shall be competent for the Supreme Court on application made by either party, to appoint such third arbitrator; and the decision of such arbitrator or the majority of them on all questions submitted relative to the said purchase by the said Colonial Government shall be final and conclusive: And any award made under this section may be made a rule or order of the Supreme Court, and may be pleaded in bar of any action or proceeding at law brought for and on account of the subject matter.

When Colonial Government may take over works and on what terms.

286 COMPANIES (TABLE MOUNTAIN WATER SUPPLY).

No. 47—1882.  
Interpretation.  
Short title.

55. The word company in this Act means "The Table Mountain Water Supply Company, Limited."

56. This Act may be cited as "The Table Mountain Water Supply Company Act, 1882."

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SCHEDULE A.

FORM OF APPOINTMENT OF A PROXY.

I, A. B., of———, one of the shareholders of the Table Mountain Water Supply Company (Limited), 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 th company, unless I shall be personally present.  
Witness my hand at———, this——day of ——, 18—.

A. B.

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SCHEDULE B.

No.——

CERTIFICATE OF SHARES IN THE TABLE MOUNTAIN WATER SUPPLY COMPANY (LIMITED).

This is to certify that A. B., of ——, is proprietor of —— shares in the Table Mountain Water Supply Company (Limited), 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—.

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No. 32—1861.]

[August 14, 1861.

ACT

For Incorporating the Union Fire and Marine Insurance and Trust Company, and enabling them to sue and be sued in the name of their Secretary.

Preamble.

WHEREAS by a deed bearing date at Graham's Town the tenth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, certain persons did become co-partners together in a certain joint-stock company, called "The Union Fire and Marine Insurance Company," for the insurance of movable and immovable property of every description against loss or damage by fire, and for the insurance of ships or vessels and goods, merchandise and effects, or other property, from risk at sea or in being carried to or from such ships or vessels, with a capital of one hundred thousand pounds sterling, divided into ten thousand shares of ten pounds sterling each; And whereas five thousand

one hundred and fifty shares in the said company have been allotted, upon which the sum of seven thousand seven hundred and twenty-five pounds sterling has been paid up by the holders thereof as and for part of the said capital stock of the said company, and the remaining four thousand eight hundred and fifty shares have been reserved for the benefit of the shareholders of the said company; And whereas by a certain supplementary deed, bearing date at Graham's Town the twentieth day of November, in the year of our Lord one thousand eight hundred and sixty, and executed on behalf of the several shareholders of the said company by one Henry Crump, who was duly authorized and empowered in that behalf by a resolution of a special general meeting duly convened according to the conditions and provisions of the first-mentioned deed, it was declared and provided that the business of the said company be extended to the administration and management of such estates and other property as the said company shall be appointed to administer or manage as executors, trustees, administrators, tutors, guardians, curators, or agents, either under or by virtue of a rule or order of any competent Court, or by the direction of the Master for the time being of the Supreme Court of this Colony in his official capacity, or by the last will and testament or by any valid act or deed of any person or persons whomsoever, or by virtue of any marriage settlement, power of attorney or otherwise, and that the title and designation of the said company should be "The Union Fire and Marine Insurance and Trust Company;" And whereas the directors of the said company, acting for and on behalf of the said shareholders and being duly authorized by them in that behalf, have applied for an Act to incorporate the said company as constituted under the said respective deeds and in order the better to enable them to carry into effect the objects of the said company:—

1. 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, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act under the provisions of the said respective deeds, to be and continue joint-stock proprietors of the said capital sum of one hundred thousand pounds and of all such other sums of money as they may hereafter acquire under the provisions of the said respective deeds, and to constitute and be a company for the purposes before mentioned, to be carried on under the style and firm of "The Union Fire and Marine Insurance and Trust Company."

2. A copy of the said deed and also a copy of the said supplementary deed, duly authenticated by the secretary of the said company appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this

Incorporation and style of company.

Copy of trust-deed with list of present directors and shareholders to be filed in Supreme Court.

No. 32—1961.

Colony, within one month after the passing of this Act, and in like manner a return of the names and places of abode of the several persons at the time being shareholders of the said company, and of the names and places of abode of the chairman and of each director thereof and of the secretary thereof.

Alterations or additions to be likewise filed.

3. A copy of all alterations in or additions to the said deed and supplementary deed, which may at any time be made in conformity with the provisions therein contained, shall within three months after any such alteration or additions shall have been duly made in the like manner authenticated, shall be in the same manner filed in the office of the said Registrar.

Transfer of shares.

4. Whenever the transfer of any share or shares in the said company shall be made, a return in like manner authenticated shall, within three months after such transfer shall have been made, be in the same manner filed in the said office of the said Registrar, and which return shall contain the date of such transfer, and the name and place of abode of the person to whom or in whose behalf such transfer is made.

Names of future directors to be also filed.

5. A return in like manner authenticated shall from time to time as occasion shall render it necessary be filed in the office of the said Registrar, of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, in the place of any former chairman, director, or secretary, within three months after such appointment shall have been made.

Certified copies or extracts of deeds or returns to be taken as evidence.

6. A copy of or extract from the copy of the said deeds or either of them, and of any alterations therein or additions thereto which may have been made and filed as aforesaid, and copy of an extract from any such returns as aforesaid, which may have been made and filed as aforesaid, purporting to be certified under the hand of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence as *prima facie* proof of all matters contained or recited in such certified copy or extract, and of the authority and appointment of the person or persons named therein, whether a shareholder, director, chairman, secretary, or otherwise, and of the fact of their being such at the date of such certificate, and such certified copy or extract shall be received in evidence without any proof of the handwriting of the said Registrar, or of his appointment.

Appointment of company as executors, &c., to be valid.

7. All appointments by any competent Court or authority, or by, under, or by virtue of any last will and testament, codicil, marriage settlement, power of attorney, or any other deed or act which shall have been at any time previous to the passing of this Act, or which shall be hereafter duly made and executed, of the directors or secretary of the said company, as trustees, assignees, executors, administrators, tutors, curators, guardians, or agents; or as trustee, assignee, executor, administrator, tutor, curator, guardian, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the said company.

8. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a shareholder of the said company shall be admissible in like manner as if such person were not a shareholder thereof.

No. 32—1861.  
Evidence of shareholder admissible.

9. All actions, suits, and proceedings at law to be brought for or on behalf of the said company against any person or persons, bodies politic or corporate, or others, whether shareholders of the said company or otherwise, for or on account or in respect of any debt, claim, or demand, due to the said company, or for or on account or in respect of any other matter or thing relating to the concerns of the said company, shall and may after the passing of this Act be brought and maintained in the name of the then secretary of the said company, as the nominal plaintiff, applicant, or petitioner for and on behalf of the said company, and all proceedings of a criminal nature for any fraud, crime, or offence committed against the said company or their property, or with intent to injure or defraud the said company, shall and may, subject to the provisions of any Act, Law, or Ordinance which may be in force or which may hereafter be enacted in that behalf, be prosecuted for and on behalf of the said company by and in the name of such secretary as aforesaid as nominal prosecutor, and in any indictment or information it shall be sufficient to describe the property of the said company as the property of such secretary, and any offence against or with intent to injure or defraud such secretary as aforesaid, and all actions, suits, and proceedings at law to be brought by any person or persons bodies politic or corporate, or others, whether shareholders of the said company or otherwise, against the said company, shall and may be brought and maintained against such secretary as aforesaid, as the nominal defendant or respondent for and on behalf of the said company, and not against the said company, or the directors or shareholders thereof or any of them. And no action, suit, or proceeding as aforesaid shall abate, discontinue, or be rendered ineffectual by reason of the death, removal, or resignation of such secretary, but in any such event and as often as the same may occur the name of the secretary for the time being shall be substituted in the subsequent proceedings.

Actions to be brought by secretary

10. It shall and may be lawful for the secretary of the said company to bring and maintain any action, suit, or other proceeding at law against any person being an officer or shareholder of the said company, for or on account of any claim or demand which the said company may have against such person, in like manner as if he were not an officer or shareholder thereof.

Secretary may bring actions against officer or shareholder.

11. It shall and may be lawful for any person, being an officer or shareholder of the said company, to bring and maintain any action, suit, or other proceeding at law against the secretary of the said company, for or on account of any claim or demand which he

Any officer or shareholder may bring action against secretary.



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may have against the said company, in like manner as if he were not an officer or shareholder thereof.

Share in capital stock or dividends not to be set off against claims of company.

12. No claim or demand which any shareholder of the said company may have in respect of his share of the capital stock of the said company, or of any dividends, interest, or profits payable in respect of any such share, shall be capable of being set off, and no claim in reconvention shall be brought on account of any such share, dividends, interest, or profits against any claim or demand which the said company may have against such shareholder on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock or of any dividends, interest, or profits payable in respect thereof.

Two directors may execute bonds, policies, &c.

13. It shall and may be lawful for any two of the directors of the said company to make and execute for and on behalf of the said company, any bond, deed, policy of insurance, inventory, liquidation, distribution, or other account, or any act or instrument whatsoever, and every such bond, deed, policy of insurance, inventory, account, act and instrument shall be as valid and effectual to and for all intents and purposes as if the same had been made done and executed by all or any of the directors or shareholders thereof.

Public Act.

14. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, magistrates, and others, with or without being specially pleaded.

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## CONSTITUTION.

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1. Constitution Ordinance. 2. Act 16—1856 } (Registration of Voters 3. ,, 14—1874 } and Elections). 4. ,, 11—1856 5. ,, 3—1865 (in part) } 6. ,, 7—1872 } (Increased Re- 7. ,, 18—1874 } presentation). 8. ,, 39—1877 (in part) } 9. ,, 13—1882 } 10. ,, 1—1872 } (Responsible Govern- 11. ,, 32—1879 } ment). 12. ,, 2—1886 } 13. Act 21—1859 } (Bribery and Corrupt 14. ,, 9—1883 } Practices).	15. Act 1—1854 } (Powers & Privileges 16. ,, 13—1883 } of Parliament). 17. ,, 5—1883 } (Interpretation of Acts). 18. ,, 6—1879 } (Members' Allow- ances). 19. ,, 1—1882 } (Dutch Language Act). 20. ,, 36—1882 } (President of Councils' Allowance). 21. ,, 35—1885 } (Public Bodies Private Bills).
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### Letters Patent.]

Preamble.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to our trusty and well-beloved Sir HENRY GEORGE WAKELYN SMITH, Baronet, Knight Grand Cross of our most Honourable Order of the Bath,

Major-General of our Forces, with local rank of Lieutenant-General of the said Forces in our Settlement of the Cape of Good Hope, in South Africa: Whereas we did, by certain Letters Patent under the great seal of our Kingdom of Great Britain and Ireland, bearing date at Westminster the fifteenth day of December, one thousand eight hundred and forty-seven, in the eleventh year of our reign, constitute and appoint you to be Governor and Commander-in-Chief in and over our said settlement of the Cape of Good Hope, in South Africa, with its territories and dependencies, for and during our royal will and pleasure, and did thereby require and command you to do all things in due manner that should belong to your said command and the trust we have thereby reposed in you, according to the several powers and directions granted or appointed you by the said commission, and the instructions therewith given you, or according to such further powers, instructions, and authorities as should at any time thereafter be granted or appointed you under our sign manual and signet, or by our order in our Privy Council, or by us through one of our principal Secretaries of State: And we did thereby, amongst other things, declare our will and pleasure that there should be within our said settlement a Legislative Council, to be constituted in such manner as is in that behalf directed by the instructions therewith given to you, or according to such further powers, instructions, or authorities as should at any future time be granted to or appointed for you under our signet and sign manual, or by our order in our Privy Council, or by us through one of our principal Secretaries of State: And we did thereby further give and grant unto you, the said Sir HENRY GEORGE WAKELYN SMITH, full power and authority, with the advice and consent of the said Legislative Council, to make, enact, ordain, and establish laws for the order, peace, and good government of our said settlement of the Cape of Good Hope, and its dependencies, as, relation being had unto the said Letters Patent and accompanying instructions, will more fully and at large appear: And whereas we have deemed it expedient to make other provision than is in the said commission contained for making, enacting, ordaining, and establishing laws for the peace, order, and good government of the said settlement: Now, know you that, in pursuance and in exercise of the powers to us in that behalf in anywise belonging, we, of our special grace, certain knowledge, and mere motion, do hereby declare and ordain that there shall be within our said settlement of the Cape of Good Hope a Parliament, to be holden by you our Governor and Commander-in-Chief, and to consist of our Governor and Commander-in-Chief, a Legislative Council, and a House of Assembly: And we do hereby declare, ordain, and appoint that the said Legislative Council (subject to the exceptions hereinafter provided) and the said House of Assembly shall consist and be constituted of such

Letters Patent.

A Parliament to be established at the Cape of Good Hope.

Constitution of Legislative Council and House of Assembly:

Letters Patent. persons as shall be elected in such manner and form, and for such terms and under such regulations as shall for that purpose be prescribed in any Ordinance or Ordinances to be for that purpose passed by you, with the advice and consent of the present Legislative Council of our said settlement : Provided, nevertheless, that it shall be prescribed in and by such Ordinance or Ordinances, that the Chief Justice of the Colony of the Cape of Good Hope for the time being shall be, by virtue of his office, a member of the said Legislative Council, and shall preside over the same: Provided, also, that every such Ordinance shall contain a clause suspending the operation of the same until it shall have been confirmed by us, with the advice of our Privy Council: And we do hereby declare our will and pleasure that you, our Governor, with the advice and consent of the Legislative Council and House of Assembly so to be constituted and elected in manner and form aforesaid, shall have authority to make laws for the peace, welfare, and good government of our said settlement: And we do hereby further declare our will and pleasure that, in the said Ordinance or Ordinances for constituting the said Legislative Council and House of Assembly, provision shall be made for enabling and empowering you, our Governor, to transmit to the said Legislative Council or House of Assembly, for their consideration, the drafts of any laws which it may appear to you desirable to introduce, and also any amendments for the consideration of the said Legislative Council and House of Assembly (if you shall so think fit) in any bill presented to you for our assent, and for prescribing the manner in which such drafts of laws and amendments shall be dealt with by the said Legislative Council and House of Assembly, and for determining the regulations under which bills appropriating sums of money to the public service may be introduced in such Assembly, amended, and finally enacted; and for empowering you, our said Governor and Commander-in-Chief, from time to time, in the exercise of your discretion, to dissolve such Legislative Council and House of Assembly together, or such House of Assembly separately: And we do hereby reserve to ourself full power and authority, by an order or orders to be made by us in our Privy Council, to alter or amend such Ordinance or Ordinances as shall be passed by you, with the advice and consent of the Legislative Council of our said settlement, for the purpose of constituting and establishing the said Assembly, and for such other purposes as are hereinbefore specified: And we do further declare our will and pleasure to be, that it shall be competent for you, our Governor, to continue, with the advice and consent of the present Legislative Council of our said settlement, to make, enact, ordain, and establish laws for the peace, order, and good government of our said settlement, until the first writs shall issue for the election of members of the said Legislative Council and House of Representatives, under and by virtue of such Ordinance or Ordinances so to be made and

Under such regulations prescribed by Ordinance to be passed by present Legislative Council.

Chief Justice to preside over Legislative Council.

Constitution Ordinance not to come into operation till confirmed by the Queen.

Governor to make laws, with advice and consent of Council and Assembly.

Provision to be made for enabling Governor to transmit drafts of laws to Council or Assembly, or amendments, &c. &c.;

And for introducing Bills for appropriating sums of money;

And for dissolving Council and Assembly.

Queen to have power to alter or amend ordinances.

Present Council to make laws, &c., till issue of first writs for election of Council and Assembly.

passed as aforesaid, but no longer: In witness whereof we have caused these our Letters to be made Patent. Witness ourself at Westminster, the twenty-third day of May, in the thirteenth year of our reign.

Order in Council.

By writ of Privy Seal,  
CHARLES EDWARD PEPYS,  
Clerk of the Crown in Chancery.

23rd May, 1850.

Order in Council.]

At the Court at Buckingham Palace, the 11th day of March, 1853.

PRESENT:

The Queen's Most Excellent Majesty,	
His Royal Highness Prince Albert,	
Lord Privy Seal,	Earl of Aberdeen,
Duke of Newcastle,	Earl of Clarendon,
Duke of Wellington,	Mr. Herbert,
Lord Chamberlain,	Sir James Graham, Bart.

WHEREAS Her Majesty did, by her Letters Patent under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the twenty-third day of May, in the thirteenth year of her reign, declare and ordain that there should be within her settlement of the Cape of Good Hope a Parliament, to be holden by the Governor and Commander-in-Chief of the said settlement, and to consist of the said Governor and Commander-in-Chief, a Legislative Council, and a House of Assembly: And did thereby declare, ordain, and appoint that the said Legislative Council (subject to the exceptions thereafter provided) and the said House of Assembly should consist and be constituted of such persons as should be elected in such manner and form, and for such terms and under such regulations as should for that purpose be prescribed in any Ordinance or Ordinances to be for that purpose passed by the said Governor, with the advice and consent of the then Legislative Council of the said settlement: Provided, nevertheless, that it should be prescribed in and by such Ordinance or Ordinances that the Chief Justice of the Colony of the Cape of Good Hope for the time being should be, by virtue of his office, a member of the Legislative Council, and should preside over the same: Provided also, that every such Ordinance should contain a clause suspending the operation of the same until it should have been confirmed by her said Majesty, with the advice of her Privy

Recital of Letters Patent.

Order in Council.

Council: and did thereby declare her will and pleasure that the said Governor, with the advice and consent of the Legislative Council and House of Assembly, so to be constituted and elected in manner and form aforesaid, should have authority to make laws for the peace, welfare, and good government of the said settlement: And did further declare her will and pleasure that, in the said Ordinance or Ordinances for constituting the said Legislative Council and House of Assembly, provision should be made for enabling and empowering the said Governor to transmit to the said Legislative Council or House of Assembly, for their consideration, the drafts of any laws which it might appear to him desirable to introduce, and also any amendments for the consideration of the said Legislative Council and House of Assembly (if he should so think fit) in any bill presented to him for her assent, and for prescribing the manner in which such drafts of laws and amendments should be dealt with by the said Legislative Council and House of Assembly, and for determining the regulations under which bills appropriating sums of money to the public service might be introduced in such Assembly, amended, and finally enacted: and for empowering the said Governor, from time to time, in the exercise of his discretion, to dissolve such Legislative Council and House of Assembly together, or such House of Assembly separately: And did thereby reserve to herself full power and authority, by an order or orders to be made by her, in her Privy Council, to alter or amend such Ordinance or Ordinances as should be passed by the said Governor, with the advice and consent of the Legislative Council of the said settlement, for the purpose of constituting and establishing the said Assembly, and for such other purposes as are hereinbefore specified: And did further declare her will and pleasure to be that it should be competent for the said Governor to continue, with the advice and consent of the Legislative Council of the said settlement, to make, enact, ordain, and establish laws for the peace, order, and good government of the said settlement, until the first writs should issue for the election of members of the said Legislative Council and House of Representatives, under and by virtue of such Ordinance or Ordinances so to be made and passed as aforesaid, but no longer:

Confirmation of  
Ordinance of April  
3, 1852.

And whereas, on the 3rd day of April, in the year 1852, in pursuance of the authority conveyed by the said Letters Patent, an Ordinance was enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance for constituting a Parliament for the said Colony:"

With certain  
amendments.

And whereas it is expedient that certain amendments should be made in the said Ordinance, in pursuance of the power and authority reserved to Her Majesty in her said Council in that behalf by the said Letters Patent; of which said Ordinance, with

such amendments as aforesaid, a copy is contained in the Schedule to the present Order in Council annexed :

Order in Council.

And whereas it is expedient that the said Ordinance so amended as aforesaid shall be ratified and confirmed by Her Majesty in Council :

It is therefore hereby ordered by the Queen's Most Excellent Majesty, with the advice of her Privy Council, that the said Ordinance so amended as aforesaid shall be, and the same is hereby ratified, confirmed, and finally enacted.

And it is further ordered and declared by the authority aforesaid, that the said Ordinance shall commence and take effect within the Colony of the Cape of Good Hope from and after the first day of July next ensuing : Provided always, that nothing herein contained shall extend to prevent the Parliament of the said Colony of the Cape of Good Hope from making any Act or Acts (subject to Her Majesty's power to disallow the same, with the advice of her Privy Council, or to assent to the same, if reserved for the signification of her pleasure thereon), in amendment of the said Ordinance, or in furtherance of the objects thereof.

And the most noble the Duke of Newcastle, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

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SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

Ordinance, enacted by His Excellency the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for constituting a Parliament for the said Colony.

WHEREAS Her Majesty did, by certain Letters Patent, bearing date at Westminster, on the 23rd day of May, in the thirteenth year of her reign, amongst other things, declare and ordain that there should be within the settlement of the Cape of Good Hope, a Parliament, to consist of the Governor, a Legislative Council, and House of Assembly ; and did declare, ordain, and appoint that the said Legislative Council (subject to the exception hereinafter contained) and the said House of Assembly should consist and be constituted of such persons as should be elected in such manner and form, and for such terms and under such regulations, as should for that purpose be prescribed in any Ordinance or Ordinances to be for that purpose passed by the Governor of the said settlement, with the advice and consent of the then present Legislative Council thereof ; provided, nevertheless, that it should be prescribed in and by such Ordinance or Ordinances that the Chief Justice of the Colony of the Cape of Good Hope for the time being should be, by virtue of his office, a member of the said Legislative Council,

Establishment of a Parliament within the Cape of Good Hope, to consist of the Governor, a Legislative Council, and House of Assembly.

Constitution Ordinance.

and should preside over the same; provided also, that every such Ordinance should contain a clause suspending the operation of the same until it should have been confirmed by Her Majesty, with the advice of her Privy Council; and her said Majesty did thereby declare her will and pleasure that the said Governor, with the advice and consent of the Legislative Council and House of Assembly, so to be constituted and elected in manner and form aforesaid, should have authority to make laws for the peace, welfare, and good government of the said settlement; and that, in the said Ordinance or Ordinances for constituting the said Legislative Council and House of Assembly, provision should be made for enabling and empowering the said Governor to transmit to the said Legislative Council or House of Assembly, for their consideration, the drafts of any laws which it might appear to him desirable to introduce, and also any amendments for the consideration of the said Legislative Council and House of Assembly (if he should so think fit) in any bill presented to him for her said Majesty's assent, and for prescribing the manner in which such drafts of laws and amendments should be dealt with by the said Legislative Council and House of Assembly, and for determining the regulations under which bills appropriating sums of money to the public service might be introduced in such Assembly, amended, and finally enacted; and for empowering the said Governor, from time to time, in the exercise of his discretion, to dissolve such Legislative Council and House of Assembly together, or such House of Assembly separately: And whereas her said Majesty did thereby reserve to herself full power and authority, by an order or orders to be made by her in her Privy Council, to alter or amend such Ordinance or Ordinances as should be so passed as aforesaid, for the purpose of constituting and establishing the said Council and Assembly, and for such other purposes as are thereinbefore specified: 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 Legislative Council and House of Assembly for the said Colony shall be severally constituted and composed as is hereinafter provided.

Constitution of the Legislative Council.

2. And be it enacted, that the said Legislative Council shall consist of the Chief Justice for the time being of the said Colony, and of fifteen <sup>(1)</sup> elective members; and the said Chief Justice <sup>(2)</sup> (when present) shall preside in the said Council. Provided that it shall be at all times lawful for the said Chief Justice (notwithstanding his so acting as President) to take part in any debate or discussion which may arise in the Legislative Council.

Quorum of Legislative Council.

3. And be it enacted, that five members of the said Council shall form a quorum for the despatch of business; and all questions arising in the said Council shall be decided by a majority of votes

<sup>1</sup> Increased to 21 by Act 3 of 1865; to 22 by Act 39 of 1877, *infra*.

<sup>2</sup> The Chief Justice as President may receive salary. Act 36 of 1882, *infra*.

of the members present other than the presiding member; but when the votes shall be equal, the presiding member shall have the casting vote.

Constitution Ordinance.

When votes equal, presiding member to have the casting vote

4. [§§ 4 and 5 are repealed by Act 18 of 1874. *Infra.*]

6. And be it enacted, that the House of Assembly of the Cape of Good Hope shall consist of <sup>(1)</sup> forty-six members, elected, in the manner hereinafter in that behalf provided, for a term of five years from the date of election, and that twelve members, exclusive of the member presiding in the said Assembly, shall form a quorum for the despatch of business, and that all questions which shall arise in the said Assembly shall be decided by a majority of votes of the members present, other than the presiding member, and that when the votes shall be equal, the presiding member shall have the casting vote.

Number of members of the House of Assembly.

Quorum of the same.

When votes equal, presiding member to have the casting vote

7. <sup>(2)</sup> And be it enacted, that the divisions of the Cape (exclusive of the city of Cape Town), Malmesbury, Stellenbosch, the Paarl, Clanwilliam, Swellendam, Caledon, George, Uitenhage, Port Elizabeth, Albany (exclusive of the town of Graham's Town), Fort Beaufort, Victoria, Albert, Somerset, Graaff-Reinet, Cradock, Colesberg, Beaufort, and Worcester, and the city of Cape Town, and the town of Graham's Town, shall, respectively, be Electoral Divisions within the meaning and for the purposes of this Ordinance: Provided that for the purposes of this Ordinance the division of the city of Cape Town shall include the municipality of Green Point: And provided also, that the boundaries of the said several Electoral Divisions, other than Cape Town and Graham's Town, shall be the boundaries from time to time assigned to or prescribed for such divisions respectively in respect of fiscal purposes: And provided further, that the boundaries of the city of Cape Town, the municipality of Green Point, and the town of Graham's Town, shall, for the purposes of this Ordinance, be the boundaries assigned to or prescribed for the said city, the said municipality, and the said town respectively, by the municipal regulations in force for the time being in the same respectively.

Electoral divisions.

Cape Town to include Green Point.

Boundaries of the electoral divisions.

8. <sup>(3)</sup> And be it enacted, that every male person, not subject to any of the legal incapacities hereinafter mentioned, who shall have occupied within any Electoral Division for the space of twelve months next before the day on which any such registration of voters as is hereinafter mentioned shall commence, any house, warehouse, shop, or other building, being either separately or jointly, with any land within such Electoral Division occupied

Who qualified to be registered as voters, and to vote at elections of members of the Council, and of members of the Assembly.

<sup>1</sup> 74 members now, increased to 66 by Act 3 of 1865, 2 more added by Act 7 of 1872, 4 more added by Act 39 of 1877 (Griqualand West Annexation), and 2 more by Act 13 of 1882.

<sup>2</sup> Further electoral divisions created by Acts 3 of 1865, 7 of 1872, and 39 of 1877. See *infra*.

<sup>3</sup> As to qualification of voters in Griqualand West. See Act 39 of 1877; § 8 (*infra*). See also Schedule to Act 14 of 1874 (*infra*) for abstract of qualifications entitling to registration.



Constitution  
Ordinance.

therewith, of the value of twenty-five pounds sterling, or who shall have been, for the space of twelve months aforesaid, really and *bonâ fide* in the receipt of salary or wages at and after the rate of not less than fifty pounds by the year,—or who, having been in the receipt for the space aforesaid of salary or wages at and after the rate of not less than twenty-five pounds by the year, shall, in addition to such salary or wages, have been supplied with board and lodging,—shall be entitled to be registered as a voter, and to vote at elections of members of the said Council and of members of the said House of Assembly: Provided, that when any number of different premises of the required nature and value shall have been occupied in immediate succession by the same person within the same Electoral Division during the aforesaid space of twelve months, such person shall be deemed and taken to be entitled to be registered as a voter and to vote: Provided further, that no person claiming to be registered from salary or wages shall be prevented from being so registered by reason that, during the space of twelve months aforesaid, he may have been employed by different employers, in case no interval greater than one month shall have occurred between the time of his quitting one employer and the time of his taking employment with or under another employer: And provided also, that whilst no person shall be entitled to be registered as a voter, or to vote from or out of any premises of which he shall not be in the actual occupation, yet if, in any case, it shall happen that the same person shall be in actual occupation, in each of two or more Electoral Divisions, of premises of the required nature and value, such person shall be entitled to be registered as a voter for each of the said Electoral Divisions, and to vote for each of such Electoral Divisions in the election of members of the House of Assembly; but no voter shall vote in more than one Electoral Division in the election of members of the Legislative Council.

Persons occupying premises of the required value in each of two or more electoral districts, to vote in each for members of Assembly; but no person to vote in more than one district for members of the Legislative Council.

When joint occupiers shall be entitled to be registered as voters, or to vote.

9. And be it enacted, that where any premises are jointly occupied by more persons than one, each of such joint occupiers shall be entitled to be registered as a voter, and to vote in respect of the said premises, in case the total value of such premises, when divided by the number of such joint occupiers as aforesaid, shall yield for every such joint occupier a sum of twenty-five pounds: Provided, however, that in case such joint occupiers shall own, or be interested in, such premises in unequal shares or proportions, no such joint occupier shall be entitled to be registered as a voter or to vote unless his share or proportion shall, regard being had to the total value of the premises, yield a sum of twenty-five pounds.

Who disqualified to be registered as voters or to vote.

10. And be it enacted, that no person shall be entitled to be registered as a voter or to vote at any election of members of the Legislative Council or Assembly of the Cape of Good Hope, unless he be of the full age of twenty-one years, and either a natural-born subject of Her Majesty the Queen, or a subject of Her Majesty the Queen who, though not natural-born, was, before and

on the eighteenth of January, one thousand eight hundred and six, a subject of the Batavian Government, resident in this Colony, and who, from thence hitherto, has resided or maintained a domicile in the said Colony, or unless, if of alien <sup>(1)</sup> birth, and not such a subject as last aforesaid, he shall have been naturalized by some Act of the Parliament of Great Britain and Ireland, or of the Legislature of the Cape of Good Hope, or shall, before the commencement and taking effect of this Ordinance, have obtained a deed of burghership ;—and that no person shall be entitled to be registered as a voter, or to vote, who is of unsound mind, or who shall have been convicted of and sentenced for treason, murder, rape, theft, fraud, perjury, or forgery, unless he shall have received a free pardon.

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11. <sup>(2)</sup> And whereas it is expedient to form a register of all persons entitled to vote in each Electoral Division, be it therefore enacted that it shall and may be lawful for the Governor of the Cape of Good Hope, and he is hereby required, as soon as may be after the taking effect of this Ordinance within the said Colony, by proclamation or proclamations to be by him issued for that purpose, to enjoin and direct some fit and proper person or persons to make out, or cause to be made out, in and for each Field-cornetcy in each Electoral Division (except the Electoral Divisions of Cape Town and Graham's Town), an alphabetical list of all persons entitled to vote, resident within such Field-cornetcy ; and the person or persons appointed to make out any such list shall insert therein the name and, as well as may be, the address of every person who shall, in person, or by any writing under his hand, witnessed by one witness, or more than one, claim to be inserted therein, as well as the name of every other person who shall be known, or on reasonable grounds believed, to be entitled to be inserted therein.

A register of voters in each electoral division to be formed

A list to be made of the voters in each field-cornetcy (except Cape Town and Graham's Town).

12. And be it enacted, that it shall and may be lawful for the Governor aforesaid, and he is hereby required, by some such proclamation as aforesaid, to fix and name some convenient place within each Field-cornetcy, at which place the person or persons appointed to make out the list aforesaid for such Field-cornetcy will attend upon such day or days as shall in any such proclamation be, in that behalf, appointed, and at which place all persons shall be entitled to appear in order to claim to be themselves placed upon such list, or to hand in the claim of any other persons made in writing as aforesaid : Provided always, that the Governor may, in case the convenience of the inhabitants shall seem to him so to require, appoint, in any Field-cornetcy, more places than one for the purposes aforesaid ; in which case, every such place shall be announced by proclamation, and the day or days at which the

List of voters for the several field-cornetcies, how to be framed.

<sup>1</sup> See Act 2 of 1883 as to Naturalization. (Aliens).

<sup>2</sup> §§ 11 to 19 inclusive apply only to First Registration of Voters. For procedure now see Act 16 of 1856.

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person or persons aforesaid, appointed to make out the list aforesaid for such Field-cornetcy, will attend at each such place, shall be published for general information.

Every field-cornetcy list, when completed, to be posted.

13. And be it enacted, that as soon as the list aforesaid for any Field-cornetcy shall be completed, (and not later than some certain day to be by the Governor aforesaid, in or by some such proclamation as aforesaid, fixed for that purpose), the person or persons appointed to make out such list shall cause a copy thereof, legibly written, to be posted upon, or affixed to, some public place or public places within such Field-cornetcy, there to remain for general information during not less than seven days; and if any person shall, during such space of seven days, wilfully tear down, cover over, deface, or obliterate, either wholly or in part, any such list, or any such other list or notice as are hereinafter mentioned, or procure any other person so to do, every such person shall, upon conviction, be liable to be imprisoned, with or without hard labour, for any period not less than one month or more than three months.

Penalty for tearing down, &c., any such list.

Notice to claimants, and persons objecting, how to be given.

14. And be it enacted, that subjoined or annexed to every copy of any such list as aforesaid, so posted or affixed as aforesaid, a notice shall be written, signed by the person or persons causing such list to be posted or affixed, which notice shall be written both in the English and the Dutch languages, and shall be, in substance, as follows, that is to say,—

“Notice is hereby given, that if any inhabitant whose name is not inserted in the above list shall claim to be entitled to have his name inserted therein, or if any inhabitant shall object to the right of any person whose name is inserted in the said list to have his name therein inserted, every such inhabitant may lodge his claim or objection, in writing, directed to the undersigned, at (here name some convenient place within the Field-cornetcy), on or before the            day of           , (here insert some day not sooner than seven, nor later than fourteen days next after the day on which the list aforesaid shall have been first posted), in order that such claim or objection (as the case may be) may be recorded, and dealt with as the law directs.

“Given under my hand this            day of           , 185 .  
(Signed)            “A. B.”

And every such claim as aforesaid shall be in substance as follows, that is to say:—

Form of claim.

“To the officer appointed to make out the list of voters in the Field-cornetcy of           , in the division of

“Please to take notice that I claim to have my name inserted in the list of voters in the above Field-cornetcy.

“Dated the            day of            185 .

(Signed)            “A. B.,

“Of           ” (here state his place of residence).

And every such objection as aforesaid shall be in substance as follows, that is to say,—

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“To the officer appointed to make out the list of voters in the Field-cornetcy of \_\_\_\_\_, in the division of \_\_\_\_\_

Form of an objection.

“Please to take notice that I object to the name of \_\_\_\_\_ being retained in the list of voters in the above Field-cornetcy; and that I shall support my objection at the time fixed by law for that purpose, the ground of my objection being \_\_\_\_\_ (here state ground of objection).

“Dated the \_\_\_\_\_ day of \_\_\_\_\_ 185 \_\_\_\_\_.

(Signed)

“A. B.,

“Of \_\_\_\_\_” (here state his place of residence).

15. And be it enacted, that as soon as may be after the day fixed in and by such notice as aforesaid as the latest day upon which any such claims or objections as aforesaid are to be receivable, the person or persons aforesaid, appointed to make out the list to which such claims or objections shall relate, shall transmit to the Civil Commissioner of the division in which such Field-cornetcy shall be situate a copy of the list for the said Field-cornetcy, as such list was originally posted or affixed, together with another list, containing the names of all persons not inserted in such list who shall, according to the terms of the notice aforesaid, have claimed to be inserted therein, and also a third list, containing the names of all persons inserted in such list, as posted or affixed, whose right to be so inserted shall have been objected to as aforesaid: Provided also, that such person or persons as aforesaid shall, at the same time, transmit to the Civil Commissioner the original writings containing all such claims or objections.

Copies of field-cornetcy lists as originally posted, of lists of claimants, and of lists of persons objected to, to be transmitted to civil commissioners.

16. And be it enacted, that the Civil Commissioners of the several divisions of the Colony of the Cape of Good Hope shall, respectively, and with all convenient speed, prepare, from the several lists received by them from the several Field-cornetcies, a general list, containing the names of all persons inserted, or claiming to be inserted, in such several and respective lists; and such general list shall keep the several Field-cornetcies in such division distinct from each other, in regard to the voters therein, but shall, so far as may consist with such distinction, pursue an alphabetical order; and that opposite the name of every person, who shall, in manner aforesaid, have been objected to, shall be placed the words “Objected to,” and at the foot of the list of names beginning with any particular letter, and belonging to any particular Field-cornetcy, shall be written in words, “Persons claiming to be registered as voters,” under which words shall be placed the names of all such claimants as aforesaid whose names begin with that particular letter; and should there be no such claimant, then under the said words shall be written the word “None;” and that every Civil Commissioner, as soon as he shall have completed such general list,

From the above field-cornetcy lists, civil commissioners to form divisional lists.

How divisional lists to be framed.

Constitution Ordinance. shall report to the Secretary to Government that the same has been completed.

As soon as a proclamation shall be issued for the first election of members of Council, the civil commissioners shall draw out lists of persons objected to.

17. And be it enacted, that as soon as may be after the time and place, or the times and places, for the taking of the poll for members of the Legislative Council shall, by any such proclamation as is hereinafter in the 32nd section of this Ordinance mentioned, be fixed for or in regard to any Electoral Division, the Civil Commissioner of such division shall, from the lists and accompanying writings aforesaid in his custody, draw out and post upon or affix to some public place at or near his office a list containing the names, and, as far as known, the residences, or supposed residences, of all persons placed upon any of the lists of or belonging to any of the Field-cometries in such division whose right to be placed upon such lists shall, in the manner hereinbefore in the 14th section of this Ordinance mentioned, have been objected to, and the Civil Commissioner shall prefix to the list which he is by this section directed to draw out and post, a notice, which shall be written both in the English and the Dutch languages, and shall be in substance as follows, that is to say:—

Form of notice to be prefixed.

“Division of

“The several persons whose names are set forth in the subjoined list having been objected to as not being entitled to be placed upon the list of voters for this division, notice is hereby given to each of the said several persons respectively, that before being permitted to vote at the ensuing election for members of the Legislative Council, the objection against him will be heard and determined by the proper officer upon the day and at the place set opposite to his name in the said subjoined list, and that should any such person fail to attend, his name will be struck out of the voters' list for this division.

“Given under my hand this                     day of                     185 .  
 (Signed)                                     “A. B.,  
 “Civil Commissioner for the Division of                     .”

Form of such lists.

Cape Town and Graham's Town not included in this or any of the four next succeeding sections.

Provided always, that every such list as aforesaid shall be drawn out in four columns, of which the first shall set forth the name of the person objected to, the second, his residence, or supposed residence, the third, that one of the appointed polling-places in such division which shall be most easily reached from the place or residence, or supposed residence, of the person objected to, and the fourth, the day upon which such person is to attend at such polling-place, which day shall be that appointed, in manner aforesaid, for the commencement of the poll at such polling-place: Provided also, that nothing in this nor in any of the four next succeeding sections mentioned shall extend to the Electoral Divisions of the city of Cape Town or the town of Graham's Town.

18. And be it enacted, that every such Civil Commissioner aforesaid shall, when drawing out and posting the list in the last preceding section mentioned, or as near such time as may be, draw out and post another list, containing the names and, as far as known, the residences, or supposed residences, of all persons not inserted in the list of voters for such division who shall, in manner and form as hereinbefore provided, have claimed to be inserted therein: and that such list of claimants shall, like the list aforesaid of persons objected to, be drawn out in four columns, of the like tenor and effect as aforesaid, and which list shall have prefixed thereto a notice, which shall be written both in the English and Dutch languages, and shall be in substance and effect as follows, that is to say:—

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Civil commissioner to draw out, at or about the same time, lists of claimants.

Form of such lists.

“Division of

“The several persons whose names are set forth in the subjoined list having claimed to be inserted in the list of voters for this division, notice is hereby given to each of the said several persons respectively, that his claim to be so inserted will be heard and determined by the proper officer upon the day and at the place set opposite to his name in the said subjoined list; and that should such person fail to attend and support his claim, the same will be rejected.

Form of notice to be prefixed to such lists.

“Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 185 .  
 (Signed) “A B.,”  
 “Civil Commissioner for the Division of \_\_\_\_\_”

19. And be it enacted, that as soon as may be after the lists and notices in the two last preceding sections respectively mentioned shall have been posted as aforesaid, the Civil Commissioner posting the same shall, by the public post, or in any other mode by which his letter shall seem to him to be more likely to be carried safely and speedily to its destination, transmit to every person in either of the said lists mentioned, a letter, signed by such Civil Commissioner, informing such persons of the polling-place at which, and of the day on which, the claim of such person, or the objection against him (as the case may be), will be heard and determined, and apprising him that unless he shall attend then and there, his claim will be rejected or the objection against him allowed (as the case may be); and that such Civil Commissioner shall at the same time inform every person so objected to of the alleged ground of objection, and shall, in like manner, transmit a letter to every person by whom an objection to any other person shall have been lodged, in manner and form as in the 14th section of this Ordinance mentioned, informing such persons who shall have so objected of the time and place at which such objection will be heard and determined.

Civil commissioners to give notice to claimants, persons objected to, and persons objecting.

20. And be it enacted, that upon the day appointed for commencing to take the poll for members of the Legislative Council at

An officer to attend at every polling-place

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What lists such officer is to be furnished with.

Officer at polling-place to hear and determine claims and objections.

Divisional lists to be rectified in conformity with such determination.

Copy of all such rectified lists to be preserved.

any polling-place within any Electoral Division, the officer appointed to take the poll thereat shall attend for the purpose of so doing at such polling-place, having in his possession a copy of the general list of voters for such division as the same is hereinbefore in the 16th <sup>(1)</sup> section of this Ordinance described, certified under the hand of the Civil Commissioner to be a correct copy, and <sup>(1)</sup> also a list of the names of all persons, whether claimants, persons objected to, or persons objecting, who shall, in manner aforesaid, have been noticed or directed to attend at the particular polling-place, in order to have any claim or objection heard and determined <sup>(1)</sup>.

21. <sup>(1)</sup> And be it enacted, that it shall and may be lawful for every person, whether claimant or person objected to, or person objecting, who shall, in manner aforesaid, have been noticed or directed to attend at any such polling-place, to come upon the day in that behalf prescribed before the officer appointed to take the poll at such polling-place, and the said officer shall hear all such parties, and finally determine every such claim and every such objection; and such officer is hereby authorized to administer an oath to any person whom he shall see fit to examine touching any such claim or objection, and may admit or reject any claim or objection, as justice shall require; and that, as often as the claim of any claimant shall be admitted, he shall be entitled to give his vote forthwith, precisely as if his name had stood, from the first, free from objection upon the general list; and the name of every person objected to in regard to whom the objection shall have been allowed, shall be considered as if the same had never been inserted in the voters' list aforesaid: Provided always, that the officer taking the poll at any such polling-place shall, when delivering or transmitting, as hereinafter directed, the list of persons admitted to poll at such polling-place, also deliver or transmit to the Civil Commissioner of the division a list of all claimants whose claims shall have been admitted, and of all persons objected to in regard to whom the objection shall have been allowed; and the voters' list for such division shall be rectified by adding the name of every such claimant, and expunging the name of every person objected to in regard to whom the objection shall be allowed; and such list, when so rectified, shall become and remain, so long as no fresh registration of voters shall have taken place in and for such division, the list of registered voters for such Electoral Division; and a clear and correct copy of such list shall be, at all times, preserved in the office of the Civil Commissioner: Provided also, that in every case in which the Governor aforesaid shall have ascertained that the claims or objections to be heard and determined at any particular polling-place are too numerous to be conveniently determined by one officer, it shall and may be lawful for the said Governor to appoint a second officer for such polling-place,—and

<sup>1</sup> But see Act 16 of 1856.

when and as often as two such officers shall be so appointed, one of them shall hear and determine all claims and objections, at some place adjacent to, but distinct from, the place at which the poll shall be taken.

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22. (1) And be it enacted, that the lists of voters for the Electoral Division of Cape Town and the Electoral Division of Graham's Town respectively, shall be made out by such fit and proper persons as shall be for that purpose nominated by the Governor of the Cape of Good Hope, by Government Notice in the *Government Gazette*.

Lists of voters for Graham's Town how to be made.

23. And be it enacted, that it shall and may be lawful for the commissioners of the municipalities of Cape Town and Green Point respectively, and they are hereby required to permit the persons so nominated as aforesaid to make out the lists of voters for the Electoral Division of Cape Town to copy, or cause to be copied, the names of all the resident householders in the said municipalities respectively, for the purpose of placing such resident householders upon the said lists as hereinafter mentioned; and that the commissioners of the municipality of Graham's Town shall, in like manner, and for the like purpose, permit the person nominated to make out the list of voters for Graham's Town to copy, or cause to be copied, the names of the resident householders of Graham's Town.

Persons appointed to make out list of resident householders from the municipal records.

24. And be it enacted, that so soon as the persons in the last preceding section mentioned shall be respectively in possession of lists of all the resident householders of the municipalities of Cape Town and Green Point, and of all the resident householders of the municipality of Graham's Town, each of the said persons shall respectively give notice, by publication in whatever manner shall, for the time being, be used for the publication of Government notices in Cape Town and in Graham's Town respectively, that he will attend at some convenient time and at some place, within his Electoral Division for which he shall have been appointed to act (which time and place shall be specified in such notice), at which time and place all persons claiming to be registered as voters for Cape Town or for Graham's Town (as the case may be), and not being resident householders of either or any of the respective municipalities, shall be called upon to attend and give in their names: Provided always, that it shall be lawful, in any such notice as aforesaid, to fix different times or different places in regard to different districts of the said Electoral Divisions respectively: Provided also, that when the person so attending as aforesaid at any particular time and place, in pursuance of the notice aforesaid, shall see cause, he may announce, in some public manner, so as to make the same known to whom it may concern, that he

When lists of resident householders obtained, other persons claiming to be voters to receive notice to make their claims.

Manner of making claims.

<sup>1</sup> §§ 22 to 31 inclusive repealed by Act 14 of 1874 in so far as they relate to the Electoral Division of Cape Town. See also § 27, Act 16 of 1856, as to framing of lists for Graham's Town.



Constitution Ordinance. — will again attend there for the same purpose at some appointed hour upon some future day, on which day and hour it shall be his duty to attend.

Claimants attending in person to have their names taken down. 25. (1) And be it enacted, that the persons so nominated as aforesaid, and attending at such a place or places as in the last preceding section mentioned, shall respectively take down the names of all persons who shall, in person, claim before them to be registered; but the names of no persons other than those who shall so claim.

When names of claimants and resident householders shall be all received, copies of the several lists to be posted for not less than seven days. 26. (1) And be it enacted, that the persons so nominated as aforesaid shall, so soon as they shall respectively have collected the names of all such claimants as aforesaid, proceed to frame, from and out of the names of the resident householders aforesaid, an alphabetical list of voters for the city of Cape Town and town of Graham's Town respectively, and shall cause a copy of such list, legibly written or printed, to be posted upon or affixed to some public place within such city and such town respectively, there to remain for general information during not less than seven days.

When several lists posted, notice thereof shall be given, as well as notices similar to those in the 14th section mentioned. 27. And be it enacted, that as soon as may be after any such list as aforesaid shall have been posted or affixed, the person who shall have posted it, or caused it to be posted, shall give notice in Cape Town and in Graham's Town respectively, by publication in whatever manner shall, for the time being, be used for the publication of Government notices in Cape Town and in Graham's Town respectively, and by printed placards posted through the said city and the said town, that such list has been posted or affixed, and such notice shall, moreover, contain a further announcement, which shall, in substance, be the same, *mutatis mutandis*, as the notice hereinbefore in the 14th section of this Ordinance directed to be given in regard to the lists therein mentioned; and the forms of claims and of objections respectively in the said lastmentioned section contained shall, *mutatis mutandis*, be applicable and be used.

Notice of revision of the general lists for Cape Town and Graham's Town, how to be given. 28. And be it enacted, that as soon as may be after the publication in Cape Town and in Graham's Town respectively of any such notice as in the last preceding section mentioned, the Resident Magistrate of Cape Town and the Resident Magistrate of Albany (as the case may be) shall respectively, by a notice of not less than fourteen days, to be published in whatever manner shall, for the time being, be used for the publication of Government notices in Cape Town and Graham's Town respectively, inform all whom it may concern that such Resident Magistrate will attend in his Court-room, on some day and hour to be specified in such notice, for the purpose of revising and amending the voters' list of Cape Town or of Graham's Town, as the case may be.

<sup>1</sup> See § 27 Act 16 of 1856, *infra*.

29. And be it enacted, that as soon as may be after the expiration of the number of days in the 27th section of this Ordinance mentioned, and not later than forty-eight hours before the hour announced for the sitting of the Resident Magistrate, for the purpose of revising and amending such list as aforesaid, the person nominated as aforesaid to prepare the lists of voters for the division to which such notice shall relate, shall deliver to the said Resident Magistrate a correct copy of such list, in the plight and condition in which the same was originally posted, together with two such other or separate lists as are in the 15th section of this Ordinance directed to be framed, containing, respectively, the names of persons not inserted in such original list who shall have claimed to be therein inserted, and the names of persons inserted in such original list whose right to be so inserted shall have been objected to: Provided always, that the person nominated as aforesaid shall also deliver to the Resident Magistrate the original writings, containing all such claims and objections, and shall, moreover, not less than forty-eight hours before the hour appointed for the sitting of the Resident Magistrate to revise and amend the list aforesaid, cause notice, in writing, to be given to every person inserted in such original list, whose right to be so inserted shall have been objected to, that his said right has been so objected to, and that the hearing of such objection will come on before the Resident Magistrate at the sitting appointed to be held by him for the purpose aforesaid.

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After the time for making claims and objections, as fixed by the notice required in the 27th section, shall have expired, but not later than forty-eight hours before the sitting of the resident magistrate, announced in the notice required by the 28th section, lists posted, together with separate lists of persons claiming to be inserted and of persons objected to, to be delivered to resident magistrates.

30. And be it enacted, that the respective Resident Magistrates of Cape Town and Albany shall, upon the days and hours by them respectively announced as aforesaid, attend in their respective Court-rooms, and it shall be lawful for any person not inserted in the original list, who shall have claimed, in writing, to be inserted therein, and for any person who shall, in writing, have objected to the right of any person inserted in the said list to be so inserted, and for any person who shall have been so objected to, to come before such Resident Magistrate; and such Resident Magistrate shall hear all such parties, and may, should he think fit, summon before him, and examine upon oath, any person whom he shall deem it necessary to examine, and may impose a fine not exceeding ten pounds on any person duly summoned who shall, without sufficient cause, refuse or neglect to attend; and such Magistrate shall finally determine all questions brought before him, and revise and amend the said original list as justice shall require: Provided always, that every such Magistrate may adjourn such sitting from time to time, if it shall seem to him expedient so to do.

Resident magistrate to revise the voters' lists Graham's Town.

31. And be it enacted, that as soon as the Resident Magistrates as aforesaid shall respectively have revised and amended the respective lists aforesaid, each of the said Magistrates shall cause to be made out, and safely kept in his office, the list of voters as so by him revised and amended, and such lists shall respectively be

Lists for Graham's Town, as revised, to be kept in the office of the resident magistrate.

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the lists of registered voters for the city of Cape Town and the town of Graham's Town, respectively; and, as soon as the said Resident Magistrates shall respectively have made out such revised and amended lists, they shall respectively report that they have done so to the Secretary to Government.

Votes for members of the Legislative Council to be called for, and polling-places to be appointed.

32. And be it enacted, that so soon as it shall appear, from the reports of the Civil Commissioners and Resident Magistrates aforesaid, that the lists of persons qualified to vote in the several Electoral Divisions of the said Colony have, in such manner and form as aforesaid, been completed, it shall and may be lawful for the Governor, by <sup>(1)</sup> proclamation, to command that the returning officer, to be by him appointed for each of the said Electoral Divisions <sup>(2)</sup> in the Western districts and the Eastern districts respectively, shall cause to be taken and returned to the Secretary to Government, or such other person as by such proclamation may be in his behalf appointed, all the votes of persons entitled to vote in such respective Electoral Divisions which shall be given, in manner herein provided, for the candidates for election as members of the Legislative Council, for the districts of which such respective Electoral Divisions may form part; and the Governor shall, in such proclamation or proclamations as he shall issue as aforesaid, fix and appoint the several polling-places in and for every Electoral Division (of which there shall be one at least in every Field-cornetcy in each of the several Electoral Divisions other than Cape Town and Graham's Town), and fix and appoint the day on which the polling shall commence at every such place, and the day on which the same shall finally close: Provided that every such proclamation shall be published in the *Government Gazette*, not less than thirty days before the earliest day mentioned therein for the commencement of the poll at any polling-place in any division in such proclamation mentioned.

Qualification of members of the Legislative Council.

33. <sup>(3)</sup> And be it enacted, that no person shall be qualified to be elected a member of the said Council who would, under and by virtue of any of the provisions of this Ordinance, be incapacitated to be registered as a voter as herein provided, or who shall be under the age of thirty years; or who shall not be the owner, for his own use and benefit, of immovable property, situate within the districts of this Colony, of the value of two thousand pounds of sterling money, over and above all special conventional mortgages affecting the same; or who shall not, being the owner of such property to such value, but under mortgage, be at the same time possessed of property, movable and immovable, within the said Colony, to the value of not less than four thousand pounds of sterling money, over and above his just debts: Provided always, that every married man shall, for the purposes of this and every

<sup>1</sup> See § 9, Act 21 of 1859, *infra*.

<sup>2</sup> Electoral Provinces now, Act 18 of 1874, *infra*.

<sup>3</sup> Printed as amended by Act 18 of 1874, § 5, *infra*.

other section of the present Ordinance which regards the ownership or occupation of property, be deemed and taken to own or occupy (as the case may be) the whole of the property belonging to his wife: Provided, also, that no person holding any office of profit under Her Majesty the Queen within the said Colony, and no uncertificated insolvent, and no alien who shall have been registered as a voter by virtue merely of having obtained a deed of burghership, shall be eligible to be elected a member of the said Council. <sup>(1)</sup>

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34. And be it enacted, that no person shall be deemed a candidate at any election of members of the said Council for the said <sup>(2)</sup> Western districts or Eastern districts, unless he shall have been invited to become such candidate by a requisition in writing, signed by not less than twenty-five of the persons qualified to vote in the election of members of the said Council for such respective <sup>(3)</sup> districts, every such signature being accompanied by a full and correct address of the person so signing, and shall have accepted such requisition, in writing under his hand, and shall have transmitted, within the time limited in this behalf, such requisition, with such acceptance thereof, to the Secretary to the Government, or such other person as may be appointed as herein mentioned.

Requisition to candidates.

35. And be it enacted, that no person shall be entitled to sign a requisition to more than one candidate, or to sign more than one requisition in respect of the same election; and that if the same person shall sign more than one such requisition his signature shall be expunged from all the requisitions which he may have signed, and he shall not be capable of signing another requisition for the election in respect of which he shall have so signed.

No person to sign more than one requisition.

36. And be it enacted, that the Governor shall, by proclamation to be published in the *Government Gazette* not less than twenty-eight days before the day appointed for the commencement of the poll, call upon all persons who may have received and accepted such requisitions as aforesaid to become candidates to transmit such requisitions, and their acceptance thereof, within a time to be limited in such proclamation, to the Secretary to the Government, or such other person as by such proclamation may be appointed in this behalf; and the Governor shall, in such proclamation, require the persons who shall be invited in manner herein mentioned to become candidates for election as members of the said Council, and who shall accept such invitations, severally to nominate, by writing under their hands, transmitted to the Secretary to the Government, or such other person as may in this behalf be appointed by such proclamation, and within such time as by such proclamation may be limited, one person as a scrutineer, for the purpose of examining the lists of votes returned as herein provided.

Governor to require persons who have received and accepted such a requisition to transmit the same as directed.

Candidates to nominate each a scrutineer to examine lists of voters.

<sup>1</sup> But see Acts 1 of 1872, § 3 and 18 of 1874, § 8, *infra*.

<sup>2</sup> Electoral Provinces now, Act 18 of 1874, § 4.

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Lists of candidates to be published.

How committees of scrutineers to be appointed.

Persons on registered lists entitled to vote.

Commencement and continuation of poll.

The votes for members of Legislative Council may be distributed amongst the candidates, as the voter pleases.

37. <sup>(1)</sup> And be it enacted, that the Governor shall cause to be published in the *Government Gazette*, fourteen days at least before the day appointed for the commencement of the poll, separate lists, for the Western districts and the Eastern districts respectively, of the candidates who shall have received and accepted, and transmitted as aforesaid, such requisitions; and the Governor shall, by such proclamation, appoint such three of the scrutineers nominated by the candidates of the <sup>(2)</sup> Western districts, and such three of the scrutineers nominated by the candidates for the <sup>(2)</sup> Eastern districts, as the said Governor shall find to be nominated by the greatest number of candidates for such districts respectively, to be committees of scrutineers for such <sup>(2)</sup> districts respectively, for the purposes herein mentioned: Provided always, that in the event of three scrutineers not being nominated as aforesaid, for such districts respectively, or of any scrutineer nominated or appointed, dying, declining, or becoming incapable to act, or of there being a deficiency of scrutineers from any other cause, the Governor may appoint such scrutineer or scrutineers as may be necessary for constituting the full number of three scrutineers for the Western districts and the Eastern districts respectively.

38. And be it enacted, that all persons whose names shall be inserted in the list of voters for any Electoral Division, but no other persons, shall be entitled to <sup>(3)</sup> vote in and for such Electoral Division for members of the Legislative Council: Provided always, that the list of voters for every Electoral Division, other than the city of Cape Town or the town of Graham's Town, shall, for the purposes of this section, be taken to include the name of every claimant whose claim shall be allowed by any such officer as aforesaid, at any such polling-place as aforesaid, and not to include the name of any person originally inserted upon such list in regard to whom an objection shall have been allowed by any such officer.

39. And be it enacted, that the poll at every polling place in every Electoral Division shall, upon every day appointed for taking the poll thereat, open at eight o'clock in the forenoon and close at five o'clock in the afternoon.

40. And be it enacted, that each person entitled to vote in and for any Electoral Division comprised in the Western districts shall be entitled to vote for the members of the said Council to be elected for such districts, and shall be entitled to give at such election as many votes as there are members of such Council to be elected at such election for such districts; and each person entitled to vote in and for any Electoral Division comprised in the Eastern districts shall be entitled to vote for the

<sup>1</sup> See Act 18 of 1874, § 4.

<sup>2</sup> 3 Scrutineers are appointed for each Electoral Province, § 4 *ibid.*

<sup>3</sup> Agents of Candidates may not vote, Act 9 of 1883, § 35.

members of the said Council to be elected for such districts, and shall be entitled to give at each election as many votes as there are members of such Council to be elected at such election for such districts; and every person so entitled to vote for members to be elected for the Western districts and for the Eastern districts, respectively, shall be entitled, at his discretion, to give at any such election one vote to each of any number of the candidates not exceeding the whole number of members to be elected, or to distribute, in such proportion as he may think fit, the whole number of votes which he is entitled to give among any lesser number of candidates, or to give all his votes to one candidate.<sup>(1)</sup>

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41. <sup>(1)</sup> And be it enacted, that the manner of voting at every polling place in every Electoral Division for members of the said Council shall be as follows, that is to say: the Governor shall cause the officer appointed as aforesaid to take the poll at each polling place to be furnished with a sufficient number of printed lists of the several candidates for the Western or Eastern districts, as the case may be, whose names shall have been published in the *Government Gazette*, as aforesaid, and such voter shall, in the presence of such officer, write, or cause such officer to write, upon one such list, against the name or names of the candidates whom such voter shall desire to be chosen, the number or respective numbers of votes which he shall give to such candidate or to each of such candidates respectively, and the name of such voter shall by such officer be legibly written at 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 when and as often as the identity of any voter shall be established, no omission, either in the voters' list of the division, or in the list in this section mentioned, 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.

Manner of voting for members of the Legislative Council.

42. [Repealed by Act 14 of 1874 § 37.]

43. And be it enacted, that as soon as the time limited for keeping open the poll at any polling-place at any election of a member or members of the Legislative Council shall have expired, no further votes shall be received thereat, and the officer who shall have taken the poll at such polling-place shall, with all convenient speed, deliver in person, or securely enclose and transmit to the Secretary to the Government, or such other person as may be appointed in this behalf as hereinbefore mentioned, the lists received by such officer from the voters at such polling-place.

At the close of the poll, officer to transmit lists received from voters to the Secretary to Government.

<sup>1</sup> Electoral Provinces now. This section must be read with § 4 Act 18 of 1874, *infra*.

Constitution Ordinance.

Members of the Legislative Council to be ascertained, and announced by proclamation.

44. (1) And be it enacted, that the lists of votes for the Western districts and the Eastern districts respectively, when returned to the Secretary to the Government, or such other person as may be appointed to receive the same, as herein provided, shall be laid before the committees of scrutineers for such districts respectively, and each such committee shall, by writing under the hands of the members of such committee, or two of them, certify to the Secretary to the Government the names of the several candidates for whom votes have been given, and the number of votes they shall find to have been given for each of such several candidates within the districts for which such committee is appointed; and such certificate shall be published in the *Government Gazette*; and the Governor shall, by proclamation in the *Government Gazette*, declare such (2) eight candidates and seven candidates respectively as may appear by the certificates of the committees of scrutineers for the Western districts and Eastern districts respectively to have been elected by the votes, or (as the case may be) the majority of votes, received as aforesaid, to be duly elected members of the said Council for such districts respectively, and the day of the publication of such proclamation shall, for the purpose of computing the time during which such members are under the provision hereinbefore contained, to hold their seats, be deemed and taken to be the date of their election: Provided that, if it appear by such certificate of the scrutineers that, by reason of any two or more candidates having received an equal number of votes the requisite number of members cannot be declared to be elected by the majority of votes, the Governor shall, before he shall issue such proclamation as last aforesaid, cause the member or members required to make up such number to be determined by lot among the candidates having such equal number of votes, such lot to be drawn in presence of one of the judges of the Supreme Court, and of such candidates, or their agents authorized in writing (in case such candidates or agents think fit to attend); and such judge shall certify to the Secretary to the Government, under his hand, the name of the candidate or candidates upon whom the lot has fallen, and such certificate shall be published in the *Government Gazette*, and the Governor shall, by such proclamation as aforesaid, declare such candidate or candidates to be, with the candidate or candidates having such majority of votes as aforesaid, duly elected members of the said Council.

When the members of the Legislative Council shall have been announced by proclamation to be issued for electing the members of the House of Assembly.

45. And be it enacted, that as soon as, but not before, the names of the members of the Legislative Council shall, in manner and form as aforesaid, have been published in the *Government Gazette*, the Governor shall, by proclamation in the said *Gazette*, command the returning officers of the several Electoral Divisions by him appointed to proceed, upon some certain day to be named in such

<sup>1</sup> See § 4, Act 18 of 1874, *infra*. See also §§ 50 and 56, Act 14 of 1874.

<sup>2</sup> But see Act 14 of 1874, § 3.

proclamation, to the election of members of the House of Assembly of the Cape of Good Hope: Provided always, that it shall be lawful for the said Governor to issue, for the purpose aforesaid, either one proclamation or more than one, and to appoint the same days or different days for or in regard to the several Electoral Divisions of the Colony respectively, and any day or days appointed by any proclamation from time to time to alter, as circumstances shall require: Provided also, that not less than thirty-one clear days shall elapse between the day of the publication of any proclamation fixing the day of election for any Electoral Division and the day of such election.

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46. And be it enacted, that for the purpose of constituting the House of Assembly of the Cape of Good Hope, it shall and may be lawful for the voters in or for each of the <sup>(1)</sup> twenty-two Electoral Divisions hereinbefore mentioned, except the city of Cape Town, to elect two <sup>(2)</sup> qualified men, and no more, to be the representatives of such Electoral Division, and for the voters in or for the Electoral Division of Cape Town to elect four qualified members; and that every voter in every Electoral Division shall be entitled to give at each election as many votes as there are members of Assembly to be elected at such election: Provided always, that in no Electoral Division except Cape Town shall any voter be capable of giving to any one candidate more votes than one: Provided also, that in the Electoral Division of Cape Town every voter shall be entitled, at his discretion, to give at any such election one vote to each of any number of the candidates not exceeding the whole number of members to be elected, or to distribute in such proportions as he shall think fit the whole number of votes which he is entitled to give among any lesser number of candidates, or to give all his votes to one candidate.

Each electoral division other than Cape Town to elect two members of Assembly.

Cape Town to elect four members.

Voters in Cape Town may distribute their votes amongst the candidates at pleasure.

47. <sup>(3)</sup> And be it enacted, that any person (except as is next hereinafter excepted) who shall be qualified and entitled to be registered as a voter in and for any Electoral Division within the said Colony shall be qualified and entitled to be elected a member of the Legislative Assembly for any Electoral Division within the said Colony: Provided also, that no person holding any office of profit under <sup>(4)</sup> Her Majesty the Queen, within the said Colony, and no uncertificated insolvent, and no alien who shall have been registered as a voter by virtue merely of having obtained a deed of burghership, shall be eligible to be elected a member of the said Legislative Assembly.

Qualification of members of the House of Assembly.

Persons qualified to be voters who are disqualified to be members.

48. And be it enacted, that upon the day which shall, in and by any such proclamation as is in the 45th section of this Ordinance mentioned, be appointed for proceeding to the election,

Nomination of candidates for the House of Assembly, and proceedings thereupon.

<sup>1</sup> Number increased. See note to § 6 of this Ordinance.

<sup>2</sup> As to Electoral Division of Kimberley, see Act 13 of 1882, § 2.

<sup>3</sup> See § 33 of this Ordinance and Act 18 of 1874, § 8.

<sup>4</sup> But see Act 1 of 1872, § 3 *infra*.



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in any Electoral Division, of members of the House of Assembly for such division, the returning officer of such Electoral Division shall (except as hereinafter excepted in regard to the Electoral Divisions of Cape Town and the Cape Division) hold, in the Court-room of the town or place in which the office of the Civil Commissioner of the same division shall be situated, a public court for the nomination of persons proposed as members of Assembly for such division; and every such person shall be nominated by some registered voter of or for such division, and such nomination shall be seconded by some other such voter; and if it shall happen that the number of persons so proposed is not greater than the number of members to be elected, then the persons so proposed shall forthwith be declared to be duly elected. But in case the number of persons so proposed exceeds the number of members to be elected, and any of the candidates, or any voter acting on behalf of any of the candidates, shall, after the result of a show of hands of the voters present shall have been declared, demand a poll, the returning officer shall, before adjourning such court for the purpose of such poll, take sufficient security from or on behalf of every person so proposed, for the payment of an equal share or proportion of the expenses of such poll (not exceeding, however, the sum of fifty pounds), as the said expenses shall be sanctioned and allowed by the Governor of the said Colony: Provided always, that not less than three clear days shall, in any case, elapse between the nomination of the candidates and the commencement of the poll, and that when there shall be more polling-places than one in any Electoral Division, the returning officer shall, before adjourning the court aforesaid, fix and announce the day or days on which the poll will be taken at the respective polling-places; and such returning officer shall also forthwith cause a written notice, under his hand, to be posted upon or affixed to some conspicuous place at or near such Court-room, containing the names of the several polling-places in such Electoral Division, and the days and hours for the taking of the poll thereat respectively: And provided that, in case such security for expenses, as aforesaid, shall fail to be given, by or on behalf of any candidate so nominated as aforesaid, then every candidate by whom or in whose regard such failure shall have taken place shall, in case there be other candidates giving such security, not less in number than the number of members to be elected, be considered as if he or they had not been nominated; but if the candidate or candidates so giving security shall be in number less than the number of members to be elected, then the candidate or candidates, if any, giving such security, shall be declared duly elected, and the question of election between or amongst the other candidates failing to give such security shall be decided by a show of hands; and if none of the candidates nominated, nor any voter on behalf of any of them, shall give such security, then the question of election between all

the several candidates shall be decided by a show of hands: Provided always, that if after such second show of hands shall have been taken, any of the candidates in regard to whom it shall have been taken shall declare his or their readiness to give the security which he or they previously failed to give, he or they may demand a poll; and then, if a greater number of such last-mentioned candidates than can be all elected shall give the said security, a poll shall be granted and taken in regard to such last-mentioned candidates; but in case the number of such last-mentioned candidates giving such security shall not be greater than the number of members still to be elected, then the candidate or candidates giving such security shall be declared duly elected: Provided, however, that no member who shall, before such second poll, have been declared duly elected shall be subjected to or affected by such second poll, or chargeable with any of the expenses thereof: Provided further, that the court aforesaid for the nomination of candidates for the Electoral Division of Cape Town and the Electoral Division of the Cape shall be held at such convenient place or places within the city of Cape Town as the Governor of the said Colony shall appoint: And provided also, that the court aforesaid for the nomination of candidates for the Electoral Division of Graham's Town shall be held in the same Court-room in Graham's Town in which shall be held the court for the nomination of candidates for the division of Albany.

49. And be it enacted, that the returning officer of every Electoral Division shall, unless he shall for some sufficient reason find it expedient to act otherwise, appoint, for the taking of the poll for the election of the members of the House of Assembly, the same polling-places within such division which had before been appointed by proclamation for the taking of the poll for the members of the Legislative Council; and such returning officer, in fixing a day or days for taking the poll at any polling-place within the Electoral Division, shall have regard to the distance from the Court-room aforesaid of such polling-place, and its other local peculiarities, and shall take care to allow time reasonably sufficient for the transmission to such polling-place, and the publication thereat, for a period of not less than three clear days, of the names of the persons proposed, in manner aforesaid, as candidates: Provided also, that such returning officer shall, without delay, deliver or transmit to the person appointed to take the poll at any polling-place in such Electoral Division, a list of the registered voters for such division, certified under the hand of the Civil Commissioner of such division to be correct; and such returning officer shall also deliver or transmit, at the same time, to the same person, the names of the candidates who have been proposed; and the person receiving the said names shall forthwith fix them up in some conspicuous place at such polling-place, for general information: Provided always, that in case there shall be

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more polling-places than one within the Electoral Divisions of Cape Town and Graham's Town, or either of them, the list of registered voters to be delivered as aforesaid shall be certified, not by the Civil Commissioner, but by the Resident Magistrate of Cape Town or the Resident Magistrate of Albany, as the case may be.

The register to be conclusive proof of right to vote.

50. And be it enacted, that no person shall be permitted to vote in any Electoral Division for any member of the House of Assembly except a person whose name shall be inserted in the list of registered voters <sup>(1)</sup> for such Electoral Division, and who shall, in person, appear to vote: Provided that the list of registered voters for the time being in and for the several Electoral Divisions shall, for all purposes and in all places, be deemed and taken to be conclusive proof of the right to vote of every person inserted therein; and no such list shall be opened up, or the right of any voter mentioned therein questioned, in any manner or by any proceeding, either in the Legislative Council or the House of Assembly.

No vote to be received except for a candidate nominated as in the 48th section mentioned.

51. And be it enacted, that no vote shall be received, or, if received, shall be reckoned or regarded, which vote is given, or proposed to be given, to or for any person not proposed and seconded as aforesaid, as a candidate for representing in the Legislative Assembly the Electoral Division in or for which such vote shall be given or proposed.

52. [Repealed by § 37, Act 14 of 1874, which see *infra* and note to § 42 of this Ord.]

Lists of voters received at polling-places to be transmitted to the returning officers.

53. And be it enacted, that as soon as the time limited for keeping open the poll at any polling-place for any election of a member or members of the House of Assembly shall have expired, the person charged with the duty of taking the poll thereat shall, with all convenient speed, deliver, in person, to the returning officer for the Electoral Division for which such poll is taken, or, in case it be inconvenient to deliver the same in person, shall securely enclose and transmit to such returning officer, a list containing the names of all persons admitted to poll at such polling-place, together with the names of the respective persons for whom such voters shall respectively have voted.

Returning officer to cast up such lists.

54. And be it enacted, that when and as soon as the returning officer of any Electoral Division shall be in possession of the whole of the poll-lists of such division, he shall cast up and ascertain the number of votes for each candidate.

Returning officer to hold a court, declare the state of the poll, and make proclamation of the members.

55. <sup>(2)</sup> And be it enacted, that every such returning officer shall, as soon as may be after he shall be in possession of the whole of the said poll-lists, but nevertheless upon a notice to be posted or affixed for not less than two clear days at the Court-room in which the court aforesaid for the nomination of the candidates was held,

<sup>1</sup> Agents of Candidates cannot vote. Act 9 of 1883, § 35.

<sup>2</sup> See §§ 47 and 51 Act 14 of 1874, *infra*.

hold in the said Court-room another court, whereat such returning officer shall openly declare the state of the poll, and make proclamation of the member or members of the House of Assembly returned, and such returning officer shall, without delay, transmit to the Governor the names of the members elected, and the number of votes received by the respective candidates.

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56. (1) And be it enacted, that as soon as the said Governor shall have received from the several returning officers throughout the Colony the names of the members elected by the several Electoral Divisions to serve in the House of Assembly, the Governor shall, by proclamation in the *Government Gazette*, publish the names of the members returned, together with the Electoral Divisions which they severally represent; and the day of the publication of such proclamation shall, for the purposes of the sixth section of this Ordinance, be deemed and taken to be the date of the election of all and singular the members of the said House of Assembly.

The names of the members of the House of Assembly to be published.

57. And be it enacted, that if in any case the same person shall have been elected for more than one Electoral Division, such person shall be bound, upon being thereto required by the Governor, if not before, to elect what Electoral Division he will represent, and upon such election being declared, the Governor shall, by a proclamation of the same nature with the proclamation in the 45th section of this Ordinance mentioned, command the returning officer of any other division for which such person shall have been returned to proceed to the election of another person in the room and stead of the person so originally elected, and thereupon the like proceedings shall take place as are hereinbefore directed in regard to the original election; and if such person shall fail to make his election as aforesaid when thereto required, then his election for every division for which he shall have been elected shall be deemed and taken to be void; and, by proclamation as aforesaid, a new election for a member in place and stead of such person shall be commanded in regard to every such division.

Provision for the case in which the same member is elected for more than one division.

58. And be it enacted, that if, at any such public court as in the 48th section of this Ordinance mentioned, it shall so happen that no candidates or candidate shall be proposed and seconded, whereby there shall be no election in such Electoral Division for any member of the House of Assembly, the returning officer shall forthwith notify the fact to the Governor, who shall, in publishing, in the manner hereinbefore in the 56th section of this Ordinance mentioned, the names of the members of the House of Assembly, announce, at the same time, the division or divisions in which no election shall have taken place: but no such refusal or failure to elect in any one division, or divisions more than one, shall be deemed or taken to make the House of Assembly incomplete, or to

Provision for failure to elect.

<sup>1</sup> See § 47 and § 51 Act 14 of 1874, *infra*.

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Penalty on returning officer or other person for contravening this ordinance.

Governor to summon the Council and the Assembly to meet at such place and time as he shall appoint.

The oath of allegiance to be taken by the members of the Council and of the Assembly.

Affirmation in lieu of oath in certain cases.

prevent it from meeting and dispatching business, so long as there shall be a quorum of members present.

59. And be it enacted, that if any returning officer or any person whatsoever shall wilfully contravene or disobey the provisions of this Ordinance, or any of them, with respect to any matter or thing which such returning officer or other person is hereby required to do, he shall, for such his offence, be liable to be sued, in any competent Court, for the penal sum of one hundred pounds, and the plaintiff shall recover the said sum or such lesser sum as such Court shall think he ought to pay for such offence, with full costs: Provided that no such action shall be brought except by a voter, or person claiming to be a voter, or a candidate, or a member actually returned for either House of Parliament, or other party aggrieved.

60. And be it enacted, that so soon as every Electoral District in the Colony shall have either elected or failed in electing its representatives in the House of Assembly, it shall and may be lawful for the Governor of the Cape of Good Hope to summon, by proclamation, the Legislative Council and the House of Assembly of the Cape of Good Hope, to meet at such place within the said Colony and at such time as the said Governor shall think fit: Provided always, that the said Council and Assembly shall be summoned to meet at some period not later than twelve months next after the promulgation of this Ordinance in the said Colony.

61. And be it enacted, that no member, either of the Legislative Council or of the House of Assembly of the Colony of the Cape of Good Hope, shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor of the Colony, or before some person or persons authorized by such Governor to administer such oath:—

“I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Colony of the Cape of Good Hope, and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against her person, crown, and dignity, and that I will do my utmost endeavours to disclose and make known to Her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against Her Majesty or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary.”

62. And be it enacted, that every person authorized by law to make an affirmation instead of taking an oath, may make such

affirmation in every case in which an oath is hereinbefore required to be taken. Constitution Ordinance.

63. And be it enacted, that the House of Assembly shall, at its first meeting, and before proceeding to the dispatch of any other business, elect, one member thereof to be and be called the Speaker of such House; and as often as the place of such Speaker shall become vacant by death, resignation, or removal by vote of the said House, shall again elect before proceeding to the dispatch of any other business, some other member to fill the said place; and the Speaker elected shall, unless it shall be otherwise provided in the standing rules and orders hereinafter mentioned, preside at all meetings of the said House. House of Assembly to elect its Speaker.

64. And be it enacted, that every elective member of the Legislative Council, before he shall sit or vote therein, shall deliver to the Clerk of the said Council, while the Council is sitting, with the President in the chair, the following declaration:— Declaration of property qualification to be made by the members of the Legislative Council.

“I, A. B., do declare and testify that I am the owner, for my own use and benefit, of immovable property situate at \_\_\_\_\_ in the Colony of the Cape of Good Hope, of the clear value of two thousand pounds sterling money, over and above all special conventional mortgages affecting the same, and that I have not collusively or colourably obtained a title to the said property, or any part thereof, for the purpose of qualifying or enabling me to be returned as member of the Legislative Council of the Cape of Good Hope.”

Or if such member cannot or shall not make the lastmentioned declaration, he may make, in lieu and stead thereof, the declaration following:—

“I, A. B., do declare and testify that I am the owner, for my own use and benefit, of immovable property situate at \_\_\_\_\_ in the Colony of the Cape of Good Hope, of the clear value, if unencumbered, of two thousand pounds sterling money, and that I am possessed of property, movable and immovable, within the said Colony, to the value of four thousand pounds sterling money, over and above all my just debts; and I further testify and declare that I have not collusively or colourably obtained a title to the said property, or any part thereof, for the purpose of qualifying or enabling me to be returned as member of the Legislative Council of the Cape of Good Hope.”

And that every such declaration as aforesaid shall be contained in a paper signed by the member making the same, and every such paper shall be filed and kept by the Clerk of the Legislative Council with the other records of his office; and every member of the said Council who shall sit and vote in the said Council before Declaration to be filed. Penalty for sitting and voting before making the said declaration.

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making such declaration as aforesaid shall be liable, for every day on which he shall so offend, to a penalty of one hundred pounds, to be sued for and recovered for his own use by any person suing for the same; and if any person shall knowingly or wilfully deliver a false declaration respecting his qualification as aforesaid, such person shall be deemed to be guilty of the crime of falsity, and upon conviction thereof shall suffer the like pains and penalties as by law are incurred by persons guilty of wilful and corrupt perjury.

Property qualification must be possessed during the time the member of Council retains his seat.

65. And be it enacted, that every elective member of the Legislative Council shall have and possess the qualification aforesaid during all the time he shall be and remain a member of the said Council. <sup>(1)</sup>.

[§§ 66, 67 and 68, repealed by Act 9, 1883].

Resignation of seat in Council.

69. And be it enacted, that it shall be lawful for any member of the Legislative Council of the Cape of Good Hope, by <sup>(2)</sup> writing, under his hand, addressed to the President of the said Council, to resign his seat in the said Council; and upon such resignation, the seat of such member shall become vacant.

Resignation of seat in Assembly.

70. And be it enacted, that it shall be lawful for any member of the House of Assembly of the Cape of Good Hope, by writing, under his hand, addressed to the <sup>(3)</sup> Speaker of the said Assembly, to resign his seat in the said Assembly; and upon such resignation, the seat of such member shall become vacant.

Vacating of seats in certain cases, and for certain causes.

71. And be it enacted, that if any Legislative Councillor of the Colony of the Cape of Good Hope, or any member of the House of Assembly thereof, shall for one whole Session of the Parliament of the said Colony fail to give his attendance in the House of Parliament to which he belongs, without the permission of such House, or shall take any oath, or make any declaration of acknowledgment of allegiance, obedience, or adherence to any foreign prince or power,—or shall do, concur in, or adopt any act whereby he may become a subject or citizen of any foreign state or power, or if his estate shall be sequestrated as <sup>(4)</sup> insolvent,—the seat of such councillor or member of the Assembly shall thereby become vacant.

No member of Council eligible to be a member of Assembly: member of Assembly elected a member of Council to vacate his seat in the Assembly.

72. And be it enacted, that no member of the Legislative Council shall be eligible for a seat in the House of Assembly: and that if any member of the House of Assembly shall be elected a member of the Legislative Council, the former seat of such member shall, *ipso facto*, become vacant.

<sup>1</sup> The remaining portion of this section relating to the modes of procedure upon a Petition against a member of the Legislative Council for want of qualification repealed by Act 9 of 1883, *infra*.

<sup>2</sup> Or by telegraphic message. See Act 41 of 1882, § 3, under "Telegraphs"

<sup>3</sup> See also Act 18 of 1874, § 9 *infra*.

<sup>4</sup> See also § 8 Act 18 of 1874, *infra*.

73. (1) And be it enacted, that when and as often as a vacancy shall, by death or other cause in this Ordinance specified, occur in regard to any elective seat or seats in the Legislative Council, or any seat or seats in the House of Assembly, it shall and may be lawful for the House in which such vacancy or vacancies shall have occurred to address the Governor, stating the existence of such vacancy or vacancies, and the cause or causes thereof; and the Governor, upon receiving such address, shall, by proclamation, command, in like manner, *mutatis mutandis*, as is hereinbefore enjoined in regard to the first elections under this Ordinance, a new election or new elections, for supplying such vacancy or vacancies; and the like proceedings shall, *mutatis mutandis*, take place in regard to such elections for supplying vacancies as are hereinbefore ordered in regard to the first or original elections: Provided always, that it shall be lawful for the Governor to issue the like proclamation during any recess of either House of Parliament, whether by prorogation or adjournment, as soon as he shall receive notice, by a certificate under the hands of two members of such House, supported by such evidence as he shall consider sufficient, that a vacancy has occurred in any such seat as aforesaid in such House, and thereupon the like proceedings shall take place: Provided also, that no member elected to supply any vacancy in the Legislative Council, caused by the death, resignation, disqualification, or incapacity of any other member, shall hold his seat longer than during the term for which the member occasioning such vacancy might, but for the cause creating the vacancy, have held his seat: And provided also, that no vacancies occurring in regard to any number of members of either House of Parliament, whose names shall, in manner and form as hereinbefore provided, have been published as members, shall be deemed or taken to render such House incompetent for the dispatch of business, so long as there shall be members present therein sufficient to form a quorum.

Constitution Ordinance.  
Election how to take place on vacancies.

74. And be it enacted, that it shall and may be lawful for the Governor of the Cape of Good Hope, whenever he shall see fit so to do, to prorogue, either by speech or by proclamation, published in the *Government Gazette*, the Legislative Council and the House of Assembly of the said Colony; and also, either by speech or by any such proclamation, to dissolve the said Council and the said House of Assembly, or dissolve the said House of Assembly, without dissolving the said Council. (2)

Dissolution of the Council and Assembly, or of the Assembly without the Council.

75. (3) And be it enacted, that whenever, by reason of any such dissolution as aforesaid, there shall be a general election for the members, either of the Legislative Council or the House of Assembly, and whenever, by effluxion of time, there shall occur one of

Proceedings upon any general election, caused either by a dissolution or by effluxion of time.

<sup>1</sup> See also Act 18 of 1874, § 9, and Act 9 of 1883, *infra*.

<sup>2</sup> See Act 18 of 1874, § 7, *infra*.

<sup>3</sup> But see §§ 4 and 5 Act 18 of 1874, *infra*.



Constitution  
Ordinance.  
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Ordinance. the alternate elections of eight members and of seven members of the Legislative Council, as hereinbefore directed, or a general election for the whole of the members of the House of Assembly, then and in every such case the like proclamation, or proclamations, *mutatis mutandis*, shall be issued by the Governor, and the like proceedings, *mutatis mutandis*, be had and taken in regard to any such election as are hereinbefore directed in regard to the first or original elections under this Ordinance: Provided always, that when and as often as the Legislative Council and the House of Assembly shall be dissolved together, the members of the Legislative Council shall be elected before any proclamation shall issue for the election of any of the members of the House of Assembly.

Provision for a  
biennial registration  
of voters.

76. <sup>(1)</sup> And whereas it is expedient that provision should be made that at the expiration of every two years a fresh register of voters should take place throughout the Colony of the Cape of Good Hope, be it therefore enacted, that not sooner than one month before nor later than one month after the expiration of two years from the day of the publication of the proclamation, announcing, as hereinbefore mentioned, the names of the first members of the Legislative Council of the said Colony, the like proclamation and proceedings, in all respects, *mutatis mutandis*, as are hereinbefore directed in regard to the first or original registration of voters under this order, shall respectively be issued and take place, in order that there shall thereby be prepared and preserved fresh lists of voters in and for the several Electoral Divisions, similar to the lists hereinbefore directed to be prepared and preserved; and such a fresh registration shall, in like manner, take place every two years: Provided that in future registrations no objection shall be received to names which shall have been retained on the list of voters at the two preceding biennial registrations, unless these names are objected to on the ground that the persons so previously registered no longer possess the qualification in respect of which they had been registered: Provided also, that if, after the preparation of any fresh list in any Electoral Division (other than Cape Town and Graham's Town), a poll shall, in such division, be taken for members or a member of the House of Assembly before any poll shall be there taken for members or a member of the Legislative Council, and before any further biennial list of the voters in such division shall begin to be prepared, then and in that case the same proceedings relative to the determination of claims and objections which are hereinbefore directed, in regard to the officers charged with the taking of the votes at the first election of members for the Legislative Council, shall take place in regard to the officers taking the poll at such election of members or a member of the House of Assembly, precisely as if the said poll for members or a member of the Legislative Assembly were the first poll for the first members of the Legislative Council: Provided

<sup>1</sup> But see Act 16, 1856, *infra*.

also, that if, in any division, no poll shall be taken for members of the Legislative Council or House of Assembly before a fresh biennial list shall begin to be prepared, then in that case the respective officers appointed to prepare such fresh biennial list in the respective Field-cornetries, shall determine upon all claims and objections growing out of or connected with the last previous biennial list; and the like forms, *mutatis mutandis*, shall be observed in regard to the posting notices and transmitting letters, for the information of claimants, persons objecting, and persons objected to, which are hereinbefore directed to be observed upon the occasion of the poll for the first members for the Legislative Council of the said Colony.

Constitution Ordinance.  
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77. And be it enacted, that there shall be a session of the Parliament of the Cape of Good Hope once at least in every year; so that a period of twelve calendar months shall not intervene between the last sitting of the said Parliament in one session and its first sitting at next session.

A session of Parliament once, at least, in every year.

78. (1) And be it enacted, that the Legislative Council and the House of Assembly, at the first sitting of each respectively, and from time to time afterwards, as there shall be occasion, shall prepare and adopt such standing rules and orders as shall appear to the said Council and Assembly best adapted for the orderly and efficient conduct of the business of such Council and Assembly respectively, and for the manner in which the said Council and Assembly shall respectively be presided over, in case of the absence of the President or Speaker, and for the mode in which the said Council and the said Assembly shall confer, correspond, and communicate with each other, relative to votes or bills passed by or pending in the said Council and Assembly respectively; and for the manner in which notice of bills, resolutions, and other business, intended to be submitted to the said Council and Assembly respectively, at any session thereof, may be published in the *Government Gazette* or otherwise, for general information, for some convenient space of time before the meeting of such Council and Assembly respectively: and for the proper framing, entitling, and numbering of the Acts to be made and passed by the said Council and Assembly, and for any other purpose necessary for the convenient dispatch of business: all of which rules and orders shall, by such Council and Assembly respectively, be laid before the Governor of the Colony, and being by him approved, shall become binding and of force, but subject nevertheless to the confirmation or disallowance of Her Majesty, in manner as hereinafter provided respecting the acts to be made by the Governor, with the advice and consent of the Legislative Council and Assembly of the Colony.

Standing rules and orders to be made in and for the Council and the Assembly respectively.

79. [Repealed by Act 1 of 1872, § 5, *infra*].

80. And be it enacted, that it shall not be lawful for the House of Assembly or the Legislative Council to pass, or for the

Manner in which the public revenue shall be appropriated to the public service

<sup>1</sup> Printed as amended by Act 13, 1883, *infra*.

Constitution Ordinance.

Governor to assent to, any bill appropriating to the public service any sum of money from or out Her Majesty's revenue within the said Colony, unless the said Governor, on Her Majesty's behalf, shall first have recommended to the House of Assembly to make provision for the specific public service towards which such money is to be appropriated; and that no part of Her Majesty's revenue within the said Colony shall be issued, except under the authority given by the Governor of the said Colony, directed to the public treasurer thereof.

Governor may transmit drafts of laws to either house.

81. And be it enacted, that it shall and may be lawful for the Governor of the Cape of Good Hope to transmit, by message, to either the Legislative Council or the House of Assembly, for their consideration, the drafts of any laws which it may appear to him desirable to introduce, and all such drafts shall be taken into consideration in such convenient manner as shall, in and by the rules and orders aforesaid, be in that behalf provided: Provided always, that the said Governor shall not transmit <sup>(1)</sup> to the Legislative Council the draft of any law which ought, under and in virtue of the provisions of this Ordinance, to originate in or be introduced into the House of Assembly.

Power of Governor to assent to, or to refuse to assent to, or to reserve for the royal pleasure, bills which have passed the two houses.

82. And be it enacted, that whenever any bill which has been passed by the Legislative Council and Assembly of the Colony of the Cape of Good Hope shall be presented for Her Majesty's assent to the Governor of the said Colony, such Governor shall declare, according to his discretion, but subject nevertheless to the provisions contained in this Ordinance, and to such instructions as may from time to time be given in that behalf by Her Majesty, her heirs or successors, that he assents to such bill in Her Majesty's name, or that he refuses his assent to such bill, or that he reserves such bill for the signification of Her Majesty's pleasure thereon: Provided always, that it shall and may be lawful for the Governor, before declaring his pleasure in regard to any bill which shall have been so presented to him, to make such amendments in such bill as he shall think needful or expedient, and by message to return such bill, with such amendments, to the Legislative Council, or the House of Assembly, as he shall think more fitting; and the consideration of such amendments by the said Council and Assembly respectively shall take place in such convenient manner as shall, in and by the rules and orders aforesaid, be in that behalf provided.

Power of the Crown to disallow acts assented to by the Governor.

83. And be it enacted, that whenever any bill which shall have been presented for Her Majesty's assent to the Governor of the said Colony of the Cape of Good Hope shall, by such Governor, have been assented to in Her Majesty's name, such Governor shall, by the first convenient opportunity, transmit to one of Her Majesty's Principal Secretaries of State an authentic copy of the act so assented to; and that it shall be lawful, at any time within

<sup>1</sup> See § 88.

two years after such bill shall have been received by such Secretary of State, for Her Majesty, by Order in Council, to declare her disallowance of such Act, and that such disallowance, together with a certificate under the hand and seal of such Secretary of State, certifying the day on which such bill was received as aforesaid, being signified by such Governor to the Legislative Council and Assembly of the Cape of Good Hope, by speech or message to the Legislative Council and Assembly of the said Colony, or by proclamation, shall make void and annul the same from and after the date of such signification.

Constitution Ordinance.

84. And be it enacted, that no bill which shall be reserved for the signification of Her Majesty's pleasure thereon, shall have any force or authority within the Colony of the Cape of Good Hope until the Governor of the said Colony shall signify, either by speech or message to the Legislative Council and Assembly of the said Colony, or by proclamation, that such bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; and that an entry shall be made in the journals of the said Legislative Council of every such speech, message, or proclamation, and a duplicate thereof, duly attested, shall be delivered to the proper officer, to be kept amongst the records of the said Colony; and that no bill which shall be so reserved as aforesaid shall have any force or authority in the said Colony, unless Her Majesty's assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such bill shall have been presented for Her Majesty's assent to the Governor as aforesaid.

Bills reserved, when to take effect.

85. And be it enacted, that the Governor of the Cape of Good Hope shall cause every Act of the Parliament of the Cape of Good Hope which he shall have assented to in Her Majesty's name to be printed in the *Government Gazette* for general information, and such publication by such Governor of any Act of the said Parliament shall be deemed to be law in the promulgation of the same (1).

Acts of the Parliament to be printed in the Government Gazette.

86. And be it enacted, that as soon as may be after any Act of the Parliament aforesaid shall have been assented to, in Her Majesty's name, by the Governor of the Cape of Good Hope, or having been reserved for the signification of Her Majesty's pleasure, Her Majesty's assent thereto shall, in manner aforesaid, have been signified by the said Governor, the Clerk of the Legislative Council shall cause a fair copy of such Act, signed by the said Governor, as well as by the President of the said Legislative Council and the Speaker of the House of Assembly, to be enrolled of record in the office of the Registrar of the Supreme Court: Provided, however, that the validity of any such Act shall not depend upon the enrolment thereof.

Copies of Acts of the Parliament to be enrolled.

<sup>1</sup> See Act 5, 1883, *infra*.

Constitution Ordinance.

Certificates of disallowance of acts of the Parliament to be enrolled.

87. And be it enacted, that when and as often as any bill, provisionally assented to by the Governor of the Cape of Good Hope in the name of Her Majesty, shall, in manner aforesaid, have been disallowed by Her Majesty, the Governor aforesaid shall cause a certificate of such disallowance, certified under the public seal of the said Colony, to be enrolled in the office of the Registrar of the Supreme Court.

Bills granting supplies or imposing taxes to originate in the Assembly.

88. And be it enacted, that in regard to all bills relative to the granting of supplies to Her Majesty, or the imposition of any impost, rate, or pecuniary burden upon the inhabitants, and which bills shall be of such a nature that if bills similar to them should be proposed to the Imperial Parliament of Great Britain and Ireland, such bills would, by the law and custom of Parliament, be required to originate in the House of Commons, that all such bills shall originate in, or be by the Governor of the Cape of Good Hope introduced into, the House of Assembly of the said Colony: Provided that the Legislative Council of the said Colony and the Governor thereof shall, respectively, have full power and authority to make, in all such bills, such amendments as the said Council and the said Governor shall, respectively, regard as needful or expedient; and the said Council and the said Governor may, respectively, return such bills, so amended, to the House of Assembly or the Legislative Council.

Proceedings in both houses to be in the English or Dutch languages.

89. And be it enacted, that all debates and discussions in the Legislative Council and House of Assembly, respectively, shall be conducted in the English <sup>(1)</sup> language, and that all journals, entries, minutes, and proceedings of the said Council and Assembly be made and recorded in the same language.

Provision for the payment of the expenses of certain members of the two houses.

90. <sup>(2)</sup> And be it enacted, that each member of the Legislative Council and each member of the House of Assembly, whose ordinary place of residence shall be situate at a greater distance than ten miles from the place or places in which the said Council and Assembly shall respectively assemble, shall be entitled to be paid from the public treasury of the said Colony the sum of one pound sterling per day, for every day during which such member shall be engaged in travelling to, and returning from, and attending at, any session of Parliament of the said Colony: Provided always, that such payment shall in no case be made for more than ninety days in any one calendar year; and that every such member shall also be entitled to be paid a further sum of one shilling for every mile which he shall necessarily travel in coming to and returning from any such session: Provided always, that no part of such sums shall become payable to any member in any session until after an Act providing funds for the public service of the current year shall have been passed by the said Council and Assembly, and assented to by the Governor.

<sup>1</sup> Or Dutch. See Act 1 of 1882 *infra*.

<sup>2</sup> Printed as amended by Act 6 of 1879, § 1, *infra*.

91. And be it enacted, that in the construing this Ordinance, the word "Governor" shall mean any officer for the time being lawfully administering the Government of the Colony of the Cape of Good Hope; and that the words "Chief Justice" shall mean the person for the time being lawfully administering the functions of the Chief Justice; and that the words "Colony of the Cape of Good Hope" shall not include the district of Natal; and that the words "*Government Gazette*" shall mean the *Government Gazette* of the Colony of the Cape of Good Hope; and that whenever mention is made of any public officer, the officer mentioned shall be deemed to be such officer for the time being, or the officer acting as such; and that words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number, unless there be something in the subject or context repugnant to such construction.

Constitution Ordinance.  
Interpretation of terms.

92. And be it enacted, that this Ordinance shall commence and take effect within the Colony of the Cape of Good Hope from and after such date <sup>(1)</sup> as Her Majesty shall, by the advice of Her Privy Council fix for that purpose <sup>(1)</sup>.

Ordinance when to take effect.

W. L. B.

ORDER IN COUNCIL.

*At the Court at Buckingham Palace, the 11th day of March, 1853.*

PRESENT:

The Queen's Most Excellent Majesty,	
His Royal Highness Prince Albert,	
Lord Privy Seal,	Earl of Aberdeen,
Duke of Newcastle,	Earl of Clarendon,
Duke of Wellington,	Mr. Herbert,
Lord Chamberlain,	Sir James Graham, Bt.

WHEREAS, on the 3rd day of April, in the year 1852, an Ordinance was 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 in certain respects the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof," of which said Ordinance a copy is contained in the schedule to this present Order in Council annexed:

And whereas it is expedient that the said Ordinance should be ratified and confirmed by Her Majesty in Council:

It is, therefore, hereby ordered by the Queen's Most Excellent Majesty, with the advice of Her Privy Council, that the said Ordinance shall, and the same is, hereby ratified, confirmed, and finally enacted.

<sup>1</sup> 1st July, 1853, *infra*.

Constitution Ordinance.

And it is further ordered and declared, by the authority aforesaid, that the Ordinance shall commence and take effect within the Colony aforesaid, from and after the first day of July next ensuing :

Provided, always, that nothing herein contained shall extend to prevent the Parliament of the said Colony from making any Act or Acts (subject to Her Majesty's power to disallow the same, with the advice of her Privy Council, or to assent to the same, if reserved for the signification of her pleasure thereon), in amendment of the said Ordinance or in furtherance of the objects thereof.

And the Most Noble the Duke of Newcastle, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

[SCHEDULE REFERRED TO IN THE FOREGOING ORDER.]

Ordinance (enacted by the Honourable the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof,) for regulating, in certain respects, the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof.

Preamble.

WHEREAS Her Majesty did, by certain Letters Patent, bearing date at Westminster on the twenty-third day of May, in the thirteenth year of her reign, amongst other things declare and ordain that there should be within the settlement of the Cape of Good Hope, a Parliament, to consist of the Governor, a Legislative Council, and House of Assembly: And whereas, by an Ordinance, entitled "Ordinance enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for constituting a Parliament for the said Colony," provision has been made for constituting a Legislative Council and House of Assembly for the said Colony, and for defining the powers of the same: And whereas it is expedient that provision should be made for defraying certain expenses out of the revenue of the said Colony :

Charges of collecting and managing the revenue to be paid thereout.

1. 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 Governor shall be authorized to pay, out of the revenue of the said Colony, all the costs, charges, and expenses incident to the collection, management and receipt thereof:

Accounts of all such disbursements to be laid before the Parliament.

Provided always, that full and particular accounts of all such disbursements shall from time to time be laid before the Parliament of the said Colony.

Grants for civil and other services.

2. And be it enacted, that until the Parliament of the said Colony shall otherwise direct, there shall be payable every year to Her Majesty, her heirs and successors, out of the said revenue

fund, the sum of one hundred and six thousand and ninety pounds, for defraying the expenses of the several services and purposes in the schedules (marked A, B, C, and D) annexed to this Ordinance: the said sum to be issued by the Treasurer of the said Colony, in discharge of such warrant or warrants as shall be from time to time directed to him under the hand and seal of the Governor.

Constitution Ordinance.

3. And be it enacted, that in construing this Ordinance, the word "Governor" shall mean any officer for the time being administering the Government of the Cape of Good Hope.

Interpretation clause.

4. And be it enacted, that this Ordinance shall commence and take effect within the Colony of the Cape of Good Hope from and after such date as Her Majesty shall, by advice of her Privy Council, fix for that purpose.

Ordinance when to commence.

SCHEDULES REFERRED TO IN THE FOREGOING ORDINANCE.

SCHEDULE (A.)

The Governor and Private Secretary,	£5,300	0	0
The Lieut-Governor, Secretary, Messenger, and House-rent ..	2,200	0	0
The Clerk of the Executive Council	520	0	0
The Colonial Secretary and his Department .. ..	5,500	0	0
The Treasurer-General .. do.	1,890	0	0
The Auditor-General .. do.	1,650	0	0
The Registrar of Deeds .. do.	1,000	0	0
The Surveyor-General .. do.	2,080	0	0
The Civil Engineer .. do.	2,250	0	0
The Post-Office Department ..	2,330	0	0
The Keeper of the Public Buildings	235	0	0
The Agent-General in London ..	210	0	0
The Secretary and Clerks of the Central Road Board .. ..	1,140	0	0
The Supreme Court .. ..	7,935	0	0
The High Sheriff .. ..	1,250	0	0
The Attorney-General .. ..	1,670	0	0
Divisional Courts .. ..	16,335	0	0
Education Establishments .. ..	4,100	0	0
Medical Departments .. ..	1,895	0	0
Police, Prisons, and Gaols .. ..	1,540	0	0
	£61,030	0	0

SCHEDULE (B.)

Pensions, .. ..	15,000	0	0
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SCHEDULE (C.)

( <sup>1</sup> ) Public Worship .. ..	16,060	0	0
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SCHEDULE (D.)

Border Department (Aborigines) .. ..	14,000	0	0
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£106,090 0 0

<sup>1</sup> Schedule C. repealed by Act 5 of 1875. (Ecclesiastical).



No. 16—1856.]

[June 4, 1856.

## AN ACT

## For Amending the Law relative to the Registration of Voters and to the taking of Polls.

Preamble.

WHEREAS it appears to be practicable to lessen the expense, without impairing the efficiency, of the system now in force for the registration of voters and the taking of polls: 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 76th section, and of any other section, of the Ordinance constituting a Parliament in this Colony as shall be repugnant to or inconsistent with this Act, is hereby repealed. And the act of the Governor aforesaid, in having hitherto deferred the first biennial registration of voters, as in the said 76th section mentioned, is hereby ratified and confirmed.

Postponement of first biennial registration confirmed.

Governor, by proclamation, to call upon persons in each field-cornetcy to forward their claims for registration to civil commissioner.

2. It shall be lawful for the said Governor, by any proclamation or proclamations to be by him issued and published in the *Government Gazette*, to call upon all persons resident in any Field-cornetcy within any Electoral Division, other than Cape Town and Graham's Town, and qualified to be registered as voters for such division, but who are not registered in such Field-cornetcy and upon the list of registered voters for the time being for such Electoral Division, to send in to the Civil Commissioner of such division their claims, in writing; which claims may be either in the English or in the Dutch language, and shall be in substance as follows:

“To the Civil Commissioner of ”

Form of claim.

“Please to take notice that I, A.B., residing in the Field-cornetcy of \_\_\_\_\_, in the above Electoral Division, hereby claim to be entitled to be registered in the said Field-cornetcy, as a voter at the election of members of Parliament.  
Dated this \_\_\_\_\_ 185

(Signed) A.B.”  
(describe his residence.)

Claim to whom addressed, and where to be left.

3. Every such claim as aforesaid shall be addressed as aforesaid to the Civil Commissioner, and shall be marked on the outside “Claim to be registered as a voter,” and shall be delivered either at the office of the Civil Commissioner of the division, or otherwise to the Field-cornet of the Field-cornetcy in which the claimant resides.

Proclamation to name a day for receiving claims.

4. Every such proclamation as aforesaid shall name a day, on or before which all such claims as aforesaid must be delivered in, in manner and form as in the last preceding section mentioned, which day shall not be earlier than the 15th of June nor later than the 31st of July next after the commencement and taking effect of this

Act: Provided that every such proclamation shall be published for not less than 31 days before the day named therein as the last day for the delivery of claims.

Act 16—1856.

5. At some time between the 1st day of June and the 15th day of July next after the commencement and taking effect of this Act, the Civil Commissioner of each Electoral Division shall transmit to the Field-cornet of each Field-cornetcy within such division a list, containing the names of all persons registered as of or as belonging to such Field-cornetcy, according to the registered list of voters for the time being of such Electoral Division, with a letter, desiring the said Field-cornet, acting to the best of his knowledge, information, and belief, to notify or report, either upon the list so transmitted, or upon some separate paper, such of the persons inserted in such list as shall be dead, and such as shall have ceased to reside in such Field-cornetcy, and such as shall have ceased to possess the qualification in regard to which they were formerly registered.

Civil commissioner to forward list of registered voters to each field-cornet for correction.

6. Every Field-cornet receiving any such list for the purpose in the last preceding section stated, shall, with all convenient speed, and to the best of his knowledge, information, and belief, notify or report as aforesaid the names of all persons who shall have died, or ceased to reside in such Field-cornetcy, or ceased to possess the qualification in regard to which they were formerly registered, and shall then return such list, with such notification or report, to the Civil Commissioner from whom he shall have received such list.

Field-cornet to correct the list.

7. As soon as may be after the day named in the proclamation in the 2nd section mentioned as the last day for the delivery in of claims by persons not included in the registered list of voters for the time being, the Field-cornet of each Field-cornetcy in every Electoral Division shall carefully enclose and transmit to the Civil Commissioner all claims which shall have been delivered to such Field-cornet; and if there be none such, then the Field-cornet shall report to such Civil Commissioner that there are none.

Field-cornet to send claims to civil commissioner.

8. When the Civil Commissioner shall be in possession of a notification or report from each Field-cornet, touching the matters in the 5th section mentioned, and in possession also of the claims which shall as aforesaid have been delivered to each Field-cornet, then such Civil Commissioner shall forthwith frame a list of names for or in regard to each Field-cornetcy, in order that the same may be posted for general information as hereinafter directed.

Civil commissioner to frame list for each field-cornetcy.

9. In framing such list as aforesaid the Civil Commissioner shall insert the name of every person included in the registered list of voters for the time being as of or as belonging to such Field-cornetcy, except the name of a person notified or reported as aforesaid as dead, or as having ceased to reside in that Field-cornetcy, or as having ceased to possess the qualification in regard to which he was formerly registered, and such Civil Commissioner shall also insert the name of every person who shall, as aforesaid,

List how to be framed.

Act 16—1856.

have delivered a claim, either at the office of such Civil Commissioner or to the Field-cornet of his Field-cornetcy, claiming to be registered: Provided that if, through mistake or otherwise, any person already registered shall have delivered in such a claim, his name shall be but once inserted in such list: and provided that such list shall place the names upon it in alphabetical order.

List to be sent to field-cornet.

10. When the Civil Commissioner shall, in manner aforesaid, have framed the list aforesaid, he shall deliver or transmit the same to the Field-cornet to whose Field-cornetcy it relates, having subjoined or appended thereto a notice, written both in the English and in the Dutch languages, to be signed by such Field-cornet before the posting of the said list, as hereinafter directed; which notice shall be in substance as follows:—

Form of notice to be annexed.

“Notice is hereby given that if any inhabitant of the Field-cornetcy of \_\_\_\_\_, whose name is not inserted in the above list, shall claim to be entitled to have his name inserted therein, or if any such inhabitant shall object to the right of any person whose name appears in the above list, whether a person formerly registered or not, to be registered as a voter, such inhabitant may lodge his claim or objection, in writing, with Mr. \_\_\_\_\_, the Field-cornet of the said Field-cornetcy, on or before the \_\_\_\_\_ day of \_\_\_\_\_ (here insert some day not sooner than ten nor later than twenty-eight days next after the day on which the list aforesaid shall have been first posted), in order that such claim or objection may be recorded and dealt with as the law directs.

“Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 185 \_\_\_\_ .  
(Signed) \_\_\_\_\_ C.D., Field-cornet.”

Separate list to be framed of persons represented as dead or disqualified.

11. The Civil Commissioner aforesaid shall, when transmitting or delivering to such Field-cornet the list in the 10th section mentioned, transmit or deliver at the same time another list, containing the names of all persons who shall have been by such Field-cornet notified or reported in manner aforesaid as dead, or as having ceased to reside in such Field-cornetcy, or as having ceased to possess the qualification in regard to which they were formerly registered. And such Civil Commissioner shall head or entitle such list thus:—

“List of persons formerly registered as voters, who are believed to be no longer entitled to be registered.”

And such Civil Commissioner shall subjoin or append to such list a notice, written both in the English and Dutch languages, and signed by such Civil Commissioner, which notice shall be in substance as follows:—

Form of notice to be attached.

“Notice is hereby given that all the above-named persons are believed to have ceased to be entitled to be registered as voters in this Field-cornetcy, and that none of the said

persons will continue registered, unless he shall, in pursuance of the notice subjoined to the certain other list now posted at this place, lodge his claim afresh, just as if he had never been registered before.

Act 16—1856.

(Signed) O.P.,

“ Civil Commissioner of the Division of .”

12. Every Field-cornet receiving any such lists and notices as aforesaid shall forthwith fill up the blank left in such notice as in the 10th section mentioned for the day on or before which claims and objections shall be lodged, and shall forthwith post such lists and notices at some public place within such Field-cornetcy, there to remain for general information for not less than seven days: provided that as often as any Field-cornet shall receive such list as in the 10th section, and also such a list as in the 11th section mentioned, he shall post both at the same time and in the same place.

Lists to be posted.

13. Every claim to be made in pursuance of such notice as aforesaid shall be marked on the outside “ Claim to be registered as a voter,” and shall be in substance as follows:—

Form of claim in pursuance of above notice.

“ This is to give notice that I hereby claim to have my name inserted in the list of voters in the Field-cornetcy of . Dated the day of , 185 .

“ (Signed) E F.”

(Here state place of residence.)

14. Every objection to be made in pursuance of such notice as aforesaid shall be marked on the outside, “ Objection to the registration of a voter,” and shall be in substance as follows:—

Form of objection.

“ This is to give notice that I hereby object to the name of being retained in the list of voters in the Field-cornetcy of , the ground of my objection being that ” (here state the ground of objection).

“ Dated this day of 185 .

“ (Signed) G. H.”

(Here state place of residence.)

15. As soon as may be after the day fixed in and by the notice so posted as aforesaid as the latest day for lodging claims or objections, the Field-cornet of every Field-cornetcy within any district composing or comprised within any Electoral Division shall carefully enclose and transmit to the Resident Magistrate of the district all such claims and objections as aforesaid as shall have been lodged with such Field-cornet. Should no such claim or objection have been lodged, the Field-cornet shall inform such Resident Magistrate that such is the case.

Claims and objections to be transmitted to the resident magistrate.

16. As often as any Electoral Division shall comprise more than one district subject to the jurisdiction of a Resident Magistrate, the Civil Commissioner shall, as soon as may be after transmitting to the Field-cornet of each Field-cornetcy the lists in the 10th sec-

Copies of lists mentioned in 10th section to be sent to the magistrates of the several districts constituting an electoral division.

Act 16—1856.

Notices need not be sent.

Duty of magistrate on receiving such list.

Title of list of claimants.

Form of notice to be appended.

Title of list mentioned in 14th section and notice to be affixed.

tion mentioned, transmit to the Resident Magistrate of each district copies of the lists transmitted to the Field-cornets of such Field-cornetries as shall be comprised within any such district of Resident Magistrate: provided that no copy so transmitted to any Resident Magistrate need contain a copy of the notice in the 10th section mentioned.

17. As soon as any Resident Magistrate shall be in possession of the list so to be transmitted to him by the Civil Commissioner as in the last preceding section mentioned, and also of all claims and objections forwarded to him by any Field-cornet, under and by virtue of the 15th section of this Act, he shall forthwith frame, in regard to each Field-cornetcy within his district, a list containing the names of all persons not inserted in the list relating to such Field-cornetcy, received by him as aforesaid from the Civil Commissioner, and who shall have claimed in manner aforesaid to be inserted therein, and also another list containing the names of all persons inserted in the said list in regard to whom an objection shall, in manner aforesaid, have been lodged.

18. The list of claimants in the last preceding section mentioned shall be headed thus—

“Field-cornetcy of

“List of persons not posted, who have since claimed to be registered as voters.”

And such list shall have subjoined or appended thereto a notice in the English and Dutch languages, and signed by the Resident Magistrate, which notice shall be in substance as follows:—

“The persons above named, and all others whom it may concern, are required to take notice that the Resident Magistrate undersigned will hold a court at on the day, 185, at o'clock in the forenoon, at which court the claimants may appear, with proof of their qualification to be registered, failing which they will not be registered; and any inhabitant of the Field-cornetcy aforesaid may appear to oppose such registration.

“Given under my hand, this day of, 185.

“(Signed) L. M.,

“Resident Magistrate for the District of.”

19. The list of persons objected to, as in the 14th section mentioned, shall be headed thus—

“Field-cornetcy of

“List of persons posted, who have been since objected to.”

And such list shall have subjoined or appended thereto a notice in the English and Dutch languages, and signed by such Resident Magistrate as aforesaid, which notice shall be in substance as follows:—

“The persons above named, and also the persons by whom they have been objected to, are respectively required to take notice that the Resident Magistrate undersigned will hold a court at \_\_\_\_\_ on \_\_\_\_\_ the day of \_\_\_\_\_, 185\_\_\_\_, at \_\_\_\_\_ o’clock in the forenoon, at which court the persons objected to and the persons objecting may appear, with their respective proofs, in order to have the said objections decided. The name of the objector and the ground of objection in each case can, in the meantime, be learned by application to the undersigned. Should the objecting party not appear at the court aforesaid, the objection will be dismissed.

Act 16—1856.

“Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 185\_\_\_\_.

“(Signed) \_\_\_\_\_ L.M.,

“Resident Magistrate for the District of \_\_\_\_\_.”

20. Every Resident Magistrate who shall have framed any such lists and notices as aforesaid shall forthwith post the same at or near his Court-room or office, for general information, and shall also cause copies thereof, signed by himself as aforesaid, to be posted, as soon as may be, by the Field-cornet of each Field-cornetcy to which any such lists shall relate, at the same place at which the list in the 10th section mentioned had been posted.

Magistrate to post list.

21. The day to be appointed by any such notice as is in the 18th and 19th sections mentioned for the holding of the court in such notice referred to, shall be some day not less than one month after the day on which such notice shall have been posted by such Resident Magistrate at his Court-room or office: provided that the same day need not be appointed for or in regard to each Field-cornetcy within the district of such Magistrate.

Court to be held for hearing claims and objections.

22. The place to be appointed by any such notice for the holding of the said court may be the ordinary Court-room of the district, but, in case distance and the number of claims or objections should be so great as, in the opinion of the Magistrate, to render it expedient to hold such court at some place other than the ordinary Court-room, it shall be lawful to hold it at such other place: provided also that the same place need not be named in regard to all the Field-cornetcies within the district of such Magistrate: and provided that the claims and objections connected with one Field-cornetcy may be heard and determined at a court held at any place within another Field-cornetcy.

Place where court to be held.

23. The Resident Magistrate aforesaid shall attend on the day and the place and hour mentioned in the notice aforesaid for the holding of the court, and shall hear all parties, claimants, and persons objecting, and persons objected to, and may, should he so think fit, examine all such parties upon oath, and, should he so think fit, may summon before him, and examine upon oath, and any person whom he shall deem it necessary to examine; and such Magistrate shall finally determine all questions brought before

Manner of hearing and determining questions.

Act 16—1856.

him: provided that every claimant who shall have claimed in manner and form as in the 12th section mentioned, shall be bound to prove to the satisfaction of such Magistrate, either in person or by some one else, authorized in writing to appear for him, his right to be registered as a voter in such Field-cornetcy: and provided that if the person who shall have objected to the right of any other person to be registered shall not, either in person or by some one else, authorized in writing to appear for him, appear to make good his objection, such objection shall, without requiring any appearance or proof on the part of the person objected to, be dismissed: provided, also, that if the person objected to shall fail to appear in person, and the ground of objection shall be one peculiarly within the knowledge of such person, then, in case the objecting party shall make oath to his belief that such ground of objection does really exist, the Magistrate may allow the objection: provided, lastly, that the Magistrate may adjourn the court till some future day, and, should it be convenient, to some other place, for the further hearing of any case, or for his decision upon any case already heard regarding which he may desire time to consider his judgment.

List of claims admitted and objections allowed to be sent to civil commissioner.

24. As soon as the Resident Magistrate shall have finally determined upon all claims and objections connected with any Field-cornetcy within his district, he shall transmit to the Civil Commissioner of the Electoral Division the list originally received by such Magistrate from the Civil Commissioner, as also a list, showing the names of all claimants whose claims have been admitted and the names of all persons objected to in regard to whom the objection shall have been allowed.

How if electoral division contains more than one fiscal division.

25. Should it at any time happen that any Electoral Division of this Colony shall comprise within it more Fiscal Divisions than one, then the Civil Commissioner mentioned in and contemplated by this Act shall be deemed to be the Civil Commissioner of that Fiscal Division which shall give its name to the Electoral Division; and all Resident Magistrates, whose districts shall be comprised within the other Fiscal Division included in such Electoral Division shall be deemed, for the purposes of this Act, to be in the same plight and condition as if Resident Magistrates of the Fiscal Division which shall give its name to the Electoral Division.

Civil commissioner to frame general list from field-cornetcy lists.

26. When the Civil Commissioner of the Electoral Division shall be in possession of the list of voters in each Field-cornetcy within such division, as rectified and amended in manner aforesaid, he shall, with all convenient speed, frame from such lists a general list of the voters of or for such Electoral Division, containing the names of all persons mentioned in the several and respective lists of voters in the several and respective Field-cornetcies, as rectified and amended as aforesaid, which general list shall keep the several Field-cornetcies distinct from each other, but shall, so far as may consist with such distinction, pursue an alphabetical order; and

such general list shall become and remain, so long as no fresh registration of voters shall have taken place in and for such division, the list of registered voters for such Electoral Division, for all the purposes of the 21st and of every other section of the Ordinance constituting a Parliament for this Colony; and the Civil Commissioner shall report to the Colonial Secretary, in Cape Town, that such list has been completed.

Act 16—1856.

Completion of general list to be reported to Colonial Secretary.

27. The lists of voters for the Electoral Divisions of Cape Town (1) and Graham's Town respectively shall be framed in manner and form as is in that behalf directed in the Ordinance in the last preceding section mentioned, save and except that the persons in the 26th section of the said Ordinance mentioned may, in the list in the said section mentioned, and therein directed to be posted upon or affixed to some public place, include the name of any person inserted in the registered list of voters for the time being who is believed by such persons to be still qualified to be inserted in such list, although such person may not be a resident householder of the municipality in question, and may not, under the 25th section of the said Ordinance have claimed in person to be registered: Provided always that the Government notice in the 22nd section of the said Ordinance mentioned, shall be published not more than 14 days next after the publication of the proclamation in the 2nd section of this Act mentioned.

List of voters for Graham's Town how to be framed.

28. In order that there may be henceforth a general registration of voters throughout the Colony every two years, the Governor of the Colony shall, in the year next but one after the year of the first general registration by this Act directed, issue and publish a proclamation or proclamations, of the same tenor and effect, in all respects, as the proclamation in the 2nd and 4th sections of this Act mentioned, and a Government notice as in the last preceding section of this Act mentioned, and thereupon all and singular the several provisions of this Act shall take effect, in order that there shall thereby be prepared and preserved fresh lists of voters in and for the several Electoral Divisions of the Colony; and in like manner such proclamation or proclamations, and such Government notice, shall be published, and such proceedings as aforesaid take place every second or alternate year for ever.

Provision for a registration in every alternate year.

29. From and after the commencement and taking effect of this Act, the poll at every election of a member or of members of the Legislative Council, or of the House of Assembly, shall be taken in the divisional town of every Electoral Division of the Colony by the Civil Commissioner of such division; in every Field-cornetcy other than such town by such other person, being a resident within such division, as the Governor shall appoint: and the said persons shall respectively be deemed and taken to possess all and singular the powers and authorities of the polling officers mentioned in the Ordinance constituting a Parliament, but none other,

Polling officers at elections.

<sup>1</sup> Repealed by Act 14 of 1874, *infra*, as far as regards Cape Town.



Act 16—1856.

Provided, that nothing in this Act contained shall extend to either of the Electoral Divisions of Cape Town or Graham's Town.

Construction of terms.

30. In construing this Act, the word "Governor" shall mean the officer for the time being lawfully administering the Government of this Colony; and whenever mention is made of any public officer, the officer mentioned shall be deemed to be the officer for the time being, or the officer acting as such officer; and words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number, unless there be something in the subject or context repugnant to such construction.

Act when to commence.

31. This Act shall commence and take effect from and after the promulgation thereof

No. 14—1874.]

[July 29, 1874.

## ACT

To Amend the law relative to the Registration and Qualification of Voters, and to the Election of Members of Parliament, and for the more effectual prevention of the Personation of Voters, and for other purposes connected with Elections.

Preamble.

WHEREAS it is expedient to amend in certain respects the law relative to the registration of voters and the election of members of Parliament, and to provide for the more effectual prevention of the personation of voters, and for other purposes connected with elections: 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:—

Twenty-second to thirty-first sections of Constitution Ordinance, and twenty-seventh section of Act No. 16 of 1856 repealed as far as regards Cape Town.

1. The several sections of the Ordinance for constituting a Parliament in this Colony, commonly called the Constitution Ordinance, from the 22nd to the 31st (both inclusive), and the 27th section of the Act No. 16, 1856, intituled "An Act for amending the Law relative to the Registration of Voters, and to the taking of Polls," are hereby repealed in so far as they relate to the Electoral Division of Cape Town.

Governor to appoint Registering Officer for the electoral division of Cape Town.

2. The list of voters for the Electoral Division of Cape Town, shall, upon the occasion of each biennial registration of voters, as by law required, be made out by some fit and proper person, to be nominated for that purpose by the Governor of the Colony, by Government notice in the *Government Gazette*, which person shall be called the registering officer for the Electoral Division of Cape Town.

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And whereas the Town Council of the Municipality of Cape Town is, by law <sup>(1)</sup> required to frame annually a list of the resident householders of the said municipality: Be it enacted as follows:

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3. The Town Council of the municipality of Cape Town, when framing the list of resident householders of the said municipality for the year one thousand eight hundred and seventy-five, <sup>(2)</sup> shall employ a sufficient number of persons to collect, from house to house, in the several districts into which the said Municipality shall, for the time being, be divided, the names of the resident householders of the said districts, respectively, and such persons shall be supplied by the said Town Council with a sufficient number of printed papers, which shall, in substance, be in the form in the schedule to this Act set forth. The contents of every such paper shall be printed on one side in the English language, and on the other side in the Dutch language.

Town Council to use form in schedule to this Act in framing list of householders for 1875.

4. Every person employed as aforesaid to collect the names of voters, being supplied with such printed papers as aforesaid, shall, upon such day or days as the Town Council shall in that behalf appoint, leave at every house, warehouse, or other building, in each district in which any person shall be found to receive the same, one of the said printed papers, to the end that the blanks in the said paper may be filled up in manner and form as in the said paper directed: Provided that as often as any warehouse or shop shall be a part of, or shall communicate with any house or building, and shall be occupied by the same person who occupies such house or building, it shall be sufficient to leave the said paper either at such house or building, or at such warehouse or shop.

Person employed to collect names to leave a form at every house on appointed day.

5. On such day or days as the Town Council shall in that behalf direct, not being less than two clear days from the day on which such printed papers as aforesaid shall have been left as aforesaid in any district, the person who left the same or some other of the persons employed as aforesaid shall call for the said papers at the places where the same were left, and, having obtained the said papers, shall deliver them to the registering officer: Provided that it shall be lawful for any person so employed as aforesaid, instead of leaving the papers aforesaid to be afterwards filled up, to allow the same to be filled up at once, should the person or persons by whom the same should have been filled up, had they been left, so desire; anything in either of the two last preceding sections to the contrary notwithstanding.

And to call for it again on a subsequent day to be appointed by Town Council.

6. If the person who shall have called for and obtained any such paper as aforesaid shall find that the same has not been filled up, or has been filled up informally, he shall, if practicable, get the same paper or another paper filled up properly, so that the same shall show legibly—

Form may be filled up at once instead of being left.

If person calling for paper, finds it not filled up or informally filled, he shall get it properly filled.

<sup>1</sup> See Act 44 of 1882 (Municipalities, Cape Town).

<sup>2</sup> And every second year thereafter. See § 30.

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1stly. The christian name and the surname of the claimant, and if he have more christian names than one, then all his christian names, written at full length. If the claimant be known by more christian names or more surnames than one, then the paper shall show all the names by which he is known.

2ndly. The street and the number of the street in which the claimant resides.

3rdly. The trade, profession, or other occupation of the claimant, and

4thly. The nature of the qualification from or out of which the claimant claims a right to be registered as a voter.

Should the house, warehouse, or shop, or building at which any such paper as aforesaid shall have been left, not be situated in any street or not in any street or place having a name, then the part of the paper left blank for the insertion of the street and number need not be filled up, or may be filled up in such a way as to designate, as well as may be, the situation of such house, warehouse, shop or building. By the term "residence" in this and in the tenth section is meant the house, warehouse, shop, or other building at which the printed paper shall have been left, whether the occupier lives there or not; and by the term "christian name" is meant in this Act any name prefixed to the surname, whether received at christian baptism or not.

Meaning of term "residence."

Meaning of term "christian name."

Penalty for inserting wrong name, &c.

7. If any person shall, in any such printed paper as aforesaid, insert or shall move, incite, aid, or abet any other person to insert any name not being the name, and not being intended to be the name, of some person residing at or in occupation of the house or premises at which such printed paper was left to be filled up, and shall do so with intent that such name, so inserted, whether that of some non-existent person or not, shall appear upon the said paper as the name of a person claiming to be registered as a voter, such person so offending shall upon conviction be liable to a fine not exceeding five pounds, or to imprisonment with or without hard labour for any period not exceeding three months.

Signature or mark of any claimant to be witnessed.

8. The signature or mark of every person who shall sign any such printed paper as aforesaid as a claimant for registration shall be witnessed by at least one witness.

Papers to be kept by Town Council until applied for by Registering Officer.

9. All such papers as aforesaid, collected in the several districts of the municipality of Cape Town, being received by the Town Council in order that the list of resident householders of the said municipality may be framed therefrom, shall be safely kept by the said Council until the then next nomination, in manner and form as in the second section of this Act mentioned of a registering officer for the Electoral Division, whereupon the said registering officer shall apply to the said Council for the said papers, and the said Council shall deliver the same to him.

10. As soon as the registering officer shall be in possession of the printed papers aforesaid, he shall frame from such papers a temporary or provisional list of the claimants in each district, beginning with district No. 1; and in framing such list he shall, in regard to each district, pursue an alphabetical order, and shall set forth the christian name or names and the surname of each claimant at full length and not otherwise, and shall state opposite to each name the residence of the claimant, his trade or other description, and the nature of his qualification, as such particulars appear upon or from the printed papers in the registering officer's possession. And should such officer find that any of the said papers does not contain all such particulars as aforesaid, he shall take no notice of such paper in framing the said list.

No. 14—1874.  
Registering Officer  
to frame temporary  
list of claimants in  
each district.

11. Should the registering officer have reason to believe or suspect that the same person appears by the printed papers in the possession of such officer to be a claimant for registration in more districts than one, or more than once in the same district, whether by reason of the occupation by such person of premises in more than one district or in more than one place in the same district, then such officer shall cause to be delivered at every house, warehouse, shop, or other building, at or from which any printed paper containing the name of such person was obtained, a notice which shall be in substance as follows:

If same person appears to claim for more districts than one, or to claim more than once in same district, notice to be given to him.

NOTICE.

Inasmuch as there is reason to believe that the name ——— (here state the claimant's name at length), which name is found as that of a claimant for registration as a voter in more districts than one, (or "more than once in district No.—"), refers to one and the same person, namely, ———, who resides in district No.—, (or "in ——— street, in district No. —"), notice is hereby given that unless cause to the contrary be shown to me at ——— at — o'clock in the forenoon on the — instant, the name of the said ——— will be placed on the list of claimants in district No. —, and not on the list of claimants in any other district, (or "will be placed only once on the list of claimants in district No. —").

Form of notice.

Cape Town, this — day of ———, 18—.

A. B., Registering Officer.

And should no cause to the contrary be shown at the appointed time and place, then the name of the person in question shall be placed upon the lists of claimants, in conformity with the terms of the said notice. In case any such claimant as is in this section referred to be a person who, being qualified to be registered in more districts than one, shall not reside within the Electoral Division of Cape Town, then he shall be registered in whichever of such districts he shall himself select, and failing such selection, then in whatever district the registering officer shall determine.

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Registering Officer to appoint a time and place to receive claims not registered.

12. As soon as may be after the registering officer aforesaid shall be in possession of the printed lists obtained from the several districts which shall for the time being constitute, together with the municipality of Green Point, the Electoral Division of Cape Town, he shall publish in the *Government Gazette*, and by printed placards posted in such places as he shall deem necessary, a notice, stating that he will attend at a certain time and place, to be specified in such notice, for the purpose of receiving and taking down the names of all persons claiming to be registered as voters in any of the districts aforesaid who have not signed and delivered over as aforesaid printed lists containing their claims to be so registered, and also of all persons claiming to be registered as voters in the municipality of Green Point, which notice shall be in substance as follows :

REGISTRATION OF VOTERS.

The undersigned will attend on ——— (name the day or days of the week, and state the day or days of the month, and the year), at ——— (state the place), from nine o'clock a.m. till four o'clock p.m., for the purpose of taking down the names of all such persons as claim to be registered as voters in the Electoral Division of Cape Town, and who have not already signed and delivered over, in reference to the present registration, printed papers making their claims. All persons claiming before me must claim in person, or by an agent authorized by some writing, signed by the claimant, and witnessed by at least one witness, which agent must be able to state in full the claimant's christian name or names, his surname, his residence, his trade, profession, or other description, and the nature of his qualification to be registered.

Dated at Cape Town, this — day of —, 18—.

(Signed) A. B., Registering Officer.

Registering Officer may fix different time and place for each district, or may group districts together.

13. It shall be lawful for the registering officer aforesaid, instead of fixing the same time and place for taking down the names of such claimants as aforesaid for the whole of the districts into which the municipality of Cape Town shall be divided, to fix a different time and place for each district of such municipality, or for so many districts of such municipality as he shall deem expedient to group together; and as often as different times and places shall be fixed in reference to all or any of the districts aforesaid, the notice aforesaid shall be altered accordingly. And the registering officer shall attend at some place within the municipality of Green Point for not less than six hours on some day to be fixed by him, for the purpose of taking down the names of claimants for registration; of the place, day, and hours of which attendance notice shall be given in the manner hereinbefore provided.

To attend at Green Point for six hours at least on some day to be appointed.

14. The registering officer, attending in conformity with the notice given by him as aforesaid, shall take down at full length the christian name or names and the surname of each claimant, the street and the number of the street in which such claimant resides, the trade, profession, or other description of such claimant, and the nature of the qualification in respect of which such claimant claims a right to be registered as a voter. In case the residence of such claimant shall be elsewhere than within the Electoral Division of Cape Town, then, instead of his place of residence, there shall be taken down the street and number of the street in which is situate the house, warehouse, shop, or other building, from or out of which such claimant claims a right to be registered as a voter.

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Registering Officer may question claimant as to his qualification, &c., of claimants.

15. It shall be lawful for the registering officer to explain to any person claiming before him as aforesaid the nature of the qualifications in the eighth section of the Constitution Ordinance specified as entitling persons to be registered as voters, and to interrogate such person so far as may be reasonably necessary, to ascertain that such person comprehends the nature of such qualifications, and distinctly avers that he possesses the particular qualifications by him alleged. Any person who shall falsely, knowingly, and wilfully, aver to such registering officer, whether in answering questions put to him or otherwise, that such person possesses a certain qualification to be registered which he does not in fact possess, shall, upon conviction, be liable to a fine not exceeding ten pounds, and, in default of payment, to imprisonment with or without hard labour for any period not exceeding two months. If any claimant shall refuse or decline to answer any proper and reasonable question put to him by the registering officer for the purpose of ascertaining the existence of the qualification which such person shall allege that he possesses, then the name of such claimant shall not be taken down, or, if taken down, shall be expunged. Nothing, however, in this section or in the next succeeding section contained shall prevent any person whose name shall not have been taken down, or, having been taken down, shall have been expunged, from afterwards making his claim to be registered in manner and form as hereinafter in the nineteenth and twentieth sections of this Act provided.

Registering Officer may question claimant as to his qualification.

Penalty for false answers.

Name of claimant refusing to answer to be expunged.

16. The name of no claimant whose name appears upon the temporary or provisional list of claimants which is in the tenth section of this Act mentioned shall be taken down by the registering officer, and if any doubt or question shall arise whether any person appearing in person or by agent before the registering officer, and desiring to have his name taken down, is a person whose name appears upon the said temporary or provisional list, then the registering officer shall summarily inquire into the matter, and his decision shall, for the purpose of the list of claimants to be posted as hereinafter in the next succeeding section of this Act directed, be final and conclusive. Should the registering officer

Registering Officer not to receive name of any person entered on temporary lists, but if any doubt or question should arise, may inquire into it.

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Should same person claim in Cape Town and Green Point, notice in eleventh section of this Act to be served.

have reason to believe or suspect that the same person appears as a claimant for registration in the municipality of Green Point, and also in one or more of the districts into which the municipality of Cape Town is divided, then the provisions of the eleventh section of this Act shall, in substance, apply to such case, and the form of notice in the said section set forth shall be altered accordingly; and such claimant, if entitled to be registered in the municipality aforesaid, and also in one or more of the districts aforesaid, may elect whether he will be registered in the said municipality, or in some of the said districts to be named by him for the purpose. Failing such election, he shall be registered either in the said municipality or otherwise in one of the said districts, as the registering officer shall determine.

Names of claimants to be added to temporary list, and complete list posted.

17. As soon as may be after the registering officer shall, in manner aforesaid, have taken down the names of all such claimants as are in the twelfth section of this Act described, he shall add their names in their respective districts and in alphabetical order, to the temporary or provisional list in the tenth section of this Act mentioned, and shall cause a copy of such list as then completed, legibly written, to be posted upon or affixed to some public place in Cape Town, there to remain for not less than seven days. And in such list the names of the claimants for registration in or belonging to the municipality of Green Point shall be separately set forth, precisely as if such municipality had been a district.

Names of claimants in each district to be posted there also.

18. Besides posting or affixing, as in the last preceding section mentioned, the list of claimants in or belonging to the whole of the districts into which the municipality of Cape Town for the time being be divided, and also in or belonging to the municipality of Green Point, the registering officer shall cause to be posted upon or affixed to some public place in each district, there to remain for not less than seven days, a copy of so much of the said list as contains the names of the claimants in or belonging to the said district. And the registering officer shall cause so much of the said list as relates to the municipality of Green Point to be posted within the said municipality in like manner as if such municipality had been a district.

Notice to be attached to lists in two previous sections.

19. Subjoined to each of the lists in the two last preceding sections mentioned shall be a notice written in both the English and Dutch languages, and signed by the registering officer, which notice shall be in substance as follows:

NOTICE.

Form of notice.

Notice is hereby given that if any person whose name is not inserted in the above list shall claim to have his name inserted therein, or if any person whose name is inserted therein or who claims to have his name inserted therein, shall object to the right of any other person whose name is inserted therein to be registered as a voter, such person may lodge with the undersigned

at——on or before the—day of——, 18— (here insert some day not sooner than ten nor later than twenty-one days next after the day of the posting of the list to which such notices relates), his claim or objection (as the case may be), in order that such claim or objection may be recorded and dealt with as the law directs.

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Dated at Cape Town, this—day of——, 18—.  
(Signed) A. B., Registering Officer.

20. Every claim to be made in pursuance of such notice as aforesaid shall be marked on the outside, "Claim to be registered as a Voter," and shall be in substance as follows : Form of claim in pursuance of above notice.

This is to give notice that I hereby claim to have my name inserted in the list of voters in District No.— (or in the municipality of Green Point as the case may be), and that my qualification arises from the occupation of (here state "house," "warehouse," "shop," or other building, and the street and number of the street in which it is situated; or, should it not be in a street having a name and numbered houses, describe it otherwise as well as may be).

Dated this——day of——, 18—.  
(Signed) E. F., Carpenter.

In case the qualification of the claimant shall be "salary" or "wages," then the above form of claim shall be altered accordingly.

21. Every objection to be made in pursuance of such notice as aforesaid shall be marked on the outside "Objection to the Registration of a Voter," and shall be in substance as follows :

Form of objection.

This is to give notice that I hereby object to the name of ——being retained on the list of voters for District No.— (or "the municipality of Green Point," as the case may be), and the ground of my objection is (here state the ground of objection).

Dated this——day of——, 18—,  
(Signed) G. H.

22. Every person claiming as in the twentieth section of this Act mentioned shall sign his christian name or names and his surname at full length, and shall also state what is his trade, profession, or other description, and every person objecting as in the twenty-first section of this Act mentioned shall, together with his name (which it shall not be imperative to write at full length), state his residence. No claim or objection which shall omit any of the particulars by this section required shall be attended to. Claims and objections to give full particulars as to name, &c.

23. As soon as may be after the list in the seventeenth and eighteenth sections of this Act mentioned shall have been posted or affixed, the Resident Magistrate of Cape Town shall, by notice Court to be held to revise and amend voters' list.



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in the *Government Gazette*, inform all whom it may concern that the said Magistrate will attend at his Court-room on some day and at some hour to be specified in such notice, for the purpose of revising and amending the voters' list for the Electoral Division of Cape Town. Such notice shall specify for the holding of such court a day later by not less than seven days than the day named in the notice in the nineteenth section of this Act, as the latest day for lodging claims and objections.

Original posted list and separate lists of claims, and objections to be delivered to Magistrate by Registering Officer.

24. As soon as may be after the expiration of the latest day for lodging claims and objections, and not later than forty-eight hours before the hour announced for the sitting of the Resident Magistrate for the purpose of revising and amending the voters' list as aforesaid, the registering officer shall deliver to such Resident Magistrate a correct copy of the list in the seventeenth section of this Act mentioned, in the plight and condition in which it was posted as in the said section enjoined, together with another list, containing the names of all persons not inserted in the said list, who shall, in terms of the notice in the nineteenth section of this Act mentioned, have claimed to be inserted therein, and also a third list containing the names of all persons inserted in the list aforesaid as posted and affixed, whose right to be so inserted shall have been objected to; and the registering officer shall, when delivering the said lists to the Resident Magistrate, deliver to him also the original writings containing all claims and objections. The registering officer shall, moreover, not less than forty-eight hours before the hour appointed for the sitting of the Resident Magistrate to revise and amend the list aforesaid, cause notice in writing to be given to every person inserted in the said list as posted, whose right to be so inserted shall have been objected to, that the hearing of such objection will come on before the Resident Magistrate at the sitting appointed to be held by him for the purpose aforesaid.

Manner of hearing and determining questions, and revising lists.

25. The Resident Magistrate of Cape Town shall on the day and at the hour by him announced as aforesaid attend in his Court-room; and it shall be lawful for any person not inserted in the voters' list as posted, who shall have claimed in writing to be inserted therein, and for any person who shall in writing have objected to the right of any person inserted in the said list to be so inserted, and for any person who shall have been so objected to, to come before such Magistrate, and such Magistrate shall hear all such parties, and if he shall think fit, take their evidence upon oath, and may, should he think fit, summon before him and examine upon oath any person whom he shall in the course of such inquiry deem it necessary to examine, and may impose a fine not exceeding ten pounds on any person duly summoned who shall, without lawful cause, refuse or neglect to attend; and such Magistrate shall finally determine all questions brought before him, and revise and amend the voters' list as so posted as aforesaid, according as

justice shall require. The Resident Magistrate may if necessary adjourn his sitting from time to time.

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26. Every person who shall have claimed as aforesaid to be inserted in the list aforesaid shall be bound to prove his qualification to the satisfaction of the Resident Magistrate; and should such claimant not appear, either in person or by his general agent, or by some agent specially authorized in writing by such claimant, the claim of such person shall be dismissed.

Every claimant to appear and prove his claim.

27. If the person who shall have objected to the right of any other person to be inserted in the list aforesaid shall not, either in person or by some agent specially authorized in writing by such objector, appear to make good his objection, such objection shall, without requiring any appearance or proof on the part of the person objected to, be dismissed. If the objector shall appear and if the person objected to shall not appear in person, and the ground of objection shall be one peculiarly within the knowledge of the person objected to, then, in case the objector, or, should he have appeared by agent, his agent, shall make oath to the belief of the deponent that such ground of objection does really exist, the Magistrate may either at once allow the objection or make some further inquiry as shall appear just.

Objectors to appear and make good their objections.

If person objected to does not appear, Magistrate may in certain cases either allow objection or make further inquiry.

28. It shall be lawful for the Resident Magistrate, should it appear right and fitting so to do, to adjudge to any person objecting or objected to such reasonable costs against the adverse party as such Magistrate shall tax and allow, to be recovered in like manner as if costs between party and party in a civil action tried and determined in the Court of the said Magistrate.

Costs may be given.

29. As soon as the Resident Magistrate aforesaid shall, in manner aforesaid, have revised and amended the voters' list aforesaid, he shall cause to be made out and safely kept in his office the said list as so revised and amended, and such list shall be and remain the list of registered voters for the Electoral Division of Cape Town, until a fresh list shall have been framed in manner as hereinafter provided. And the Resident Magistrate shall upon the completion of such list report to the Colonial Secretary that it has been completed.

Revised list to be kept in Magistrate's office.

And completion thereof to be reported to Colonial Secretary.

30. The provisions of this Act from the third section to the ninth, both inclusive, shall be acted upon and carried into effect in every second year from and after the year one thousand eight hundred and seventy-five in manner and form as hereinbefore described in regard to that year; and all the other sections of this Act from the tenth to the twenty-ninth, both inclusive, shall be acted upon and carried into effect, when and as often as a registering officer for the Electoral Division of Cape Town shall, for the purpose of any biennial registration of voters, be nominated in manner and form as in the second section of this Act mentioned.

Provision for a biennial registration

31. As often as it shall be necessary, after the completion under this Act of a list of registered voters, for the Electoral Division of

At elections, polling place and officer to be appointed for

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each district in mu-  
nicipality of Cape  
Town.

Cape Town, to take a poll in the said division for members or for a member of either House of Parliament, then one polling place shall be, by Government notice in the *Government Gazette*, appointed or established in each of the districts into which the said municipality of Cape Town shall for the time being be divided, and the polling officer appointed by Government notice in the *Government Gazette* to take the poll in each district shall be furnished with a list of voters in and for such district; and no voter shall be competent or permitted to vote except at the polling place of the district in and for which he is registered. But the fact that any voter registered in any district shall have ceased at the time of taking the poll to possess the qualification in regard to which he was registered in such district shall not deprive him of the right to vote in such district so long as his name remains inserted in the list of voters in such district. And in regard to the municipality of Green Point, it shall be lawful to appoint a polling place within the said municipality, at which alone the voters registered belonging to such municipality shall be competent to vote, and not elsewhere, or to appoint that all such voters shall vote at the polling place of such one of the districts into which the Municipality of Cape Town shall be divided as shall be deemed most convenient, and be selected.

Each voter to vote  
in his own district.

Every voter on the  
list may be taken to  
be qualified.

Polling place for  
Green Point to be  
appointed either  
there or in Cape  
Town.

Duration of poll.

32. As often as any such poll as is in the last preceding section mentioned shall be taken in the said Electoral Division, such poll shall remain open for one day, and no longer, and the same day shall be appointed for taking the poll in the whole of the districts constituting the said Electoral Division.

Polling Officer to  
be assisted by some  
person acquainted  
with the inhabitants  
of each district.

33. The polling officer appointed to take the poll in each district of the municipality of Cape Town aforesaid shall be assisted by some person acquainted as generally as possible with the inhabitants of such district, which assistant shall be appointed by Government notice in the *Government Gazette*, and the duty of such assistant shall be to detect and disclose all attempts which may be made to personate any of the registered voters; and such assistant to the polling officer shall, before acting as such make oath before the polling officer, who is hereby authorized to administer such oath, that he will perform his duty as such assistant without fear, favour, or prejudice. Should a polling place be appointed within the municipality of Green Point, it shall not be necessary to appoint an assistant to the polling officer at such polling place.

Such assistant to  
be sworn.

Polling Officer to  
allow certain persons  
only to be present  
during the hours of  
voting.

34. It shall be the duty of the polling officer at each polling place in the Electoral Division aforesaid, and he is hereby authorized and required, to prevent anyone from entering and remaining in the polling place during the hours of voting, except the returning officer of the Electoral Division, the assistant aforesaid, the candidates in regard to whom the poll is taken, or, in the absence of any of the latter, a representative of each absent candidate (which representative shall be authorized by some writing under the hand

of such candidate to represent him), and the voters, or persons claiming to be voters coming to give and whilst giving their votes.

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35. No person shall be permitted to enter or remain in any polling place during the poll, whilst he shall wear, carry, or display any cockade, ribbon, or other mark distinguishing the friends or supporters of any the candidates in regard to whom the poll is being taken.

No cockade or ribbons to be worn in polling place.

And in regard to the several Electoral Divisions of the Colony, other than the division of Cape Town: Be it enacted as follows:

36. As often as there shall be within any such Electoral Division a municipality or corporate town now forming or hereafter to be formed into a distinct Field-cornetcy, and the commissioners or council of such municipality or the town council of such corporate town shall, at any meeting thereof, resolve that it would be for the public advantage to extend to such municipality or corporate town the provisions of this Act, or such of them as may not be deemed inapplicable to such municipality or corporate town, it shall be lawful for the Governor, with the advice of the Executive Council, upon the application of the commissioners or council of such municipality, or of the town councillors of such corporate town, to declare and provide, by proclamation in the *Government Gazette*, that the provisions of this Act in reference to the Electoral Division of Cape Town, with such exceptions, if any, and such adaptations as the Governor shall approve of and proclaim, shall be in force within the Field-cornetcy constituted by such municipality or corporate town, precisely as if the said provisions with such exceptions and adaptations had been by this Act expressly applied to such municipality or corporate town: And the Electoral Division of Graham's Town shall be capable of being brought under the provisions of this Act, in like manner as if Graham's Town were a municipality or corporate town within an Electoral Division; when and as often as the said provisions shall be extended to any municipality or corporate town, then all former laws or ordinances repugnant to or inconsistent with any of the said provisions shall be repealed: Provided that the expenses attendant upon the employment of the person or persons employed to collect the names of persons entitled to be registered as voters in any such municipality or corporate town, shall be borne by such municipality or corporate town, which shall also supply to the person or persons so employed the necessary printed papers.

Provisions of this Act may apply to country municipalities.

As well as to Graham's Town.

Expenses of registration to be borne by municipalities.

And in regard to all and singular the several Electoral Divisions of this Colony without distinction: Be it enacted as follows:

37. The forty-second and fifty-second sections of the Constitution Ordinance are hereby repealed, but where in any Act the said sections or either of them are referred to, the provisions of this Act substituted for the said sections or either of them shall be considered as mentioned instead thereof,

Forty-second and fifty-second sections of Constitution Ordinance repealed, and provisions of this Act substituted.

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Polling officers at elections may put certain questions.

38. The polling officer at any polling place shall if required by or on behalf of any candidate, and may of his own motion when he shall deem it fitting, put to any person coming to vote at the time of tendering his vote, but not afterwards, the following questions:

1st. What is your name in full ?

2ndly. Where do you live ?

3rdly. What is your occupation ?

4thly. Are you to the best of your knowledge and belief the same person whose name appears as ——— (here give the name of the registered voter as whom the person tendering his vote claims to vote) on the list of registered voters for the Electoral Division of ——— ?

5thly. (In case the poll is taken for a member or for members of the Legislative Council),—Have you already voted, either here or elsewhere, at this election, for any member of the Legislative Council ? or (in case the poll is taken for a member or for members of the House of Assembly),—Have you voted, either here or elsewhere in this Electoral Division, at this election for any member of the House of Assembly ?

Discrepancies between name given by voter and that on registered list, not to preclude him from voting, if it appears that he is really and truly the person intended to have been registered.

39. In case the person tendering his vote shall, in answer to the first of the said questions, give the surname, as registered, of the voter as whom he claims to vote, but not the christian name as registered, or not all the christian names when more than one, and it shall appear from answers to further questions that the person tendering his vote has no names other than those first stated by him, he shall not thereby be precluded from voting, in case it shall appear from his answers to other questions, or from the testimony of the assistant to the polling officer in the thirty-third section of this Act mentioned (when there shall be such assistant present at the poll), that the christian name or names as registered are mistaken, and that the person tendering his vote is really and truly the person intended to have been registered.

Discrepancies between residence or occupation stated by voter, and that on registered list not to preclude him from voting in case it appears that he is really and truly the person intended to have been registered.

40. In case the person tendering his vote shall, in answer to the second or third of the said questions, state a residence or occupation different from the residence or occupation registered as the residence or occupation of the voter as whom the person tendering his vote claims to vote, such person shall be questioned as to his residence and occupation at the time of the framing of the list of registered voters upon which appears the name of the voter as whom such person claims to vote. Should it appear from the answers to such questions that he did not at the time of the framing of such list reside at the place registered, or did not follow the occupation registered, he shall not thereby be precluded from voting in case it shall appear from his answers to other questions, or from the testimony of the assistant aforesaid (when there shall be such an assistant present at the poll), that the residence or the

occupation, or residence and occupation, as registered, are mistaken, and the person tendering his vote is really and truly the person intended to have been registered.

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41. As often as the list of registered voters in the hands of the polling officer shall not set forth the residence or occupation of the voter, then it shall not be necessary to put the second or third questions aforesaid (as the case may be), anything in the thirty-eighth section of this Act notwithstanding.

If residence or occupation is not set forth in list, those questions need not be put.

42. If any person tendering his vote shall wilfully make a false answer to any question which any polling officer is, by the thirty-eighth, thirty-ninth, and fortieth sections of this Act, authorized to put, such person shall, upon conviction, be liable to be imprisoned with or without hard labour for any period not exceeding two years.

Penalty for false answers.

43. Any person who, knowing that he is not the person registered by or under a certain name upon any list of registered voters, shall nevertheless wilfully assume or pretend to be the person so registered, and shall vote or attempt to vote as being the person so registered, shall, whether any such questions as aforesaid shall have been put to him or not, be liable, upon conviction, to a fine not exceeding fifty pounds, and in case of non-payment to imprisonment with or without hard labour for any period not exceeding six months, unless the fine imposed be sooner paid. Nothing in this section contained shall affect the provisions of the last preceding section in regard to the punishment for any false answer made to any question put, but no person prosecuted to trial either under this or the last preceding section shall be afterwards prosecuted under the other of the said sections.

Penalty for per-sonation of voters.

Person tried under either this or the preceding section, not liable to prosecution under the other.

44. If any polling officer shall have reasonable and probable cause for believing that any person has, in the presence of such polling officer, committed an offence under or against either of the two last preceding sections of this Act, it shall be lawful for such polling officer by verbal order to be given and acted upon before such person shall have left the polling place in which such offence, if any, shall have been committed, to authorize and require any officer of the law proper for the execution of criminal warrants, or any private person or persons, to detain in some convenient place such person so believed to have offended as aforesaid until such person shall be brought before some Resident Magistrate or Justice of the Peace to be dealt with according to law. But if such person will, whilst so detained, give bail by two sufficient sureties in twenty-five pounds each, or one such surety in fifty pounds, that he will when duly summoned appear to answer the charge against him, and that he will accept service of the summons at some place to be mentioned in the bail bond, he shall thereupon be liberated. Such bail bond as aforesaid may be entered into before the polling officer who shall have ordered his detention, or before any Resident Magistrate or Justice of the Peace.

Polling officer may, on reasonable grounds of suspicion that person has contravened either of the two last sections, verbally order his apprehension.

But he may be released on bail.

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No more than one person to vote on same name.

Person rejected may complain under forty-seventh section.

Penalty for voting more than once at any one election.

In any electoral division other than Cape Town and Graham's Town, any person whose vote was not registered must complain within seven days to Civil Commissioner.

Civil Commissioner receiving any such complaint, to investigate it.

45. No polling officer shall permit more persons than one to vote upon or in regard to any one name upon the list of registered voters. Should any person claim to vote upon or in regard to any name upon or in respect of which name another person shall have already voted, the vote of the person so claiming shall be rejected; but such person shall be at liberty to complain as in the forty-seventh section of this Act provided. But nothing in this section shall prevent different persons of the same name, who are all registered, from all voting, each in regard to one of the said names.

46. If any person shall vote more than once at any one election for a member or for members of the Legislative Council, or more than once in any Electoral Division for a member or for members of the House of Assembly for such division, he shall be liable upon conviction to a fine not exceeding twenty-five pounds, and in case of non-payment, to imprisonment with or without hard labour for any period not exceeding three months unless the fine imposed shall be sooner paid.

47. It shall be competent for any voter registered or alleging himself to be registered as such in any Electoral Division other than the Electoral Divisions of Cape Town and Graham's Town, who shall complain that his vote, duly tendered at the proper polling place in such Electoral Division, was rejected by the polling officer who took the poll at such polling place, or who shall complain that at such polling place a person not entitled to vote thereat was, whether objected to or not, admitted to vote thereat, to lodge with the Civil Commissioner of the Fiscal Division which constitutes, or, if it does not constitute, gives its name to the Electoral Division in which such poll was taken, his complaint in writing, stating the name of the person so rejected or admitted, and requesting that the grounds of such complaint may be investigated. Such complaint must be lodged within seven days next after the day on which the poll in question was taken, otherwise no notice shall be taken of it, nor shall such poll as taken be capable of being impeached by any action or proceeding whatsoever by any person who shall not have lodged his complaint as aforesaid within the said space of seven days. But nothing in this section contained shall affect the fifty-fifth or any other section of the Constitution Ordinance, or delay the declaration or proclamation of the member or members of the House of Assembly as in the fifty-fifth section directed to be made by the returning officer, or delay any other act or proceeding by the said Ordinance enjoined in reference to the election of members of the Legislative Council.

48. As often as the Civil Commissioner shall receive any such complaint in manner and form as aforesaid, he shall in the most speedy and inexpensive manner practicable cause the polling officer and the party complaining, and the party complained against, if any and if known, to attend before him, and shall in their presence

inquire into the grounds of such complaint. If he shall adjudge that the vote of any person complaining that his vote was rejected was a vote which ought of right to have been received, then in case the poll in question were a poll for a member or for members of the Legislative Council, the Civil Commissioner shall allow the complainant to vote in manner and form as in the forty-first section of the Constitution Ordinance specified, precisely as if such Civil Commissioner were a polling officer taking a poll; but adding after the signature of such Civil Commissioner, that his vote has been taken under this section of this Act, and shall transmit the printed list or polling paper containing such vote to the Colonial Secretary, who shall, in case the committee of scrutineers have not completed their scrutiny, transmit the same to such committee, to be reckoned by them amongst the other votes. In case it shall be made to appear to the Civil Commissioner that the vote of the voter so by him allowed to vote as aforesaid had been rejected by the polling officer because another person had already personated such voter, and voted as being such voter, then the Civil Commissioner shall by endorsement upon the printed list or polling paper certify that the name of the said voter had at the poll been fraudulently assumed by some person who had personated him and voted in his name; and the committee of scrutineers, receiving such printed list or polling paper bearing such endorsement, shall, besides reckoning the votes of such voter, set aside and treat as non-existent the votes upon the printed list or polling paper signed by the person who personated such voter and voted in his name, or signed at the request of such person by the polling officer, should such paper by reason that it is the only one which came from the same polling place bearing the same name, or by any other proof afforded by any other documents in the hands of the scrutineers, be capable of being identified. In case the complaint shall be that some person not entitled to vote at such poll was admitted to vote, and did vote thereat, and the ground of such complaint shall be established to the satisfaction of the Civil Commissioner, he shall, in case the poll in question was a poll for a member or for members of the Legislative Council, certify in writing that it has been made to appear to him in a proceeding under this section of this Act that the person who voted at the poll in question by and under the name of ——— was not entitled so to vote; and shall transmit such certificate to the Colonial Secretary, who shall, in case the committee of scrutineers have not yet completed their scrutiny, transmit such certificate to such committee, who shall thereupon set aside and treat as non-existent the votes given by such person, should the printed list or polling paper signed by such person be, for any such reason as that hereinbefore specified in regard to the certain other polling paper aforesaid, capable of being identified. Should the committee of scrutineers have completed their scrutiny before any such certificate

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May allow the vote and record it.

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or certificates as aforesaid shall have been transmitted to them by the Colonial Secretary, then the Colonial Secretary shall require the said committee to re-assemble, and shall transmit every such certificate to such committee, who shall proceed thereupon as hereinbefore directed in order to correct the number of votes formerly certified by such committee under the forty-fourth section of the Constitution Ordinance.

If election is for Legislative Council, Civil Commissioner to inform Colonial Secretary seven days after such election, whether any such complaint is made, so that notice may be given to scrutineers.

49. Every such Civil Commissioner as is in the last preceding section described shall, at the expiration of seven days next after the last day upon which a poll was taken for a member or for members of the Legislative Council, at any polling place in the Electoral Division with which he is connected, inform the Colonial Secretary whether any and, if so, how many complaints, under the forty-seventh section of this Act, have been lodged with him, to the end that the said Colonial Secretary may not require the committee of scrutineers to re-assemble until he shall have in his hands the whole number of certificates likely to be transmitted to him: And every Civil Commissioner who shall have informed the Colonial Secretary of any complaint which such Civil Commissioner shall afterwards find to be ill-founded shall forthwith report to the Colonial Secretary that such complaint has been dismissed.

Duty of scrutineers on receipt of amended voting papers.

50. When the committee of scrutineers, so re-assembled as aforesaid, shall have received all such certificates as aforesaid which shall have been transmitted to the Colonial Secretary, and shall have revised the number of votes for the several candidates as the same shall be affected by such certificates, and shall have certified to the Colonial Secretary, *de novo*, the number of votes given for each candidate, then in case the difference between the number of votes as originally certified by the said committee and the number of votes as certified *de novo* shall not be such as to affect the seat of any of the members already proclaimed, or to alter the ranking or position as amongst themselves of any of the members so proclaimed, the number of votes as certified *de novo* shall be published by Government notice in the *Government Gazette* for general information, but shall not be further regarded. If, however, the difference aforesaid shall be such as to prove that any candidate already proclaimed a member had fewer votes than some candidate not proclaimed a member, or that the ranking or position as amongst themselves of any of the members proclaimed requires to be altered, then the Governor shall, by a proclamation reciting the former proclamation and the grounds that have since arisen for amending the same, proclaim afresh the names of the candidates in the order, as regards numbers of votes, in which they shall be found to stand after the revision and rectification of the votes as hereinbefore provided: And as often as it shall appear by such proclamation that any person formerly proclaimed a member has received fewer votes than some other person who was not proclaimed a member, the person formerly proclaimed a member shall,

Members to be proclaimed afresh, if difference in the number of votes alters their position.

upon and from the issuing of such proclamation, cease to be a member, and the other person who received a greater number of votes shall thenceforth become the member in his room and stead. In case the revision and rectification aforesaid shall have the effect of showing an equality of votes between any member who was formerly proclaimed and any candidate who was not proclaimed, the question between them shall be determined by lot, to be drawn in manner and form as in the forty-fourth section of the Constitution Ordinance provided: And should the effect of such revision and rectification be to show an equality of votes between any two or more members who, when formerly proclaimed, appeared to have had a majority one above another, then the order in which the names of the said members shall stand in the amended proclamation shall be determined by lot, to be drawn in the same manner. But the day of the publication of the first proclamation, and not the day of the publication of the amended proclamation, shall, for the purpose of computing the time for which members shall hold their seats, be deemed to be the date of the election of the members proclaimed as such by such amended proclamation.

51. In case the poll in regard to which any complaint as is in the forty-seventh section of this Act mentioned shall be lodged shall have been a poll taken for a member or for members of the House of Assembly, and if such complaint shall not have been inquired into and disposed of before the declaration or proclamation of the member or members, as in the fifty-fifth section of the Constitution Ordinance directed, the Civil Commissioner, in case he shall adjudge such complaint to be well founded, shall certify to the Colonial Secretary, in case of a vote or votes rejected at the poll, the name or names of the candidate or candidates for whom the complainant now votes, and in the case of a vote or votes admitted at the poll, from what candidate the vote or votes in question are to be deducted. Should the proclamation in the fifty-sixth section of the Constitution Ordinance specified not have been published when any such certificate shall have been received by the Colonial Secretary, then, if the effect of any such certificate shall be to show that any candidate formerly returned as a member has fewer votes than some other candidate not so returned, the former return shall be amended by the Colonial Secretary in conformity with the certificate by him received from the Civil Commissioner, and the proclamation to be issued under the fifty-sixth section of the Constitution Ordinance, shall publish the name of the member or the names of the members according to such amended return. A Government notice shall be prefixed or appended to such proclamation showing the number of votes received by the respective candidates as originally transmitted by the returning officer, and the change in such numbers consequent upon the certificate or certificates aforesaid. Should the proclamation in the fifty-sixth section of the Constitution Ordinance mentioned have been pub-

If election is for House of Assembly, civil commissioner to certify number of votes admitted and number of votes rejected for each candidate, &c.

No. 14—1874.

lished before the receipt by the Colonial Secretary of any such certificate or certificates as aforesaid, then all and singular the provisions of the fiftieth section of this Act, in reference to the Legislative Council, shall, *mutatis mutandis*, be applied so far as applicable to the House of Assembly, precisely as if the number of votes as ascertained by the amended return aforesaid were the number of votes certified *de novo* by the committee of scrutineers, and the number of votes originally transmitted by the returning officer in regard to the House of Assembly were the number of votes originally certified by the said committee in regard to the Legislative Council.

Mode of procedure  
in investigating complaints.

52. Every person complaining as in the forty-seventh section of this Act mentioned, and every person complained against, shall be entitled to be assisted by an agent, and the Civil Commissioner may, should the circumstances of the case require it, take evidence on oath, and may summon witnesses to appear before him to give evidence; and the form of summoning witnesses and the consequences of attendance or non-attendance shall *mutatis mutandis* be in substance the same as are set forth in the sixteenth, seventeenth, and eighteenth sections of the rules, orders, and regulations of the Courts of Resident Magistrates, contained in the schedule marked B to the Act No. 20 of 1856; and the Civil Commissioner may, if he shall think fit, award his reasonable costs to any person concerned therein, and shall tax and ascertain such costs, and shall certify in writing to the clerk to the Court of the Resident Magistrate of the district in which the person liable to pay such costs shall reside the amount of such costs, and the process of such Court may issue for the levy of such costs precisely as if such costs had been costs recovered in a civil suit by the person to whom they shall have been awarded by the Civil Commissioner.

Civil commissioner  
may submit doubtful cases to a judge  
in chambers.

53. If the nature of any such complaint as aforesaid shall be such that the Civil Commissioner shall be uncertain regarding the decision proper to be given upon it, it shall be competent for him to draw up a statement of the facts, and such statement shall be signed by such Civil Commissioner in attestation of its correctness, and such Commissioner shall (except as hereinafter excepted) transmit the same to the Registrar of the Supreme Court, to be by him submitted to a judge in chamber for his consideration and determination: Provided that every Civil Commissioner within the Eastern Districts, as the same are described in the Administration of Justice Act, 1864, shall transmit all such cases as last aforesaid to the Registrar of the Court of the Eastern Districts for the consideration and determination of a judge of the said Court.

Judge may call for  
further evidence, &c.

54. The judge before whom any such statement as aforesaid shall be laid may, should the same appear to him defective, call for further information from the Civil Commissioner who transmitted it, and shall give such a decision as shall appear to him

right and proper, and such decision shall, for the purpose of the poll to which it relates be final and conclusive.

No. 14—1874.

55. All and singular the several sections of this Act, from the forty-seventh to the fifty-fourth, both inclusive, shall apply to the Electoral Divisions of Cape Town and Graham's Town, in like manner as to all the other Electoral Divisions of the Colony, except that all complaints under section forty-seven shall, if they relate to the Electoral Division of Cape Town, be lodged with and be inquired into by the Resident Magistrate of Cape Town; and if they relate to the Electoral Division of Graham's Town, shall be lodged with and inquired into by the Resident Magistrate of Albany.

Forty-seventh to fifty-fourth sections of this Act to apply to Cape Town and Graham's Town, &c.

56. If, upon ascertaining the number of votes which have been given for the several candidates for election as members of the House of Assembly for any Electoral Division, it shall be found that any two or more of such candidates have received an equal number of votes, the like proceedings shall be had in order to determine who shall be proclaimed the members for such Electoral Divisions as are prescribed in the forty-fourth section of the said Constitution Ordinance as to an equality of votes between candidates for election as members of the Legislative Council.

In case of equality of votes between candidates for House of Assembly, &c., forty-fourth section of Constitution Ordinance to apply.

57. This Act may be cited for all purposes as "The Election Law Amendment Act, 1874."

Short title.

### SCHEDULE.

CLAIM TO BE REGISTERED AS A VOTER.

District No — .

The qualifications entitling persons to be registered are detailed in the eighth and ninth sections of the Constitution Ordinance. The following is an abstract of the qualifications entitling to registration :

1. Every male person who is, and has been for not less than twelve months, the occupier of a house, warehouse, shop, or other building of the value of twenty-five pounds.

2. Every male person who is, and has been for not less than twelve months, in the receipt of salary or wages, at a rate of not less than fifty pounds per annum.

3. Every male person who is, and has been for not less than twelve months, in the receipt of salary or wages, at a rate of not less than twenty-five pounds per annum, and who besides has been and is supplied with board and lodging.

4. Every joint occupier being a male person, whose share in any house, warehouse, shop, or other building, is of the value of not less than twenty-five pounds.

DIRECTIONS TO BE OBSERVED IN FILLING UP THIS PAPER :

1. "Name."—The claimant must be careful to write or cause to be written all his names at full length; and if he be known by more christian names or more surnames than one, all such names must be

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No. 14—1874.

written at full length, and his signature must be witnessed by at least one witness.

2. "Residence."—Insert the name of the street, and the number of the house, warehouse, &c., in virtue of occupying which the claimant seeks to be registered. Should the street have no name, or the house, warehouse, &c., no number, describe the premises by reference to some adjoining street or other object marking the locality.

3. "Trade, Profession, &c."—The claimant must state his trade, profession, or occupation, when he has any. Persons who have retired from any trade, business, or calling, will style themselves accordingly, such as "retired merchant," or the like.

4. "Qualification."—The claimant must describe the nature of his qualification, such as "resident householder," "salary," "wages," "salary and board and lodging," "wages and board and lodging."

5. Should there be more persons than one residing in or occupying the house, &c., where this paper has been left, each may apply to the registering officer for a separate paper, or all may sign this paper one under another.

6. The claimant will sign the "declaration" at foot, but need not there sign his name in full. If there be more claimants than one, the form of declaration will be understood as referring to each claimant separately:

Name.	Residence.	Trade, Profession, &c.	Qualification.

I, the undersigned, hereby declare that I am, to the best of my knowledge and belief, entitled to be registered as a voter in virtue of the qualification set opposite my name as above.

Signature of claimant \_\_\_\_\_.

Witness to Signature:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

No. 11—1856.]

[June 4, 1856.

AN ACT

To Secure Electoral Privileges to the Inhabitants of the Division of Queen's Town.

Preamble.

WHEREAS His Excellency the late Governor Sir GEORGE CATHCART, K.C.B., did, by proclamations bearing date 10th Sept. and 10th Nov., 1853, create, upon the Eastern Frontier of the Colony, a certain division for fiscal purposes of the Colony, called the

division of Queen's Town: and whereas it is expedient that all duly qualified persons in the said division should be entitled to be registered as voters, and to vote at elections of members of the Legislative Council, and of members of the House of Assembly; and that for such purpose, the said division of Queen's Town should be united to, and form part of, the Electoral Division of Victoria: 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:—

No. 11—1856.

Electoral Privileges (Queen's Town) Act.

1. So much of the Ordinance for constituting a Parliament for this Colony, amended, ratified, and confirmed by the order of Her Majesty in Council, bearing date the 11th day of March, 1853, as shall be repugnant to or inconsistent with the provisions of this Act, shall be repealed, and is hereby repealed accordingly.

Repugnant part of constitution ordinance repealed.

2. The Electoral Division of Victoria, in the said Ordinance mentioned, shall, for all the purposes of the said Ordinance, include the division of Queen's Town: and all persons in the said division of Queen's Town, duly qualified as in the 8th section of the said Ordinance required, shall be entitled, at and from the first ensuing registration of voters throughout the Colony, to be registered as voters in the Electoral Division of Victoria, and to vote at elections of members of the Legislative Council and of members of the House of Assembly.

Electoral division of Victoria to include Queen's Town.

Voters residing in Queen's Town to be registered as of Victoria, and to vote accordingly.

3. This Act shall take effect from and after the promulgation thereof.

Act when to commence.

(1) No. 3—1865.]

[Oct. 10, 1865.

### 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.

WHEREAS by the third section of the Imperial Act, 28th of Her Majesty, chapter 5, the Parliament of the Cape of Good Hope is empowered to make provision for the incorporation of the territory of British Kaffraria with the Cape of Good Hope, and it is enacted that when and as soon as the Governor of the Cape of Good Hope, as Governor of British Kaffraria, assents, in manner and form as in the said section set forth, to the provision so made, then, and from and after the date of such assent, British Kaffraria shall become incorporated with the Cape of Good Hope, on the terms of such provision, for all purposes whatever, as if British Kaffraria had always formed part of the Cape of Good Hope:

Preamble.

<sup>1</sup> For full text of this Act see under "Annexation."

No. 3—1865.

And whereas it is expedient that such provision as aforesaid should be made, and that the same should take effect when and as soon as the Governor of British Kaffraria shall, by virtue of his powers as such Governor, and by laws and ordinances by him made, have divided British Kaffraria into two parts, to form, after such incorporation as aforesaid, Electoral Divisions of the Cape of Good Hope, each of which shall be entitled to send two members to the House of Assembly of the Cape of Good Hope, and shall have defined and named such Electoral Divisions, and shall have effected a registration of voters entitled to vote according to the qualification of voters fixed and established by the fourth section of the Constitution Ordinance of the Cape of Good Hope, and shall have declared the qualification of persons capable of being elected to be, after such incorporation as aforesaid, members of the House of Assembly aforesaid,—such qualification to be that described in the forty-seventh section of the Constitution Ordinance aforesaid,—and shall have provided for the conduct of the election of such members, in like manner, so far as may be, as if such election were to take place under the provisions of the said Constitution Ordinance, and when and as soon as the said election shall have been held: 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:—

Repugnant part of  
Constitution Ordinance,  
&c., repealed

1. So much of the Constitution Ordinance, and so much of any other law in force in this Colony at the time of the promulgation of the proclamation in the next succeeding section mentioned, as shall be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Incorporation of  
British Kaffraria  
when to take effect.

2. (1) From and after the day upon which the Governor of the Cape of Good Hope shall, by proclamation in the *Government Gazette* of the said Colony, publish the names of the members returned in manner and form as in the preamble to this Act mentioned by each of the two Electoral Divisions of British Kaffraria, then British Kaffraria shall become incorporated with the Cape of Good Hope, for all purposes whatever, as if British Kaffraria had always formed part of the Cape of Good Hope.

Additional members  
of House of  
Assembly, condition  
of.

3. (1) The four members aforesaid shall be added to the number of the members of the House of Assembly of the Cape of Good Hope, and be, from and after the promulgation of such proclamation as aforesaid, in the same situation and condition, in all respects, as if, when they were so returned as aforesaid, the said Electoral Divisions of British Kaffraria had been Electoral Divisions of the Cape of Good Hope entitled to return two members each to the House of Assembly.

Representation in  
House of Assembly  
and Legislative  
Council of the two  
additional electoral  
divisions.

4. (1) The two Electoral Divisions aforesaid shall, from and after such incorporation as aforesaid, become and remain Electoral Divisions of the Cape of Good Hope, entitled to be each repre-

<sup>1</sup> See § 24 of this Act.

mented by two members in the House of Assembly, and shall, for the purpose of the election <sup>(1)</sup> of members of the Legislative Council of the Cape of Good Hope, be comprised in and form part of the Eastern Districts, within the meaning and for the purposes of the Constitution Ordinance, in like manner and with the like effect, in all respects, as if those Electoral Divisions had been expressly constituted part of the Eastern Districts in that Ordinance.

\* \* \* \* \*

And whereas it is expedient that the number of the elective members of the Legislative Council of the Cape of Good Hope should be increased to twenty-one, and that the number of the members of the House of Assembly of the said Colony should be increased to sixty-six, such number to include the four members aforesaid to be returned by the two Electoral Divisions forming that part of the Colony which, next before the incorporation thereof as aforesaid, formed the territory of British Kaffraria: Be it enacted, as follows:—

Number of members of Legislative Council and House of Assembly increased.

21. From and after the taking effect of this Act the Legislative Council of this Colony shall consist of twenty-one <sup>(2)</sup> elective members.

Legislative Council to consist of twenty-one members.

22. [Repealed by Act 18 of 1874, *infra*].

23. [Repealed by Act 18 of 1874, *infra*].

24. For the purpose of electing the sixteen members required, together with the four members in the second, third and fourth sections of this Act mentioned, to complete the number of sixty-six <sup>(3)</sup> members of the House of Assembly, the following ten Fiscal Divisions shall be, and the same are hereby constituted, respectively, Electoral Divisions,—that is to say, Aliwal North, Namaqualand, Oudtshoorn, Piketberg, Riversdale, and Queen's Town, whilst the Fiscal Divisions of Victoria West and Fraserburg shall together constitute a seventh <sup>(4)</sup> Electoral Division, and the Fiscal Divisions of Hope Town and Richmond shall together constitute an eighth <sup>(5)</sup> Electoral Division.

New electoral divisions created.

25. Each of the said eight Electoral Divisions shall be entitled from time to time, for ever, to elect two members of the House of Assembly.

Each new electoral division entitled to two members of House of Assembly.

26. Nothing in this Act contained shall be construed so as to deprive any of the Electoral Divisions, of which, before the taking effect of this Act, any of the said eight Electoral Divisions constituted by this Act formed a portion, of the right to continue to elect members as before the taking effect of this Act, or to vacate

Electoral privileges of divisions of which new electoral divisions originally formed part, not affected.

<sup>1</sup> See Act 18 of 1874, § 2, *infra*.

<sup>2</sup> Increased to 22 by Act 39 of 1877, § 3, *infra*.

<sup>3</sup> 74 now. See note to § 6 Constitution Ordinance, *supra*.

<sup>4</sup> To be called the Electoral Division of Victoria West, § 28.

<sup>5</sup> To be called the Electoral Division of Richmond, *ibid*.



No. 3—1865.

or affect the seat of any member of Parliament elected before the taking effect of this Act.

27. [This section refers only to the preparation of the first lists of registered voters and is no longer applicable].

New electoral divisions, how to be named.

28. The Electoral Division formed by the Fiscal Divisions of Victoria West and Fraserburg shall be called the Electoral Division of Victoria West, and the court for the nomination of persons proposed as members of the House of Assembly for such Electoral Division, and the court for declaring the names of the members elected by such Electoral Division, shall be held in the Court-room of the district of Victoria West; and the Electoral Division formed by the Fiscal Divisions of Hope Town and Richmond shall be called the Electoral Division of Richmond, and the court for the nomination of persons proposed as members of the House of Assembly for such Electoral Division, and the court for declaring the names of the members elected by such Electoral Division, shall be held in the Court-room of the district of Richmond.

\* \* \* \* \*

When proclamation for election of new members of Assembly is to be issued.

32. As soon as, but not before, the names of the members of the Legislative Council elected as aforesaid shall have been published there, shall be an election of two members of the House of Assembly for each of the eight Electoral Divisions in the twenty-fourth section of this Act mentioned; and all and singular the several provisions of the Constitution Ordinance relating to the election of members of the House of Assembly shall apply to the elections to take place in and for the said eight Electoral Divisions; and the members then elected shall, after their election, be in the same situation and condition, in all respects, as if they had been returned for the said divisions at the last general election held throughout the Colony for members of the House of Assembly.

\* \* \* \* \*

No. 7—1872.]

[July 31, 1872.

ACT

To Constitute the Division of Wodehouse an Electoral Division.

Preamble.

WHEREAS it is expedient that the Fiscal Division of Wodehouse should be constituted an Electoral Division, and be entitled to send two members to the House of Assembly 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:—

Repugnant laws repealed.

1. So much of the Ordinance enacted on the 3rd day of April in the year 1852, by the Governor of the Cape of Good Hope, with

the advice and consent of the Legislative Council thereof, intituled "An Ordinance for Constituting a Parliament for the said Colony," so much of the Act No. 3, 1865, intituled the "British Kaffraria Incorporation and Parliamentary Representation Amendment Act of 1865," and so much of the Act No. 6, 1871, intituled "An Act to Erect the District of Wodehouse into a Fiscal Division," or of any other law or ordinance in force in this Colony, as shall be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

No. 7—1872.

2. The Fiscal Division of Wodehouse shall be and the same is hereby constituted an Electoral Division, and shall be entitled from time to time to elect two members of the House of Assembly.

Wodehouse constituted an electoral division.

3. Nothing in this Act contained shall be construed so as to deprive any of the Electoral Divisions of which, before the taking effect of this Act, the said Electoral Division of Wodehouse constituted by this Act formed a portion, of the right to continue to elect members as before the taking effect of this Act, or to vacate or affect the seat of any member of Parliament elected before the taking effect of this Act.

Electoral rights of divisions previously forming part of new electoral division of Wodehouse not affected.

4. Forthwith upon the taking effect of this Act the Civil Commissioners of the divisions of Albert, Aliwal North, and Queen's Town respectively, shall make out and transmit to the Civil Commissioner of the division of Wodehouse a list of all registered voters resident in the said Electoral Division hereby created, and the list so transmitted shall form the list of registered voters for the said division; and the lists of registered voters, from which the said last-mentioned list was taken, as they shall stand respectively, after deduction of the names contained in the list transmitted, shall form the lists of registered voters for the time being of the said Electoral Divisions of Albert, Aliwal North, and Queen's Town.

Formation of voters' list.

5. The Electoral Division of Wodehouse shall become entitled to elect members under this Act at the next ensuing general election for members of the House of Assembly, and not sooner.

Election of members.

6. This Act may be cited for all purposes as the "Wodehouse Representation Act, 1872."

Short title.

No. 18—1874.]

[July 31, 1874.

### ACT

To Amend the Constitution Ordinance and Act No. 3 of 1865, and to repeal Act No. 6 of 1859.

WHEREAS it is expedient, in order to secure to the electors a more equal exercise of the franchise, to divide the Colony of the Cape of Good Hope into seven Electoral Provinces, for the purpose

Preamble.

No. 18—1874.

of electing the members of the Legislative Council, and to alter, in other respects, the constitution of the said Council: And whereas it is necessary, for the purposes aforesaid, to amend the Constitution Ordinance and Act No. 3 of 1865, and to repeal Act No. 6 of 1859: 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 and 5 of Constitution Ordinance, Act No. 6 of 1859, and section 31 of Act No. 3 of 1865, repealed.

Present Council to be deemed to have been elected for five years.

And vacancies in the meantime, or before dissolution to be filled up as if this Act had not been passed.

Division of Colony into seven electoral provinces.

1. The fourth and fifth sections of the Constitution Ordinance, the Act No. 6 of 1859, and the 31st section of the Act No. 3 of 1865, are hereby repealed: Provided that all the members of the Legislative Council in existence at the time of the taking effect of this Act, shall be deemed to have been elected for the term of five years from the date of their election and no longer: Provided further, that any vacancy or vacancies which shall happen in the present Council before the dissolution thereof, or before the expiration of the said five years, whichever shall first happen, shall be filled up in the same manner as if this Act had not been passed, but the member or members elected to fill such vacancy or vacancies shall hold his or their seat or seats until the expiration of the five years aforesaid or such dissolution as aforesaid and no longer.

2. For the purpose of electing hereafter the twenty-one (<sup>1</sup>) elective members of the said Council, as provided for by the twenty-first section of Act No. 3 of 1865, the Colony of the Cape of Good Hope shall be divided into seven Electoral Provinces, and such provinces shall respectively consist of the Electoral Divisions following, that is to say:

1. The Western Electoral Province shall consist of the Electoral Divisions of Cape Town, Cape Division, Stellenbosch, and Paarl.
2. The North-western Electoral Province shall consist of the Electoral Divisions of Worcester, Malmesbury, Piquetberg, Namaqualand, and Clanwilliam.
3. The South-western Electoral Province shall consist of the Electoral Divisions of Swellendam, Caledon, Riversdale, Oudtshoorn, and George.
4. The Midland Electoral Province shall consist of the Electoral Divisions of Graaff-Reinet, Richmond, Beaufort West, and Victoria West.
5. The South-eastern Electoral Province shall consist of the Electoral Divisions of Port Elizabeth, Uitenhage, Graham's Town, Albany, and Victoria East.
6. The North-eastern Electoral Province shall consist of the Electoral Divisions of Somerset East, Fort Beaufort, Cradock, Colesberg, and Albert.

<sup>1</sup> 22 now. See Act 39 of 1877, *infra*.

7. The Eastern Electoral Province shall consist of the Electoral Divisions of King William's Town, East London, Queen's Town Aliwal North, and Wodehouse. (1)

No. 18—1874.

3. The voters in and for each of the said Electoral Provinces shall be entitled to elect three qualified men, and no more, to be members of the said Legislative Council, and such members shall vacate their seats at the expiration of seven (2) years from the date of their election: Provided that every member vacating his seat under the provisions of this section shall be eligible to be re-elected.

Each province to elect three members, who shall vacate their seats every seven years.

4. All and singular the provisions of the Constitution Ordinance, from the thirty-fourth to the forty-fourth sections thereof, both inclusive, and of the seventy-third and seventy-fifth sections of the said Ordinance, regarding the mode of signing and accepting requisitions, and electing and proclaiming any member or members of the Legislative Council for the Western and Eastern Districts respectively, shall apply, *mutatis mutandis*, to the election of any member or members of the said Council for the said Electoral Provinces respectively, precisely as if the said Ordinance had directed the election of members of the said Council to take place for the said Electoral Provinces respectively, instead of for the Western and Eastern Districts respectively: Provided, however, that as often as there shall be an election of any member or members of the said Council, then, in case the candidate or candidates to fill the vacant seat or seats who shall have duly accepted and transmitted a requisition or requisitions, as in the said thirty-fourth section of the said Ordinance is mentioned, shall in number not exceed the seat or seats to be filled, then and in every such case there shall be no poll held; but such candidate or candidates, if otherwise duly qualified, shall, after the expiration of the time limited by the proclamation for transmitting requisitions and acceptances thereof, be declared and proclaimed in the *Government Gazette*, as being duly elected a member or members of the said Legislative Council.

Mode of election.

5. The thirty-third section of the said Constitution Ordinance shall be, and the same is hereby, amended, by reading the same as if the words following, that is to say, "Western or Eastern, as the case may be, for which he shall be elected," had not been inserted therein, but had been entirely omitted therefrom.

Section 33 of Constitution Ordinance amended.

6. If in any case the same person shall have been elected as member of the said Council for more than one Electoral Province, such person shall be bound, upon being thereto required by the Governor, if not before, to elect the Electoral Province for or in respect of which he will become a member of the said Council;

Province to be selected by person elected for more than one.

<sup>1</sup> and (<sup>2</sup>) The Province of Griqualand West, Act 39 of 1877, *infra*.

<sup>2</sup> As to dissolution of Parliament. See § 7 of this Act, and § 74 of Constitution Ordinance.

No. 18—1874.

and upon such election being declared, a fresh election shall take place to supply the resulting vacancy or vacancies.

Council may be dissolved as provided in section 74 of Constitution Ordinance.

7. Nothing in this Act contained shall prevent the Governor from, at any time, dissolving the present or any future Legislative Council as in the seventy-fourth section of the said Constitution Ordinance provided.

Members of Parliament accepting offices of profit under Government or becoming insolvent to vacate their seats.

8. And whereas it is provided by the 33rd and 47th sections of the said Ordinance, that no person holding any office of profit under Her Majesty the Queen within the said Colony, and no uncertificated insolvent shall be eligible to be elected a member of the said Council or of the House of Assembly, but no provision is made in and by the said Ordinance for the vacating of the seat of any person who being a member either of the said Council or of the said Assembly shall accept any office of profit under Her Majesty or shall become insolvent<sup>(1)</sup>: Be it enacted that if any member of the Legislative Council or House of Assembly shall accept or be the holder of any office of profit under Her Majesty the Queen, save and except the office of Colonial Secretary, Treasurer of the Colony, Attorney-General, Commissioner of Crown Lands and Public Works, or Secretary for Native Affairs, or if the estate of any such member shall be sequestrated as insolvent, the seat of such member shall become vacant, and thereupon an election shall take place for filling the said vacancy in like manner as if the causes specified in this section for creating vacancies had been specified in the said Constitution Ordinance.

Exceptions.

Further provision for filling vacancies.

9. And whereas the 73rd section of the said Constitution Ordinance provides *inter alia* for the supplying during the recess of either House of Parliament of any vacancy which may have occurred in either of such Houses, but no provision is made in and by the said Ordinance for the supplying of any vacancy occurring in either House in the interval between any general election for members of either House and the then next meeting of Parliament: Be it enacted that the provisions of the said seventy-third section of the said Ordinance, relative to the supplying, during the recess of either House of Parliament, of any vacancy which shall have occurred in either of such Houses, shall extend and apply to the supplying of vacancies occurring in either House in the interval between any general election for members of either House and the then next meeting of Parliament, precisely as if such interval were a recess created by prorogation or adjournment of the House in which any such vacancy shall have occurred; and it shall be lawful for any member of the House of Assembly desiring to resign his seat during such interval, to do so by writing<sup>(2)</sup> under his hand, addressed to the Colonial Secretary, anything in the

Vacancies during recess.

Members may resign during recess by writing to Speaker or Colonial Secretary

<sup>1</sup> See also § 71, Constitution Ordinance.

<sup>2</sup> Or by Telegraphic Message, § 3, Act 41 of 1882. (Telegraphs.)

seventieth section of the Constitution Ordinance to the contrary notwithstanding: Provided, further, that it shall be lawful for any member of the House of Assembly to resign his seat in the said Assembly, by writing under his hand, addressed to the Colonial Secretary, instead of the Speaker of the said Assembly, if such office shall be vacant in consequence of the death or resignation of such Speaker, or if such Speaker should be absent from the Colony.

No. 39—1877.

10. This Act may be cited for all purposes as the "Constitution Ordinance Amendment Act, 1874."

Short title.

No. 39—1877.]

ACT

(<sup>1</sup>) To Make Provision for the Annexation to this Colony of the Province of Griqualand West.

WHEREAS it is expedient that the Province of Griqualand West should be annexed to and form part of the Colony of the Cape of Good Hope, and that provision should be made by the Legislature of the said Colony for such annexation, and for the representation in the Parliament of the said Colony of the inhabitants of the said Province, 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:—

Preamble.

1. So much of the Constitution Ordinance, of the Royal Letters Patent, commonly called the "Charter of Justice," of "the Administration of Justice Act, 1864," and of any other law in force in this Colony at the time of the taking effect of this Act as shall be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Repugnant laws repealed.

2. From and after the taking effect of this Act, the said Province of Griqualand West, within the boundaries thereof as then fixed and determined, shall become annexed to and thenceforth be portion of the Colony of the Cape of Good Hope.

Annexing Griqualand West.

3. The entire of the said Province of Griqualand West shall, for the purposes of election to the Legislative Council of the Cape of Good Hope, be and become from and after the annexation of the said Province to the said Colony, a new Electoral Province of the said Colony, and such new Electoral Province shall be entitled to return to the Legislative Council of the said Colony one member; and the entire of the said Council shall consist, from and after the said annexation, of twenty-two elective members instead of twenty-one as heretofore.

Griqualand West to be a new electoral province for the purposes of Legislative Council elections, returning one member, which Council shall, in future, consist of twenty-two members instead of twenty-one.

<sup>1</sup> For full text of this Act see "Annexation."

No. 39—1877.

Griqualand West to be divided into two electoral divisions.

4. Within three months after the taking effect of this Act, there shall be formed out of the said Province of Griqualand West two new Electoral Divisions to become and be Electoral Divisions of the Colony of the Cape of Good Hope, with such boundaries as may be defined by the Governor, with the advice of the Executive Council of the said Colony, by Proclamation to be published in the *Government Gazette* within the time aforesaid.

Each division to return two members to House of Assembly.

5. Each of the said Electoral Divisions<sup>(1)</sup> shall be entitled to return to the House of Assembly of the Colony of the Cape of Good Hope two members.

Member of Council and members of Assembly to be elected as soon as may be, and for that purpose the province and divisions to be treated as if they had members and these members had died or resigned.

6. As soon as may be after the taking effect of this Act, the member to be returned as aforesaid for the said new Electoral Province to the said Legislative Council and the members to be returned as aforesaid for the said two Electoral Divisions to the said House of Assembly shall be elected; and for the purposes of such respective elections the said Electoral Province and the said Electoral Divisions respectively shall be treated and considered as if members had been returned for the same to the said Legislative Council and the said House of Assembly respectively and their seats had become vacant by death or resignation, and the fact of the occurrence of such vacancies had been duly notified to the Governor; and the like proceedings shall, *mutatis mutandis*, be taken to fill the said seats as would take place if the said Electoral Province and the said Electoral Divisions respectively had been immediately before the taking effect of this Act a Province and Electoral Divisions respectively of the said Colony, and the members elected to fill such seats shall be in the same position in all respects as other members of the said respective Houses of Parliament of the said Colony: Provided that in case of a dissolution of either House of Parliament before any such election as aforesaid, but after the taking effect of this Act, the said new Electoral Province and the said two Electoral Divisions respectively shall in regard to the general election of members be treated in all respects as any other Electoral Province or Electoral Division of the said Colony entitled to return members to the Parliament thereof.

Members elected to be treated in all respects as other members of Parliament.

Provision as to election and qualification of members.

7. All the provisions existing at the time of the taking effect of this Act with regard to the election and qualification of members of the said Legislative Council and House of Assembly shall, so far as may be, be in force and apply to the election and qualification in time to come of members of the Legislative Council and House of Assembly respectively for the new Electoral Province and Divisions respectively of the said Colony after such annexation as aforesaid.

Provision as to voters.

8. All persons for the time being registered as voters under any law of the said Province of Griqualand West, and who, imme-

<sup>1</sup> By Act 13 of 1882 the Electoral Division of Kimberley returns four members, instead of two.

diately before the annexation of the said Province to the said Colony, would have been entitled to vote for a member or members of the Legislative Council of the said Province shall be entitled, after such annexation as aforesaid, to vote for a member of the Legislative Council and for members of the House of Assembly, as the case may be, of the said Colony, at the first election thereof respectively under the provisions of this Act, and shall remain so entitled to vote in like manner as they would be entitled to vote for members of the said Legislative Council and House of Assembly respectively, if duly registered as voters for some Electoral Division heretofore within this Colony until the next general registration of voters throughout the Colony which shall take place after the annexation of the said Province, when all and singular the provisions of the laws for the time being in force in the said Colony relative to the registration of voters and the conduct of elections for members of the Legislative Council and House of Assembly respectively shall apply to the said Electoral Province and the said two Electoral Divisions hereby created, and to persons residing therein, as if the said Province were a Province of the said Colony, and as if the said two Electoral Divisions were Electoral Divisions of the said Colony, and for such purposes the list of registered voters in each of the said Electoral Divisions for the time being in force shall be deemed to be, for the purpose of such general registration as aforesaid, the registered list of voters for the time being for each of the said Electoral Divisions: Provided, however, that the qualification of <sup>(1)</sup> voters in that part of the said Colony formed by the said Province shall, after the said annexation thereof, remain the same as before the said annexation until Parliament shall otherwise provide: And provided also that upon the formation of the said Electoral Divisions mentioned in the fourth section of this Act, the lists of registered voters then in force in the said Province shall be divided so as to make the same conformable to the formation of the said new divisions.

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No. 13—1882.]

[June 21, 1882.

ACT

To Grant Increased Representation in the House of Assembly to the Electoral Division of Kimberley.

WHEREAS it is desirable to amend Act No. 39 of 1877, known as "The Griqualand West Annexation Act, 1877," by making provision for an increase in the number of the representatives now

Preamble.

<sup>1</sup> As to qualification of voters in Griqualand West, see §§ 7, 8 and 9 of Proclamation No. 24 of 1873, Griqualand West Statute Law, p. 79.



No. 1—1872. returned to the House of Assembly for the Electoral Division of Kimberley: 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:—

Repeal of repugnant laws. 1. So much of the fifth section of Act No. 39 of 1877, known as “The Griqualand West Annexation Act, 1877,” as may be repugnant to or inconsistent with this Act, is hereby repealed.

Kimberley to elect 4 members to Assembly. 2. At the next ensuing general election, and thereafter, the Electoral Division of Kimberley shall be entitled to return to the House of Assembly of the Cape of Good Hope four members.

Short title. 3. This Act may be cited as “The Kimberley Increased Representation Act, 1882.”

No. 1—1872.]

[Nov. 28, 1872.

ACT

To Amend the Ordinance enacted on the 3rd of April, 1852, by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, intituled, “An Ordinance for Constituting a Parliament for the said Colony.”

Preamble.

WHEREAS it is expedient, in order to the introduction of the system of executive administration, commonly called Responsible Government, to amend in certain respects the Ordinance enacted on the third day of April, in the year 1852, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, intituled “An Ordinance for Constituting a Parliament for the said 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:—

Offices of Commissioner of Crown Lands and Public Works and of Secretary for Native Affairs established.

1. From and after the taking effect of this Act, there shall be in this Colony a certain office to be called the office of “Commissioner of Crown Lands and Public Works,” and a certain other office to be called the office of “Secretary for Native Affairs.”

Appointments to be made by Her Majesty, and to be held during pleasure.

2. The persons to hold the said offices respectively shall be appointed by Her Majesty the Queen, and shall hold office during Her Majesty’s pleasure, and shall be charged with such duties as Her Majesty shall from time to time assign to them.

Persons holding certain offices of profit under Her Majesty, eligible as to election as members of Legislative Council or House of Assembly.

3. The following persons holding offices of profit under Her Majesty the Queen shall be eligible, if otherwise duly qualified under the provisions of the Ordinance aforesaid, to be elected as members of the Legislative Council or of the House of Assembly, anything in the thirty-third and forty-seventh sections of the Ordinance aforesaid to the contrary notwithstanding, that is to say,—the Colonial Secretary, the Treasurer of the Colony, the

No. 1—1872.

Attorney-General, the Commissioner of Crown Lands and Public Works, and the Secretary for Native Affairs: Provided, always, that it shall be lawful to appoint to any such office as aforesaid any person being already at the time of such appointment a member of the said Council or of the said Assembly.

4. It shall be lawful for any person holding any of the offices in the third section of this Act mentioned, and being likewise a member of either the Legislative Council or of the House of Assembly, to sit and take part in any debate or discussion which may arise in the House whereof he does not happen to be a member, subject, nevertheless, to any such standing rules and orders, as are in the seventy-eighth section of the Ordinance aforesaid mentioned; but it shall not be lawful for any such officer to vote on any proceeding in such House whereof he shall not be a member.

Such officers, being members of either Council or Assembly, to have right of debate in either.

But no right to vote in House whereof they shall not be members.

5. From and after the taking effect of this Act, the seventy-ninth section of the Ordinance aforesaid shall be, and the same is hereby repealed.

Section 79 of Constitution Ordinance repealed.

6. In the event of the retirement from office on political grounds after the taking effect of this Act of Richard Southey, Esq., Colonial Secretary, James Christopher Davidson, Esq., Treasurer of the Colony, and William Downes Griffith, Esq., Her Majesty's Attorney-General for the Colony, or any of them, the said officers, respectively shall be and are hereby declared to be entitled to demand and receive from and out of the public revenue of the Colony such pension or retiring allowance as Her Majesty the Queen shall, through one of Her Principal Secretaries of State, fix and determine: Provided, that, if after the assignment of any such pension or retiring allowance, any such officer shall accept any new appointment under the Crown in this Colony, or elsewhere, his pension or retiring allowance shall, during the tenure of such appointment, merge, or be reduced *pro tanto*, according as the salary or emolument of any such appointment shall be equal to or less than the pension or retiring allowance of such officer.

Pensions of present Executive officers secured.

Pensions to merge, or be reduced on reappointment to office.

7. [Repealed by Act 32 of 1879, *infra*.]

8. None of the officers in the last preceding section mentioned shall, upon ceasing to hold office, be entitled to claim or receive any pension or retiring allowance.

Such officers not entitled to pension.

9. This Act shall commence and take effect when and so soon as the Governor shall by proclamation (!) declare that Her Majesty has been pleased to allow and confirm the same.

Commencement of Act.

10. This Act may be cited for all purposes as "The Constitution Ordinance Amendment Act, 1872."

Short title.

<sup>1</sup> Proc. in Gazette 29th November, 1872.

No. 32—1879.]

[Sept. 11, 1879.

ACT

To Alter in certain respects the Act No. 1 of 1872, known as the "Constitution Ordinance Amendment Act, 1872."

Preamble.

WHEREAS it is expedient that Act No. 1 of 1872, known as the "Constitution Ordinance Amendment Act, 1872," should be amended, by increasing the amount of the annual salaries heretofore paid thereunder to the officers mentioned in the seventh section of that 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:—

Section 7 of Act 1 of 1872 repealed.

1. The seventh section of Act No. 1 of 1872 is hereby repealed.
2. [Repealed by Act 2 of 1886.]

Prime minister to receive £250 a year more than the other ministers.

3. There shall also be paid to such of the said officers as shall be the Prime Minister of the Colony for the time being, an additional sum of two hundred and fifty pounds per annum, for the period during which such officer shall be Prime Minister as aforesaid.

No. 2—1886.]

[May 28, 1886.

ACT

To Amend the Act No. 32 of 1879, by Providing for a Reduction in the Annual Salaries of the Officers mentioned in the Seventh Section of Act No. 1 of 1872, known as "The Constitution Ordinance Amendment Act, 1872."

Preamble.

WHEREAS it is expedient to make provision for a reduction in the annual salaries of the officers mentioned in the seventh section of Act No. 1 of 1872: 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:—

Repealing clause.

1. The second section of the Act No. 32 of 1879 is hereby repealed.

Salaries of Ministers fixed.

2. During the year ending the thirtieth day of June, one thousand eight hundred and eighty-seven, and for and during every subsequent year, there shall be paid to the Colonial Secretary, the Treasurer of the Colony, the Commissioner of Crown Lands and Public Works, and the Secretary for Native Affairs, respectively, the sum of twelve hundred pounds sterling, and to the Attorney-General the sum of one thousand pounds sterling.

No. 21—1859.]

[July 8, 1859.

ACT

(1) For Preventing Bribery, Treating, and Undue Influence at Elections of Members of Parliament.

WHEREAS it is expedient to make provision for preventing corrupt practices in the election of members to serve in Parliament, and for securing the freedom of such elections: Be it enacted by His Excellency 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 following persons shall be deemed guilty of bribery, and shall be punishable accordingly :

Bribery defined.

1. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election.
3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.
4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.

<sup>1</sup>As to trial of Election Petitions, and Corrupt Practices. See Act 9 of 1883, *infra*.

No. 21—1859.

5. Every person who shall advance or pay, or cause to be paid, any money to, or to the use of, any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay, or cause to be paid, any money to any person, in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

Penalty.

And any person so offending shall be guilty of an offence punishable by fine not exceeding one hundred pounds, or by imprisonment, for a term not to exceed one year, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit: Provided, always, that the aforesaid enactment shall not extend, or be construed to extend, to any money paid, or agreed to be paid, for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined.

2. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election.
2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election.

Penalty.

And any person so offending shall be guilty of an offence punishable by fine not exceeding fifty pounds, or imprisonment not exceeding a term of three months, and shall also be liable to forfeit the sum of five pounds to any person who shall sue for the same, together with full costs of suit.

Treating defined.

3. Every candidate at an election, or other person, who shall corruptly, by himself or by or with any other person, or by any other ways or means, on his behalf, at any time, either before, during, or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink; entertainment, lodging, provision, or conveyance, to or for any person, for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of

treating, and shall forfeit any sum not exceeding twenty-five pounds to any person who shall sue for the same, with full costs of suit.

No. 21--1859.  
Penalty.

4. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of an offence punishable by fine not exceeding twenty-five pounds, or imprisonment, not exceeding a term of three months, and shall also be liable to forfeit the sum of twenty-five pounds, to any person who shall sue for the same, together with full costs of suit.

Undue influence defined.

Penalty.

5. Whenever it shall be proved before the Civil Commissioner of any division that any person who is, or claims to be placed, on the list or register of voters for such division has been convicted of bribery, treating, or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such Civil Commissioner shall, in case the name of such person is on the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled "The list of persons disqualified for bribery, treating, or undue influence," which lastmentioned list shall be preserved in the office of the Civil Commissioner, for general information.

Names of offenders to be struck out of list of registered voters.

And be inserted in a separate list.

6. No candidate, or other person shall, before, during, or after any election, in regard to such election, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the division for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall, for every such offence, forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any charring, or any such cockade, ribbon, or mark of

No cockades or other mark of distinction to be given at elections.

No. 21—1859.

Penalties recoverable in Supreme and Circuit Courts only.

distinction as aforesaid, or of any bands of music, or flags, or banners, shall be deemed illegal payments within this Act.

7. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence, respectively, shall be recoverable by action or suit by any person who shall sue for the same in the Supreme or Circuit Courts of this Colony, but not in any other Court.

Costs and expenses of prosecutions.

8. It shall be lawful for any Criminal Court, before which any prosecution by any private prosecutor shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said Court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided, always, that no indictment for bribery, treating, or undue influence shall be triable before any other than the Supreme or Circuit Court.

Proclamation for election to give warning against bribery, &c.

9. For the more effectual observance of this Act, every proclamation which shall at any time hereafter be issued by the Governor of this Colony, for any election for either the Legislative Council or House of Assembly of the said Colony, shall proclaim and make known that all persons who are guilty of bribery, treating, or undue influence at or in reference to the said election, will upon conviction, be liable to the penalties provided by this Act.

In private prosecutions, if judgment be given for defendant, he may recover costs from prosecutor.

10. In case of any indictment or information by a private prosecutor, for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the Court in which such judgment shall be given.

Prosecutor not entitled to costs unless he shall have entered into a recognizance that he shall conduct the prosecution and pay costs.

11. It shall not be lawful for any Court to order payment of the costs of a private prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding or filing of the indictment or information, enter into a recognizance before a judge of the Supreme Court, with two sufficient sureties in the sum of two hundred pounds, with the conditions following, that is to say: that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Limitation of actions.

12. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of six months next after such offence against this Act shall be committed, and unless such person shall be summoned, or otherwise served with process, within the same space of time, provided such summons or service of process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the Court out of which such summons or other process shall have

issued, in which case the summons or process may be served within six months after the return of such person, within the jurisdiction of the Court; and in case of any such prosecution, suit, or processes aforesaid, the same shall be proceeded with and carried on without any wilful delay.

No. 21—1859.

13. The giving, or causing to be given, to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of five pounds for each offence to any person who shall sue for the same, by civil action in any competent Court, together with full costs of suit.

Giving refreshments to voters illegal.

Penalty.

14. In citing this Act for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices at Elections Prevention Act, 1859."

Short title.

No. 9—1883.]

[September 12, 1883.

### ACT

To amend the Law relating to Election Petitions, and to the Prevention of Corrupt Practices at Parliamentary Elections.

WHEREAS it is expedient to amend the law relating to election petitions and to the prevention of corrupt practices at the Parliamentary Elections: 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, 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.

Repeal of repugnant laws.

2. The following words in this Act shall have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction, that is to say:

Definition of terms used.

"Constitution Ordinance" shall mean the Ordinance mentioned in the said Schedule.

"Election" shall mean an election of a member or members to serve in Parliament.

"Candidate" shall mean any person elected to serve in Parliament, and any person who has received and accepted a requisition as in the thirty-fourth section of the Constitution Ordinance mentioned, and any person who has been nominated as a candidate at an election, with his consent.



No. 9—1883.

- “Corrupt practices” or “corrupt practice” shall mean bribery, treating, undue influence and personation or any of such offences as now are or may hereafter be defined by Act of Parliament.
- “Prescribed” shall mean prescribed by any rule of Court to be made as hereinafter mentioned.

PRESENTATION AND SERVICE OF PETITION.

What petitions may be presented, and to what Courts.

3. A petition complaining

- (1) Of an undue return or undue election of a member to serve in either House of Parliament by reason of want of qualification, disqualification, corrupt practices, irregularity, or otherwise ; or
- (2) That a member of the Legislative Council who has been elected, has ceased to possess the qualification by law required,

may be presented to the Supreme Court, or, in the case of a return or election within the jurisdiction of the Eastern Districts Court or of the High Court of Griqualand, either to the Supreme Court or to the Eastern Districts Court, or High Court of Griqualand, respectively, as the case may be, by

- (1) Some person who voted or who had a right to vote at the election to which the petition relates ; or
- (2) Some person claiming to have had a right to be elected at such election ; or
- (3) Some person alleging himself to have been a candidate at such election ; and such petition is hereinafter referred to as an election petition.

Provisions as to such petitions.

4. With respect to the presentation of an election petition under this Act, the following provisions shall apply :—

- (1) The petition shall be signed by the petitioner or all the petitioners if more than one.
- (2) The petition shall be presented within forty-two days after the result of the election has been proclaimed in the *Government Gazette*, or, as to a petition against a member of the Legislative Council who has, since his election, ceased to possess the property qualification by law required, at any time.
- (3) Presentation of a petition shall be made by delivering it to the Registrar of the Court to which it is addressed.
- (4) At the time of the presentation of the petition, or within seven days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner
  - (a) To any person summoned as a witness in his behalf, or
  - (b) To the member whose election or qualification is complained of (who is hereinafter referred to as the

respondent) shall be given by or on behalf of the petitioner.

No. 9—1883.

- (5) The security shall be to the amount of three hundred pounds; it shall be given either by recognizance, to be entered into by any number of sureties not exceeding four, or by a deposit of money with the Registrar of the Court, or partly in one way and partly in the other.

5. Notice in writing of the presentation of a petition under this Act, and of the nature of the proposed security, accompanied with a copy of the petition, shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent, either personally or by leaving the same at his usual or last known dwelling-house or place of business; and it shall be lawful for the respondent where the security is given wholly or partially by recognizance, by notice in writing to be served upon the petitioner in manner aforesaid, within twenty-one days from the date of the service on him of such notice, to object to such recognizance on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

Service of petition on respondent.

Security.

6. Any objection made to the security given shall be heard and decided on by the Court to which the petition has been presented, or by a judge thereof. If any objection to the security is allowed, it shall be lawful for the petitioner, within a further time to be fixed by the Court or Judge, not exceeding ten days, to remove such objection by a deposit of such sum of money as may be deemed proper by the said Court or Judge, to make the security sufficient.

How objections to security to be dealt with.

If on objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or after objection made on the sufficiency of the security being established, the petition shall be deemed to be at issue.

If security decided to be insufficient.

7. The Registrar of the Court shall as soon as may be make out a list of petitions under this Act, presented to the Court of which he is Registrar, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the election list, open to the inspection of any person making application for inspection thereof. Such petitions shall be tried in the order in which they stand in such list, unless the Court shall otherwise order.

Registrar of Court to make list of petitions.

#### TRIAL OF A PETITION.

8. With respect to the trial of election petitions under this Act, the following provisions shall apply:—

Provisions for the trial of election petitions.

- (1) The trial of every election petition shall take place before the Court to which it has been presented, but if it shall be

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- made to appear to such Court that the trial may be more conveniently and properly held elsewhere than at the place where such Court is held, it shall be lawful for such Court to direct that the same shall take place before a Circuit Court.
- (2) Every election petition shall be tried with open doors.
  - (3) The trial of election petitions may take place in any civil term, upon any day prescribed by any rule or order of Court: Provided that the Court to which it has been presented, may upon the application of any of the petitioners or respondents, fix any day in or out of term, for such trial or for trial at a Circuit Court.
  - (4) Notice of the time and place at which an election petition will be tried shall be given not less than fourteen days before the day on which the trial is to be held.
  - (5) The Court before which the trial of any election petition shall take place may adjourn the trial from time to time and from place to place.
  - (6) Where, on the trial of an election petition praying the Court to determine that some other person than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent was bribed or treated or subjected to undue influence by any one on behalf of the respondent, or that such person was guilty of personation, every vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election. If conclusive evidence cannot be obtained as to the number of votes given for the respondent by such person, there shall be deducted from the total number of votes aforesaid as many votes as such person was lawfully entitled to record at the election.
  - (7) At the conclusion of the trial of any election petitions, the Court shall determine whether the respondent was duly elected, or whether any, and if so, what person other than the respondent was or is entitled to be declared duly elected; and, in the case of a respondent who is a member of the Legislative Council, and who is alleged to have ceased to possess the qualifications by law required, whether such respondent has ceased to possess such qualifications. If the Court shall determine that the respondent was duly elected, such election shall be and remain as valid as if no petition had been presented against the same. If the Court shall determine that the respondent was not duly elected, but that some other person was or is entitled to be declared duly elected, the respondent shall forthwith be deemed to have vacated his seat; and the Court shall forthwith certify such

determination to the Governor, who shall thereupon, by proclamation in the *Gazette*, declare such other person duly elected. If the Court shall determine that the respondent was not duly elected, and that no other person was or is entitled to be declared duly elected, or, in the case of a respondent who is a member of the Legislative Council, and is alleged to have ceased to possess the qualification by law required, that he has ceased to possess such qualification, the seat of the respondent shall forthwith be deemed to be vacant, and the Court shall forthwith certify such determination to the Governor, who shall thereupon command, in manner provided by the seventy-third section of the Constitution Ordinance, that a new election shall take place for the purpose of filling up such vacancy, and like proceedings shall take place in regard to such new election as are ordered in regard to elections for filling up vacancies by the said seventy-third section.

- (8) Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Court shall, in addition to such certificate, and at the same time, report in writing to the Governor as follows:
- (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice.
  - (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice.
  - (c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.
- (9) The Court may at the same time make a special report to the Governor as to any matters arising in the course of the trial, an account of which ought in its judgment to be submitted to the Governor.
- (10) A copy of every certificate and report made by any Court as aforesaid to the Governor shall, as soon as may be, be presented by him to the House of Parliament, the election of a member of which has been the subject of the trial before such Court.

9. If it shall appear to the judge of any Circuit Court on the trial of an election petition referred to such Court that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the Court, it shall be lawful for the said judge to postpone the determination of the case and the

Questions of law may be reserved.

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granting of the said certificate until the determination of such question or questions by the Court to which the petition was presented, and for this purpose to reserve any such question or questions for the consideration and determination of such Court.

Report affirming corrupt practices to be sent to Attorney-General.

10. If the Court shall state in the report on the trial of an election petition under this Act that any person has been guilty of corrupt practices or that there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates, such statement, with the evidence taken at the trial, shall be laid before the Attorney-General, with a view to the institution of any prosecution proper to be instituted under the circumstances.

#### PROCEEDINGS.

Form of petition.

11. An election petition under this Act shall be in such form and state such matters as may be prescribed.

More than one respondent.

12. Two or more candidates may be made respondents to the same petition, and their case may, for the sake of convenience, be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent.

Petitions relating to same election to be heard together.

13. When, under this Act, more petitions than one are presented relating to the same election or return, all such petitions shall, in the list of petitions, be bracketed together, and shall be dealt with as one petition, but such petition shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the Court or a judge thereof shall otherwise direct.

Notes of evidence on trial.

14. On the trial of an election petition under this Act notes shall be taken of the evidence given at the trial, and a copy of such evidence shall accompany the certificate made by the Court to the Governor.

#### RULES OF COURT.

Rules under this Act.

15. 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 and orders for the effectual execution of this Act, and the regulation of the practice, procedure, and costs of election petitions, and the trial thereof, and the certifying and reporting thereon.

In the absence of rules, Court may make order as to form of proceeding.

16. Until Rules of Court have been made in pursuance of this Act, and so far as such rules do not extend, the Court to which any election petition shall be presented may make such order in regard to the form and manner or time of proceeding as to such Court shall seem fit.

#### JURISDICTION OF COURTS.

Jurisdiction of the Courts.

17. The Supreme Court and the Eastern Districts Court, and High Court of Griqualand, or any Circuit Court, respectively,

shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition pending in or before any such Court, and the proceedings thereon, as such Courts respectively would have if such petition were an ordinary case within the jurisdiction of any such Court.

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WITNESSES.

18. Witnesses shall be summoned and sworn in the same manner as in a trial before any such Court as is in the last preceding section mentioned, and shall be subject to the same penalties for perjury.

Summoning witnesses.

19. On the trial of an election petition under this Act the Court before which the petition is to be tried may examine any witness or any person in Court, although such witness or person is not called or examined by any party to the petition. After the examination of a witness as aforesaid by the Court as aforesaid, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Witnesses not summoned may be examined.

20. No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt practice at or connected with any election then forming the subject of inquiry, on the ground that the answer thereto may criminate or tend to criminate himself: Provided that where any witness shall answer every question relating to the matters aforesaid which he shall be required by the Court to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled to receive from the Court under the hand of the Registrar a certificate stating that such witness was, upon his examination, required by the said Court to answer questions or a question relating to the matters aforesaid, the answer or answers to which criminated or tended to criminate him, and had answered all such questions or question; and if any information, indictment, or action be at any time thereafter pending in any Court against such witness for any offence under "The Corrupt Practices at Elections Prevention Act, 1859," or any other Act for the prevention of corrupt practices at elections, or for which he might have been prosecuted or proceeded against under any such Act committed by him previous to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the Court shall, on production and proof of such certificate, stay the proceedings in such information, indictment, or action: Provided that no statement made by any person in answer to any question put to him by or before such Court, shall, except in cases of indictment for perjury, be admissible in evidence against him in any proceeding, civil or criminal.

Witness not entitled to refuse to answer because he may criminate himself, but protected from consequences of such answer.

21. The reasonable expenses incurred by any person appearing to give evidence at the trial of an election petition under this Act

Witnesses' expenses.

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according to the scale usually allowed to witnesses on the trial of civil actions in the superior Courts of Law in this Colony, may be allowed to such person, and such expenses shall be deemed to be costs of the petition.

WITHDRAWAL AND ABATEMENT OF ELECTION PETITIONS.

Petition not to be withdrawn without leave.

22. An election petition under this Act shall not be withdrawn without the leave of the Court to which it was presented, or of a Circuit Court appointed to try the same, and after such notice has been given as such Court may direct.

Substitution of petitioner may be asked.

23. On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of such election to which the petition relates may apply to the Court to be substituted as a petitioner for the petitioners so desirous of withdrawing the petition.

Court may order substitution.

24. The Court may, if it think fit, substitute as a petitioner any such applicant as aforesaid, and may further, if the proposed withdrawal is in the opinion of the Court induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

Security.

When fresh security required.

25. If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within fourteen days after the order of substitution.

Substituted petitioners.

26. Subject as aforesaid a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities as the original petitioner.

Costs of withdrawn petitions.

27. If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

Consent of co-petitioners required for withdrawal.

28. When there are more petitioners than one, no application to withdraw a petition shall be made without the consent of all the petitioners.

Abatement by death.

29. An election petition under this Act shall be abated by the death of the sole petitioner or petitioners, but such abatement shall not affect the liability of the petitioner or petitioners to the payment of costs previously incurred.

Consequence of abatement.

30. On the abatement of a petition, any person who might have been a petitioner in respect of the election to which the petition relates may, within twenty-one days after such abatement, apply to the Court to which such petition was presented, or any judge thereof, to be substituted as a petitioner, and such Court or judge may thereupon, if it or he think fit, substitute as a petitioner

any such applicant who is desirous of being substituted, and on whose behalf security to the same amount given as is required in the case of a new petition.

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31. A respondent who has given notice that he does not intend to oppose the petition shall not be allowed to appear or to act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Parliament to which he had been elected, pending the result of the trial of the petition, and the Court shall in all cases in which such notice has been given, report the same to the said President of the Legislative Council or the Speaker of the House of Assembly, as the case may be.

Respondent who has given notice that he will not oppose cannot appear.

#### Costs.

32. All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, shall be defrayed by the parties to the petition in such manner and in such proportions as the Court before which the same is tried or to be tried may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

Court to decide as to costs.

33. The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the superior Courts of this Colony.

Taxation of costs.

34. If any petitioner in an election petition presented under this Act shall neglect or refuse for the space of one month after demand to pay to any person summoned as a witness on his behalf, or of the respondent, any sum certified to be due to him for his costs, charges, or expenses, and if such neglect or refusal be proved to the satisfaction of the Court to which such petition was presented, every person who has entered into a recognizance relating to such petition under the provisions of this Act, shall be held to have made default in his said recognizance, and the Registrar of the said Court shall thereupon certify such recognizance to be forfeited, and execution may thereupon, by leave of the said Court, be sued out thereon at the suit of any such witness or respondent from time to time as occasion may require.

Neglect to pay witnesses.

#### PUNISHMENT OF CORRUPT PRACTICES.

35. No voter who within three months before or during any election shall have been retained, hired, or employed for all or any of the purposes of the election for reward by or on behalf of any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment, shall be entitled to vote

Election agent and canvasser disqualified from voting.

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When corruption by agent unknown to candidate.

at such election, and if he shall so vote, he shall be liable upon conviction to a penalty not exceeding fifty pounds, and upon non-payment to imprisonment for any period not exceeding six months.

36. Where it is found by the Court upon an election petition that corrupt practices have been committed by any agent of a candidate for the purpose of procuring the election of such candidate, without the knowledge or consent of such candidate, the election of such candidate if he has been elected, shall be void, and a fresh election shall thereupon be held.

Penalties incurred by unauthorized agents.

37. Any person who shall represent himself to be or professes to be authorized to act as the agent of any candidate for the purposes of his election without the express written authority of such candidate, or in the case of sub-agents without the written authority of some agent authorized as aforesaid, shall upon conviction be liable to a penalty not exceeding one hundred pounds and in default to imprisonment with or without hard labour for any period not exceeding six months, or to both such penalty and such imprisonment.

Penalties incurred by candidates cognizant of corruption.

38. Where it is found by the Court upon an election petition under this Act, that corrupt practices have been committed by or with the knowledge and consent of any candidate, the election of such candidate, if he has been elected, shall be void, and a fresh election shall thereupon be held, and such candidate shall be incapable of being elected to or of sitting in either House of Parliament during the five years next after the date of his so being found guilty; and he shall further be incapable during the said period of five years

- (1) Of being registered as a voter and voting at any election for members of Parliament in this Colony; and
- (2) Of holding any Divisional Council or Municipal Office; and
- (3) Of holding any judicial office and of being appointed and of acting as a Justice of the Peace.

Penalties for persons other than candidates guilty of corruption.

39. Any person other than a candidate found guilty of corrupt practices at an election by any competent Court shall during the five years next after the time at which he is so found guilty, be incapable of being elected to and sitting in Parliament, and also during the said period of five years

- (1) Of being registered as a voter and of voting at any election for members of Parliament in this Colony; and
- (2) Of holding any Divisional Council or Municipal Office; and
- (3) Of holding any Judicial Office and of being appointed and of acting as a Justice of the Peace.

Penalties for perjury under this Act.

40. If at any time after any person has become disqualified as aforesaid by virtue of this Act, the witnesses or any of them on whose testimony such person shall have so become disqualified shall upon the prosecution of such person be convicted of perjury

in respect of such testimony, it shall be lawful for such person to move the Court to which the petition was presented, to order, and the said Court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

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41. Any person found guilty of corrupt practices as aforesaid, or any candidate whose election has been declared void as aforesaid by any Circuit Court, may appeal from the decision of such Circuit Court to the Court of Appeal of the Cape of Good Hope, and such Court of Appeal shall affirm, reverse, or alter the decision of such Circuit Court as justice may require, provided such appeal shall be noted, and prosecuted within the time and according to the manner of proceeding in appeals from Circuit Courts.

Power of appeal.

MISCELLANEOUS.

42. No election or return to Parliament shall hereafter be questioned except in accordance with the provisions of this Act.

Elections only to be questioned under this Act.

43. On the trial of a petition under this Act complaining of an undue election or return, and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election.

When seat claimed for another person than the respondent.

44. This Act may be cited for all purposes as "The Parliamentary Elections Act, 1883."

Short title.

SCHEDULE.

LAWS REPEALED.

Date.	Title.	Extent of Repeal.
3rd April, 1852.	Ordinance (enacted by His Excellency the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof) for constituting a Parliament for the said Colony.	Sections Sixty-six, Sixty-seven and Sixty-eight, so much of the Section Sixty-five as relates to the mode of procedure upon a Petition against a Member of the Legislative Council for want of qualification, and so much of Section Seventy-three as may be repugnant to or inconsistent with this Act.

No. 1—1854.]

[Sept. 19, 1854.

## ACT

## (1) To Secure Freedom of Speech and Debates, or Proceedings in Parliament, and to give Summary Protection to Persons employed in the Publication of Parliamentary Papers.

Preamble.

Freedom of speech and debates, or proceedings in Parliament not to be questioned out of Parliament.

Mode of proceeding in cases in which suits at law are instituted in regard to papers published by authority of either House of Parliament

WHEREAS it is essential to the due and effectual exercise and discharge of the functions and duties of Parliament, and to the promotion of wise legislation, that the freedom of speech and debates, or proceedings in Parliament, should not be impeached or questioned in any Court or place out of Parliament, and that no obstructions or impediments should exist to the publication of such reports, papers, votes, or proceedings of either House of Parliament as such House of Parliament may deem fit or necessary to be published: And whereas it is fit that such freedom should be secured by law, and that all such obstructions or impediments, should any arise, may be summarily removed: Be it therefore enacted by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly, that there shall be freedom of speech and debates, or proceedings in Parliament, and that such freedom of speech and debates, or proceedings in Parliament, shall not be liable to be impeached or questioned in any Court or place out of Parliament.

2. And be it enacted, that it shall and may be lawful for any person or persons who may be a defendant or defendants in any civil or criminal proceeding, commenced or prosecuted in any manner soever, for or in respect of the publication of any report, paper, votes, or proceedings, by such person or persons, by or under the authority of either House of Parliament, to bring before the Court in which such proceeding shall be so commenced or prosecuted, or before any judge thereof (should the proceedings be in the Supreme or any Circuit Court), first giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor in such proceeding, a certificate under the hand of the President of the Legislative Council for the time being, or of the Clerk of the Legislative Council, or of the Speaker of the House of Assembly, or of the Clerk of the same house, stating that the report, paper, votes, or proceedings, as the case may be, in respect whereof such civil or criminal proceeding shall have been commenced or prosecuted, was or were published by such person or persons, or by his or their servant or servants, by order or under the authority of the Legislative Council, or the House of Assembly, as the case may be, together with an affidavit verifying such certificate; and such Court or Judge shall thereupon immediately stay any such civil or

<sup>1</sup> See also Act 13 of 1883, *infra*.

criminal proceeding, and the same and every writ or process issued thereon shall be, and the same shall be deemed and taken to be, finally put an end to, determined, and superseded, by virtue of this Act.

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3. Provided always, and it is hereby expressly declared and enacted, that nothing herein contained shall be deemed, or taken, or held, or construed, directly or indirectly, by implication or otherwise, to affect the rights and privileges of Parliament, in any manner whatsoever.

This act not to affect the rights and privileges of Parliament.

4. That in construing this Act, the word "Governor" shall mean any officer for the time being lawfully administering the Government of this Colony.

Interpretation clause.

No. 13—1883.]

[September 26, 1883.

ACT

To Define and Declare the Powers and Privileges of Parliament.

WHEREAS it is expedient more clearly to define and declare the powers and privileges of Parliament in certain respects: 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 Schedule hereto, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed.

Schedule of laws repealed.

2. In the interpretation of this Act

(1) The term "President" shall mean and be taken to apply to the officer or member for the time being presiding over the Legislative Council.

Interpretation clause.

(2) The term "Speaker" shall mean and be taken to apply to the officer or member for the time being presiding over and duly elected as such by the House of Assembly.

(3) The term "Clerk" shall be taken to mean the officer holding such appointment under the authority or appointment of the said Legislative Council or the President thereof:— or of the House of Assembly or the Speaker thereof.

(4) The term "House" or "Houses of Parliament" shall mean the Legislative Council and House of Assembly, or either of them.

3. Each House of Parliament and any committee of either House duly authorized by the House to send for persons and papers, may order any person to attend before the House or before such committee as the case may be, and also to produce to such

Power to order the attendance of witnesses.

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House or committee any paper, book, record or document in the possession or power of such persons.

Such attendance to be notified by summons.

4. Any such order to attend or to produce documents before either House shall be notified to the person required to attend or to produce documents by a summons under the hand of the President or Speaker as the case may be; and any such order to attend or to produce documents before any such committee, shall be notified to the person required to attend or to produce documents by a summons under the hand of the Clerk of the House, authorized by the chairman of the committee; and in every such summons shall be stated the time when and place where the person summoned is to attend, and the particular documents which he is required to produce, and such summons shall be served on the person mentioned therein either by delivering to him a copy of such summons or by leaving a copy of the same with some adult person at his usual or last known place of abode in the Colony; and there shall be paid or tendered to the person so summoned, if he shall not reside within five miles of the Houses of Parliament, a reasonable sum for his expenses of attendance according to any standing rule or order in that behalf.

Payment of reasonable expenses.

Attendance of members before either House.

5. A member of Parliament who shall be summoned to attend before the House, or a committee of the House, of which he is not a member, shall not be at liberty so to attend without the consent of the House of which he is a member, and shall not be bound so to attend without an order of the House of which he is a member.

Objections to answer questions or to produce papers to be reported to and decided by the House.

6. If any person ordered to attend or produce any paper, book, record or document to either House or to any committee of either House shall refuse to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the President or Speaker or the chairman of the committee as the case may be, shall report such refusal with the reason thereof, and the House shall thereupon excuse the answering of such question or the production of such paper, book, record or document, or order the answering or production thereof as the circumstances of the case may require.

Houses empowered to punish for certain contempts.

7. Each House of Parliament may summarily punish for contempt to the extent and according to the standing orders thereof by fine and fees or either; and, in case such fine and fees or either so imposed shall not be immediately paid, by imprisonment in the custody of its own officer in such place as the House may direct until payment shall be made, or for a period not later than until the end of the then existing Session, for or in respect of any of the offences hereinafter enumerated whether committed by a member of the House or by any other person:—

- (1) Disobedience to any order of either House or of any committee duly authorized in that behalf to attend or to produce papers, books, records, or documents before the

House or such committee unless excused by the House in manner aforesaid.

- (2) Refusing to be examined before or to answer any lawful and relevant question put by the House or any such committee unless excused by the House in manner aforesaid.
- (3) Assaulting, obstructing or insulting any member in coming to or going from the House or on account of his behaviour in Parliament or endeavouring to compel any member by force, insult, or menace to declare himself in favour of or against any proposition or matter depending or expected to be brought before either House.
- (4) Sending to a member any threatening letter on account of his behaviour in Parliament.
- (5) Sending a challenge to fight to a member.
- (6) Offering any bribe to or attempting to bribe a member.
- (7) Creating or joining in any disturbance in the House or in the vicinity of the House while the same is sitting, whereby the proceedings of such House may be interrupted.
- (8) Any of the contempts from time to time set forth and declared to be such in any standing order of either House.

8. For the purpose of punishing any of the contempts aforesaid, the President or Speaker as the case may be, is hereby empowered upon the resolution in that behalf of the House to issue his warrant under his hand, for the apprehension and imprisonment as aforesaid, of any person adjudged by the House guilty of any such contempt, if such fine and fees or either shall not have been paid as aforesaid.

President or Speaker to issue warrant.

9. Any person creating or joining in any disturbances in the House during its actual sitting, may be apprehended without warrant on the verbal order of the President or Speaker as the case may be, and may be kept in the custody of the officer of the House until a warrant can be made out for the imprisonment of such person in manner aforesaid.

Persons disturbing proceedings of House may be arrested without warrant.

10. Every such warrant shall contain a statement that the person therein mentioned has been adjudged guilty of contempt by the House, the President or Speaker whereof shall have issued the same, specifying the nature of such contempt; and every warrant shall be sufficient from which it can be reasonably collected that the person mentioned therein has been adjudged guilty of any of the contempts aforesaid, and no particular form shall be necessary to be observed in such warrants.

Form of warrant.

11. The Sheriff and his officers and all constables and other persons are hereby required to assist in the apprehension and detention of any person in pursuance of the verbal order as aforesaid of the President or Speaker as the case may be, and also to

Sheriff, constables, and others to assist in execution of warrant or verbal order.

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be aiding and assisting in the execution of any such warrant as aforesaid, and where any such warrant directs that the person mentioned therein shall be imprisoned in any gaol, the keeper thereof is hereby required to receive such person into his custody in the said gaol, and there to imprison him according to the tenor of the warrant.

Gaoler to imprison

Doors may be broken open in executing warrant.

12. It shall be lawful for any person charged with or assisting in the execution of any warrant under the hands of the President or Speaker, issued under the authority of this Act, to break open in the day time all doors of places where the person for whose apprehension such warrant was issued is concealed.

Wilfully false answers how punished.

13. If any person before either House, or before any committee of either House, shall after being duly cautioned as to his liability to punishment under this section give a wilfully and corruptly false answer to any lawful and relevant question material to this subject of inquiry which shall be put to him during the course of any examination, he shall be guilty of an offence, and shall be liable on conviction to be punished in the same manner as though he had been convicted of wilful and corrupt perjury.

Rules and orders to be framed subject to the Governor's approval.

14. The rules and orders from time to time required in the execution of, or to give effect to, the provisions of this Act shall be framed and adopted by either House; but the same shall not become binding and of force until approved by the Governor, under and subject to the provisions of the seventy-eighth section of the Constitution Ordinance.

Members exempt from service as jurors or witnesses, and from civil suits in any Courts, other than the Supreme Court, while attending in Parliament.

15. No member of Parliament in actual attendance on either House shall, during such attendance, be required to serve on any jury, or to attend as a witness in any Court, other than the Supreme Court, in any civil suit or proceeding; and no such suit or proceeding in which such member shall be a party defendant shall be brought to trial in any Court other than the Supreme Court during such attendance. The certificate of the President of the Legislative Council or the Speaker of the House of Assembly, as the case may be, shall be deemed sufficient proof that any such member is in such attendance as aforesaid.

And whereas the House of Assembly on the report of its Public Accounts Committee resolved to exercise the sole supervision over the necessary expenditure incidental to its own internal economy: Be it enacted:

Provisions for final audit by the Speaker.

16. The provisions of the Audit Act of 1875 (except as herein-after mentioned), shall not apply or extend to the audit or control of the accounts and appropriations of the House of Assembly; and the audit by the Speaker of the accounts of all payments and receipts in reference to all matters affecting the service of the House of Assembly shall be taken to be in all respects good and effectual, anything contained in any Act to the contrary notwithstanding: Provided that the Public Accounts Committee of the House of Assembly shall exercise in regard thereto such powers

and give such directions as may from time to time be authorized by any order of the House of Assembly.

No. 13—1883.

17. After the passing of the Annual Appropriation Act, the notification by the Controller and Auditor-General, and the authorization and approval by him of requisitions for expenditure required to be given and issued to the several Ministers respectively, as set forth in the seventh section of the Audit Act of 1875, shall, for the purposes of this Act, apply to and include the Speaker, precisely as if he had been named therein.

Speaker's Requisition for Expenditure authorized.

18. For the purposes of this Act, the person who shall fill the office of Speaker of the House of Assembly at the time of any Dissolution of Parliament shall be deemed to be the Speaker until a Speaker shall be chosen by the new Parliament.

Speaker to act not withstanding Dissolution of Parliament

19. Nothing in this Act contained shall be deemed or taken to affect or abridge the rights and privileges of Parliament in any manner whatever.

This Act not to affect the rights and privileges of Parliament.

20. This Act may be cited for all purposes as the "Powers and Privileges of Parliament Act, 1883."

Short title.

SCHEDULE OF LAWS REPEALED.

No. and Year.	Title.	Extent of Repeal.
1. 3rd April, 1852.	The Constitution Ordinance.	The proviso to the 78th Section and so much of said Section as may be inconsistent with this Act.
2. No. 30, 1875.	Audit Act.	So much as may be repugnant to or inconsistent with this Act.

No. 5—1883.]

[September 6, 1883.

ACT

To interpret and shorten the language of Acts of Parliament.

WHEREAS it is desirable to repeal "The Acts of Parliament Interpretation Act, 1859," and to re-enact the substance thereof, with amendments and additions: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent

Preamble.



No. 5—1883.

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

Repeal of former Act.

1. "The Acts of Parliament Interpretation Act, 1859," shall be and the same is hereby repealed.

All Acts to be interpreted according to definitions in this Act.

2. In the interpretation of all Acts heretofore passed, or hereafter to be passed by the Parliament of the Cape of Good Hope (including this present Act), and of all bye-laws, rules, regulations, or orders made under the authority of any law, the definitions and other provisions in this Act contained shall be adopted and applied, unless there shall be something in the language or context of any such Act, bye-law, rule, regulation, or order, repugnant to the said definitions and provisions.

Definitions of terms

3. The terms hereinafter set forth shall be read and taken to mean as follows :—

"Her Majesty" or "The Queen" or any like expression, shall include the heirs and successors of her present Majesty the Queen.

"Governor" shall mean the officer for the time being administering the Government of the Colony: provided that when any act, matter, or thing is by any law directed or required to be done by the Governor it shall mean the Governor with the advice of the Executive Council.

"Order in Council" shall mean any order made by the Governor with the advice of the Executive Council.

"Christian Name," any name prefixed to the surname, whether received at Christian baptism or not.

"Constitution Ordinance," the Ordinance enacted on the third day of April, 1852, by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for constituting a Parliament for the said Colony.

"Charter of Justice," the Royal Letters Patent of His late Majesty King William the Fourth, dated the fourth day of May, 1832, for the better and more effectual administration of justice.

"District," the area subject to the jurisdiction of the Court of any Resident Magistrate.

"Division" or "Fiscal Division," the area under the administration of a Civil Commissioner.

"Month," a calendar month.

"Gazette," the *Government Gazette*.

"Affidavit," "Oath," and "Swear," shall include affirmation, declaration, affirming and declaring in the case of persons by any law, now or hereafter to be in force, allowed to declare or affirm instead of swearing.

"Solemn Declaration," a declaration made under and by virtue of the provisions of the Ordinance No. 6, 1845.

“Law” shall mean and include any  
 Act of Parliament,  
 Government Advertisement or Notice,  
 Ordinance,  
 Placaat,  
 Proclamation,  
 Regulation or Bye-law made under the authority of any  
 Law,  
 Rule of Court,  
 Or other enactment having the force of law.

4. When any act, matter, or thing, is by any law directed or required to be done by the Governor, the notification that such act, matter, or thing has been done may be by Proclamation, under the hand of the Governor, or by order in Council.

Proclamations or Orders in Council.

Any such act, matter, or thing or any power authorized to be exercised by the Governor, may be done and exercised from time to time.

From time to time.

5. When anything is directed to be done “in writing” it may be done partly in writing and partly in printing.

Writing or printing.

6. When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, New Year’s Day, Good Friday, Easter Monday, Ascension Day, Whit Monday, Her Majesty’s birthday, or any other day appointed by Proclamation of the Governor as a solemn fast or day of thanksgiving, in which case the time shall be reckoned exclusively of the first and of every other such day also.

How number of days to be reckoned.

7. When any bye-laws, regulations, rules, or orders are authorized by any law to be made by the Governor, or by any local authority, public body or person, with the approval of the Governor, such bye-laws, regulations, rules, or orders, shall be published in the *Gazette*, and production of a copy of the *Gazette* containing a proclamation or notice of the making or approval thereof (as the case may be) by the Governor, shall be sufficient evidence of such making or approval. The power to make any such bye-laws, regulations, rules, or orders, shall include the power to alter or amend, and to repeal and make others, provided that the powers conferred upon the Governor by any such law be not exceeded.

Copy of *Gazette*, proof of Bye-laws, &c.

8. When the Governor is by any Act authorized to make rules, orders, or regulations for any purpose in such Act stated, copies of such rules, orders, or regulations shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament be then sitting; and if Parliament be not then sitting, within thirty days after the commencement of the next Session.

Rules, &c., made by Governor, to be laid before Parliament.

No. 6—1879.

Acts to take effect from promulgation in *Gazette*.

As to penalties under repealed Acts.

Repeal of repealed Act not to revive former one.

As to reprints of altered or amended Acts.

Designation of public officers.

Singular plural, male and female, &amp;c.

Short title.

9. All Acts of Parliament shall commence and take effect from and after their promulgation in the *Gazette*.

10. The repeal of any law shall not have the effect of extinguishing any penalty, forfeiture, or liability incurred under such law unless the repealing Act shall so expressly provide, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement or recovery of such penalty, forfeiture, or liability.

11. The repeal of any law whereby any former law was repealed shall not have the effect of reviving such lastmentioned law.

12. When in any Act sections or words in any prior Act are respectively directed to be omitted, or added, or substituted for other sections or words, in all copies of such last-mentioned Act which shall subsequently be printed the sections or words respectively directed to be omitted shall be omitted, those directed to be added shall be added, and those directed to be substituted for others shall be so substituted, as the case may be.

13. When and as often as any public officer is described by his name of office the person designated shall be taken to be the officer for the time being or the person for the time being acting as such officer.

14. Words of the singular number shall include the plural number, and words of the plural number shall include the singular number, and words of the masculine gender shall include females as well as males.

15. This Act may be cited for all purposes as "The Interpretation Act, 1883."

No. 6—1879.]

[Sept. 8, 1879.]

## ACT

To make Provision for the better Payment of the Expenses of certain Members of the Legislative Council and the House of Assembly of the Colony of the Cape of Good Hope.

Preamble.

WHEREAS it is expedient to make provision for the better payment of the expenses of certain members of the Legislative Council and the House of Assembly of this Colony: 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 therefore, as follows:—

Members of Parliament may be paid for ninety days attendance.

1. In lieu and instead of the words "fifty days" mentioned in the first proviso of the ninetieth section of the Constitution Ordinance, the words "ninety days" shall be substituted, and

payment shall be made in accordance therewith for the present and subsequent sessions.

No. 1—1882.

2. This Act may be cited as the "Payment of Members' Expenses Act, 1879."

Short title.

No. 1—1882.]

[May 25, 1882.

ACT

To Amend the Constitution Ordinance.

WHEREAS it is expedient to amend the Ordinance enacted on the third day of April, 1852, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, intituled "An Ordinance for Constituting a Parliament for the said 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 eighty-ninth section of the said Ordinance as is repugnant to or inconsistent with the provisions of this Act shall be and the same is hereby repealed.

Section 89 of Constitution Ordinance amended.

2. From and after the passing of this Act, all debates and discussions in the Legislative Council and House of Assembly may be conducted either in English or Dutch, but in no other language.

Dutch language may be used in Parliament.

3. This Act may be cited as "The Constitution Ordinance Amendment Act, 1882."

Short title.

No. 36—1882.]

[June 29, 1882.

ACT

To Remove Doubts as to the legality of the Payment of an Annual Allowance or Salary to the Chief Justice of the Colony of the Cape of Good Hope as President of the Legislative Council.

WHEREAS doubts may arise as to the legality of the payment of an allowance or salary to the Chief Justice as President of the Legislative Council, and it is expedient that such doubts should be removed: 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. Nothing in the Charter of Justice contained shall be construed so as to prevent the payment to the Chief Justice of the Colony of the Cape of Good Hope, so long as the said Chief Justice shall continue to be the President of the said Council, of such annual allowance or salary for or in respect of his duties as President of the Legislative Council as Parliament may from time to time direct.

Chief Justice empowered to receive salary as President of Legislative Council.

No. 35—1885.]

[August 11, 1885.

## ACT

To Authorize certain Public Bodies to introduce into and promote or to oppose in Parliament certain Private Bills, and to legalise expenses incurred by such Bodies in respect of the introduction and promotion of or the opposition to such Private Bills.

Preamble.

WHEREAS it is expedient and desirable to authorize public bodies empowered to levy rates to introduce into Parliament and there promote private bills for the furtherance of the interests of the ratepayers represented by such public bodies, and to oppose in Parliament private bills inconsistent or conflicting with those interests: and whereas it is furthermore expedient to legalise the necessary expenses incurred by any such body in respect of the introduction and promotion of or opposition to any such private bill: 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:—

Definition of certain terms.

1. "Public Body" shall, for the purposes of this Act, mean any public body empowered to levy rates.

"Local newspaper" shall mean any newspaper circulating in the neighbourhood wherein all or most of the persons reside who are liable to pay rates to such public body.

"Ratepayer" shall mean every person liable to the payment of rates to or qualified to vote in the election of members of such public body.

Public meeting to be convened to consider introducing or opposing private bills.

2. Whenever any public body shall deem it expedient and necessary to introduce into Parliament and there promote any private bill in furtherance of, or to oppose in Parliament any private bill inconsistent or conflicting with, the interests of the general body of ratepayers upon whom such public body is by law empowered to levy rates, it shall be lawful for such public body to summon and convene a public meeting of such ratepayers in manner hereinafter provided, for the purpose of laying before such meeting resolutions in favour of the introduction and promotion of or in favour of opposition to such private bill, as the case may be.

Public meeting, how convened.

3. Every such public meeting shall be summoned and convened to assemble at some convenient time and place and upon a day to be stated in a notice of such meeting, and such notice shall be published not less than four times in any one or more local newspapers, or in default of any such local newspapers in every issue of the *Gazette* during a period of not less than two weeks before the said day, and shall refer to this Act and shall contain as nearly as may be the words of the resolution or resolutions to be proposed for the consideration of the said meeting, and also a clear general statement of the object and purpose of such meeting.

Publication of notice required.

4. At the time and place and on the day specified in such notice the said meeting shall assemble, and a chairman shall be forthwith elected by a vote of the majority of ratepayers present and voting at such meeting by show of hands, but thereafter the said meeting may by resolution of the majority of ratepayers present and voting be adjourned, for any period not longer than one week, to reassemble at such time and place and on such day as by such resolution shall be determined.

No. 35—1885.  
Meeting assembled elects chairman, but may adjourn.

5. At such meeting, or at such adjourned meeting, as the case may be, the resolution or resolutions published in the aforesaid notice shall be submitted to the ratepayers thereat assembled, and if, by a vote of a majority of two-thirds of the ratepayers then present and voting, any such resolution to introduce and promote or to oppose any private bill shall be carried, the public body which has convened the meeting shall be deemed and taken for all legal intents and purposes to be authorized to introduce and promote or to oppose such private bill.

Resolution carried by two-thirds of meeting to be authority to public body to introduce or oppose bill.

6. The voting at such meeting on the resolutions published in such notice as aforesaid shall in the first place be by show of hands to be declared by the chairman, and the declaration of the chairman shall be final and conclusive, unless not less than twenty ratepayers present shall demand that the voting shall be by signature, and whenever any such demand shall be made the voting on the resolution in question shall be determined by signatures to be affixed by each ratepayer signing his name in full upon one of certain lists to be ready for the purpose at the said meeting, and such lists shall be two in number for each resolution, and the signatures to the one list shall be in affirmation and to the other in negation of the resolution in question.

Voting by show of hands, or upon demand by signature of list.

7. The said lists shall, at a place or places to be notified from the chair at such meeting, lie open on a day to be named by the chairman, not being less than seven nor more than fourteen days from the date of meeting, and between the hours of 10 a.m. and 4 p.m. on such day, and may be signed by any ratepayer during the said period and hours.

Lists to lie open for signature by ratepayers on a day to be named by chairman.

8. Every such list shall, after the termination of such period, be scrutinised by the chairman elected by the meeting, together with such assistants as such public body may appoint, and the result of the voting shall be declared by the chairman by advertisement to be published at least twice in one or more local newspapers, or in the *Government Gazette*, at the expense of the ordinary revenue of the said public body.

Scrutiny of lists by chairman; result to be published at expense of public body.

9. Whenever any such published resolution shall be carried in manner aforesaid being not less than two-thirds of the total number of ratepayers voting, in favour of the introduction and promotion, or in favour of opposition to any such private bill, all necessary costs, charges and expenses by such public body incurred in and about the convening of such meeting and the

When resolution passed costs, &c., of introducing or opposing private bill constitute debt of public body, payable out of rates.

No. 2—1873.

introduction and promotion of or opposition to such private bill, shall be deemed and taken to constitute a just debt and liability against such public body within the meaning of the "Public Bodies' Debts Act, 1867," and shall be payable out of the ordinary revenue derived by such public body from rates levied on the ratepayers, anything to the contrary contained in any law of the Colony notwithstanding.

Provisions of Act to apply to private bills introduced or opposed during present session.

10. If at any public meeting hereafter summoned, convened and assembled in manner and by such majority as is in this Act provided, a resolution shall be passed in manner hereinbefore set forth, ratifying the action and conduct of any public body in introducing and promoting or in opposing any private bill during the present session of Parliament, such resolution shall for all legal intents and purposes be deemed and taken to authorize such introduction and promotion of or such opposition to such private bill, and to render legal all necessary costs, charges, and expenses incurred in respect of such introduction and promotion or opposition, as if this Act had been passed and such resolution had been arrived at under the provisions of this Act, before the said introduction and promotion or opposition had been undertaken by such public body.

Act not to apply to municipalities under Act of Incorporation.  
Short title.

11. Nothing in this Act contained shall apply to any Municipality acting under an Act of Incorporation.

12. This Act may be cited as the "Public Bodies' Private Bill Act, 1885."

No. 2—1873.]

[June 26, 1873.]

## ACT

To Protect and Regulate the Rights of Authors in respect of their Works. (1)

Preamble.

WHEREAS it is expedient to protect the rights of authors in this Colony in respect of their works and to afford encouragement to the production of literary works of lasting benefit to the 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:—

Duration of copyright of books published during the author's lifetime.

1. The copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of five years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided, always, that if

<sup>1</sup> As to importation of Foreign Reprints of Books published in United Kingdom. See Act 4, 1854 (Customs). For copyright in certain Telegraphic Messages see under "Telegraphs," Act 8 of 1880.

the said term of five years shall expire before the end of thirty years from the first publication of such book, the copyright shall in that case endure for such period of thirty years.

No. 2—1873.

2. The copyright in every book which shall be published after the death of its author shall endure for the term of thirty years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published and his assigns.

Of posthumous work.

3. A registry book wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books and assignments thereof, shall be kept by the Registrar of Deeds, in his office in Cape Town, and shall at all convenient times be open to the inspection of any person on payment of one shilling for every entry which shall be searched for or inspected in the said book of registry; and the Registrar of Deeds shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified shall be received in evidence in all courts, and shall be *prima facie* proof of the proprietorship or assignment of copyright as therein expressed, but subject to be rebutted by other evidence.

Regulations for registry.

4. It shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book aforesaid of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, upon payment to the Registrar of Deeds of the sum of five shillings; and it shall be lawful for such registered proprietor to assign his interest or any portion of his interest therein, by making entry in the said registry book of such assignment and of the name and place of abode of the assignee thereof, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed or other instrument.

Mode of registering and assigning copyright.

5. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said registry book, it shall be lawful for such person to apply by motion to the Supreme Court in term time, or to any judge of the Supreme Court in vacation, for an order that such entry may be expunged or varied, and thereupon such Court or Judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or Judge shall seem just; and the Registrar of Deeds shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same accordingly.

Objections to entries in registry to be decided by Supreme Court.

CC



No. 2—1873.

Persons infringing  
copyright liable to  
damages.

6. If any person shall print or cause to be printed any book in which there shall be subsisting copyright without the consent in writing of the proprietor thereof, or shall import for sale from parts beyond the Colony any such book so printed in parts beyond the Colony, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose for sale, or shall have in his possession for sale, any book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to an action for damages at the suit of the proprietor of such copyright.

*see Act 16-1895*

Books unlawfully  
printed or imported  
to become the prop-  
erty of the proprie-  
tor of copyright.

7. All copies of any book wherein there shall be copyright and of which an entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to demand delivery up to him of all existing copies, and to sue for and recover the same, or damages for the detention or conversion thereof, in an action against the party who shall detain the same.

Copy of every book  
published in colony  
to be presented to  
South African and  
Graham's Town Li-  
braries.

8. A printed copy of the whole of every book which shall be published in this Colony after the passing of this Act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, shall within three months after such book shall first be sold, published, or offered for sale within this Colony, be delivered gratis on behalf of the publisher thereof to the librarian of the South African Public Library, and also to the librarian of the Graham's Town Public Library; and if any publisher of any such book shall neglect to deliver the same, pursuant to this Act, he shall for every such default forfeit a sum of five pounds sterling, to be recovered by such librarians respectively for and on behalf of the said libraries.

Penalty for default

Interpretation of  
terms.

9. In the construction of this Act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter press, sheet of music, and map, chart, or plan separately published; the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any book; and the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book and whether acquired by sale, donation, legacy, or by operation of law or otherwise.

Short title

10. This Act may be cited for all purposes as the "Copyright Act of 1873."

CRIMINAL PROCEDURE.

1. Ord. 40—1828,	(Criminal Procedure).	10. Act 9—1867,	(Trial for Theft, &c.)
2. „ 73—1830,	( do. do. ).	11. „ 7—1873,	(Amending Ord. 73 of 1830).
3. Charter of Justice	(§§ 34, 39, 40 and 45).	12. „ 17—1874,	(Criminal Law amended).
4. Ord. 2—1837,	(Crimes against Life and Property).	13. „ 5—1879,	(§§ 22—30) (Appeals in Criminal Cases).
5. „ 7—1837,	(When actions deemed Pending).	14. „ 40—1882,	(§ 16) ( do. ).
6. „ 8—1852,	(Prosecution of crimes)	15. „ 13—1886,	(Criminal Law amended).
7. Act 3—1861,	(Criminal Law amended).	16. „ 17—1886,	(§ 5) (Appeals in Criminal Cases).
8. „ 15—1864,	( do. ).		
9. „ 7—1867,	( do. ).		

No. 40.—Sd. Richard Bourke.] [January 25, 1828.

Ordinance for Regulating the Manner of Proceeding in Criminal Cases in this Colony (1).

WHEREAS it is necessary and expedient to make certain changes and alterations in the mode of proceeding in criminal cases, and to declare the laws as at present established by His Majesty's Royal Charter, bearing date the 24th day of August, at Westminster, in the eighth year of His Majesty's reign: Be it therefore enacted and declared, by His Honour the Lieutenant-Governor in Council, that from and after the passing of this Ordinance, the manner of proceeding in criminal cases in this Colony shall be according to the rules and regulations hereinafter mentioned and set forth.

Preamble.

OF JURISDICTION.

1. All crimes and all offences against the law (for the commission of which any penalty or punishment is by law provided) committed by any person in this Colony, or its dependencies, are subject to the jurisdiction of the Supreme Court of the Colony of the Cape of Good Hope (2).

All offences in the colony subject to the jurisdiction of the supreme court.

2. All crimes and offences against the law (for the commission of which any penalty or punishment is by law provided), committed by any person within any one of the districts into which this Colony has been or shall be divided by the Governor, are also subject to the jurisdiction of the Circuit Court of such district, or of any such Circuit Court held within any other district of the Colony, to which the trial of such crime or offence shall be permitted or allowed to be removed by the competent Court.

All offences in any circuit districts subject also to the jurisdiction of the circuit court for such district.

<sup>1</sup> Note.—Ord. 8 of 1852 prescribes the procedure in districts where there is no Clerk of the Peace. § 5 Ord. 73 repeals so much of this Ordinance as requires the Superintendent of Police or his Deputy to take preparatory examinations or to prosecute at the public instance and so much as requires Res. Magistrates to transmit prep. examinations to the Supt. of Police or his Deputy. Act 11 of 1860 abolishes the Police Court in Cape Town and the offices of Judge and Supt. of Police.

<sup>2</sup> See § 30 Charter of Justice (Administration of Justice).

Ord. 40—1828.

All offences not punishable by death, transportation, or banishment committed within local limits of an inferior court, subject to the jurisdiction of such inferior court.

Power of review in the supreme court of all proceedings of inferior courts.

Grounds of review;—

Incompetency of the court in respect of jurisdiction.

Incompetency in respect of interest of the judge or his near kinsman.

Malice or corruption.

Gross irregularity. Admission of illegal evidence.

Attorney-General vested with right of prosecuting all crimes,—

In person in the supreme court,—

In circuit and district courts through the medium of clerks of the peace.

3. (1) All crimes and offences against the law (for the commission of which any penalty or punishment is by law provided), not punishable by death, transportation, or banishment, committed by any person within the local limits within which the jurisdiction of any inferior Court erected or to be erected by the Governor of this Colony is appointed by the said Governor to be exercised, are also subject to the jurisdiction of such inferior Court.

4. (2) The Supreme Court has full power, jurisdiction, and authority, to review the proceedings of all inferior Courts of Justice within the Colony; and, if necessary, to set aside or correct the same.

5. The grounds upon which it is competent to bring the proceedings of the inferior Courts under the review of the Supreme Court, are:

First. Incompetency of the Court in respect of the cause, including all excess of jurisdiction, whether committed by the judge in trying for an offence, which in respect of its nature, or magnitude, or of its having been committed out of his jurisdiction, or of its having been already tried, or forming the subject of a pending trial in any other competent Court, was not subject to his jurisdiction, or in awarding a greater punishment, than by the constitution of his Court he had power to award.

Second. Incompetency of the Court in respect of the judge himself, as that either the judge himself, or his near kinsman had an interest in the cause.

Third. Malice or corruption on the part of the judge.

Fourth. Gross irregularity in the proceedings.

Fifth. The admission of illegal or incompetent evidence.<sup>(3)</sup>

#### OF PROSECUTORS AND THEIR TITLE.

6. (4) The Attorney-General of the Cape of Good Hope is vested with the right, and entrusted with the duty, of prosecuting in the name and on the behalf of the King, all crimes and offences committed in this Colony.

7. This right of prosecution is exercised by the Attorney-General, in the Supreme Court, in person—in the Circuit and District Courts, through the medium of the Clerks of the Peace for the respective districts in which such Courts shall be held; and in the Police Court in Cape Town, through the medium of the Superintendent of Police, or his deputy, unless any other person shall have been specially appointed by the said Attorney-General to

<sup>1</sup> See Act 20 of 1856, § 42 (Resident Magistrates) and Act 10 of 1876 (Justices of the Peace).

<sup>2</sup> See Ch. of Justice, § 32, Act 21 of 1876, § 4, §§ 22 *et seq.* Act 5, 1879, § 16, Act 40, 1882, and §§ 1 and 5, Act 17, 1886 (Administration of Justice).

<sup>3</sup> See also Ord. 73, § 3, *infra*, and § 54 of this Ord.

<sup>4</sup> As to powers of Solicitor-General, see § 36, Act 21 of 1864 (Administration of Justice), and § 18, Act 40 of 1882 (*ibid.*). As to powers of Crown Prosecutor, see § 19, Act 39 of 1877 (*ibid.*). As to appointment of Acting Attorney-General see Act 23, 1884.

appear and act for him in any particular case, before any or either of the said superior or inferior Courts. (1)

Ord. 40—1828.

8. This right and power of prosecution in the Attorney-General, is absolutely under his own management and control (2).

Power of prosecution absolutely in the Attorney-General.

9. (3) The Attorney-General has the power at any time before conviction, of stopping all prosecutions commenced by him, or by the Superintendent of Police, or by the Clerks of the Peace, at the public instance: but in the event of the defendant having been previously arraigned upon any charge, he shall be entitled to a verdict of acquittal, in respect of such charge.

Attorney-General's power of stopping prosecutions.

10. The Attorney-General has the power (except in the special case hereinafter excepted) of ordering the liberation of any person committed to gaol for further examination, or for trial; for which liberation, a writing, setting forth that the Attorney-General sees no grounds for prosecuting such person, and subscribed by him, shall be a sufficient warrant.

Power of ordering liberation of persons committed for further examination.

11. (4) Where in virtue of the right of prosecution hereinafter given to private parties, any private party intends to prosecute any person, for whose liberation from gaol any warrant of the nature above mentioned may have been issued by the Attorney-General, it shall be competent for such private parties, upon entering into a recognizance for the prosecution of the said defendant in the form hereinafter set forth, to apply to the Supreme Court, or Circuit Court; or in case such Courts shall not be then actually sitting, to the Chief Justice of the Colony, or to any of the judges of the Supreme Court, for a warrant for the further detention in gaol of such person, (or in case the liberation has already taken place, for his recommittal to gaol for trial) upon which application, the said Courts, and the said Chief Justice, and other judges, shall make such order, as to them shall seem proper.

Proceedings by private prosecutor on such liberation by the Attorney-General.

12. Neither conviction nor acquittal following on the prosecution of the Attorney-General is any bar to a civil action for damages, at the instance of any person who may have suffered any injury from the commission of any alleged crime or offence.

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

13. In all cases, where the public prosecutor declines to prosecute for any alleged crime or offence, it is competent for any private party, who alleges that he has suffered injury by any such alleged crime or offence, to prosecute in any Court, competent to the trial of the same, the person alleged to have committed such crime or offence.

Private prosecution on refusal of the Attorney-General to prosecute.

14. (5) In order that no prosecution, at the instance of a

Private prosecutor to produce certificate of Attorney-General that he declines to prosecute at the public instance, before obtaining process of the supreme or circuit court,—

<sup>1</sup> The Police Court in Cape Town and the office of Judge and Superintendent of Police were abolished by Act 11 of 1860. For procedure in districts where there are no Clerks of the Peace see Ord. 8 of 1852, *infra*.

<sup>2</sup> See § 4 Ord. 73, *infra*.

<sup>3</sup> See § 81, Sched. B Act 20 of 1856 (Resident Magistrates) and § 3 Act 17 of 1874, *infra*.

<sup>4</sup> See § 5 Act 15 of 1864, *infra*; and § 20 of this Ord.

<sup>5</sup> See §§ 6, 7 and 8 Ord. 73, *infra*; § 10, Ord. 8 of 1852, *infra*; § 64 Sched. B, Act 20 of 1856 (Resident Magistrates); § 5, Act 15, 1864, *infra*.

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private party, may take place, until the public prosecutor shall have exercised his discretion, whether he will prosecute the offender at the public instance, it shall not be competent for any private party to obtain the process of any Court for summoning any party to answer to any indictment or complaint, unless the said private party shall produce to the officer, authorized by law to issue such warrant, the indictment or complaint, having endorsed thereon where the indictment is to be tried in the Supreme or Circuit Court, a certificate under the hand of, and subscribed by, the Attorney-General, that he has seen the indictment, and declines to prosecute at the public instance for the offence therein set forth; and where the indictment or complaint is to be tried in any inferior Court, a certificate under the hand of, and subscribed by, the officer who by law is entitled to prosecute at the public instance in such Court, that he has seen the said indictment or complaint, and declines to prosecute at the public instance for the offence therein set forth; and in every case, in which the Attorney-General declines to prosecute, he and the officers, through whom he exercises the right of prosecution in the inferior Courts, shall, at the request of the party intending to prosecute, grant the certificates above mentioned on every indictment submitted to them by such private party.

Or a certificate of the proper officer entitled to prosecute to the like effect before obtaining process of an inferior court.

Private prosecutor must have substantial interest in the issue of the trial.

15. To support a prosecution at the private instance, the private party prosecuting must be able to show some substantial and peculiar interest in the issue of the trial, arising out of some injury, which he individually has suffered by the commission of the alleged crime or offence set forth in the indictment or complaint.

Prosecution by husband.

16. A husband possesses this right of prosecution in respect of crimes and offences committed against his wife.

Prosecution by guardians of minors.

17. The legal guardians of minors possess this right of prosecution in respect of crimes and offences committed against their wards.

Prosecution by wife or children or next of kin.

18. The wife or children, or where there is no wife or child, any of the next of kin, of any deceased person, possess this right of prosecution in respect of any crime by which the death of such person is alleged to have been caused.

Costs of private prosecution.

19. (1) Where a person prosecuted at the instance of a private party is acquitted, the Court, in which the prosecution was brought, may adjudge the prosecutor, to pay to the party prosecuted the whole, or any part, of the expenses, which may have been occasioned to him by the prosecution.

Recognizances to be entered into by private prosecutor.

20. (2) It shall not be competent for any private party to obtain the process of the Supreme Court for summoning any party to answer to any indictment or complaint, unless such private party shall first enter into a recognizance in the sum of twenty pounds sterling, together with two sufficient sureties in ten pounds

<sup>1</sup> See § 9 Ord. 8 of 1852 *infra*; § 74 Sched. B, Act 20 of 1856 (Resident Magistrates).

<sup>2</sup> See § 14 of this Ord. and note thereto.

sterling, each, to be approved of by the officer issuing such process, to prosecute the said indictment or complaint to a conclusion, according to the forms of law at the time, at which the summons requires the defendant to appear.

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21. The right of prosecution for the crime of murder shall not be barred by any lapse of time; but the right of prosecution for any other crime or offence, whether at the instance of the public prosecutor, or of the private party injured, shall be barred by the lapse of twenty years from the time when the crime or offence was committed.

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

#### OF ARREST AND PRELIMINARY EXAMINATION.

22. *The Chief Justice, or any Judge of the Supreme Court, the Judge of the Police Court in Cape Town, any Resident Magistrate, or Justice of the Peace, who has knowledge of any crime or breach of the peace, by seeing it committed, may himself arrest the offenders, or by a verbal order he may authorize others to do so, who may follow the offenders thus pointed out to them, and execute this order on them out of the presence of such Magistrate, if they fly.* (1)

23. (2) The Sheriff and his deputies, Superintendent of Police and his deputy, and Field-cornets, and all Constables, Police Officers, or other officers of the law, proper to the execution of criminal warrants, have the power of arresting, in cases of crimes or breaches of the peace committed in their presence, or of the commission of which they have credible information from others; and after taking the offender, such Sheriff or other officer shall immediately carry the offender before the nearest Magistrate, to be dealt with according to law.

Arrest by Sheriffs, Superintendents of police, Field-cornets, and constables.

24. *The Chief Justice of the Colony and Judges of the Supreme Court, the Judge of Police in Cape Town, the Resident Magistrates, and all Justices of the Peace, may lawfully grant a warrant for the apprehension of any offender, on a written application, setting forth the offence alleged to have been committed, and that from information taken upon oath, there are reasonable grounds of suspicion against him, subscribed by the Attorney-General, by the Superintendent of Police, in Cape Town, or by the Clerk of the Peace of the district, or upon the information to the like effect of any person made on oath before the Judge or Magistrate granting the warrant.* (3)

25. *A warrant issued by the Chief Justice, or any of the Judges of the Supreme Court, has effect and may be executed anywhere in the limits of the Colony and its dependencies; warrants issued by the Judge of Police in Cape Town, Resident Magistrates, and Justices of the Peace, have effect and can be executed only within the local limits within which the jurisdiction of the said Magistrate, Judge of Police, or Justice of the Peace, is appointed to be exercised; but the Judge*

<sup>1</sup> Superseded by § 11 Ord. 73 which see *infra*.

<sup>2</sup> See § 12 Ord. 73.

<sup>3</sup> Superseded by § 9 Ord. 73.

- Ord. 40—1828. of Police in Cape Town, every Resident Magistrate, and every Justice of the Peace, on production to him of a warrant issued by any other Magistrate, is bound to grant his concurrence to it by an endorsement thereof, after which the warrant may be executed within the local limits of the jurisdiction of the Magistrate so endorsing it. <sup>(1)</sup>
- Endorsement of warrants by Resident Magistrates.
- Tenor of warrant. 26. Every warrant so issued shall be to apprehend the party described in it, and to bring him before any Resident Magistrate, or the Judge of Police in Cape Town, or Justice of the Peace, for examination.
- Preparatory examination. 27. <sup>(2)</sup> The Superintendent of Police in Cape Town, or his deputy, and every Clerk of the Peace, on receiving information of any crime or offence having being committed within his district (except it shall plainly appear to be proper for the cognizance of a court of summary jurisdiction), shall commence a preparatory examination before the Judge of Police in Cape Town, Resident Magistrate, or Justice of the Peace, within whose jurisdiction respectively such Superintendent of Police in Cape Town and his deputy, and Clerks of the Peace, are appointed to exercise their respective offices; and, for that purpose, shall immediately apply for a warrant for the apprehension of any person, who from information taken upon oath, may be reasonably suspected of having committed the said crime or offence, and for summoning those persons, whom it shall appear necessary to examine as witnesses: and in case of refusal or failure to attend after due proof of the service of such summons, a further warrant under the hand of any Magistrate, to enforce the appearance of such witnesses; or in the event of its not being known or suspected by whom the crime or offence was committed, a warrant for summoning as witnesses such persons as aforesaid: and the Superintendent of Police in Cape Town, and every Field-cornet and every constable, on receiving information of any crime or offence, except as in the case hereinbefore excepted, shall give immediate information thereof to the Clerk of the Peace of the district within which such Superintendent of Police, Field-cornet, or Constable, exercises his office: in order that the said Clerk of the Peace may institute or attend the preparatory examination, or give such directions concerning the conduct thereof, as to him shall seem necessary.
- Warrant for the apprehension of suspected persons. Summons of witnesses.
- Information by Superintendent of Police, Field-cornets, and constables, to Clerks of the Peace.
- When a trial in an inferior Court should be stopped, and a preparatory examination should be instituted. 28. When in the course of any trial in any inferior Court, it shall appear that the crime or offence under trial is, from its nature or magnitude, only subject to the jurisdiction or more proper for the cognizance of a superior Court, then the Judge or Magistrate, before whom such inferior Court is held, shall stop the trial, and commence anew the examination of the person accused, and of the witnesses, as in a preparatory examination, and the examinations

<sup>1</sup> Amended by § 10 Ord. 73.

<sup>2</sup> For procedure where there are no Clerks of the Peace see § 11 Ord. 8 of 1852, see also § 29 of this Ord.

so taken shall be reported in the manner hereinafter directed as to other examinations.

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29. Where there is any danger that delay may defeat the ends of justice, the Judge of Police in Cape Town, any Resident Magistrate, or any Justice of the Peace, may himself commence taking the preparatory examinations; but he shall without delay give information thereof, in Cape Town and the district thereof to the Superintendent of Police or his deputy, and in any other district to the Clerk of the Peace of such district.

Proceedings where delay might endanger the ends of justice.

30. Every officer conducting a preparatory examination, shall cause to be examined by the Magistrate, before whom the same is taken, every person who can give any information on the subject of the crime or offence under investigation.

Examination of all persons who can give information.

31. (1) All preparatory examinations shall be taken upon oath, and every witness, before giving his evidence, shall make oath before the Magistrate by whom he is to be examined that in the whole of his deposition he will tell the truth, the whole truth, and nothing but the truth; and each witness shall be examined apart from the others. The depositions shall be taken down in writing in presence of the accused party, or if taken in his absence, shall be afterwards read over to him in the presence of the witnesses making the same, whom he shall be entitled to cross-examine; and such depositions shall be signed by the Magistrate, and by the witnesses; and in case of their incapacity or refusal, then the same shall be signed by two persons in whose presence the same were taken. And if any person, having been thereto summoned, shall refuse or neglect to attend, then the Magistrate shall issue a warrant to apprehend and bring him for examination; and if any witness shall obstinately refuse to give evidence, he may be committed to, and detained in prison until he shall comply. Every Magistrate before whom any preparatory examination is taken, may lawfully bind any witness, by recognizance, to appear to give evidence at the trial, upon being summoned thereto, and upon his refusing may commit and detain in prison the person so refusing until he shall comply.

Evidence on oath at preparatory examinations.

Depositions to be in writing and in the presence of the accused. Right of cross-examination. Depositions to be signed by the Magistrate and witnesses.

Warrant for the apprehension of witnesses who refuse to attend. Committal of witnesses who refuse to give evidence.

Recognizance to give evidence at the trial.

32. When any person, suspected of a crime or offence, is apprehended by virtue of the warrant hereinbefore described, the officer who executes the warrant shall, with all convenient speed, carry the prisoner before the Magistrate named in the warrant; or if the warrant is general, before the nearest Magistrate within the district in which the apprehension takes place.

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

33. When any person suspected of a crime or offence is brought before any Magistrate for examination, such Magistrate, before commencing the examination of the witnesses, shall satisfy himself that the prisoner is in his sound and sober senses.

Prisoner to be in his sound and sober senses.

<sup>1</sup> As to production in evidence of depositions, see § 41, Ord. 72 (Evidence), and § 5, Act 17 of 1874, *infra*. As to taking recognizances from witnesses see § 20 Ord. 73, *infra*.



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Prisoner at the close of examination in support of the charge, to be cautioned that he is not obliged to make any statement criminating himself. Statement how to be signed.

34. After the examination of the witnesses in support of the charge, in presence of the prisoner, or after the examinations have been read over to him, if taken in his absence, the Magistrate shall ask the said prisoner, what he will say in answer to the charge against him; and shall at the same time caution him that he is not obliged to make any statement, that may criminate himself, and that what he shall say may be used in evidence against him. The prisoner's statement shall then be taken down, in writing, in so far as the same is relevant to the charge; and the same, after being read over to him, shall be subscribed by him if he will subscribe the same, and also by the Magistrate and by one person at the least who may be present thereat.<sup>(1)</sup>

Committal of prisoner for trial.

35. When there shall appear to any Magistrate sufficient grounds for putting any person, brought before him on trial for the crime or offence of which he is accused, the Magistrate shall grant a warrant to commit him to the gaol of the district, there to be detained, till brought to trial for the said crime or till liberated in due course of law; which warrant shall clearly express the crime or offence with which the prisoner is charged.<sup>(2)</sup>

Committal for further examination

36. Where sufficient grounds do not appear for at once committing the prisoner for trial, or for discharging him, and there shall appear to the Magistrate probability that further evidence may be produced, the Magistrate may grant a warrant for committing him for further examination. Such re-committal for further examination may, if necessary, take place, oftener than once, upon sufficient cause appearing to the said Magistrate, which cause shall be expressed in the warrant of re-commitment; and every warrant of commitment for examination shall specify the time, when the prisoner is again to be brought before the Magistrate for examination.

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

37. Until the warrant for commitment for trial is made out, no prisoner, even although the offence of which he is accused is a bailable offence, can insist on being admitted to bail; but it is in the discretion of the Magistrate to admit a prisoner accused of a bailable offence to bail, before the preparatory examinations are concluded.

Access of friends and legal advisers by authority of Magistrate before committal. After committal, friends and legal advisers to have free access.

38. No prisoner, under commitment for examination shall be allowed the access of his friends or legal advisers, but by the authority of a Magistrate, and under such restrictions as to him may appear requisite; but after commitment for trial, the prisoner's friends and legal advisers shall have free access to him, subject to the regulations of the Magistrate, to whom the superintendence of the prison and the safe custody of the prisoners are entrusted.

<sup>1</sup> This statement is to be received in evidence upon production; § 4 Act 17 of 1874, *infra*; Accused may give evidence § 6 Act 13 of 1886, *infra*.

<sup>2</sup> See § 21, Ord. 73, and § 5, Act 15 of 1864, *infra*.

39.<sup>(1)</sup> *A prisoner is not of right entitled to the assistance of a legal adviser while he is under examination.*

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40. It is the duty of the officer who conducts the preparatory examination to make any local inspections, which the particular circumstances of the case may render necessary; and in cases of homicide, and of serious injury to the person of any individual, to cause the dead body, or the person injured, to be examined by a regularly admitted medical man, if any such can be procured, and if not, then, by the best qualified person or persons that can be obtained, who shall draw up and subscribe a written statement of the appearances and facts observed on such examination: Provided always, that in all cases the like duties, inspections, and examinations, shall and may be in like manner performed and conducted by any Field-cornet, each in his own particular Field-cornetcy.

The officer conducting preparatory examination to make local inspection, and to cause *post mortem* and other examinations to be made.

Field-cornets to perform like duties in their field-cornetcies

41. The officer conducting the preparatory examination or the Field-cornet, as the case may be, shall cause all writings, and other articles, exhibited by the witnesses in the course thereof, and likely to be used in evidence on the prisoner's trial, to be inventoried and labelled, or otherwise marked in the presence of the person producing the same; so as they may be capable of being identified at the prisoner's trial, and shall cause the same to be kept in safe custody until the trial, and to be then produced.

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

42.<sup>(2)</sup> The Chief Justice of the Colony, and Judges of the Supreme Court, or the Judge of Police in Cape Town, the Resident Magistrates, and all Justices of the Peace, upon an information taken on oath being transmitted to them by the Attorney-General, the Superintendent of Police in Cape Town, or by any of the Clerks of the Peace, or upon the information of any person made on oath before such Judge, or Magistrate, that there is reason to suspect that stolen goods are concealed in any place within the jurisdiction of the Judge or Magistrate to whom the information is transmitted, or before whom the information is made, may by warrant under his hand cause every such place to be searched during the day time.

Search warrant on information of reasonable grounds for suspecting the concealment of stolen goods.

43.<sup>(3)</sup> Where a preparatory examination has been taken by a Magistrate, without the presence of the Clerk of the Peace of the district; or, if in Cape Town and the district thereof, without the presence of the Superintendent of Police or his deputy; such Magistrate shall forthwith deliver or transmit the examinations to the Clerk of the Peace of the district within which the same were taken, or to the Superintendent of Police, if taken within Cape Town or the district thereof, and the Superintendent of Police and his deputy, and every Clerk of the Peace, shall forthwith cause all preparatory examinations, whether taken by them, or

Preparatory examinations taken without the presence of the Clerk of the Peace to be at once transmitted to the Clerk of the Peace.

<sup>1</sup> Repealed by § 13, Act 17 of 1874.

<sup>2</sup> As to Seamen's property, see § 7, Act 2 of 1870.

<sup>3</sup> See § 12, Ord. 8 of 1852.

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received by them in manner above mentioned, to be transmitted to the Clerk of the Peace for the Cape district, at his office in Cape Town, in order to be by him submitted to the consideration of the Attorney-General.

Powers of Attorney-General.

44. After considering the preparatory examinations submitted to him, the Attorney-General may either order that the prisoner shall be forthwith liberated, or committed for trial; or that a further investigation shall take place; or shall forthwith take such measures, and give such directions for the trial of the prisoner in such competent Court of the district or place within which the offence was committed, as shall be most expedient for the ends of justice, and the due execution of the laws.

## ON BAIL.

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

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

Bailable offences.

46. Every prisoner committed for trial in respect of crimes not capital, is entitled, as soon as the warrant of commitment for trial is made out, to be admitted to bail.

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

47. For this purpose it shall be competent for the prisoner, at the time of the commitment, to apply verbally to the Magistrate, or Judge granting the warrant of commitment, to be immediately liberated on bail.

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

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

In what cases only to the Supreme Court or a Judge thereof.

Magistrate to determine whether the offence is bailable and modify the bail in 24 hours.

49. Every Magistrate to whom an application for bail is made, shall, within twenty-four hours after such application, determine whether the crime is bailable, and if so, modify the amount of the bail to be given, and failing to do so, shall be liable in the penalty of a sum not exceeding one hundred pounds sterling.

How Magistrate is to determine whether the offence is bailable.

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

51. (1) The Supreme Court has power to bail, in all cases whatever, whether capital or not [*where innocence may be fairly presumed, and in every case where the charge is not alleged with sufficient certainty.*]

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Power of Supreme Court to bail.

52. In case where a doubt may arise concerning the degree and quality of the crime, from the uncertain issue of the deed which has been done, as in the case of a wound, of which it cannot be foretold whether the sufferer shall die or recover, every Judge or Magistrate, to whom application for bail is made, may refuse to grant the same until all hazard of the life of the sufferer be at an end.

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

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

Excessive bail not to be required.

54. In every case in which a prisoner considers himself aggrieved by the proceedings of the judge of any inferior Court, or any Magistrate, in having illegally committed him to prison, or refused to admit him to bail, or in having required excessive bail, it shall be competent to such prisoner to apply to the Supreme Court, or to the Circuit Court of the district within which he is imprisoned: or in case neither of these Courts shall be then sitting, to the Chief Justice, or any of the judges of the Supreme Court, who shall make such order thereon as to them, in the circumstances of the case, shall seem just.

Application of prisoner aggrieved by illegal committal to prison or refusal of bail, to the Supreme or Circuit Court, or any Judges of the Supreme Court.

55. The recognizance shall be taken by the Magistrate, either from the prisoner alone, or from the prisoner and one or more sureties, at the discretion of the Magistrate, according to the nature and circumstances of the case; and the condition of such recognizance shall be, that the prisoner shall appear and answer to any indictment that shall be presented against him, in any competent Court, for the crime or offence, wherewith he is charged, at any time within the space of six months from the date thereof; and that he will accept service of any such indictment, and summons thereon, at some certain place by him elected and therein expressed.

Condition of recognizance, that the prisoner shall appear to answer to an indictment at any time within six months, and that he will accept service at some certain place by him elected.

56. (2) The keepers of all the gaols within the district of Cape Town shall, under a penalty of five pounds sterling, at each session of the Supreme Court holden for the trial of criminal cases, deliver to the Court a list of all the persons confined within their respective gaols, which list shall specify the date of commitment of each prisoner, and the cause of his imprisonment, and the name of the committing Magistrate.

Gaol returns to be delivered by the keepers of gaol in Cape Town to the Court at the Criminal Sessions.

57. The keepers of all the gaols within the district of each Circuit Court shall, under a penalty of five pounds sterling, at each session of each Circuit Court, deliver to the Court a list of all the persons

Returns of gaols in the country districts to be delivered to the Court at the Circuit Sessions.

<sup>1</sup> Words in italics expunged by § 7, Act 17 of 1874.

<sup>2</sup> As to district of Albany see Act 21 of 1864, § 35 (Administration of Justice).

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Prisoners committed in Cape Town and Cape District to be brought to trial at the Criminal Sessions of the Supreme Court, provided 21 days have elapsed from commitment.

Such prisoners not brought to trial at the second Session of the Court after commitment, entitled to discharge from imprisonment.

Prisoners committed within circuit districts to be brought to trial at the first Circuit Session, provided 31 days have elapsed from commitment.

Such prisoners not brought to trial at second Session of the Circuit Court after commitment, entitled to discharge from imprisonment.

Prisoner may by consent be brought to trial at any time after commitment.

confined within their respective gaols; which list shall specify the date of commitment of each prisoner, and the cause of his imprisonment, and the name of the committing Magistrate.

58. <sup>(1)</sup> In every session of the Supreme Court, holden for the trial of criminals, every prisoner who has been committed for trial within Cape Town and the Cape district, shall be brought to trial before the said Court, provided that twenty-one days have elapsed between his commitment for trial and such session, or else shall then be admitted to bail; unless it shall be made to appear to the satisfaction of the Court, that in consequence of the absence of material evidence, or some other sufficient cause, the trial cannot then be proceeded in without defeating the ends of justice; or unless a warrant shall have been obtained from the said Court for the transmission of the prisoner to the gaol of some circuit district, in order for trial before the Circuit Court, or any inferior Court within the same. And if such prisoner is not brought to trial at the second session of the Supreme Court holden after the date of his commitment for the trial of criminals, and has not previously been tried before any inferior Court, or before the Circuit Court, in order to his trial before which a warrant for his transmission to the gaol of the district of such Circuit Court had been obtained, provided such Circuit Court to which he was transmitted for trial shall in the meantime have been holden, he shall be discharged from his imprisonment for that offence, for which he had been committed for trial.

59. Every prisoner committed for trial within any of the districts of any Circuit Court, shall be brought to trial at the first session of the Circuit Court of that district, holden after the date of the commitment; provided, thirty-one days have elapsed between the date of the commitment and the time of holding such Court, or else shall be admitted to bail; unless it shall be made to appear to the satisfaction of the Court, that in consequence of the absence of a material evidence, or of some other sufficient cause, the trial cannot then be proceeded in without defeating the ends of justice; or unless before the close of such first session of such Circuit Court, a warrant shall have been obtained from some competent Court for his re-committal to gaol, in order to his trial elsewhere. And if such prisoner is not brought to trial at the second session of the Circuit Court of the district which shall be holden after the date of the commitment, and has not previously been tried before any other competent Court, to which he shall have been transmitted as aforesaid, he shall be discharged from his imprisonment for that offence, for which he has been committed for trial.

60. Any prisoner, by his own consent and with the consent of the public prosecutor, may be brought to trial either before the Supreme or the Circuit Courts at any time after his commitment;

<sup>1</sup> Trial may be postponed after arraignment but not after jury is sworn; § 3, Act 17 of 1874.

notwithstanding that the periods of twenty-one days and of thirty-one days respectively shall not have expired <sup>(1)</sup>.

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61. When a warrant has been obtained from any competent Court for the transmission of any prisoner for trial before any other competent Court, such prisoner shall forthwith be transmitted to the gaol of the district of such last-mentioned Court, and shall be tried at the next session of the said Court holden for the trial of criminal cases, or otherwise shall be discharged from his imprisonment for that offence for which he was transmitted for trial: provided that such session shall not be holden within twenty-one days after the transmission of such prisoner to the gaol aforesaid.

Prisoner transmitted by warrant of a competent Court for trial before another competent Court, to be tried at the next session of the last-mentioned court, or to be discharged.

62. No person who has been once discharged from gaol, in consequence of not being brought to trial within the period hereinbefore prescribed, shall be subject to be recommitted to gaol, either for examination or for trial, for the same offence.

Persons discharged from gaol by reason of non-trial not to be recommitted for the same offence.

63. No person who has been admitted to bail, and who has not been duly brought to trial, shall be obliged to find further bail, or shall be subject to be committed to gaol, either for examination or trial, for the same offence, in respect of which he was formerly admitted to bail.

Persons admitted to bail and not duly brought to trial, not required to find further bail.

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

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

65. The Supreme Court and Circuit Courts shall, at the close of each of their said sessions, discharge all such prisoners, as by law shall then be entitled to liberation.

Liberation of prisoners by Supreme and Circuit Courts.

66. All the penalties hereinbefore provided, shall be recoverable before the Supreme Court or Circuit Court within the district of which such penalties shall be incurred, at the instance either of the public prosecutor or of the party aggrieved, without prejudice to the right of the prisoner to insist also for damages against the person, incurring such penalties, in a civil action before any competent Court.

Penalties in this Ordinance recoverable at the instance of public prosecutor or of aggrieved party, without prejudice to civil actions.

#### FORM OF PROCESS IN THE SUPREME COURT AND CIRCUIT COURTS.

67. The form and manner of proceeding in the trial of crimes to be observed in the Supreme Court, and Circuit Courts respectively, shall in pursuance of His Majesty's charter be according to the rules, orders, and regulations framed, constituted, and established by the said Supreme Court.

Form of procedure to be in accordance with rules of the Supreme Court.

<sup>1</sup> Repealed by Ordinance No. 73, § 23, but re-enacted by Act 7 of 1873 *infra*.

No. 73.—Sd. G. Lowry Cole.]

[April 15, 1830.

Ordinance for explaining, altering, and amending the Ordinance No. 40 <sup>(1)</sup>

Offences committed within two miles of the boundaries of two or more districts may be tried in any of such districts.

WHEREAS it is expedient, in certain respects to explain, alter, and amend the Ordinance No. 40: Be it therefore enacted and declared by His Excellency the Governor in Council, that where 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.<sup>(2)</sup>

Offences committed in or upon carriages employed in a journey, or on board of a vessel on any river in or forming a boundary of the Colony may be tried in any district within two miles of the boundary of which such carriage or vessel may have passed.

2. <sup>(2)</sup> And be it further enacted and declared, that, where any crime or offence shall be committed on any person, or on or in respect of any property in or upon any coach, wagon, cart, or other carriage whatever, employed in any journey, or on board any vessel whatever, employed on any voyage or journey upon any river within, or forming the boundary of, any part of this Colony, 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 boundary whereof, such coach, wagon, cart, or carriage, or vessel, shall have passed in the course of the journey or voyage, 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.

Review on the ground of rejection of evidence.

3. And be it further enacted and declared, that it shall be competent for any person, aggrieved by the proceedings of any inferior Court in any case, to bring the same under the review of the Supreme Court, on the ground that such inferior Court has, upon the trial of such case, rejected legal and competent evidence.<sup>(3)</sup>

Clerks of the Peace under control of Attorney-General.

4. And be it enacted and declared, that in all matters relating to, or connected with, any criminal proceedings, instituted or intended to be instituted against any person, or with regard to any crime or offence, the Clerks of the Peace of the several districts of this Colony, and the Superintendent of Police of Cape Town, shall be under the control of, and bound to conform to, the directions which shall and may from time to time be given to them respectively by the Attorney-General.<sup>(4)</sup>

Repeal of sections of former Ordinances authorizing preparatory examinations to be taken by Superintendent of Police.

5. And be it enacted and declared, that from and after the passing of this Ordinance, the several enactments and provisions of the

<sup>1</sup> See "Note" to title of Ord. 40.

<sup>2</sup> See § 44, Act 20 of 1856, and § 2, Act 16 of 1882 (Resident Magistrates).

<sup>3</sup> See Ordinance No. 40, § 5, *supra*.

<sup>4</sup> See Ordinance No. 40, § 8, *supra*.

Ordinances Nos. 40 and 48, <sup>(1)</sup> whereby the Superintendent of Police of Cape Town, or his deputy, are authorized or required to take any preparatory examination, or to prosecute at the public instance, for any crime or offence, and whereby any Magistrate is required to transmit any preparatory examination to the Superintendent of Police, or his deputy, shall be, and the same are hereby repealed; and that hereafter, the Clerk of the Peace for the Cape district, or some one of the clerks in the office of the said Clerk of the Peace, appointed for that purpose by the Attorney-General, shall be hereby authorized and required to take all such preparatory examinations, and to conduct all such prosecutions at the public instance, as the said Superintendent of Police and his deputy, were heretofore authorized or required to take or to conduct.

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All such examinations to be taken by Clerk of the Peace.

6. <sup>(2)</sup> And be it further enacted and declared, that it shall be competent for any private person to prosecute summarily by complaint in any competent inferior Court, for any crime or offence for which such person shall be entitled so to prosecute, although such party shall not have previously applied for and obtained the certificate directed and required by the provisions of the fourteenth section of the Ordinance No. 40, anything to the contrary therein contained notwithstanding.

Summary prosecution by private person without the certificate required by section 14 of Ordinance No. 40.

7. And be it further enacted and declared, that where, in the course of the proceedings in any summary prosecution as aforesaid, it shall appear that the crime or offence complained of, is, from its nature or magnitude, one which ought not to be permitted to be prosecuted at the instance of the private party, until the prosecutor shall have exercised his discretion, whether he will prosecute the offender at the public instance, the Judge or Magistrate shall stop all further proceedings in such case, until the party prosecuting shall produce to such Judge or Magistrate, a certificate in the form and to the effect directed and required by the provisions of the fourteenth section of the Ordinance No. 40; Provided always, that nothing herein contained shall extend or be construed to affect, alter, or repeal any provision or enactment of the twenty-eighth section of Ordinance No. 40.

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

8. <sup>(3)</sup> And be it further enacted and declared, that in every case of any such summary prosecution as aforesaid, it shall be lawful and competent for the Attorney-General, or other officer who by law is entitled to prosecute at the public instance, in such Court, at any stage of the prosecution, to appear in Court, and take up the prosecution of such complaint at the public instance, and thereafter to conduct the proceedings in such case as if the prosecution had been originally at the public instance; or to apply by motion to the Judge or Magistrate to stop all further proceedings in such case,

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

<sup>1</sup> Ord. No. 48 is repealed by Ord. 2 of 1840.

<sup>2</sup> See § 10 Ord. 8, 1852, § 64 Sched. B, Act 20, 1856 (Resident Magistrates), § 5 Act 15, 1864, *infra*.

<sup>3</sup> See § 10, Ord. 8 of 1852, *infra*; § 64 Sched. B, Act 20 of 1856.



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in order that a prosecution for the same crime or offence may be instituted at the public instance in some other form or Court; or until such certificate aforesaid, shall be granted to the private party prosecuting in such case, and by him be produced to such Judge or Magistrate; and such Judge or Magistrate shall, in every such case be bound to make an order in the terms of such motion.

Warrants of apprehension by Judges, Resident Magistrates and Justices of the Peace.

9. And be it further enacted and declared, that it shall and may be lawful for the Chief Justice, or any Judge of the Supreme Court, the Judge of Police of Cape Town, or any Resident Magistrate, or Justice of the Peace, to grant warrant for the apprehension of any person, on a written application, setting forth the offence alleged to have been committed, and that, from information taken upon oath, there are reasonable grounds of suspicion against the person for whose arrest the warrant is sought, subscribed by the Attorney-General, by the Superintendent of Police of Cape Town, or by the Clerk of the Peace of the district; or upon the information, to the like effect, of any person, made on oath before the Judge or Magistrate granting the warrant: Provided always, that it shall not be lawful for any Resident Magistrate or Justice of the Peace, to grant any such warrant, except when the offence charged has been committed within the jurisdiction of such Resident Magistrate or Justice of the Peace, or except when the person, against whom the warrant is issued, shall at the time when such warrant is so issued, be known or suspected on reasonable grounds, to be within the jurisdiction of the Resident Magistrate or Justice of the Peace issuing such warrant <sup>(1)</sup>.

Execution of warrants.

10. And be it further enacted and declared, that every officer of the law within this Colony, proper for the execution of criminal warrants, shall be hereby authorized and required, to obey and execute every such warrant issued by the Chief Justice, or any of the Judges of the Supreme Court; and every such, officer of the law, shall be hereby authorized and required, to obey and execute every such warrant issued or endorsed by the Resident Magistrate, or any Justice of the Peace of the district in which such officer of the law has been appointed to act; and every criminal warrant issued by the Chief Justice, or any of the judges of the Supreme Court, or any Resident Magistrate, or Justice of the Peace, shall have effect, and may lawfully be executed anywhere within the limits of the Colony, or its dependencies, by any officer of the law, or by any private person to whom it shall be directed, anything contained in the Ordinances Nos. 32, 33, <sup>(2)</sup> 40, 44, to the contrary notwithstanding <sup>(3)</sup>.

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

11. And be it further enacted and declared, that it shall and may be lawful for the Chief Justice, or any Judge of the Supreme Court, the Judge of Police of Cape Town, or any Resident Magis-

<sup>1</sup> See § 24, Ord. 40, *supra*.

<sup>2</sup> Ord. 33 and 44 have been repealed.

<sup>3</sup> See § 25, Ord. 40.

trate, or Justice of the Peace, who has knowledge of any crime, or breach of the peace, by seeing it committed, himself, to arrest the offender, or by a verbal order to authorize others so to do, who shall be authorized and required to follow such offender, and to execute the said order on him, out of the presence of such Judge or Magistrate, if he fly <sup>(1)</sup>.

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12. And be it further enacted and declared, that the Sheriff, and his deputies, the Superintendent of Police, and his deputies, and all Field-cornets and constables, police officers, and other officers of the law, proper for the execution of criminal warrants, shall be hereby authorized and required, to arrest every person, who shall commit any crime or breach of the peace, in their presence; as also every person whom they shall have reasonable grounds to suspect of having 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, house-breaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or any other crime of equal degree of guilt with any of the crimes aforesaid; as also every person whom they shall see engaged in committing any affray, or whom they shall find attempting to commit a crime, or clearly manifesting an intention so to do <sup>(2)</sup>.

Arrest by Sheriff, police officers, and Field-cornets for offences committed in their presence, and on reasonable grounds of suspicion as to certain offences.

13. And be it further enacted and declared, that every private person when called upon by any officer of the law shall be hereby authorized and required to assist such officer in making any arrest which by law such officer is authorized to make of any person charged with or suspected of the commission of any crime or offence. <sup>(3)</sup>

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

14. And be it further enacted and declared that every private person in whose presence 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, house-breaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or other crime of equal degree of guilt with any of the crimes aforesaid, is committed or attempted to be committed, or who has knowledge that any such crime has been recently committed, shall be hereby authorized and required, to arrest, or forthwith to pursue the offenders; and every other private person, to whom the purpose of such pursuit shall be made known, shall be hereby authorized and required, to join and assist in the same. And every private person, who, on such pursuit being made, shall come up with any person having the property, which has been stolen, in his possession, or with any person whose traces have conducted his pursuers from the place where the crime was committed to the place where he shall be overtaken, shall be hereby authorized and required to arrest such

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

Assistance by other private persons.

<sup>1</sup> See § 22 Ord. 40.

<sup>2</sup> See § 23 Ord. No. 40.

<sup>3</sup> See § 7 Ord. 2 of 1837.

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Arrest by private person, in certain crimes, on reasonable suspicion, but at his own peril.

Arrest by private person in case of an affray.

In what circumstances the killing of any officer or private person in such cases of arrest shall be murder, and in what cases, culpable homicide.

, so having such stolen property in his possession or so being, traced as aforesaid. <sup>(1)</sup>

15. And be it further enacted and declared, that it shall and may be lawful for any private person to arrest any other person, upon reasonable suspicion that he has committed any of the crimes specified in the fourteenth section of this Ordinance, or any other crime of an equal degree of guilt; but every arrest, or attempt to arrest, made by any private person, upon suspicion, shall be made at his own peril, if the party so arrested, or attempted to be arrested, be innocent.

16. And be it further enacted and declared, that every private person shall be hereby authorized and required, to lay hold of any person, whom he may see engaged in committing an affray, in order to prevent such person from continuing the affray, and to suppress the same.

17. And be it further enacted and declared, that every person who, knowing the purpose for which any officer of the law or private person is acting, shall kill any such officer or person, while attempting to make or assisting in making any arrest, or while interfering in order to suppress any affray, which, in virtue of the provisions of this Ordinance, such officer or person is authorized and required to make, or to assist to make, or to suppress, shall be deemed in law, to be guilty of the crime of murder; and that every person, who shall kill any private person, while attempting to make any arrest, under the circumstances set forth in the fourteenth section of this Ordinance, knowing the purpose for which such private person so killed was acting, shall be deemed, in law, to be guilty of the crime of murder, if he have committed, or of the crime of culpable homicide, if he be innocent of the crime, on suspicion of which the person so killed attempted to arrest him; and that every person, who shall kill any private person, while attempting to make any arrest, under the circumstances set forth in the fourteenth section of this Ordinance, being ignorant of the purpose for which the person, so killed, was acting, shall be deemed, in law, to be guilty of the crime of culpable homicide, if he have committed the crime, on suspicion of which the person so killed attempted to arrest him; and that every person, who shall kill any such officer or private person, while attempting to make or assisting in making any arrest, which, in virtue of the provisions of this Ordinance, such officer or person is authorized and required to make, or to assist to make, being ignorant of the purpose for which such officer or private person, so killed, was acting, shall be deemed, in law, to be guilty of the crime of culpable homicide; and that every person, who shall kill any such officer or private person, while attempting to make an arrest, in virtue of any warrant hereinbefore mentioned,

<sup>1</sup> Deserting from a Convict Station is declared by § 12, Ord. 7 of 1844, to be a crime of equal degree of guilt with the crimes specified in this section.

which, by reason of the informality thereof, shall not be, in law, sufficient to authorize the arrest of the person who shall kill such officer or private person, shall be deemed, in law, to be guilty of the crime of culpable homicide, whether he shall know or be ignorant of the purpose for which such officer or private person was acting.

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18. And be it further enacted and declared, that, on the trial of any person for homicide, committed in resisting any arrest, nothing herein contained shall extend, or be construed to deprive any fact or circumstance (other than those, the legal effect of which is hereinbefore specially provided for and declared), under which such homicide shall have been proved to have been committed, of the effect, either in exculpating such person, or in mitigating or aggravating his guilt, which, by law, such fact or circumstance would have had previously to the passing of this Ordinance.

In such cases of homicide all other facts or circumstances proved to have their ordinary legal effect.

19. And be it further enacted and declared, that it shall and may be lawful for every officer of the law, and every private person, who shall by law be authorized or required to arrest any person, known or suspected to have committed any crime or offence, for that purpose to break open the doors of, and to enter and search, any house, in which such person is known or suspected to be: Provided always, that such officer or other person, as aforesaid shall have previously failed to obtain admission, after having audibly demanded the same, and notified the purpose for which he seeks to enter such house.

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

20. And whereas public justice has heretofore in many cases been defeated by the departure from the Colony, or otherwise, of witnesses who have been examined as such, under preparatory examinations taken before and as to the commitment of offenders for trial before the courts of criminal jurisdiction within the Colony, be it therefore enacted and declared, that every Magistrate, before whom any preparatory examination is taken, may lawfully require any witness, either alone, or together with one or two sufficient sureties, to the satisfaction of the said Magistrate, to enter into a recognizance, under condition that the said witness shall, at any time within six months from the date thereof, appear and give evidence at the trial of the said case, upon being summoned thereto at some certain place, to be so elected by such witness; and if any witness, being so required to enter into any such recognizance, shall refuse or fail so to do it shall and may be lawful for the said Magistrate, to commit and detain in prison the witness so refusing or failing, until such recognizance shall have been entered into as aforesaid. <sup>(1)</sup>

Recognizance of witness to appear on criminal trial.

21. And be it further enacted and declared, that in every case, in which any person, charged with any crime or offence, shall be apprehended and brought before any Magistrate of any district, other than that in which such crime or offence is charged to have

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

<sup>1</sup> See Ordinance No. 40, § 31.

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been committed, and where such Magistrate shall see cause to commit such person, either for trial or for further examination, it shall be lawful for such Magistrate, to grant warrant to commit such person, either to the gaol of the district in which the crime or offence is charged to have been committed, or to the gaol of the district within which such Magistrate has jurisdiction to act.

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

22. And be it further enacted and declared, that the Resident Magistrate of any district, shall and may lawfully, on an application to that effect, signed by the Attorney-General, or the Clerk of the Peace of such district, grant warrant for the removal of any person, detained in virtue of any legal warrant, within the gaol of such district, on any criminal charge, to the gaol of any other district, specified in such application, therein to be detained for further examination or for trial, or till liberated or removed therefrom in due course of law.

23. <sup>(1)</sup> *And be it further enacted and declared that from and after the passing of this Ordinance, the sixtieth section of the Ordinance No. 40 shall be, and the same is hereby repealed.*

(<sup>2</sup>) CHARTER OF JUSTICE.

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Trial by jury in criminal cases.

34. And we do further ordain, direct, and appoint, that in any criminal case depending before the said Supreme Court, the trial of the person or persons accused shall be before any one or more of the judges of the said Court, and a jury of nine men, who shall concur in every verdict to be given on the trial of any such accused party or parties; and every such verdict shall be delivered in open Court by the mouth of the foreman of every such jury, and shall be thereupon recorded and read over to such jury, before they are discharged from attendance on the said Court, Provided nevertheless, and we do further declare and direct, that no person within the said Colony who may be otherwise competent to serve on any such jury as aforesaid, shall be or be taken to be incompetent to serve on such jury by reason of his ignorance or supposed ignorance of the English language.

Delivery of verdict in open Court.

Jurors ignorant of the English language.

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Jurisdiction of Circuit Courts, and mode of proceeding therein in criminal cases.

39. And we do direct and appoint that each of the said Circuit Courts shall be respectively Courts of Record, and shall within the district in which it may be holden, have, and exercise all such and the same jurisdiction, powers, and authority, as is hereby vested in the said Supreme Court of the Colony of the Cape of Good Hope, throughout the whole of the said Colony; and that all crimes and offences, cognizable in the said Circuit Courts, shall be inquired of, heard and determined by the said circuit judge, and a jury of nine men; and that the verdict of such jury shall be pronounced and

<sup>1</sup> Repealed by Act 7 of 1873.

<sup>2</sup> For full text see *Administration of Justice*.

recorded in the manner before directed, respecting the verdicts of juries to be given in the said Supreme Court; and that the provision hereinbefore contained respecting the ignorance or supposed ignorance of the English language of any person otherwise competent to serve on any jury in the said Supreme Court, shall also extend and apply to persons serving or who may be required to serve as jurors in the said Circuit Courts or any of them.

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40. Provided nevertheless, and we do further ordain and direct, that if upon the trial of any crime or offence before any of the said Circuit Courts nine good and lawful men, being duly summoned, shall not appear to form a jury, then, in all such cases, such trial shall be had before the circuit judge and any number of the jury who shall appear, not being less than six, who shall be sworn, and have the same power, as if the full number of nine had appeared.

Number of jurors, and provision in case of a deficiency of jurors.

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45. And we do further ordain and direct, that no judgment or sentence, either of the said Supreme Court, or of any such Circuit Court as aforesaid, in any criminal case, whereby any person shall be condemned to death, or transportation, or banishment from the said Colony, shall be carried into execution, until a report of all the proceedings upon any such trial hath been laid before, or transmitted to the Governor of the said Colony by the Chief Justice or Puisne Judge presiding at any such trial, nor until such Governor shall have authorized and approved the execution of such sentence.

Transmission to the Governor of report of proceedings on trials in certain cases.

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No. 2.—Sd. B. D'Urban.]

[June 21, 1837.

Ordinance for the more effectual prevention of Crimes against Life and Property within the Colony.

WHEREAS it is expedient to make further provision for the prevention of crimes against life and property in this Colony: Be it therefore enacted and declared by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that where any officer of the law, or private person who, by the provisions of the Ordinance No. 73, entitled "An Ordinance of His Excellency the Governor in Council for explaining, altering, and amending the Ordinance No. 40," and bearing date the fifteenth day of April, one thousand eight hundred and thirty, is authorized and required to arrest, or assist in arresting, any person who has committed, or 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,

Death while enforcing arrest justifiable.

Ord. 2—1897.

arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goat, or any other crime of equal degree of guilt with any of the crimes aforesaid, <sup>(1)</sup> 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.

Property, recovery  
of beyond boundary

2. And whereas certain treaties have been entered into between Andries Stockenstrom, Esquire, Lieutenant-Governor of the Eastern Division of the Colony of the Cape of Good Hope, on the part of His Britannic Majesty, and the Kafir chiefs of the tribes of T'Slambie, the Kafir chiefs of the tribe of Gaika, the Kafir chiefs of the tribe of Congo, the Fingo chiefs Umklambiso and Iokwani, and the Tambookie chief Mapassa, in which treaties certain regulations and provisions have been agreed upon and made, as to the way and manner of recovering, and as to the particular means to be adopted for the recovery within the territory occupied by any such chiefs, or their tribes respectively, of property, which shall have been stolen, and shall not have been retaken or recovered within the Colony, and shall have been traced into any such territory: And whereas it is expedient to provide in the most effectual manner, for the enforcement of such regulations and provisions: Be it enacted, that any person, who shall pass out of the Colony over the boundary between the Colony, and any such territory as aforesaid, for the purpose, or with the intent, of recovering any such property so stolen, and not retaken or recovered, and so traced as aforesaid, except in the manner, and under, and in strict conformity with the regulations, conditions, and restrictions agreed upon, prescribed, made, and declared, in and by such treaties respectively, shall, on conviction, be subject to the payment of a fine not exceeding fifty pounds or to imprisonment for any time not exceeding six months.

Native tribes not  
to enter the Colony  
with arms.

3. And be it further enacted that it shall not be lawful for any Kafir, Gonaqua, Tambookie, Griqua, Boschjesman, Bechuana, 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

<sup>1</sup> See note to § 14 Ord. 73, *supra*.

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.

Ord. 2—1837.

4. (1) 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.

Natives not to be without passes.

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.

Arrest of natives.

6. And be it further enacted that if any body of such armed foreigners as aforesaid, consisting of three or more, shall enter the

Armed natives entering the Colony in numbers to be deemed enemies.

<sup>1</sup> See Act 22 of 1867, §§ 3 and 8 (Natives).



Ord. 7—1837. 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.

All persons to aid officers of law.

7. And be it further enacted, that every male inhabitant between the ages of sixteen and sixty, who shall be called upon by any officer of the law to assist in carrying into effect any of the provisions of this Ordinance, or of the said Ordinance No. 73, which it is the duty of any such officer to carry or cause to be carried into effect, and who shall, without sufficient excuse, refuse so to do, shall on conviction thereof be liable to a fine of not less than one pound nor exceeding twenty pounds or to imprisonment for any period not exceeding three months.

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No. 7.—Sd. B. D'Urban.] [September 6, 1837.

Ordinance for declaring at what stage of the Procedure Criminal Actions and Suits shall be deemed to be pending in the Supreme Court and Circuit Courts of the Colony.

Preamble.

WHEREAS doubts may be entertained at what stage of the procedure criminal actions or suits brought in the Supreme Court or Circuit Courts of this Colony, shall in law be deemed and taken to be pending therein; and it is expedient to remove such doubts: Be it therefore enacted and declared, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that whenever, and as soon as the indictment or information in any criminal action or suit which may and shall be brought in the Supreme Court or any Circuit Court of the Colony, shall have been duly filed with the Registrar of such Court, such action or suit shall become and be deemed and taken to be pending in such Court.

When action deemed to be pending.

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No. 8.—Sd. George Cathcart.] [December 9, 1852.

Ordinance for regulating in certain respects the Prosecution of Crimes in Districts in which there shall not be Resident Clerks of the Peace, and for other purposes.

Preamble.

WHEREAS it is expedient, pending further provision in that behalf, to regulate provisionally the prosecution of crimes in districts the Clerks of the Peace of which shall not have their homes or usual places of residence within 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 Ordinance No. 40,

Repeal of repugnant laws.

entituled "Ordinance for regulating the manner of proceeding in Criminal Cases in this Colony," and the Ordinance No. 73 entituled "Ordinance for explaining, altering, and amending the Ordinance No. 40," and any rules of the Supreme Court or of the Circuit Court or of the Courts of the Resident Magistrates <sup>(1)</sup> in so far as the said Ordinances and rules shall be repugnant to, or inconsistent with the provisions and operations of this Ordinance, shall be repealed, and the same are hereby repealed accordingly.

Ord. 8—1852.

2. <sup>(2)</sup> And be it enacted that in every district of this Colony, the Clerk of the Peace of which shall not have his home or usual place of residence within the same, it shall and may be lawful for the clerk of the Court of the Resident Magistrate for such district, upon being satisfied that any crime or offence within the jurisdiction of such Court, and proper to be summarily prosecuted therein at the public expense, has been committed; to issue and deliver to the messenger of the said Court, or other proper officer of the law, the process of the said Court in the fifty-sixth <sup>(3)</sup> rule of the Courts of the Resident Magistrates mentioned, precisely as if the public prosecutor for such district had duly requested the said clerk to issue and deliver such process, save and except only that from the form of the summons in or under the said fifty-sixth <sup>(3)</sup> rule set forth shall be omitted the following words, that is to say, "Upon the complaint and information of ———, Esquire, who prosecutes in the name and on behalf of Her Majesty:" Provided always, that nothing herein contained shall be deemed or taken to alter or affect the sixth section of the aforesaid Ordinance No. 73, which shall as much as may be acted upon in every such district as aforesaid.

Issue of criminal process by clerk of Magistrates where there is no clerk of the peace.

Retention of section 6 of Ord. No. 73.

3. <sup>(4)</sup> And be it enacted that when and as often as the clerk of the Court shall under or by virtue of the last preceding section issue and deliver such a summons as aforesaid, for compelling the appearance of any party to answer any charge, the said clerk shall also issue and deliver to the messenger, or other proper officer, the process of the said Court for compelling the attendance of all necessary witnesses in the case, and such process shall be in the form in that behalf provided in the first of the two forms in or under the fifty-seventh <sup>(5)</sup> rule of the Courts of the Resident Magistrates set forth, save and except only that the following words of the said form, that is to say, "Preferred by the public prosecutor," shall be omitted.

Issue of process for summoning of witnesses.

4. <sup>(6)</sup> And be it enacted, that upon the day appointed by any

Issue of warrant to enforce appearance.

<sup>1</sup> See § 59, Act 20, 1856 (Res. Magistrates).

<sup>2</sup> See §§ 64-68, Sched. B, Act 20 of 1856 (Res. Magistrates).

<sup>3</sup> Now 68th.

<sup>4</sup> See Sched. B, Act 20 of 1856, and § 2, Ord. 59 (Witnesses).

<sup>5</sup> Now 69th.

<sup>6</sup> See § 73, Sched. B, Act 20 of 1856.

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such summons as is in the second section of this Ordinance mentioned for the appearance of any party to answer any criminal charge, it shall be lawful for the Resident Magistrate to issue the warrant in the fifty-eighth rule of the Courts of the Resident Magistrates mentioned, without being requested by any prosecutor so to do.

Proceedings notwithstanding non-appearance of prosecutor.

5. (1) And be it enacted, that no charge or complaint in any such last-mentioned summons contained shall be dismissed by reason merely that no prosecutor appears on the court day appointed for the appearance of the party in the last preceding section mentioned, anything in the fifty-ninth rule of the Courts of the Resident Magistrates to the contrary notwithstanding. Provided that nothing herein contained shall be deemed or taken to prevent the clerk of the Court from assisting in the conduct of the trial in such manner as shall be in his power. Provided also, that no judgment or sentence of the Court of Resident Magistrate for any such district as aforesaid, shall be liable to be reversed or in anywise impeached, by reason that no public prosecutor appeared upon the trial of any charge contained in any such summons as aforesaid.

Assistance by clerk in the conduct of trial.

Reading of charge.

6. (1) And be it enacted that upon the day of the hearing of any charge contained in any such summons as aforesaid, the Magistrate shall cause the clerk of the Court to read in lieu and stead of the statement of the prosecutor in the sixty-second rule of the Courts of the Resident Magistrates mentioned, a copy of the summons aforesaid, and no reading of any such statement as aforesaid shall be necessary.

Expenses of witnesses.

7. (2) And be it enacted, that all witnesses summoned in any such district as aforesaid, by any such process as is in the third section of this Ordinance mentioned, shall, for the purpose of receiving their expenses as such witnesses, be taken and considered to be witnesses summoned at the instance of the public prosecutor, and that the clerk of the Court shall in lieu and stead of the Clerk of the Peace, make out the bills of the expenses of such witnesses, which bills are by the fourth section of Ordinance No. 59 described and directed.

Deposit of expenses by private prosecutor.

8. (3) And be it enacted that when in any Court of Resident Magistrate within this Colony, the prosecution is at the instance of a private person prosecuting under or by virtue of the sixth section of the aforesaid Ordinance No. 73, such private prosecutor or some one on his behalf shall (except as is in the next succeeding section excepted) before or at the time of the delivery to the messenger or other proper officer of the process for procuring the attendance of any person before the said Court to give evidence in support of such prosecution, deposit in the hands of the clerk of the Court

<sup>1</sup> See § 74 Sched. B, Act 20 of 1856.

<sup>2</sup> See also § 3 Ord. 26 of 1847 (Witnesses).

<sup>3</sup> See § 69 Sched. B, Act 20 of 1856.

such a sum of money as shall be sufficient to pay the expenses which such witness would be by law entitled to receive after giving his attendance in case he had been summoned at the instance of the public prosecutor, and such witness shall, after giving his attendance receive such expenses from the said clerk. Provided that if the Court shall, for sufficient cause, disallow the expenses of any witness in regard to whom any such sum shall have been deposited, or if any such witness shall fail to attend, the sum so deposited shall be returned to the party who deposited the same.

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Return of deposit on disallowance of expenses of witness.

9. And be it enacted, that in every district the Clerk of the Peace of which shall not have his home or usual place of residence within the same, no private person prosecuting summarily, at his own instance, in the Court of the Resident Magistrate of such district, shall be required to make any such deposit as is in the last preceding section mentioned, or to pay any of the expenses of any witnesses summoned at his instance; nor shall any such private prosecutor be required to pay the expense of the process in the fifty-sixth <sup>(1)</sup> rule of the Courts of the Resident Magistrates mentioned, in case such private prosecutor shall satisfy the clerk of the Court that the charge which such private prosecutor prosecutes is one which, from its nature and circumstances, would be proper to be prosecuted at the public instance, by a resident public prosecutor, and that the witnesses proposed to be summoned are material and necessary: and bills of expenses for the witnesses summoned at the instance of any such last-mentioned private prosecutor shall be made out and paid, in like manner, as if such witnesses had been summoned in manner and form hereinbefore, in the third section of this Ordinance mentioned. Provided that in every case in which the clerk of the Court shall be satisfied, as aforesaid, by any private prosecutor, the said clerk shall, before issuing the process in such case, enter, under the head "Remarks," in the "Criminal Record Book," or in some other and more convenient place in the said book, the following words, or words to the same effect, "Process in this case to be executed free." And provided, further, that it shall be competent for the Court, upon the hearing of any case in which the process shall have been issued, as aforesaid, free of charge to the private prosecutor, to order such private prosecutor to pay all costs and expenses of process issued and witnesses summoned, at his instance, in case such Court shall pronounce the charge to be unfounded and vexatious <sup>(2)</sup>, and shall be satisfied by oath that it was through, or by means of, some misrepresentation or concealment of the true facts of the case, upon the part of such private prosecutor or some one acting on his behalf that the clerk of the Court was induced to cause the process to be in the first instance executed free, and in such a case the Court may

Cases in which the deposit need not be made.

Payment by private prosecutor of witnesses' expenses by order of the court.

<sup>1</sup> Now 68th.

<sup>2</sup> See § 19 Ord. 40 and § 74, Sched. B, Act 20 of 1856.

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Restitution to private prosecutor of expenses.

order to the witnesses aforesaid their just and reasonable expenses and shall not be obliged to allow them only the rate by law allowed to witnesses summoned at the instance of the public prosecutor. And provided, also, that if from the nature of any case prosecuted at the instance of a private prosecutor, for or on whose behalf the process was not executed free, the Court should, upon the hearing thereof, see reason to think that the case, as it then appears, is one proper to have been prosecuted at the public expense, such Court may make an order directing that all sums paid or deposited by such private prosecutor, in regard to such case shall be returned to him, and that the costs and expenses of process and witnesses shall be paid in like manner as if the process had been sued out and the witnesses had been summoned at the instance of the public prosecutor.

Authority of clerk of peace or person specially appointed by Attorney-General to take up and assume conduct of pending cases.

10. (1) And be it enacted that in every such district as in the last preceding section mentioned, it shall be competent for the Clerk of the Peace thereof or for any other person specially authorized by the Attorney-General by any writing under his hand, to act in any particular case to appear in Court at any stage of any summary prosecution pending in such Court and to take up and conduct all the further proceedings in such case, or to apply, by motion to the Court, to stop all further proceedings in such case, in order that a prosecution for the same crime or offence may be instituted in some other form or Court; and the Court shall, in every such case, be bound to make an order in the terms of such motion.

Preparatory examination by Resident Magistrate and Justice of the Peace.

11. And be it enacted that in every such last-mentioned district it shall and may be lawful for the Resident Magistrate or any Justice of the Peace, on receiving information of any crime or offence having been committed within the said district (except it shall plainly appear to be proper for the cognizance of a court of summary jurisdiction) to issue his warrant for the apprehension of any person who, from information on oath, may be reasonably suspected of having committed such crime or offence, and also to issue his warrant for summoning those persons whom it shall appear necessary to examine as witnesses, and in case of refusal or failure to attend after due proof of the service of such summons, a further warrant under the hand of such Magistrate to enforce the appearance of such witnesses (which warrant may be executed by the person to whom it is directed either within or without the local limits of the jurisdiction of the Magistrate issuing the same), and such Magistrate shall proceed with the preparatory examination in the usual manner and do or cause to be done everything which by the said Ordinance No. 40 or any other law or ordinance is enjoined to be done by the officer conducting the preparatory examination, anything in the Ordinances No. 40 and No. 73 respectively to the contrary notwithstanding. Provided always that the

Intervention of Clerk of the Peace.

<sup>1</sup> See § 8 Ord. 73 and § 64, Sched. B. Act 20 of 1856.

Clerk of the Peace of such district or other person specially authorized in writing by the Attorney-General to act in any particular case may commence any preparatory examination or appear and intervene at any stage of any preparatory examination and assume the sole conduct and management thereof.

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12. And be it enacted that in every such last-mentioned district where a preparatory examination has been taken by any Magistrate without the presence of the Clerk of the Peace or other person deputed by the Attorney-General such Magistrate shall transmit such preparatory examination to the Attorney-General at his office in Cape Town, or to such Clerk of the Peace as may from time to time be specified by the Attorney-General, to be by such Clerk of the Peace submitted for the consideration of the Attorney-General.

Transmission of preparatory examination to Attorney-General.

13. And be it enacted, that at every Circuit Court held for two or more districts, all crimes and offences committed in either or any of the districts for which such Court shall be holden, may lawfully be prosecuted either by the Clerk of the Peace of the said district, or by the Clerk of the Peace of the district in which such Court is held, or by any other person specially authorized by the Attorney-General by any writing under his hand to prosecute in such Court all and singular the said crimes and offences: Provided that nothing herein contained shall be construed so as to deprive the said Attorney-General of any power which he may now possess to grant to any person a special authority to prosecute in any particular case pending in such Court.

Conduct of prosecutions in Circuit Courts.

14. And be it enacted that when and as often as any Clerk of the Peace shall by reason of sudden illness or other cause be unable to conduct in any Circuit Court the prosecutions which he would or might otherwise have conducted, and in consequence of such inability there shall not be any person entitled by law to conduct such prosecutions, it shall and may be lawful for the Resident Magistrate of the district in which such Circuit Court shall be holden or for the officer acting as such upon being satisfied of such inability, to grant by any writing under his hand an authority to some fit and proper person to prosecute such cases, which written authority shall be in substance as follows, that is to say :

Appointment of prosecutor by Resident Magistrate in case of emergency.

“ I, the undersigned, do hereby certify that it has been made to appear to me that A. B., Esquire, the Clerk of the Peace for the district of \_\_\_\_\_, is unable to appear in the Circuit Court to be holden at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, for the division of \_\_\_\_\_, (or divisions of \_\_\_\_\_ and \_\_\_\_\_, according to the fact), and that in consequence of such inability it is necessary that some other person should be appointed to conduct in the said Court the prosecution of all crimes and offences committed in the district of \_\_\_\_\_ (or districts of \_\_\_\_\_ and \_\_\_\_\_, as the case may be), and I do therefore

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hereby authorize and appoint C. D., of ———, to appear in the said Court and to conduct therein, in room and stead of the said A.B., the prosecution of such lastmentioned crimes and offences.

Given under my hand this — day of ———, 18—.

(Signed) E. F.,

Resident Magistrate of ———.”

And every person producing in any such Circuit Court any such authority, shall be entitled to conduct all such prosecutions as the person in whose room and stead he has been so appointed to act would, had he personally appeared in such Court, been competent to conduct: Provided always, that no such Resident Magistrate shall grant any such authority, unless from want of time, or other cause no authority to prosecute shall have been obtained from the Attorney-General upon application to him for that purpose. Provided, however, that no such authority, when given, shall be impeached or questioned upon the ground that, under the circumstances of the case, an authority from the said Attorney-General might have been obtained, had timely application in that behalf been made.

Time of taking  
effect of Ordinance.

15. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

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[August 14, 1861.

### ACT

#### For Improving the Administration of Criminal Justice.

Preamble.

WHEREAS offenders frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case: And whereas, such technical strictness may safely be relaxed in many instances, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defence: And whereas, a failure of justice often takes place on the trial of persons charged with offences against the law, by reason of variances between the statement in the indictment on which the trial is had, and the proof of names, dates, matters, and circumstances therein mentioned, not material to the merits of the case, and by the misstatement whereof the person on trial cannot have been prejudiced in his defence: 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. So much of any former Law, Act, or Ordinance, and of any rule of the Supreme Court, or of the Circuit Court, or of the Courts of Resident Magistrates as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

2. From and after the taking effect of this Act whenever on the trial of any indictment in the Supreme or any Circuit Court for any crime or offence there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof in the name of any Division, City, Municipality, Field-cornetcy, or place mentioned or described in any such indictment, or in the name or description of any person or persons, or body politic or corporate, therein stated or alleged to be the owner or owners of any property movable or immovable which shall form the subject of any offence charged therein, or in the name or description of any person or persons body politic or corporate therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the christian name or surname or both christian name and surname, or other description whatever of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the Court before which the trial shall be had, if it shall consider such variance not material to the merits of the case and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof by some officer of the Court or other person both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury as such Court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had occurred.

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 Certain discrepancies between indictment and evidence may be corrected.

Trial to proceed on amended indictment.

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

Verdict as valid as if indictment had been originally correct.

4. In any indictment for murder or culpable homicide preferred after the taking effect of this Act, it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder to charge that the defendant did wrongfully, unlawfully, and maliciously kill and murder the deceased, and it shall be sufficient in every indictment for culpable homicide to charge that the defendant did wrongfully and unlawfully kill the deceased.

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

5. In any indictment for forging, uttering, stealing, embezzling, destroying, or concealing any instrument, it shall be sufficient to

In indictment for forgery copy of forged instrument not necessary.

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describe such instrument by any name or designation by which the same may be usually known or by the purport thereof, without setting out any copy or facsimile thereof or otherwise describing the same or the value thereof.

Nor in any other case concerning written or printed documents.

6. In all other cases wherever it shall be necessary to make any averment in any indictment, as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof.

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

7. From and after the taking effect of this Act it shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument whatsoever, or for committing or attempting to commit theft by means of false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

How if on trial for commission of an offence its attempt only be proved.

8. And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof. For remedy thereof be it enacted that if on the trial of any person charged with any crime or offence it shall appear to the jury or Court of Resident Magistrate, as the case may be, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not, by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict and the Court aforesaid to pronounce as its judgment that the defendant is not guilty of the crime or offence charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular crime or offence charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the crime or offence for which he was so tried.

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

9. If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such

defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for assaulting with intent to rob; <sup>(1)</sup> and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried. And as often as any person shall be charged with the crime of assault with intent to murder, he may be found guilty of an assault with intent to do some grievous bodily harm, or of a common assault; and in like manner a person charged with assault with intent to do some grievous bodily harm, may be found guilty of a common assault. <sup>(2)</sup>

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Assault with intent to murder.

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

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

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

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

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

Not necessary to specify particular coin or bank-note stolen.

13. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved; nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name; nor for omitting to state the time at which the

Certain omissions or imperfections not to invalidate an indictment.

<sup>1</sup> May also be convicted of Assault or Theft, § 2 Act 17, 1874.

<sup>2</sup> See also § 1 Act 9, 1867, and § 3, Act 15, 1864.

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Limit as to error  
in date.

offence was committed in any case where time is not of the essence of the offence ; nor for stating the offence to have been committed on a day subsequent to the filing of the indictment, or on an impossible day, or on a day that never happened ; nor for want of or imperfection in the addition of any defendant or any other person ; nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence : Provided, that as often as any particular day shall be laid in any indictment as the day on which any act or crime was committed, proof that such act or crime was committed on any other day or time, not more than three months before or after the day laid in the indictment, shall be taken to support such averment in case time be not of the essence of the crime : And provided that, in the case in the last preceding proviso mentioned, proof may be given that the act or crime in question was committed on a day or time more than three months before or after the day laid in the indictment, in case the Court before which the trial shall be had shall consider that the defendant cannot be prejudiced thereby in his defence upon the merits : Provided, however, that as often as such Court shall consider that the defendant might be thereby prejudiced in his defence upon the merits, such Court shall reject such proof, and shall discharge the jury from giving a verdict in the said case ; or, if a Court of Resident Magistrate shall pronounce no judgment, and the defendant shall be in the same plight and condition as if he had not been arraigned.

How if defence be  
an *alibi*.

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

If no day or an  
impossible day be  
stated.Objections to  
indictment how and  
when to be made.

15. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken by exception, or by

motion to quash such indictment before the jury shall be sworn and not afterwards; and every Court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by such officer of the Court or other person, and thereupon the trial shall proceed as if no such defect had appeared: Provided, also, that although such indictment may have been presented by a grand jury, <sup>(1)</sup> the consent of such grand jury shall not be necessary, anything in the ninety-ninth rule or order of the Supreme and Circuit Courts to the contrary notwithstanding.

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16. In any plea of a former conviction or a former acquittal it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

Statement of defendant sufficient plea of former conviction or acquittal.

17. In any criminal case prosecuted in any Circuit Court at the instance of the public prosecutor, the process of such Circuit Court may be sued out for summoning as a witness in such case any person required to give evidence, although such person shall reside or be within some district of the Colony other than that in or for which such Circuit Court shall be appointed to be holden. And as often as it shall be necessary to summon any such lastmentioned person, the process of the Circuit Court in which such criminal case is pending shall be forwarded for execution to the Deputy Sheriff of the district in which such witness shall reside or be, or such other officer in such district as shall be proper for the execution of similar process when issued by or out of the Circuit Court of or for such lastmentioned district, and such Deputy Sheriff or other officer receiving such process shall execute the same in like manner as if it were the process of the Circuit Court of or for such lastmentioned district, and shall return such process, together with what he has done in the execution thereof, to the officer by whom the same was sued out and forwarded to him, and the return made by such Deputy Sheriff or other officer shall be *prima facie* evidence of the service of such process in manner and form as in such return stated, and such process shall have the same force and effect and entail all and singular the same consequences as if the person so summoned had been served in the district for which the Circuit Court in which the case is pending shall be held.

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

Process how to be served.

18. [Repealed by § 4 Act 15, 1864.]

19. From and after the taking effect of this Act it shall not be lawful in any indictment against any person for any crime or offence, to charge or allege that such person had been formerly convicted of any crime or offence; nor, except as hereinafter is excepted, shall it be competent to prove at the trial of any person for any crime or offence that he was formerly convicted of any crime or offence: Provided that if upon the trial of any person

Indictment not to charge former conviction.

When proof of such conviction may be adduced.

<sup>1</sup> Grand Jury abolished by Act 17, 1885.

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for any crime or offence such person shall give evidence of his good character, it shall be lawful for the prosecutor in answer thereto to give evidence of the former conviction of such person of any crime or offence which might, before the taking effect of this Act, have been in the indictment for the crime or offence then in course of investigation charged as an aggravation.

How in regard to convictions which might previous to this Act have been charged as aggravation.

20. In case any person indicted for any crime or offence shall have been formerly convicted of any crime or offence which might, before the taking effect of this Act, have been charged in the said indictment as an aggravation, it shall be lawful for the prosecutor to give notice to such person that in the event of his being found guilty of the crime for which he is indicted proof will be given of such former conviction.

Notice that proof of former conviction will be offered.

21. The notice in the last preceding section shall be written or printed, or partly written and partly printed, and shall be in substance as follows :

“ A. B., take notice that, in the event of your being found guilty of the crime charged in the indictment of which a copy is now served upon you, and for which you are to be tried on the ——— day of ——— next, proof will be offered that you were formerly convicted of the crime of (here state the crime), namely, at the Circuit Court for the division of ——— (or otherwise, as the case may be), on the ——— of ——— 186—.

“ Dated this ——— day of ——— 186—

“ W. P., Attorney-General,

“ (or E. F., Attorney for the Private Prosecutor.)”

How notice to be served.

22. The notice in the last preceding section mentioned shall be served upon the defendant by the officer charged with the service upon such defendant of the copy of the indictment in the said notice mentioned, and shall be served together with such copy, or at all events not later than by law such copy should be served, in order that the said defendant should have due notice of trial.

Return of service.

23. The officer serving any such notice as aforesaid shall forthwith deliver or transmit to the Clerk of the Peace or other functionary from whom such officer shall have received such notice for service a return of the mode in which such service was made, and such return shall be *primâ facie* evidence that service of such notice was made in manner and form as in such return stated.

Jury to inquire into proof of former conviction.

24. (1) In case the defendant shall be found guilty of the crime or offence charged against him in such indictment as aforesaid, but not otherwise, it shall be lawful for the prosecutor to inform the Court before sentence shall have been passed that he proposes to prove such former conviction as aforesaid; and thereupon, and upon reading the return aforesaid attesting the due service of such

<sup>1</sup> See § 14, Act 4, 1861, (Evidence) Act 7, 1867, § 8 Act 13, 1886, *infra*.

notice as aforesaid, the Court shall direct the same jury to inquire whether the defendant was formerly convicted of the crime or offence mentioned in such notice or not; and in case, upon the evidence, the jury shall find that the defendant was so convicted, the Court shall direct such finding to be recorded and pass such sentence as to such Court shall seem meet.

No. 3—1861.

Sentence accordingly.

And whereas it is expedient to declare the practice proper to be observed in the Courts of Resident Magistrates in regard to criminal cases remitted by the Attorney-General to such Courts, whether the same shall be remitted under the Act No. 12, 1860, entitled "An Act for increasing the Jurisdiction of the Courts of Resident Magistrates in Criminal Cases in which the Persons accused admit their Guilt," or under the ordinary jurisdiction conferred by the Act No. 20, 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates:" And whereas as often as the Resident Magistrate to whose Court any such case shall have been remitted under such lastmentioned Act shall himself have been the person by or before whom the preparatory examination shall have been held, the expense and inconvenience of recalling the witnesses examined at the preparatory examination in order to take their evidence *de novo* or to read over in their presence their former depositions may in general be safely dispensed with, Be it enacted as follows:

Procedure in Magistrates' Courts regarding criminal cases remitted by Attorney-General.

25. As often as any case shall, under the Act aforesaid No. 12, 1860, be remitted by the Attorney-General to any Court of Resident Magistrate, such Magistrate shall, with all convenient despatch, cause the accused person to be brought before his Court, and shall inform him that the preparatory examination in the course of which he voluntarily admitted his guilt, having been forwarded to the Attorney-General, has been remitted by that officer to the said Court, and such Magistrate shall ask the said accused person whether he has anything to say why sentence should not then be passed upon him for the offence of which he has confessed himself guilty.

In a case remitted by the Attorney-General under Act 12, 1860, sentence may at once be passed.

26. If in answer to the question last aforesaid the said accused person shall desire to have any witness formerly examined, recalled, or any person not yet examined, called as a witness, or if such accused person shall state any other ground why sentence should not then be passed upon him, the Magistrate shall consider what is urged by such accused person in support of his application for further evidence, or of his objection to be then sentenced, and shall pass or postpone sentence as he shall in his judgment deem to be most in accordance with real and substantial justice.

Unless accused apply for further evidence or delay.

27. If such Magistrate shall in any such case as is in the last preceding section mentioned, deem it to be his duty to pass sentence at once, he shall make a note of the application or objection made by the person accused, and of the reasons for the

If application be disallowed note thereof to be made in the record.

No. 3—1861.

disallowance thereof by such Magistrate, and shall annex such note, signed by himself, to the record of proceedings in the case and shall forward the same with such record to the Registrar of the Supreme Court.

Statement required by sixty-third rule of Court not necessary in cases remitted under Act 12, 1860.

28. No statement in writing, or complaint, as the same is described in the sixty-third of the rules, orders, and regulations of the Courts of Resident Magistrates, shall be necessary in reference to any case remitted to any Court of Resident Magistrate under the Act aforesaid, No. 12, 1860: Provided that every such case shall forthwith after sentence be entered in the Criminal Record Book, leaving blank the column provided for recording the day of lodging the complaint and the column for recording the judgment, and stating in the column provided for remarks "Case remitted under Act No. 12, 1860."

Procedure in regard to cases remitted under Act 20, 1856.

29. Cases remitted by the Attorney-General to Courts of Resident Magistrate exercising their ordinary jurisdiction under the Act aforesaid, No. 20, 1856, shall be proceeded with in such Courts in like manner in all respects as if no preparatory examination had been previously taken in such cases, save and except that when and as often as the Resident Magistrate who shall try any such case shall be himself the person by or before whom the preparatory examination in such case was taken it shall not be imperative upon him to recall any witness who formerly gave his evidence in the presence of such Magistrate and of the person accused, and it shall be competent and sufficient to read as evidence the deposition of such witness: Provided, that no deposition of any witness not previously examined in the presence of both such Magistrate and such accused person shall be read or used at the subsequent trial, but such witness, if a necessary one, shall be again summoned and be examined in like manner as if he had not been before examined in the case: And provided that as often as it shall appear to such Magistrate himself, or be made to appear to him by either the prosecutor or the person accused, that the ends of justice might be served by having a witness formerly examined in the presence of such Magistrate and of the person accused summoned again for further examination, then such witness shall be summoned and examined accordingly.

Witnesses not examined to be summoned again or if necessary re-examined after having already given evidence.

Meaning of term indictment.

30. In the construction of this Act the word "indictment" shall be understood to include any charge or complaint in any Court of Resident Magistrate or in any other Court, and also any plea, replication, or other pleading.

Short title.

31. This Act may be cited for all purposes as the "Criminal Law Amendment Act, 1861."

No. 15—1864.]

[July 26, 1864.

## AN ACT

To Amend "The Criminal Law Amendment Act, 1861,"  
and for other purposes.

WHEREAS "The Criminal Law Amendment Act, 1861," stands in need of certain amendments: And whereas, it is also expedient to amend the law regarding the Service of Criminal Process in certain cases: 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 said Act as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant portion of Act No. 3 of 1860, repealed.

2. In every case in which it shall be necessary in any indictment, to name any joint-stock company or co-partnership, as the persons injured or damaged by the commission of the offence charged in such indictment, or for any other purpose, it shall be sufficient to state the name, style, or firm of such company or co-partnership, without naming any of the officers or shareholders of such joint-stock company or any of the partners in such co-partnership, and one individual trading under the style or title of a firm may be described by such style or title.

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

3. Any person tried upon any indictment charging him with an assault with intent to commit a rape, or with an assault with any other particular intent specified in such indictment, may be found guilty of a common assault. And any person charged with murder or culpable homicide, in regard to whom it shall not be proved to the satisfaction of the jury that he caused the death of the person whom he is charged with killing, may, in case the jury shall be satisfied that he is guilty of having assaulted such deceased person, be found guilty of a common assault.

Persons indicted for assault with any particular intent may be convicted of common assault.

Ditto when indicted for murder or culpable homicide.

4. The eighteenth section of "The Criminal Law Amendment Act, 1861," is hereby repealed.

Section 18 of Act No. 3, 1861, repealed.

5. No defendant shall be tried in the Supreme or any Circuit Court for any crime or offence, unless such defendant shall have been previously committed for trial by some competent Court or Magistrate, for or in respect of the crime or offence charged in such indictment; and in case any defendant, after having been so committed for trial, shall have been again liberated by order of the Attorney-General, no process for summoning such defendant to answer any indictment at the suit of any private prosecutor shall be sued out without the leave of the Supreme or some Circuit Court, or some judge thereof, for that purpose first had and obtained: (1) Provided, always, that nothing herein contained shall

Defendant to be committed for trial by an inferior Court before trial in Supreme or Circuit Court.

On liberation, after committal, by order of Attorney-General, no private prosecution to take place without leave from Supreme or Circuit Court.

But Supreme or Circuit Court may direct committal or

<sup>1</sup> See § 11 Ord. 40, and foot note thereto.



No. 15—1864.  
 preparatory ex-  
 amination to be  
 taken.

When defendant  
 shall be considered  
 to be committed.

Persons in custody  
 or appearing in  
 pursuance of bail  
 bond to be deemed  
 to have been com-  
 mitted, unless the  
 contrary shall be  
 proved.

Chief Constables  
 charged with execu-  
 tion of process of  
 Supreme or Circuit  
 Courts in divisions  
 where there are no  
 Deputy Sheriffs.

Short title.

be construed so as to deprive the Supreme or any Circuit Court, or any judge thereof, of any power which such Court or Judge may now, by law, possess to direct, upon the application of any party interested, any Magistrate to take a preparatory examination, or to order any person to be committed for trial, whether any preparatory examination shall have been taken against such person or not: And provided that every defendant shall be deemed and taken to have been committed for trial, for or in respect of the crime or offence charged in such indictment, as often as the depositions taken before the committing Magistrate shall contain an allegation of any fact or facts upon which the defendant might have been committed upon the charge named in the indictment, although the committing Magistrate may, when committing the defendant upon such depositions, have committed him for some different crime or offence than that charged in the indictment, or for some crime or offence not known to the law of this Colony: Provided, also, that every defendant who shall be in actual custody when brought to trial, or who shall appear to take his trial in pursuance of any bail bond or recognizance entered into before any Magistrate, shall be deemed and taken to have been duly committed for trial upon the charge stated in the indictment, unless he shall prove the contrary.

And whereas by the twenty-third section of the Ordinance No. 25 of 1847, entitled "Ordinance for improving the Police of the Colony," it is 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;" and whereas it is expedient to make provision by law in regard to such process: Be it enacted as follows:

6. The chief constable of every district in which there shall reside no Deputy Sheriff shall diligently and faithfully execute all process of the Supreme or any Circuit Court for summoning defendants and witnesses in criminal cases, residing or being in such district, and which process shall be delivered to him for execution by the officer charged, for the time being, with the duty of suing out such process; and such chief constable shall execute such process in like manner in all respects as if he were the Sheriff for the Colony, or a lawful deputy of such Sheriff; and the return of such chief constable endorsed upon such process shall, in all Courts and places, be of the same force and effect as if it had been made by the said Sheriff, anything in any rule or order of the Supreme Court, or Circuit Courts to the contrary notwithstanding.

7. This Act may be quoted for all purposes as "The Criminal Law Amendment Act, 1864."

No. 7—1867.]

[August 16, 1867.

## ACT

To Amend the Act No. 3 of 1861, intituled “An Act for improving the Administration of Criminal Justice.”

WHEREAS it is expedient that the law relative to the proof of aggravations in cases of trial for criminal offences should 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:—

Preamble.

Whenever any person shall be indicted before the Supreme or any Circuit Court, or before the Court of the Eastern Districts, for any crime to which such person shall plead guilty, and it shall appear to the prosecutor that such person has been formerly convicted of any offence which might formerly have been charged in an indictment or plaint against the same person for the same cause, in aggravation of the crime to which such person shall have pleaded guilty, and notice shall have been duly served on such person that evidence of such former conviction would be offered against him, as provided by the terms of the Act No. 3 of 1861, it shall be lawful, on such person pleading guilty, for the prosecutor, before sentence is pronounced, to offer to prove such former conviction or convictions, and thereupon the Court shall ask the prisoner whether he confesses that he is the person so appearing to have been formerly convicted, and that he was so convicted as alleged, and if he shall not confess such matters, then to empanel a jury to try the truth of such matters, or such of them as the prisoner shall not confess; and if on such trial the same matters, or such of them as he shall not confess, shall be proved, or if he shall confess such matters, or any of them, then the Court shall take into account such of them as shall be proved or confessed in awarding sentence for the crime to which such prisoner shall have pleaded guilty (1).

Mode of proof of former conviction on plea of guilty.

No. 9—1867.]

[August 16, 1867.

## ACT

To Amend the Law relating to the Trial and Punishment of Criminals for Theft, and for receiving Stolen Goods knowing the same to have been stolen.

WHEREAS it not unfrequently happens that a prisoner being charged with theft escapes conviction by reason that, being concerned in the theft and being found in possession of portion of

Preamble.

<sup>1</sup> See also § 16 Act 3, 1861; § 14, Act 4, 1861 and § 8, Act 13, 1886.

No. 9—1867.

the stolen property, the actual fact of the theft cannot be substantiated by the evidence: 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 indicted for theft may on such indictment be convicted of receiving stolen goods, knowing them to have been stolen.

1. On the trial of any person upon any indictment or charge for theft, it shall and may be lawful for the jury or Court of Resident Magistrate, as the case may be, before whom such case shall be tried, should they consider that the evidence, though not sufficient to substantiate the charge of theft, is sufficient to show that the prisoner was guilty of receiving stolen goods knowing them to have been stolen, to find that the prisoner is guilty of receiving stolen goods knowing them to have been stolen, and upon any such finding the prisoner shall be liable to suffer, and shall suffer, the same penalty as if convicted of the like offence on an indictment or charge specifically framed for the crime of receiving stolen goods knowing them to have been stolen.

And whereas it is found that in many cases of theft in this Colony the offenders are not induced to commit such offences by need or poverty, but are themselves possessed of cattle, sheep, or other property: And whereas it is expedient that the cost incurred in their prosecution and in the prevention of the like outrages should be to some extent made good by such offenders: Be it enacted as follows:

Court may impose fine in addition to sentence passed for offence committed.

2. It shall and may be lawful for any Court empowered to pass sentence on any person for the offence of theft, or of receiving stolen goods knowing the same to have been stolen, or of having been accessory to any theft, before the fact, to impose upon such offender, in addition to such sentence, a fine not exceeding in amount ten times the value of the property which such offender shall be then and there sentenced for stealing, or for receiving knowing the same to have been stolen, such fine, if not paid, to be levied of 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 such levy. The amount of such fine when paid or levied shall be paid into the public treasury; and it shall and may be lawful for the Governor, upon the recommendation of the Judge or Magistrate who shall have tried the case, out of the amount so paid or levied as aforesaid, to make restitution, in whole or in part, to the person from whom the property the subject matter of such offence aforesaid shall have been stolen, of the value of such property, and further to reward any person or persons, not being himself or themselves concerned in the theft, or accessory thereto, who may have given such information as to lead to the apprehension or conviction of the offender or to the recovery of the stolen property; and when and as often as any such fine as aforesaid shall be imposed by a Resident Magistrate, such Resident Magistrate shall forward the record of the proceedings in the said case to the Registrar of the Supreme

Fine how to be levied.

Disposal of fine.

Fine imposed by Resident Magistrate subject to review by Supreme or Eastern Districts Court.

Court, or if the magistracy shall be within the Eastern Districts, then to the Registrar of the Court of the Eastern Districts, in order that the sentence may be reviewed by one of the judges of such Courts respectively, and such judge may reduce or disallow the same, as shall seem to him to be most in accordance with real and substantial justice; and in every case in which such record shall have been so forwarded as aforesaid, the warrant shall be executed by immediately attaching sufficient goods as aforesaid to answer the fine imposed by such Magistrate in the first instance, but such goods shall not be sold to realize the amount of such fine until the sentence shall have been finally approved or amended by such judge as aforesaid, and then only so much thereof shall be sold as shall probably be necessary to produce the amount of such fine as shall ultimately be imposed, together with the costs of levy, as aforesaid.

No. 9—1867.

Goods attached to satisfy fine not to be sold before confirmation of sentence.

3. If any fine in the preceding section mentioned be paid when imposed by any Resident Magistrate, and be afterwards reduced or disallowed as aforesaid, the amount by which the same shall be reduced, or the amount of such fine, as the case may be, shall be refunded to the person who shall have paid the same.

In case of reduction or disallowance of fine, refund to be made.

4. Nothing in this Act shall be held to repeal any of the provisions of the Act No. 16 of the year 1864; but whenever judgment shall be given under the fourth section of the same Act in favour of the owner of any cattle or sheep supposed to have been stolen by any accused person, such judgment shall be considered by the Court which shall try such accused person in awarding such fine as is hereinbefore mentioned, should such person be found guilty.

Act No. 16, 1864, not affected; but judgment given in favour of owner of stolen property to be considered in awarding fine.

No. 7—1873.]

[June 26, 1873.

ACT

To Repeal the Twenty-third Section of Ordinance No. 73 of 1830, intituled "An Ordinance for explaining, altering, and amending the Ordinance No. 40."

WHEREAS it is expedient to repeal the twenty-third section of Ordinance No. 73 of 1830, and to re-enact the sixtieth section of Ordinance No. 40 of 1828: 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 twenty-third section of Ordinance No. 73 of 1830 is hereby repealed, and the sixtieth section of Ordinance No. 40 of 1828 is hereby re-enacted,

Repealing section 23 of Ordinance 73 and re-enacting section 60 of Ordinance 40.

No. 17—1874.]

[July 30, 1874.

## ACT

## To Amend the Criminal Law.

Preamble.

WHEREAS it is desirable that certain amendments, as hereafter mentioned, should be made in the Criminal Law: 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:—

Provisions of Act No. 17 of 1867 extended to thefts of skins, &c.

1. All and singular the provisions of the second and every succeeding section of "The Cattle Theft Repression Amendment Act, 1867," relating to the theft of any cattle, sheep, or goat, shall extend to the crime of theft of the skin of any such animal, and to the crime of attempting to steal any such animal or the skin thereof, precisely as if whenever such theft is mentioned or referred to in the said Act, the crime of theft of the skin of any such animal, or of attempting to steal any such animal or the skin thereof, had been mentioned in place or stead of the theft of such animal.

Persons tried for robbery may be convicted of assault or theft.

2. If upon the trial of any person upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit the crime of assault, or the crime of theft, forming part of the crime of robbery charged in the said indictment, the defendant shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of the said crime of assault or of the said crime of theft, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such assault or theft; and no person so tried shall be liable to be afterwards prosecuted for the assault or theft, forming part of the said crime of robbery, charged in the said indictment.

Trial may be postponed after arraignment.

3. Notwithstanding that any defendant may have been arraigned upon any charge, it shall be competent for the Court before which he has been arraigned to postpone the trial of the said charge until such time and place, and upon such terms as to such Court may seem proper: Provided, however, that no such postponement shall be allowed after the jury shall have been duly sworn and charged with the prisoner in the manner provided for that purpose: Provided, further, that nothing in this section contained shall be held or construed to repeal or in any way to affect the validity of the provisions of the 58th and 59th sections of Ordinance No. 40 of 1828.

But not after jury is sworn.

Prisoners' declarations at preparatory examinations to be received in evidence on mere production.

4. The statement of an accused person purporting to be duly made and subscribed according to the 34th section of the Ordinance No. 40, intituled "An Ordinance for Regulating the manner of

proceeding in Criminal Cases in this Colony," shall be received in evidence before any court or tribunal upon its mere production without further proof thereof, unless it shall be proved that such statement was not in fact duly made, or that the signatures or marks thereto are not, in fact, the signatures or marks of the persons whose signatures or marks they purport to be.

No. 17—1874.

Exceptions.

5. In addition to the cases mentioned in the 41st section of the Ordinance No. 72, intituled " Ordinance for Altering, Amending, and declaring in certain respects the Law of Evidence within this Colony " where a deposition of an absent witness is admissible in evidence, such deposition shall also be admissible in evidence as in the said section mentioned, if it shall be proved on oath to the satisfaction of the Court, that the deposing witness is too ill to be able to travel: Provided that in every case mentioned in the forty-first section of the Ordinance No. 72, aforesaid, and in this section of this Act, it shall appear upon the record or be proved to the satisfaction of the Court that the person accused, by himself, his counsel, attorney, or agent, had a full opportunity of cross-examining the witness.

Admissibility of deposition at preparatory examination of witness unable to travel.

6. The punishment of whipping, *where the number of lashes or cuts shall exceed twelve*, shall in no case be inflicted under any sentence of any Court of Resident Magistrate until the proceedings in the case have been returned to the Magistrate with a Judge's certificate, as directed by the 47th section of the Act No. 20 of 1856, intituled " An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrate." <sup>(1)</sup>

Lashes not to be inflicted under any sentence of Resident Magistrate's Court until Judge's certificate is received.

7. The 51st section of the said Ordinance No. 40 shall be read and construed as if the words " where innocence may be fairly presumed, and in every case where the charge is not alleged with sufficient certainty " were omitted therefrom.

Section 51 of Ordinance No. 40 amended.

8. Every instrument liable to Stamp Duty shall be admitted in evidence in any criminal proceeding, although it may not be stamped as required by law.

Unstamped instruments admissible in criminal cases.

[9 and 10 have reference to proceedings before the Grand Jury which has been abolished by Act 17, 1885.]

11. Every person who, after the taking effect of this Act shall be held to bail, or committed to prison for any crime or offence, shall be entitled to require and have within a reasonable time in that behalf from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same a copy of the examinations of the witnesses, respectively, upon whose depositions he has been so held to bail or committed to prison, and of his own statement, on payment of a reasonable sum not exceeding three-pence for each folio of one hundred words: Provided, that if such demand shall not be made before the day appointed for the commencement of the trial of the person on whose behalf such demand

Persons bailed or committed to prison entitled to receive copy of examinations of witnesses against him.

On payment of three pence a folio.

<sup>1</sup> Words in italics expunged by § 5, Act 21, 1876.

No. 17—1874.

shall be made is to take place, such person shall not be entitled to have any such copy as aforesaid, unless the judge or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to the trial; but it shall, nevertheless, be competent for such judge, or other person presiding at such trial, if he shall think fit, to postpone such trial on account of such copy not having been previously had by the party charged.

Persons under trial may inspect depositions without charge at trial.

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

Section 39 of Ordinance No. 40 repealed.

13. The thirty-ninth section of the said Ordinance No. 40 is hereby repealed.

Short title.

14. This Act may be cited for all purposes as the "Criminal Law Amendment Act, 1874."

[Act 5—1879.] (1)

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Appeal in criminal cases.

22. The Judges of the said Court of Appeal, (2) or any three of them, shall likewise constitute a Court of Appeal in criminal cases, and appeals shall be allowed to the said Court of Appeal in criminal cases in the cases hereinafter provided for, and in no others.

When appeal in criminal cases to be applied for.

23. If any defendant, who shall be tried upon any indictment in the Supreme Court, Eastern Districts Court, or any Circuit Court, shall think that any of the proceedings of the Court before which the trial takes place are irregular or not according to law, it shall be lawful for him either during his trial or after his conviction, to apply to such Court to direct a special entry to be made on the record, showing the nature of the proceedings alleged to be irregular or illegal. If such a special entry be directed to be made, it shall be drawn up by the Registrar of the Court, and the defendant and the prosecutor, or their counsel and attorneys, shall be permitted to see it and to copy it, and if either of them shall object to its terms, it shall be settled by the judge of the Court before which the case is tried.

Special entry.

Leave to be applied for.

24. If any defendant who shall be convicted of any indictable crime or offence shall obtain leave to make, and shall cause to be made, such a special entry on the record as is hereinafter provided for, it shall be lawful for him, by leave of the judge of the Court before which the case shall have been tried, to appeal against his conviction on the ground of the irregularity or illegality of such proceedings as aforesaid as stated in such special entry aforesaid:

<sup>1</sup> For full text of this Act see *Administration of Justice*.

<sup>2</sup> See Act 17, 1886 (*Administration of Justice*).

Provided that within fourteen days after verdict notice of such appeal shall be given to the Registrar of the Court appealed from; and such Registrar shall forthwith, after receiving such notice, give notice of such appeal to the Attorney-General and transmit to the Registrar of the Court of Appeal an authenticated copy of the record, including copies of the evidence, whether oral or in writing, taken or admitted at the trial, and of the special entry made on the record in manner aforesaid.

No. 5—1879.  
Notice to registrar.

25. If any question of law shall arise on the trial of any person for any indictable crime or offence in the Supreme Court, Eastern Districts Court, or any Circuit Court, it shall be lawful for such Court to reserve such question for the consideration of the Court of Appeal in criminal cases. If the Court shall determine to reserve any such question, and the defendant shall be convicted, the Court shall state the question or questions reserved, and shall direct such case to be specially entered in the record, and a copy thereof to be transmitted to the Court of Appeal in criminal cases.

Questions of law reserved.

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

Cases in which execution of sentence may be suspended.

- (a) Unless the sentence shall be that the defendant suffer death, or be flogged or whipped, in either of which cases the sentence shall not be executed until the appeal or question reserved for the Court shall have been heard and decided.
- (b) Unless the Court from which the appeal is made, or by which the question is reserved, shall think fit to order either that the defendant be admitted to bail, or if he is sentenced to any punishment other than simple imprisonment, that he be treated as an unconvicted prisoner till the appeal or the question reserved for the Court shall have been heard and decided.

27. In case of any appeal against a conviction, or of any question being reserved as aforesaid, it shall be lawful for the Court of Appeal in criminal cases—

What appeal court may do in cases where question of law reserved.

- (a) To confirm the judgment of the Court below, in which case, if the defendant, having been admitted to bail, is in Court, the Court may forthwith commit him to custody for the purpose of undergoing any term of imprisonment to which he may have been sentenced;
- (b) or direct that the judgment shall be set aside, notwithstanding the verdict, which order shall have for all purposes the same effect, as if the defendant had been acquitted;
- (c) or direct that the judgment of the Court shall be set aside, and that instead thereof such judgment shall be given

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No. 40—1882.

- by the Court before which the trial took place as ought to have been given at the trial ;
- (d) or if such Court has not delivered judgment, remit the case to it in order that it may deliver judgment ;
- (e) or give such judgment as ought to have been given at the trial ;
- (f) or make such other order as justice may require :

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

How order of appeal court to be certified.

28. The order or direction of the Court of Appeal in criminal cases shall be certified under the hand of the presiding judge to the Registrar of the Court before which the case was tried, and such order or direction shall be carried into effect, and shall authorize every person affected by it to do whatever is necessary to carry it into effect.

When Act to take effect.

29. This Act shall take effect when and so soon as the Governor, with the advice of the Executive Council, shall, by proclamation published in the *Government Gazette*, declare that the same is in force.

Short title."

30. This Act may be cited for all purposes as "The Administration of Justice Amendment Act, 1879."

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Act 40—1882.] (1)

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Questions of law in cases under "review" of Eastern Districts or High Court may be reserved for Court of Appeal.

16. If any question of law shall arise upon review of the judgment or sentence of any inferior Court in any criminal action or suit by or before the Court of the Eastern Districts, or the High Court of Griqualand, respectively, it shall be lawful for the reviewing Court, if it shall see fit to do so, to reserve such question for the consideration and determination of the Court of (2) Appeal ; and in every such case, the provisions of the twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth sections, inclusive, of the "Administration of Justice Amendment Act, 1879," shall *mutatis mutandis* be deemed to apply.

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<sup>1</sup> For full text of this Act see *Administration of Justice*.

<sup>2</sup> See also Act 17 of 1886, § 5.

No. 13—1886.]

[June 18, 1886.]

## ACT

## To Amend in certain respects the Criminal Law and the Law of Evidence.

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.

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.

Section 7, Act 27 of 1882, amended.

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.

Penalty for injuring any person by negligent driving.

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.

Meaning of "imprisonment" in Section 9 Act 27 of 1882.

4. The "Ostrich Feathers and Skins Theft Repression Act, 1883," shall be read as if all the words in the third section which follow the words "penalty of not exceeding" were omitted and "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" were inserted; and as if all the words in the fourth section which follow the words "first section of this Act mentioned" were omitted.

Section 3 of Act 32 of 1883 amended.

5. The Resident Magistrate of the district in which any offence against the provisions of "The Ostrich Feathers and Skins Theft Repression Act, 1883," or of "The Ostrich Feathers and Skins Theft Further Repression Act, 1885," is committed, shall have jurisdiction to impose the penalty provided in respect of such offence.

Resident Magistrates to have jurisdiction under Acts 32 of 1883 and 13 of 1885.

6. In any proceeding against any person for any crime or offence, such person and the wife or husband, as the case may be, of such person may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

Accused person and the wife or husband — competent witnesses in criminal cases.

7. No witness who shall be examined or cross-examined in any proceeding under the last preceding section shall be excused from answering any question relevant to the issue in such proceeding on the ground that the answer thereto may criminate or tend to criminate himself.

Such witness cannot refuse to answer question on ground that it may criminate himself.

8. As often as it shall appear at any preparatory examination that the prisoner has been previously convicted of some crime or

If prisoner at preparatory examination admits previous

No. 13—1886.

conviction, his admission to be reduced to writing.

Such written admission to be received in evidence as proof of such previous conviction.

Penalty for supplying prisoners or convicts with liquor, tobacco, &c.

Judge of the Supreme Court or Magistrate may order seizure of books or documents in possession of accused person in criminal proceeding.

Short title.

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

9. Any person who shall, without lawful authority, supply or cause to be supplied to any prisoner or convict any intoxicating liquor, tobacco or article of food or drink shall, upon conviction before the Court of the Resident Magistrate having jurisdiction, be liable to a fine not exceeding ten pounds sterling, and in default of payment to imprisonment with or without hard labour and with or without spare diet, for any period not exceeding three months, or to such imprisonment without the option of a fine.

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

11. This Act may be cited as "The Administration of Justice Act, 1886."

No. 17—1886.] (1)

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Appeals to Supreme Court in Criminal Cases.

5. It shall be lawful for the prosecutor or defendant in any criminal suit, which shall be brought in appeal or review before the Eastern Districts Court, High Court of Griqualand, or any Circuit Court, from any inferior Court, to appeal to the Supreme Court against the judgment of the said Eastern Districts Court, High Court of Griqualand or Circuit Court, as the case may be, and

<sup>1</sup> For full text see *Administration of Justice*.

thereupon it shall be lawful for the Supreme Court to execute all and singular the powers heretofore vested in the Court of Appeal under and by virtue of the twenty-seventh Section of Act No. 5 of 1879. Placaat—April 22, 1779.

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CRIMINALS.

- |                                                                                                                                                    |                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| <p>1. Placaat 22 April, 1779, (Confiscation of property).</p> <p>2. Act 6—1884, (Imprisonment of criminals sentenced in adjacent territories).</p> | <p>3. Act 1—1860, (Introduction of convicted felons).</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|

ABOLITION OF ALL LAWS AND USAGES AUTHORIZING THE CONFISCATION OF THE PROPERTY OF CRIMINALS.

PLACAAT. [April 22, 1779.]

The States-General of the United Netherlands, unto all who shall see or hear read these presents, greeting :

Know ye that, although from the earliest times unto the present day, in the Colonies of this State, as well in the East as West Indies, comprised under the style and situated within the limits of the charter of the East and West India Companies, the power has been exercised of confiscation of goods of delinquents, who, in consequence of crime committed had forfeited liberty and life, yet it has appeared to us, not only that abuse might be made of that power, but likewise that, in its exercise, several disputes and difficulties constantly arise ; and that, moreover, actual injustice is inherent in it, inasmuch as by such confiscation the wives, children, or near relations of such delinquents are made, although themselves innocent, to share in the punishments imposed on them by the loss of the goods confiscated. Preamble.

That for these and other reasons, for the general good of the inhabitants, and in order to remove the aforesaid hardship in several Kingdoms and States, and especially in the Provinces of Holland and Zeeland, where heretofore this power was exercised in the same manner, it hath been disused or wholly abrogated.

Now, therefore, we, being desirous in like manner to provide therein for the welfare of our aforesaid Colonies and our inhabitants thereof, have been pleased, upon deliberation with the Council of State, after previous consultation and communication with His Highness the Prince of Orange and Nassau, our hereditary Stadtholder, to decree, as of our sovereign power and authority we do hereby decree, that from henceforth no confiscation of goods of delinquents, entire or partial, shall or may be ordered in our Colo- Confiscation of the property of criminals abolished in all Colonies.

Placaat—April 22,  
1779.

In all cases, not  
excepting conviction  
for treason.

nies aforesaid, either by the Courts of Justice or by any other inferior Courts therein, for any reason or offence whatever, great or small, none excepted—and not even the *Crimen Perduellionis* or *Læse Majestatis* (treason)—abolishing, cancelling, and nullifying in so far, all laws, placaaats, privileges, customs, and usages which might have an effect contrary hereto,—not desiring that the same shall in that particular be hereafter put to any further use, with instruction and express command to all judges, superior or inferior, within our aforesaid Colonies, to regulate themselves punctually according to this our placaaat.

And in order that no person may pretend ignorance of the same, we order and command the authorities of the chartered East India Company, the representative of His Royal Highness and authorities of the West India Company, the Directors of the Colony of Suriname, as also the Directors of the Colony of Berbice to cause this our placaaat to be published and affixed in all directions in the respective Colonies under their authority, at the places where it is customary to make such publications and affixions, and to cause the same to be observed and acted upon by all superior and inferior Courts of Justice of the aforesaid Colonies.

Given in the Hague under the seal of State, the Certificate of the President of our Council and the signature of our Registrar on the 10th, August, 1778.

Certified

G. J. D. PALLANDT.

By order of the abovementioned States-General,

(Signed) H. FAGEL.

The seal of their High Mightinesses being printed on the “Spatium,” on a red wafer covered with a paper lozenge.

(Endorsed) The Placaat on the other side was published here in the usual manner on the 22nd April, 1779.

In the Castle of Good Hope, 23rd April, 1779.

C. L. NEETHLING, Secretary.

No. 6—1884.]

[July 18, 1884.

ACT

To make Further Provision for the Imprisonment in this Colony of Criminals sentenced in Adjacent Territories.

Preamble.

WHEREAS it is desirable to make further provision for authorizing the imprisonment, with or without hard labour, of criminals sentenced to undergo such imprisonment by any competent Court

in the territory of St. John's River, or in any other territory in South Africa to which this Act may be declared applicable: 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. 6--1884.

1. Every person who has been or may hereafter be sentenced by any competent Court within the territory of St. John's River, or within any other territory in South Africa to which the Governor may, in exercise of the powers hereby conferred upon him, declare the provisions of this Act to extend or apply, to imprisonment with or without hard labour, may be sent into, imprisoned, and detained in the Colony of the Cape of Good Hope until the expiration of such sentence, and shall be treated in every respect as if the said sentence had been pronounced by some competent Court within the said Colony.

Governor authorized to imprison within the Colony criminals sentenced in St. John's River or other territory.

2. A certificate signed by the Colonial Secretary, setting forth that from documents deposited in his office it appears that the person or persons named in such certificate has or have been sentenced as in this Act is mentioned, and for the term named in such certificate, shall, in all courts and places whatsoever, be deemed and taken to be conclusive evidence, at all times during the continuance of such term, that such person or persons is or are duly imprisoned and kept to hard labour, or otherwise, as the case may be, under and by virtue of the provisions of this Act.

Certificate of Colonial Secretary to be evidence of sentence.

3. This Act may be cited as "The Prisoners' Detention Act, 1884."

Short title.

No. 1—1860.]

[May 21, 1860.

## ACT

To Prevent the Introduction into the Colony of the Cape of Good Hope of Convicted Felons, and other Persons sentenced to Transportation for Offences against the Laws.

WHEREAS the Colony of Western Australia has been constituted a penal settlement for the safe keeping of convicted felons and other persons undergoing transportation for offences against the laws: And whereas certain of the Australian Colonies adjacent to the Colony of Western Australia, to which colonies persons undergoing, or sentenced, or sent, to undergo transportation in the Colony of Western Australia had betaken and were likely to betake themselves, have passed Legislative Acts prohibiting the landing or living in such colonies of any of the said persons: And whereas certain persons, of the class or description prohibited by the Legislative Acts aforesaid from landing or being in the

Preamble.

No. 1—1860.

Colonies of which the Legislatures have passed the said Acts, have recently arrived in this Colony: And whereas, owing to the geographical position of this Colony, and to other causes, there is reason to apprehend that many more persons, of the class or description aforesaid, finding themselves shut out, by the Legislative Acts aforesaid, from the Colonies adjacent to Western Australia, to which Colonies they would otherwise resort, will, unless prevented, betake themselves to this Colony: And whereas it is essential to the preservation of peace and good order in the Colony of the Cape of Good Hope that an immediate stop should be put to the landing or being in the said Colony of convicted felons or other persons undergoing sentence of transportation for offences against the 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:—

Inprisonment of felons who enter the Colony.

1. No convicted felon, or other person undergoing sentence of transportation for any offence against the laws, nor any person who is or shall be under sentence in any British Colony or possession, other than this Colony, for any capital or other offence, nor any person not at liberty, by reason of any conviction or sentence, to reside in any part of the United Kingdom of Great Britain and Ireland, shall land in any of the ports of this Colony, or come or be in any place within the limits of this Colony, under the penalty, on conviction thereof before any competent Court, if a male, of being sentenced to imprisonment with or without hard labour for a period not exceeding three years, and if a female, of being imprisoned with or without hard labour for a period not exceeding two years.

No person coming from Western Australia to land, without proof of being a free person.

2. The master of any ship or vessel arriving at any port or place in this Colony, from any port or place in Western Australia, shall detain every passenger on board his ship or vessel until he have obtained from the Collector or other Chief Officer of Customs at or nearest to the port or place of arrival, in respect of each passenger respectively, a certificate that the said master has proved, to the satisfaction of the said Collector, or other Chief Officer of Customs, that the passenger in respect of whom such certificate is granted is not a prisoner of the Crown, or runaway convict, or any convict coming by virtue or under cover of any conditional pardon, ticket of leave, or indulgence of any kind, other than a free pardon or remission of his or her sentence by Her Majesty: And any master who shall permit or suffer any passenger to land, previous to obtaining such certificate, shall be liable to a penalty of twenty-five pounds for each passenger so landing: Provided, also, that it shall be lawful for the Governor, by proclamation, to extend the provisions of this section to the masters of ships and vessels arriving from any port or place mentioned in any such proclamation; and thereupon the like effects shall, in all respects, take place as if the port or place mentioned in any such proclamation had been

mentioned in this section, together with the ports and places in Western Australia.

No. 1—1860.

3. Any master or mariner, or other person commanding, navigating, or sailing any ship, vessel, or boat, which may hereafter, with the knowledge of such master or other person, bring to any port or place in this Colony any runaway convict, or any convict coming by virtue or under cover of any conditional pardon, ticket of leave, or any kind of indulgence, other than a free pardon or remission of his or her sentence by Her Majesty, shall, upon conviction thereof before any Court of Resident Magistrate, for every such offence, incur and be liable to a fine not exceeding one hundred pounds, or to imprisonment for any time not exceeding three calendar months, or to both such fine and such imprisonment, at the discretion of the said Court.

Masters or owners of vessels bringing felons to the Colony liable to fine or imprisonment.

4. Every person who shall knowingly harbour or conceal any other person such as is in the first section mentioned, shall, on conviction thereof before any such Court of Resident Magistrate as aforesaid, forfeit and pay for every such offence, a sum not exceeding one hundred pounds, and in default of payment, shall be imprisoned with or without hard labour for any period not exceeding twelve months.

Penalty for concealing persons in first section mentioned.

5. All property found upon or in the possession of any person convicted of contravening the first section of this Act shall be forfeited; and it shall be lawful for the convicting Court to order the whole, or a sufficient part thereof, to be applied towards the expense of conveying such offender to the Colony or Possession to which he or she was transported, or in which he or she was convicted.

Property of offenders to be forfeited, and whole or part applied in conveying them away.

6. Proof, on oath, that any person was in any British Colony or Possession, other than this Colony, known to be, or was commonly reputed and deemed to be, a transported felon, or a convict under sentence for any capital or other offence, shall, for the purposes of this Act, be taken as good *prima facie* evidence that such person was transported to such Colony or Possession, or convicted therein of a capital or other offence, as the case may be; and evidence that such person was so known, deemed, or reputed, at any period within seven years, shall be taken as good *prima facie* evidence that such person has not served the full period of his or her sentence, or the full term for which he or she was transported, and has not received such pardon or remission as aforesaid, unless the contrary be proved.

What deemed evidence of a person being a convict.

7. It shall be lawful for any Justice of the Peace or Resident Magistrate having credible information, on oath, that any person such as is in the first section of this Act described is, harboured in any dwelling house or tenement, or other place, within his jurisdiction, to grant a search warrant to any one or more constables or officers of the law proper for the execution of criminal warrants, to search for and apprehend such offender, and any person found

Justice of the Peace or Resident Magistrate may grant warrant to apprehend offenders.



No. 37—1882.

and apprehended by virtue of such warrant, shall, by such constable or constables, be forthwith taken before a Resident Magistrate or Justice of the Peace for examination, and to be further dealt with according to law.

Appropriation of penalties.

8. All fines and penalties recovered under this Act, and all moneys forfeited and not specially appropriated, shall be applied to and go to Her Majesty, her heirs and successors, for the public uses of the Colony.

Proceedings not to be quashed for want of form.

9. All proceedings under this Act shall be had and taken in a summary manner, and no such proceeding shall be quashed for want of form.

General issue may be pleaded in all actions.

10. If any suit or action be brought against any Resident Magistrate, Justice of the Peace, constable, or other person, for any act or thing done in furtherance of this Act, the defendant in every such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon.

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## CROWN LANDS.

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<i>Agricultural.</i>	<i>Quitrent Tenure.</i>
1. Act 37—1882, (Consolidation Act). 2. „ 40—1885, (Amending do ). 3. „ 4—1870, (Repealed Acts re- 4. „ 10—1877, { printed). 5. „ 33—1879, { 6. „ 2—1880, (Agricultural Immi- grants relief). 7. „ 37—1885, ( do. ). 8. „ 11—1862, (Grantees' Loans). <i>Leases.</i> 9. Act 19—1864, (Repealed Acts re- 10. „ 4—1867, { printed). 11. „ 3—1870, (Liability for Road Rates, &c.) 12. „ 5—1870, (Right of Purchase by Lessees). 13. „ 10—1881, (Conversion of Leases under Act 19 of 1864). <i>Mineval</i> —See Mines and Minerals. 14. Act 4—1881, (Mostert Bay titles to land).	15. Procl. 6 Aug. 1813, (Sir John Cradock's Pro- clamation.— Perpetual Quit- rent). 16. Act 7—1856, (Apportionment of Quitrent on Sub- divided Property). 17. „ 10—1875, ( do. ). 18. „ 14—1878, (Disposal of Crown Lands). 19. „ 25—1882, (Griqualand West, reduction of certain quitrents). 20. „ 2—1866, (Repealed Act re- printed). 21. „ 8—1868, (King William's Town Municipal Limits). 22. „ 24—1868, (Condition of personal residence relaxed). <i>Recovery of Rent.</i> 23. Ord. 9—1844, } 24. „ 7—1846, } Derelict Lands. 25. Act 3—1879, } 26. Act 18—1870, (Waschbank lands).

No. 37—1882.]

[June 29, 1882.

### ACT

To Consolidate and Amend the Agricultural Lands Acts.

Preamble.

WHEREAS it is necessary to consolidate, and to amend the several Acts providing for the allotment of land for agricultural

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:—

No. 37—1882.

1. The several laws mentioned in the schedule hereto, and so much of any law in force in the Colony as is inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed, save in so far as the provisions of the said Acts, or any of them, relate to lands disposed of prior to the taking effect of this Act or to the disposal of lands for which applications have been made, or proceedings commenced, prior to, or are pending at, the time of the taking effect of this Act; all which lands shall be dealt with as if this Act had not been passed.

Repeal of repugnant laws.

2. It shall be lawful for the Governor to grant, to approved applicants, on perpetual quitrent and on the terms and conditions in this Act set forth, portions of Crown land, for which such applicants may have applied, not being forest land, and not exceeding two hundred and fifty morgen, and not less than four (1) morgen in extent.

What grants of Crown Land on quitrent Governor may make.

3. Every such application for land shall be in writing, and shall clearly and accurately describe the locality, area, and boundaries thereof as set forth in a plan of the said land framed by a sworn land surveyor, previously appointed by the Surveyor-General: Provided that, with regard to any lands that may have been surveyed before the date of any such application, it shall be sufficient for the applicant in his application to describe the land in such manner that the lot applied for may be recognized.

How application to be made for grants.

4. Every such application shall be made to the Civil Commissioner of the district in which such land is situate, who shall note upon such application the day and hour at which such application is received.

To be addressed to Civil Commissioner of District.

5. In every division there shall be a land board (2) for the purposes of this Act, consisting of the Civil Commissioner of such division, and two persons to be appointed from time to time by the Governor, which appointment shall be notified in the *Government Gazette*, and such board shall enquire into the circumstances of land applied for under this Act, and shall report to the Commissioner whether it is desirable that the said land shall be disposed of and the price per morgen which shall be a fair value of the land.

Divisional Land Boards to be appointed.

6. Every applicant at the time of making application shall deposit with the Civil Commissioner a sum equal to one shilling per morgen of the land so applied for, and in the event of his neglecting or refusing to take up the licence for such land the said sum shall be absolutely forfeited to the Government.

Deposit to be made by applicant.

7. Any person of full age may receive a licence to occupy land

Who competent to receive licence to occupy land.

<sup>1</sup> Printed as amended by Act 40, 1885, § 1.

<sup>2</sup> See § 2 Act 40, 1885.

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by virtue of this Act, but no person who is the owner of land in extent two hundred and fifty morgen or upwards, and no person who at the time of making his application has made any arrangement or agreement to permit any other person to acquire by purchase or otherwise the allotment in respect of which his application is made, or any part thereof, or the applicant's interest therein, shall receive such licence, and no person shall receive more than one licence under the provisions of this Act.

Declaration to be made by applicant.

8. Every applicant for land under this Act shall make and append or annex to his application a declaration to the following effect:—I, A.B., of (insert place of abode and occupation), do solemnly and sincerely declare that I am of the age of twenty-one years and upwards; that I make this present application for my own exclusive use and benefit, and not directly or indirectly for the use or benefit of any other person whomsoever, that I am not the holder of any land in extent two hundred and fifty morgen or upwards, that I have not made any arrangement or agreement to enable or permit any other person to acquire, by purchase or otherwise, the allotment in respect of which this my application is made, or any part thereof, and that I am not already the licensee, or holder on quitrent of any land under the provisions of the "Agricultural Lands Act, 1882."

False declaration to entail forfeiture of land.

9. In the event of any of the statements contained in the declaration made by the applicant being false in any material respect, the applicant shall forfeit all right to the land applied for, as well as all moneys paid in respect thereof, and all improvements thereon.

Civil Commissioner to forward application and report of Board to the Commissioner.

10. The Civil Commissioner shall, with all possible dispatch, forward the said application, together with the applicant's declaration, to the Commissioner, and shall, at the same time, transmit the report of the land board on the said application.

Terms and conditions on which Commissioner may issue licence to hold lands.

11. The Commissioner shall, if he see fit, issue to the said applicant a licence to hold the land so applied for upon the following terms and conditions, which shall be inserted in every licence.

- (a) The licence shall be for five years reckoned from the next first July or first January following the date of licence, and shall include the period between the date of the licence and such day.
- (b) The yearly fee in respect of such licence shall be equal to one-twentieth of the price fixed for the land, and shall be paid in advance.
- (c) The deposit paid at the time of application, together with the excess over the said value of one shilling per morgen, if any, shall be in discharge of the licence fee due on the next first day of January or July, as the case may be.
- (d) The person to whom such licence is issued shall within six months after the issue of his licence, personally reside

on his land, and shall continue so to reside for a period of three years from the date of the issue of the licence.

- (e) The licensee shall within two years from the date of his licence bring under cultivation one-twentieth part of the land occupied by him under such licence, or shall enclose the same with a substantial fence.

12. If any licensee shall desire to assign his interest in the land, he may apply to the Commissioner stating his intention, and naming the person to whom he proposes to transfer the licence; whereupon the said Commissioner shall, at the expense of the said licensee, give public notice in the *Government Gazette* and in one or more newspapers published, or circulating, in the district in which the land is situated of the proposed transfer of interest by the licensee, and no transfer shall be effected until after the expiration of thirty days from the date of the last publication of such notice, after which time, if the Commissioner see fit to accept the person proposed as transferee, and such person shall have made the declaration required in the eighth section, the said Commissioner shall, on payment by means of stamps of a transfer fee of one pound sterling, endorse the said transfer on the licence on the production of the same; or, if the loss or destruction thereof be proved to his satisfaction, the Commissioner may dispense with its production, and may issue instead thereof to the person accepted, a new licence to hold the said land on the same terms and from the same date as the original licence, but with the name of such last-mentioned person substituted, and thereupon such person shall be deemed to have been from the date of the original licence the licensee of such land.

In case licensee desires to assign or transfer his licence.

13. In the event of the death or insolvency of any licensee, his executor or the trustee of his estate, as the case may be, shall have the like powers as are given to the licensee to assign the interest in the land of the licensee, provided that such power shall be exercised within twelve months from the day of the death or insolvency of the licensee, as the case may be. If such executor or trustee shall fail within such time to exercise the power to assign hereby granted, then, and in every such case, the Commissioner shall forthwith direct the land with all improvements thereon, to be sold as hereinafter provided in cases of sales or forfeiture.

In case of his death or insolvency.

14. The interest in land held on licence shall not during the currency of such licence be assignable, except under the provisions of this Act, and shall not be capable of being hypothecated, attached, or taken in execution.

Interest on land not assignable except under provisions of this Act.

15. If any person holding land under licence shall fail to perform any of the conditions under which such licence is granted, such land may be declared forfeited by the Commissioner unless the licensee shall within three months from the date of the notice of forfeiture comply with the said conditions.

Forfeiture for non-compliance with conditions of licence.

- No. 37—1882.
- Improvements on forfeited land to be valued and land sold under Act 14 of 1878.
16. When any lot of land shall be forfeited or shall become vacant from death or other cause, the Commissioner shall cause the improvements thereon to be valued, and the land shall be sold by auction under the provisions of Act 14 of 1878, upon condition that the purchaser shall pay the sum at which such improvements shall have been valued at such time as may be fixed by the conditions of sale.
- Net amount of valuation to be paid to original licensee.
17. The amount at which the said improvements shall have been valued shall, when paid by the purchaser, and after deducting the expenses incident to the forfeiture and sale of the land, be paid to the original licensee or to his legal representative.
- At expiration of licence quitrent grant may be made.
18. At the expiration of any licence, and on the fulfilment of the terms and conditions of such licence, the Commissioner shall certify the same, and the licensee shall obtain a grant on quitrent in terms of Act 14 of 1878, at an annual quitrent equal to the yearly fee paid in respect of such licence.
- If land put up under Act 14 of 1878, be not sold, application may be made within a year for a quitrent lease.
19. As often as any land shall be put up for auction under the provisions of Act 14 of 1878 and the land so put up shall fail to obtain a purchaser at the upset rent placed thereon, it shall be lawful for any person within one year of the date of such sale to make application in writing for such land, and if the applicant shall fulfil all the conditions required, the Commissioner may allow such person to obtain a quitrent lease of the said land in the same manner as if he had become a purchaser at public auction under the aforesaid Act, and at a price not being less than the said upset rent.
- Penalty for accepting money not to bid at sale of land.
20. Any person who shall directly or indirectly accept or agree to accept money or any valuable consideration for abstaining from bidding or competing as a purchaser or applicant, shall upon conviction be liable to a penalty not exceeding fifty pounds, or to be imprisoned for any period not exceeding six months.
- Commissioner may order inspection of land under licence.
21. The Commissioner or any person appointed by him in writing, may, at any time, enter upon any land held under any licence granted under this Act, to inspect the land and the improvements, or for any other purpose, and any person obstructing the Commissioner or such person in the performance of his duty shall, upon conviction, be liable 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 three months.
- What lands may not be treated as waste Crown Lands.
22. No land claimed by any registered owner of adjacent land as part of his property by reason of an alleged defective title deed, or supposed landmarks of the said adjacent land, or land occupied *bona fide* and beneficially, without title deed at the date of the extension of the colonial limits beyond it, or land conditionally occupied or claimed under any general notice or regulation of the Government, or under any promise or order of a Government officer duly authorized at the time to make such promise, or give such order, shall be considered or treated as waste crown lands

for the purpose of this Act, until the claim thereto in each case shall have been decided on by the Governor, who shall have the power of rejecting the claim altogether or of satisfying such claim by grant of the land or compensation out of the public revenue, or otherwise as shall appear equitable: Provided always that due notice of the nature of the claim, and reasonable proof that it may be substantiated, be received at the office of the Commissioner in sufficient time to admit of the withdrawal of the land from sale, and that the claimant use reasonable diligence to lay the proofs in support thereof before the officer or board to whom the question may be referred by the Governor.

No. 37—1882.

23. All lands disposed of under this Act shall be subject to such special servitudes as may be set forth at the time of the issue of the licence to occupy, and to the following general conditions, viz. :

Servitudes and general conditions.

- (a) Government shall always have the right to make new roads, railways and railway stations, aqueducts, dams and drains, or to conduct telegraphs over the land for the benefit of the public, on payment to the proprietor of such sum of money in compensation for actual damage, as three appraisers, one to be appointed by each side, and a third to be chosen by the two others, before proceeding to act, or any two of them, shall award.
- (b) The rights of the proprietor shall not extend to any deposits of gold, silver, or precious stones, which may at any time be or be discovered on the land hereby granted.

24. In the interpretation of this Act the term "licensee" shall mean any person who may receive a licence to occupy land under the provisions of this Act, and the word "Commissioner" shall mean the Commissioner of Crown Lands and Public Works.

Interpretation clause.

25. This Act may be cited for all purposes as the "Agricultural Lands Act, 1882."

Short title.

## SCHEDULE.

## LAWS REPEALED.

Number and year.	Title.	Extent of Repeal.
Act No. 4 of 1870.	"Agricultural Lands Act, 1870."	The whole.
Act No. 10 of 1877.	"Agricultural Immigrants Land Act, 1877."	The whole.
Act No. 33 of 1879.	"Agricultural Immigrants Land Extension Act, 1879."	The whole.

Act No. 40—1885.]

[August 11, 1885.

## ACT

## To Amend the Law relating to the Allotment of Agricultural Lands.

Preamble.

WHEREAS it is expedient to amend the law relating to the allotment of agricultural lands: 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 2 of Act  
No. 37 of 1882  
amended.

1. The second section of the "Agricultural Lands Act, 1882," shall be read as if the words "and not less than ten morgen in extent" therein appearing were omitted therefrom, and the words "and not less than four morgen in extent" inserted in lieu of the words so omitted.

Members of Land  
Board may be  
changed.

2. The Governor may remove from the Land Board mentioned in section five of the said Act No. 37 of 1882, any member appointed thereto, and appoint another member in the place of the one so removed.

Governor may  
with consent of Par-  
liament assign waste  
lands as commonage.

3. The Governor may from time to time with the consent of Parliament assign waste lands not being arable land as commonage for the holders of allotments under Act 37 of 1882.

Short title.

4. This Act may be cited as the "Agricultural Lands Amendment Act, 1885."

No. 4—1870.]

[May 5, 1870.

## ACT

## To Regulate the Disposal of certain Agricultural Lands in this Colony. (1)

Preamble.

WHEREAS it is expedient that increased facilities should be given to agriculturists and others of small means to become possessors of land on certain fair and reasonable conditions: 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 por-  
tions of Acts No. 2  
of 1860 and No. 19 of  
1864, repealed.

1. So much of the Act No. 2, 1860, and of Act No. 19 of 1864, as is repugnant to or inconsistent with any of the provisions of this Act, shall be, and the same is hereby repealed.

Survey of lands.

2. The Governor may from time to time cause to be surveyed agricultural areas, taken from the crown land of this Colony, such areas being as well watered as possible.

<sup>1</sup> Repealed by Act 37, 1882, but re-printed in view of the provisions of § 1 of that Act.

3. Such areas shall be surveyed in allotments of not more than five hundred acres, due regard being had to the capabilities of the ground.

No. 4—1870.  
Mode of survey.

4. When the survey of any such area is complete, it shall be lawful for the Governor to proclaim that the lands therein situated will within a certain time be open for selection in the manner and terms herein set forth.

Surveyed lands may be proclaimed open for selection.

5. The land comprised in any such proclaimed area shall thenceforth be open for selection either by absolute purchase or by conditional purchase in the manner hereinafter set forth.

Lands may be selected by absolute or conditional purchase.

6. When any person desires to select any allotment in such agricultural area for conditional purchase, he may make a written application for such allotment to the Civil Commissioner of the district within which such area shall be situated, in the form set forth in the schedule hereunto annexed, and on paying the first year's rent for such allotment, and if no other application shall have been made for the same allotment, he shall become a conditional purchaser of such allotment.

Conditional purchase, how effected.

7. In the event of two or more applications being received by the Civil Commissioner on the same day, for the same allotment, the Civil Commissioner of the district in which such land is situated shall appoint a day upon which the applicants are to attend before him, either in person or by an agent duly authorized in writing, and such allotment shall then be put up, to be competed for by the said applicants, at an upset rent of one shilling per acre, and the highest bidder shall on payment of the first year's rent, together with such premium as he shall offer thereon, be declared the conditional purchaser.

Where two or more applications for same allotment mode of procedure

8. The person who shall be declared the conditional purchaser of any allotment shall receive a lease on the following terms and conditions :

Terms of lease to conditional purchaser.

1. The term shall be for ten years, commencing from the first payment of rent.
2. The yearly rent shall be at the rate of one shilling per acre, or in the case above provided for by the sixth clause, at such sum as may have been bid by such conditional purchaser.
3. The rent for the second and each succeeding year shall be paid in advance into the office of the Civil Commissioner of the division in which such area is situated.
4. The lessee shall be bound within two years of obtaining such lease to cultivate at least one acre of every ten acres, or to erect a suitable dwelling-house thereon.
5. On failure of any of the conditions hereinbefore contained, the lease shall be forfeited, and the land and the improvements thereon shall revert to Government, but no forfeiture for non-payment of rent shall be enforced, provided such rent be paid into the office of the Civil

GG



No. 4—1870.

Commissioner of the division within ninety days from the same becoming due: Provided, further, that when the lease of any such lands shall be forfeited as aforesaid, such lease shall be put up to sale by public auction within one hundred and eighty days of such forfeiture, and after deducting from the amount for which such lease shall be sold the arrears of rent and all other sums due or which may be due to the Government, as well as all expenses incurred in holding such sale, the sum of money remaining, if any, shall be paid to the lessee or to his lawful representatives.

6. So soon as a lessee shall have made the tenth annual payment of rent, he shall, on payment of the survey expenses and other expenses of title, receive a grant of the land at a perpetual quitrent of one per cent. per annum upon ten years' value thereof; provided, however, that in no case shall the quitrent chargeable be less than ten shillings per annum.

7. If at any time during the term of such lease the lessee shall pay into the Civil Commissioner's office the rent for the unexpired portion of such term, he shall receive a grant of the land under perpetual quitrent as aforesaid.

Absolute purchase,  
how effected.

9. Any person who, having selected an allotment in the manner hereinbefore provided, shall forthwith pay the whole purchase money thereof, at the rate of ten years' annual rent, and the expenses of survey and title, shall receive a grant of the said allotment on a perpetual quitrent as aforesaid.

No one person to  
hold more than five  
hundred acres.

10. It shall not be lawful for any one person or partnership to become, under the provisions of this Act, the lessee or holder of more than five hundred acres of land.

Short title.

11. This Act may be cited for all purposes as the "Agricultural Lands Act, 1870."

## SCHEDULE.

### FORM OF APPLICATION.

I, the undersigned, do hereby state my desire to become conditional purchaser of allotment No. —, in area —, containing — acres, and herewith tender the sum of £— as and for the first year's rent thereof, and I do solemnly and sincerely declare that I apply for the above allotment on my own behalf, and for my own use and benefit only, and not as agent or trustee for any other person.

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 before me, \_\_\_\_\_

No. 10—1877.]

[August 8, 1877.

## ACT

To provide for the Disposal of Crown Lands in this Colony to certain Agricultural Immigrants. <sup>(1)</sup>

WHEREAS certain agricultural immigrants have already been and may hereafter be introduced into this Colony, and it is desirable that they should be located upon and acquire crown land upon certain terms and conditions as hereinafter 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:—

Preamble.

1. So much of the Acts No. 2 of 1860, No. 19 of 1864, No. 4 of 1870, 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.

Repugnant laws repealed.

2. It shall be lawful for the Governor from time to time as he shall see fit to cause to be set apart any area or areas taken from the crown land of this Colony, or any portion not exceeding three-fourths of an area which may have been surveyed or proclaimed under the "Agricultural Lands Act, 1870," for the purpose of locating thereon and disposing thereof to persons who have been or may be introduced into this Colony as agricultural immigrants under or by virtue of any resolution of the Parliament of this Colony. <sup>(2)</sup>

Governor may set apart areas of Crown Lands for disposal to immigrants.

3. When any such land has been set apart as aforesaid it shall be lawful for any person or persons duly authorized or appointed in that behalf by the Governor to lease the same or any part thereof to and among any such immigrants aforesaid upon the terms and conditions hereinafter mentioned, that is to say:—

Immigrants may obtain leases of such lands.

1. The term shall be for ten years, commencing from the date of the lease.
2. The yearly rent shall be at the rate of one shilling per acre.
3. The rent shall be paid at the expiration of each year from the date of the lease into the office of the Civil Commissioner of the division in which the land is situated.
4. The lessee shall be bound before the expiration of the first two years of his lease to erect upon the land leased a dwelling-house of the value of not less than twenty pounds sterling, and every year after the expiration of the two first years to cultivate at least one acre of every ten acres leased.

Terms and conditions.

<sup>1</sup> Repealed by Act 37, 1882, save in so far as the provisions of this Act relate to lands disposed of prior to taking effect of that Act. See also Act 14, 1878, § 17

<sup>2</sup> See Act 33, 1879, § 2, *infra*.

No. 10—1877.

5. On failure of any of the conditions hereinbefore contained it shall be competent for the Government to declare such lease to be forfeited, and the land and improvements thereon shall thereupon revert to the Government; and no forfeiture for non-payment of rent shall be enforced: Provided such rent be paid into the office of the Civil Commissioner of the division within three months from the same becoming due: Provided, further, that when the lease of any such land shall be forfeited as aforesaid such lease shall be put up to sale by public auction within six months of such forfeiture, and after deducting from the amount for which such lease shall be sold the arrears of rent and all other sums due or which may be due to the Government, as well as all expenses incurred in holding such sale, the sum of money remaining, if any, shall be paid to the lessee or to his lawful representatives.
6. So soon as a lessee shall have made the tenth annual payment of rent, he shall, on payment of the survey expenses and other expenses of title, receive a grant of the land at a perpetual quitrent of one per cent. per annum upon ten years' value thereof: Provided, however, that in no case shall the quitrent chargeable be less than ten shillings per annum. <sup>(1)</sup>
7. If at any time during the term of such lease the lessee shall pay into the Civil Commissioner's office the rent for the unexpired portion of such term he shall receive a grant of the land under perpetual quitrent as aforesaid.

Terms on which grant on quitrent may be obtained.

4. Any person who having received an allotment as aforesaid shall forthwith pay the whole purchase amount thereof, at the rate of ten years' annual rent, and the expenses of survey and title, shall receive a grant of the said allotment on a perpetual quitrent as aforesaid.

Lessee not to dispose of lease or grant for five years after obtaining it.

5. No lessee shall be entitled to dispose of the lease or quitrent grant of any land obtained under the provisions of this Act before the expiration of five years from the date of his lease.

No lessee to hold more than 500 acres.

6. It shall not be lawful for any such immigrant as aforesaid, or any person claiming from or through any such immigrant, to become under the provisions of this Act the lessee or holder of more than five hundred acres of land.

Short title.

7. This Act may be cited for all purposes as the "Agricultural Immigrants Land Act, 1877."

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<sup>1</sup> See Acts 2, 1880, and 37, 1885, *infra*.

No. 33—1879.]

[Sept. 11, 1879.

ACT

To make Increased Provision for the Disposal of Crown Land in this Colony to Agricultural Immigrants. (1)

WHEREAS, by Act No. 10 of 1877, provision was made for locating certain agricultural immigrants who had been or might thereafter be introduced into this Colony upon crown land, and for enabling such persons to acquire such crown land upon certain terms and conditions: And whereas it is desirable to extend and in certain respects to alter the provisions of such Act, and also to make provisions to enable persons immigrating to this Colony at their own expense to occupy and acquire crown land: 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. So much of any law in force in this Colony as is repugnant to, or inconsistent with, the provisions of this Act, is hereby repealed so far as such repugnance or inconsistency exists, but not further or otherwise.

2. When any crown land has been set apart as provided in the second section of Act No. 10 of 1877, it shall be lawful for any person or persons duly authorized in that behalf by the Governor, to assign to any agricultural immigrant, whether he shall have been introduced into this Colony at the public expense, or partly at the public expense, or shall have immigrated entirely at his own expense, an arable lot not less than twenty acres out of such crown land, to be held by such immigrant on lease under the terms and conditions set forth in the third, fourth, and fifth sections of Act No. 10 of 1877.

3. Adjoining the arable lots, to be assigned as in the preceding section of this Act mentioned, in any location of agricultural immigrants as aforesaid, there shall be set aside certain land as commonage for the joint usage of all the holders of the said arable lots in such location, the extent of which commonage shall be such that if divided into lots equal in number with such arable lots, it would give to each holder of such lots not less than one hundred and eighty acres.

4. The use for grazing purposes but not otherwise of the said commonage lands in any such location as aforesaid, shall be enjoyed by the holders of the said arable lots free of all charge for the space of six years from the date of the assignment of the said lots to holders as aforesaid: Provided, however, that the Governor may, from time to time, by notice in the *Government Gazette*, issue such regulations regarding the quantity of stock to

<sup>1</sup> Repealed by Act 37, 1882. But see note to title of Act 10, 1877, *supra*.

No. 33—1879.

be depastured by each holder of lots, and regarding the general preservation of the said commonage for the benefit of the said holders of lots as he shall deem fit and proper.

At expiration of six years, commonage to be divided into lots and sold.

5. At the expiration of six years from the date of assigning the said arable lots as hereinbefore provided, or at such time thereafter as the Governor may see fit, the said commonage lands adjoining them shall be divided into lots equal in number to the arable lots in the same area or location, and thereupon the holder of each arable lot shall be entitled to purchase one lot of divided commonage land under the provisions of the sixth and tenth sections of Act No. 14 of 1878, at an annual quitrent to be fixed for that purpose by the Governor: Provided, however, that such quitrent shall in no case exceed the sum of sixpence per acre: And provided, also, that the expenses of the survey of such commonage lots and of the erection of beacons thereon shall be paid by the respective purchasers of such lots.

If holder of arable lot will not purchase.

6. In case the holder of any arable lot shall refuse to purchase a divided commonage lot as provided in the last preceding section, such commonage lot shall be dealt with as crown land under the provisions of Act No. 14 of 1878.

Short title.

7. This Act may be cited as the "Agricultural Immigrants Land Extension Act, 1879."

No. 2—1880.]

[July 26, 1880.

ACT

To relieve certain Agricultural Immigrants from Payment of Quitrent under the "Agricultural Immigrants Land Act, 1877." (1)

Preamble.

WHEREAS certain persons have come into this Colony from Scotland and elsewhere in Great Britain, as agricultural immigrants under special agreements made and executed by them and by certain persons acting for and on behalf of the Government of this Colony in England; and in such agreements and in the notices annexed to or accompanying the same, no mention is made of the perpetual quitrent to be paid by such immigrants, as provided by the 6th sub-section of section 3 of Act No. 10 of 1877; And whereas such persons, being wholly ignorant of the provisions of the said sub-section, have been misled into the belief that they are entitled, after paying yearly for ten years one shilling per acre for such land as may be allotted to them under such Act, to receive a grant of the said land in perpetuity: And whereas it is expedient to relieve such immigrants from the payment of quitrent under the aforesaid circumstances: Be it

<sup>1</sup> See note to title of Act 10, 1877.

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. 37—1885.

1. Whenever any person shall before the taking effect of this Act have immigrated into this Colony as an agricultural immigrant under any special agreement made between him and any person lawfully acting for and on behalf of the Government of this Colony in Great Britain, whereby such immigrant is entitled to acquire land in this Colony under the provisions of Act No. 10 of 1877, but in which special agreement, or in the notices or other documents annexed to or accompanying such agreement, no mention is made of the quitrent to be paid under sub-section 6 of section 3 of such Act, such immigrant, so soon as he shall have made the tenth annual payment of rent for and in respect of any land which may have been assigned or allotted to him, shall, on payment of the survey expenses, and other expenses of title, receive a grant of such land in perpetuity free of quitrent but subject to every other condition now attaching to quitrent grants in this Colony; anything contained in the aforesaid sub-section or in any other section or sub-section of the said Act, or in any other statutory enactment to the contrary notwithstanding.

No quitrent on grants of land to immigrants who have had no notice of its being payable.

2. This Act may be cited as the “Agricultural Immigrants Relief Act, 1880.”

Short title.

No. 37—1885.]

[August 11, 1885.]

## ACT

To Relieve certain Agricultural Immigrants from the Payment of Quitrent under the “Agricultural Immigrants Land Act, 1877.”<sup>(1)</sup>

WHEREAS certain persons have come into this Colony from Germany and elsewhere in Europe as agricultural immigrants under agreements made and executed between them and one William Berg, of Cape Town, or his agents, being thereto induced by the promise, and immigrating for the purpose of receiving in this Colony allotments of land under certain conditions: and whereas, in many cases, the said persons having no notice or knowledge of the provisions of the colonial law, arrived in this Colony and received allotments of land from Government as agricultural immigrants, but were wholly ignorant of the provisions of the sixth sub-section of the third section of the “Agricultural Immigrants Land Act, 1877,” imposing a perpetual quitrent in respect of such allotments, and were misled into the belief that they would be entitled, after paying yearly for ten years one

Preamble.

<sup>1</sup> See note to title of Act 10, 1877.

No. 37—1885.

shilling per acre for the land so allotted to them, to receive a grant thereof in perpetuity: and whereas it is expedient under the aforesaid circumstances to relieve such immigrants from the payment of quitrent: 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:—

Governor may relieve from quitrent immigrants having no notice of its being payable.

1. Whenever any person shall, before the taking effect of this Act, have immigrated into the Colony from Germany or elsewhere in Europe as an agricultural immigrant under any agreement made and executed between such person and one William Berg, of Cape Town, or his agents, with the purpose and object of obtaining an allotment of land from the Government of this Colony as an agricultural immigrant, and shall have obtained such allotment, and whenever such person, upon application to the Commissioner of Crown Lands and Public Works, shall produce satisfactory proof that before arriving in this Colony he was in ignorance of the provisions of the sixth sub-section of the third section of the "Agricultural Immigrants Land Act, 1877," imposing a perpetual quitrent upon the land allotted to him, it shall be lawful for the Governor, so soon as such person shall have made the tenth annual payment of rent for and in respect of any land which may have been assigned or allotted to him, and shall have paid the survey expenses and other expenses of title, to issue to such person a grant of such land to be held by him in perpetuity free of quitrent, but subject to every other condition now attaching to quitrent grants in this Colony; anything contained in the said Act or in any other statutory enactment to the contrary notwithstanding.

Short title.

2. This Act may be cited as "The Agricultural Immigrants Relief Act, 1885."

No. 11—1862.]

[August 7, 1862.

## ACT

For Facilitating the Borrowing of Money by Grantees upon Security of Land granted to them by the Crown.

Preamble.

WHEREAS difficulties exist in the way of grantees in the division of Queen's Town, and in certain other divisions of the Colony, obtaining money upon the security of the lands granted to them by the Crown under conditions of forfeiture in certain cases specified in the grants, and by reason whereof the improvement of the lands contained in these grants is retarded in consequence of the want of capital: 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. In every case in which lands so granted as aforesaid shall have become forfeited, it shall be lawful for all persons holding a duly registered and *bonâ fide* mortgage upon the same to call upon the Governor at any time within six months from such forfeiture having been declared and published in the *Government Gazette*, to put up the lands for sale by public auction upon conditions of the same tenor and form as those appearing in the original grant thereof, so far as the same may be applicable at the time; and out of the net proceeds of such sale the Governor shall cause to be paid to the said person or persons so applying, and in the order of their priority, the amount of principal, interest, and lawful expenses due under any such mortgage: Provided that the sum to be paid shall not in the whole exceed one-half of the net proceeds of such sale.

No. 19—1864.

Persons holding mortgages on forfeited grants may call upon Governor to sell the lands and pay off the mortgage from the proceeds of sale.

Sum paid not to exceed one half of the proceeds.

No. 19—1864.]

[July 26, 1864.

## AN ACT

To Provide for the Leasing of Crown Lands, and for other purposes. (1)

WHEREAS circumstances may in some cases render the sale of crown lands inexpedient, and may render expedient the leasing of the same: 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, with the advice of the Divisional Council of any division, to let or lease such of the waste crown land of such division as he may deem it expedient, for the time being, to deal with in that way.

Leasing of Crown Lands authorized.

2. Such lands may be let on lease for any term not exceeding twenty-one years, and upon such conditions and stipulations as shall be imposed by the Governor, and agreed to by the lessee.

Term of lease.

3. All crown lands to be let shall be let by public auction, and at the highest rent which can, in that way, be obtained: Provided that it shall not be obligatory to accept the highest rent offered should it be deemed inadequate. And provided also that notice of such public auction shall be advertised in the *Government Gazette*, and in one newspaper, if there be any, in the district in which the land proposed to be leased is situated, at least one month previous to the day appointed for such auction.

Lease to be effected by public auction. Acceptance of highest rent offered not obligatory. Due notice to be given.

4. The rent of any crown land, so leased, shall be payable annually; and the payment of the same, for the period of the first three years shall be secured by sureties whom the Civil Commis-

Rent payable annually. Security to be given for three years' rent.

<sup>1</sup> Repealed by Act 14, 1878, save in so far as the provisions of this Act relate to lands disposed of prior to taking effect of Act 14, 1878.



No. 19—1864.

Where two years' rent is tendered in advance, no sureties required.

sioner shall deem sufficient, which sureties shall bind themselves, in regard to such rent, as sureties *in solidum* and co-principal debtors, renouncing the exceptions of excussion and division. Provided that the Civil Commissioner shall, if required, receive two years' rent in advance instead of demanding sureties for the period of three years.

And whereas it is expedient for the better prevention of unlicensed squatting on crown lands, that the Government should be empowered in such cases as they may think fit so to do, to assign to persons who may be found squatting as aforesaid, fit and proper localities for their future residence. Be it enacted as follows :

Governor empowered to set apart a tract of land to be leased to squatters.

5. The Governor may, with the consent of the Divisional Council, and with the advice of the Executive Council, set apart, in any division, a tract of crown land, to be divided into lots and let on lease to the parties hereinbefore mentioned, being fit and proper persons, upon such terms and subject to such regulations as he may think expedient, and a statement of all such assignments of land and copies of all such regulations shall be laid before both Houses of Parliament at the first meeting thereof, next after the making of such assignments or regulations.

Particulars whereof and regulations regarding to be laid before Parliament.

And whereas it is expedient to make provision regarding certain matters arising under Act No. 2, 1860 : Be it enacted as follows :

On failure of purchasers of Crown Land to take up title deed and pass mortgage bond for balance due, the sale to be cancelled, and any payment made to be forfeited.

6. If the purchaser of any crown land at any effected sale thereof, which purchaser shall not, upon demand made by the Civil Commissioner of the division in which the land purchased is situated, duly take up the title deed of such land, and pass a mortgage bond, according to the fourth regulation contained in the Schedule to the Act No. 2, 1860, for the balance of the purchase-money of such land ; and if such purchaser shall remain in such default for the space of twelve months from the day of sale, then the sale of such land shall be deemed to be, *ipso facto*, cancelled, and any previous payment made on account of such sale shall be forfeited : Provided that no such cancellation or forfeiture shall take place until after the publication in the *Government Gazette* for not less than three months, and not less than three times, of a Government notice, directed to such purchaser and all others whom it may concern, calling upon such purchaser or any others claiming from or under him, to execute such mortgage bond as aforesaid, or otherwise to pay the balance of the purchase-money due and owing, on pain of the said sale becoming null and void, and such previous payments, if any, forfeited.

But previous notice in Gazette to be given.

Governor may dispense with certificate required under Act No. 2 of 1860 before sale, by valuation, of Crown Land.

7. If, in any case, any Divisional Council shall recommend to the Surveyor-General to give, in regard to any portion of crown land, the certificate required by the twenty-seventh regulation contained in the Schedule to the Act No. 2, 1860, and the Surveyor-General shall decline to accede to such recommendation, it shall be lawful for the Governor, upon considering the grounds and reasons of the Divisional Council for recommending such certifi-

cate, and the grounds and reasons of the Surveyor-General for withholding the same, to dispense with such certificate, and to authorize the allotment of the portion of crown land in question, in like manner as if such certificate had been given.

No. 4--1867.

8. The Governor shall cause a separate account to be kept of all proceeds of leases of crown lands, and lay the same before Parliament within fourteen days from the opening of the session.

Account of proceeds of leases of Crown Land to be laid before Parliament.

9. This Act may be cited for all purposes as "The Crown Lands Act, 1864."

Short title.

No. 4—1867.]

[August 16, 1867.

## ACT

To Amend in certain respects the Act No. 19 of 1864,  
"To provide for the Leasing of Crown Lands and  
other purposes." (1)

WHEREAS it is expedient that the Act No. 19 of 1864, commonly called "The Crown Lands Act, 1864," should be amended as hereinafter is 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:—

Preamble.

1. Notwithstanding anything in the third section of the said recited Act contained, whenever any crown lands shall have been put up for lease by public auction, under or by virtue of the said recited Act, and the highest rent which shall be bidden therefor shall be deemed inadequate, then it shall be lawful for the Governor to lease such lands as shall have been so put up, at any time within twelve calendar months from the time of such public auction, by tender or private contract, at any rent exceeding the highest rent which shall have been bidden therefor at such public auction, which shall be deemed by the Governor reasonable and expedient to be accepted therefor. But no lease shall be granted of any crown lands, in pursuance only of any tender or private offer, for any term exceeding twelve calendar months, unless such lands for which offers may have been made by tender or private offer to take the same on lease for a longer term shall, subsequently to such offers, have again been put up at public auction, in manner provided by the third section of the said Act No. 19 of 1864, and at an upset price, and for the term of years proposed in such tender or private offer; after which, should no higher bid be obtained at such public auction, it shall be lawful for the Governor to lease the same for any term not exceeding twenty-one years, in accordance with the tender or private offer.

Crown Lands not leased in consequence of inadequacy of bidding at public auction may be let by tender or private contract.

Term of such lease.

<sup>1</sup> Repealed by Act 14, 1878, save in so far as the provisions of this Act relate to land disposed of prior to the taking effect of Act 14, 1878.

No. 3—1870.

But should a higher bid be obtained at such public auction, then the Governor shall be bound to accept such higher bid, upon sufficient security being found by the lessee for the performance of the conditions of such lease, as in other cases provided for by the said Act No. 19 of 1864.

Act No. 19, 1864,  
to apply to leases  
executed under this  
Act.

2. Every lease to be executed under the provisions of this Act shall in other respects be dealt with as if the same were made under the provisions of the said recited Act, and all such last-mentioned provisions shall, save as hereinbefore is provided, be applicable in all respects to the case of lands leased under or by virtue of this Act.

Short title.

3. This Act may be cited as the "Crown Lands Leasing Amendment Act, 1867."

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.

Preamble.

WHEREAS it is expedient that the lessees of crown lands leased under the provisions of Act 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:—

Repugnant laws  
repealed.

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.

Leased Crown  
Lands liable to road  
rates.

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.

Valuation  
assessment.  
for

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.

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.

No. 3—1870.  
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 an annual rent of not less than thirty pounds sterling per annum, shall, unless disqualified under the provisions 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 lastmentioned 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.

Lessee qualified to be elected member of Divisional Council.

No. 5—1870.]

[May 5, 1870.

### 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." (1)

WHEREAS it is expedient that the Act No. 19 of 1864, commonly called "The Crown Lands Act, 1864," should be amended as hereinafter is 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:—

Preamble.

1. It shall be lawful for the lessees of crown lands leased under the provisions of the said Act No. 19 of 1864, at any time during the continuance of their respective leases, to purchase the property

Right of lessees to purchase.

<sup>1</sup> See Act 10, 1881, *infra*.

No. 5—1870.

Arbitration  
in certain  
cases.

in the lands held by them respectively on lease, at such price as may be agreed on by and between such lessees respectively of the one part and the Colonial Government of the other part, not being in any case less than a sum which, reckoned as a principal sum after the rate of six pounds sterling per cent., would produce an amount of yearly interest equal to the rent reserved on such lease: Provided that in the event of the price demanded by Government being greater than such principal sum, in such case, at the request of the lessee, the matter may be submitted to arbitration, one arbitrator to be appointed by the lessee and one by the Government, with power to appoint a third as umpire, subject to the following conditions, that is to say:

Conditions of sale.

1. In all sales of land under this Act the purchaser shall, in addition to the purchase price, pay to the Colonial Government an annual quitrent of one pound sterling for every one hundred pounds on the purchase amount, such annual quitrent to be paid in perpetuity.
2. The purchase money so to be paid as aforesaid, according to agreement, may be paid in cash, at the option of the purchaser, so soon as the amount shall be agreed upon, and such purchaser may upon payment thereof require a grant of title upon quitrent to the said lands theretofore held by him upon lease, which grant it shall be lawful for the Governor to make.
3. If the purchaser shall not forthwith pay the full amount of purchase money agreed upon in cash so soon as the said amount shall be agreed upon, he shall be allowed to pay the same in manner following, that is to say, by three annual instalments,—the first to be paid forthwith so soon as the amount of purchase money shall be agreed upon as aforesaid, and the other two at intervals of one year respectively.
4. If the purchaser shall fail to pay the second or subsequent instalments when the same shall become payable respectively, the money already paid by him shall be returned to him, deducting thereout, by way of liquidated damages for the breach of the contract to purchase, a sum equivalent to five pounds sterling per cent. on such amount of the purchase money as shall remain unpaid, together with such sum, if any, as may be due for rent and other charges, if any, upon the said land, under or by virtue of the lease thereof; and the said lease shall, unless otherwise vitiated, be regarded as though the same were all along subsisting without any contract for purchase or sale having subsisted with regard to the same lands.
5. Until the entire purchase money shall be paid, the purchaser shall continue to pay rent under and by virtue

- of his lease, and to perform the other conditions, if any, of the same, which shall be deemed to be a subsisting lease, notwithstanding any such contract for purchase as aforesaid unless vitiated otherwise under the terms thereof, or of the said Act No. 19 of 1864.
6. Upon the payment by the purchaser, at the stated times agreed on, of all the purchase money, and of all rents and other payments due in respect of the said lease, he shall be allowed interest after the rate of six pounds per cent. per annum in respect of the several instalments of the purchase money deposited by him from the date of the deposit thereof, respectively, until such date of payment; and thereupon he shall be deemed from thenceforward as proprietor on quitrent of the land so purchased, and may require forthwith a grant of title upon quitrent to the said lands theretofore held by him upon lease, which grant it shall be lawful for the Governor to make.
  7. In fixing the value of the land applied for under the above conditions, the value of the industrial improvements made by the lessee who applies shall not be taken into consideration.
2. [Repealed by Act 8, 1874].

No. 10—1881.]

[June 25, 1881.]

## ACT

For the Conversion of Lease Lands into Grants under the  
Crown Lands Act No. 14 of 1878.

WHEREAS it is desirable that certain lessees of land, under the provisions of Act No. 19 of 1864, shall be allowed to participate in the benefits intended to be conferred on purchasers of crown lands, under the provisions of Act No. 14 of 1878, entitled the Crown Lands Act: 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:—

Preamble.

1. In case any lessee of crown land, holding a lease for a term of or exceeding five years under the Act No. 19 of 1864, shall have caused to be ascertained the price at which the land as leased may be purchased by him under the provisions of the Act No. 5 of 1870, it shall be lawful for him either to purchase such land as provided in such last-mentioned Act, or to obtain a perpetual quitrent title thereto in manner hereinafter provided.

Certain lessees of  
Crown Lands entit-  
led to purchase or  
to get quitrent titles.

2. If such lessee shall not be desirous of purchasing such land under the provisions of the said Act No. 5 of 1870, it shall be lawful for him, after the price of the said land shall have been ascer-

How quitrent to  
be calculated.

No. 4—1881.

tained as aforesaid, to claim a perpetual quitrent title thereto, paying annually as quitrent, redeemable at twenty years' purchase, a sum equal to six per centum upon the amount of such price; and upon the issue of such title all and singular the provisions of the sixth section of the Act No. 14 of 1878, regulating the redemption of quitrent, shall *mutatis mutandis* become applicable thereto.

Short title.

3. This Act may be cited as the "Lease Lands Conversion Act, 1881."

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CROWN LANDS (MINERAL).

See Mines and Minerals.

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No. 4—1881.]

[June 16, 1881.

## ACT

To enable the Governor to grant Titles to certain Crown Lands at Mostert Bay.

Preamble.

WHEREAS certain persons have for considerable periods of time, occupied certain erven or plots of crown land adjoining the sea shore at Mostert Bay, in the division of Stellenbosch, and have from time to time erected buildings thereon without having received any title to such lands, but without having been interrupted by the Government in such occupation, or in the erection of such buildings: And whereas it is desirable that the Government should receive authority to grant to such of the occupiers of the said erven or plots of land as it may deem expedient titles thereto, upon such terms as to the said Government may, in each case, seem equitable: And whereas it is further desirable that land should be reserved and set apart as commonage for the use and benefit of the inhabitants of Mostert Bay 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:—

Governor may  
grant quitrent titles  
to occupiers.

1. It shall be lawful for the Governor to grant, upon perpetual quitrent, to such of the several occupiers of ground in the preamble to this Act mentioned as he may deem fit, the whole or any portion of the erven or plots heretofore occupied by them respectively upon such terms as to the said Governor may seem in each case equitable.

Conditions of such  
grants.

2. All such grants shall state therein the quitrent payable, and shall further be subject to the condition that all existing roads and thoroughfares shall remain free and uninterrupted, unless the

same shall be closed or altered by competent authority, and shall also be subject to the several conditions and servitudes contained in the sub-sections to section 10 of Act No. 14 of 1878, marked c, d, e, and f respectively.

No. 4—1881.

3. The expenses of survey, erection of beacons, and of the title deed, shall be paid by each grantee to the Civil Commissioner of the district at the time of the issue of title.

Expenses to be paid by grantee.

4. It shall be lawful for the Governor to set aside and proclaim as commonage for the use of the occupiers of erven at Mostert Bay aforesaid, and of the public frequenting that watering place, so much of the crown lands lying between Mostert Bay and Fish Hoek Bay, as he may deem necessary for that purpose, subject, however, to such regulations as may be made from time to time, with the approval of the Governor, and to the right of the said Governor to sell at any future time such parts of the commonage, in small lots or erven, as to the said Governor may seem fit and reasonable to satisfy any further demand for the purchase of such lots.

Commonage may be set aside.

5. The provisions of the sixth section of the said Act No. 14, 1878, shall extend and apply to any grants made under the authority of this Act.

Sec. 6 of Act 14, 1878, to apply to grants.

6. This Act may be cited as the "Mostert Bay Crown Lands Act, 1881."

Short title.

## CONVERSION OF LOAN PLACES TO PERPETUAL QUITRENT.

[6th Aug. 1813.]

### PROCLAMATION

By His Excellency Lieutenant-General Sir JOHN FRANCIS CRADOCK, &c., &c.

WHEREAS agriculture constitutes the chief source of prosperity in this Colony, and the full encouragement thereof must consequently have an immediate tendency to promote the real interests of its inhabitants: Whereas this encouragement chiefly depends on the certainty of tenures, and the confidence connected therewith, that all improvements of the soil, and all increase of fertility, should indisputably belong to the holder as his own, and that, in the ordinary course of things, all his arrangements, as well with respect to the produce as to the land itself, should, by the laws, be exclusively secured to him, his heirs, executors, assigns, or representatives: Whereas, although the establishment of loan leases might have been suitable to the early state of this Colony, when the wants of Government were not foreseen, it now appears from experience that the loan tenure is injurious to that certainty, so essential to the happiness and the interest of the inhabitants, and

Preamble.

HH



Proc.—6 Aug. 1813.

equally injurious to the public interest, by preventing the holders from appropriating as much of their means to the improvement and extension of agriculture as they would do, in case they had no right of re-assumption to apprehend, and might dispose of the ground as they please, *by subdividing the same among their children, letting, selling, or otherwise alienating it in lots, cultivating it in the prospect of remote benefit, by the planting of timber, &c.* : Whereas, notwithstanding a gradual re-assumption of loan lands and the re-granting of the same in lesser portions on a more certain tenure might considerably increase the colonial revenue; yet, having taken into consideration the great utility of no longer delaying the improved cultivation of land by giving security to title, and of making the same, as speedily as possible, a general measure, I have adopted the following determination : To grant to the holders of all lands on loan, who may regularly apply for the same, their places on *perpetual quitrent*, with the following rights and privileges, and on the following terms and conditions, namely.

Memorial to the Government for conversion of Loan Places to perpetual quitrent.

Extent of grant.

Right to hold hereditarily and to alienate.

Government reservation of precious stones, gold and silver—and of right of making and repairing roads.

Reservation of rights of Crown in places adjoining the sea.

Laws respecting freehold lands to govern decisions on perpetual quitrent.

1. Every holder of a loan place, on his making application by memorial to Government for the purpose, shall have a grant of his place, on *perpetual quitrent*, (<sup>1</sup>) to the same extent as he has hitherto *legally* possessed the same on loan.

2. No loan place shall exceed three thousand morgen; every addition to that quantity of land must be particularly mentioned to the surveyor and commission, and appear upon the face of the application, for His Excellency's consideration.

3. The holder, by this grant, shall obtain the right "to hold the land hereditarily, and to do with the same as he may think proper, in like manner as with other immovable property; as also, should he deem advisable, to sell or otherwise alienate it, with the usual previous knowledge of Government, either partly or wholly, as free and allodial property."

4. Government reserves no other rights but those on mines of precious stones, gold, or silver; as also the right of making and repairing public roads, and raising materials for that purpose on the premises: other mines of iron, lead, copper, tin, coals, slate, or limestone, are to belong to the proprietor.

5. In all places adjoining to the sea, or communicating with the sea by inlets therefrom, the rights of the Crown are reserved, with the power of re-assumption of any quantity of land, not exceeding twenty morgen, paying the proprietor for such buildings as he may have erected, according to a fair valuation, provided such ground be wanted for public purposes; and if given up by the Crown, it shall not be transferred to another individual, but revert to the proprietor or his representatives.

6. In all judicial decisions regarding *perpetual quitrent* the same rights, laws, and usages shall be observed, which have hitherto

<sup>1</sup> See § 6, Act 14, 1878, *infra*.

been acted upon, or which may hereafter be established, enacted, and followed in judicial decisions, with respect to freehold lands. Proc.—6 Aug. 1813.

7. That for this, in the common course of things, irrevocable title, the holders shall pay to the public revenue an increased yearly rent, to be prescribed according to the situation, fertility, and other favourable circumstances of the land; in no case, however, exceeding a sum of two hundred and fifty rixdollars. Yearly rent not to exceed rixdollars two hundred and fifty.

8. For the survey of a loan place to be granted on *perpetual quitrent*, the land surveyor, exclusive of the diagram, travelling expenses, and wagon hire, shall not charge more than one hundred rixdollars, unless he may be obliged, from local difficulties, to appropriate more than five days to make the survey, in which case he shall be allowed to charge ten rixdollars for every day over and above that time: the respective landdrosts are therefore directed to pay strict attention hereto, when any account be presented to them to be paid out of the district treasury, as mentioned in the Government advertisement of the 16th July last. Payment of surveyor.

9. (1) On the division of any place granted on *perpetual quitrent*, each part, and its holder, shall be *severally bound* and responsible for the full amount of the rent, in such manner, however, that he who makes the payment may recover from the other holders, for as far as regards their respective shares; unless at the request of the interested parties, on making the division, Government may have been pleased to direct, that the rent shall be apportioned and registered proportionably at the time of the transfer. Each holder, on division of a place, bound for the full amount of the rent.

10. That in order to ensure the necessary regularity, as well as the interest of the State, no alienation of any part of such place shall be considered as legal before the same shall be surveyed, a diagram made thereof, regularly transferred before Commissioners of the Court of Justice, as likewise duly registered in the office of land revenue. Transfer *coram lege loci*.

11. This *perpetual quitrent* shall, further, not be liable to any other burthens but those to which all freehold lands are already subject, or which may hereafter be further prescribed. Quitrent lands liable to same burthens only as freehold.

12. All applications for the conversion of loan lands into *perpetual quitrent*, with the privileges attached thereto by this present proclamation, must be made within twelve months from the date hereof; after the expiration of which period the said rights, privileges, terms, and conditions, shall be subject to such alterations as circumstances shall be found to require. Period within which applications may be made,—twelve months.

13. The title deed (*erfgrondbrief*), on such application, shall be granted after the place shall have been surveyed, with the previous knowledge of, and if necessary pointed out by, the landdrost, by a sworn land surveyor, and a proper diagram of the same forwarded to Government by the landdrost, accompanied by his certificate, that the measurement was made without Issue of title deed.

<sup>1</sup> See Acts 7, 1856, and 10, 1875, *infra*.

Proc.—6 Aug. 1813.

prejudice to any person; and also that the diagram does not contain any greater extent of ground than was *legally* possessed on loan by the holder.

Right of re-assumption of loan places, increase of rent, &c., not curtailed,—except in case of change of tenure.

14. By the regulations made in these presents, it is not to be understood that the right of re-assumption, increase of rent, or other arrangements regarding loan places, which undoubtedly belong to the Government of this Colony, and which have been, from time to time, exercised by the successive Governments of the same, are in anywise curtailed, or intended to be curtailed, unless when the parties obtain an alteration in their tenure on the terms proposed.

Right of Government as to attached places, not done away with by this proclamation.

15. In order to prevent all misunderstanding, it is hereby specially declared, that the right which belongs to Government with respect to *attached places* is in nowise done away by this measure, and consequently, that those places remain subject to all such further regulations as they would have been liable to, in case this proclamation had not been issued.

Loan places attached to drostdies and parsonages public property.

16. Loan places attached to the respective drostdies, deputy landdrosts, or the parsonages of the clergy, remain, as they are, public property, to be transmitted to their successors. But where Field-cornets, or other public functionaries, are excused from paying rent for a loan lease of their own as part of the remuneration for their public services,—in all such cases where the party solicits and obtains a change of tenure, for the purpose of dividing it amongst his family, or other motives, he shall not be liable to the raised rent during the time he is employed in the public service, and a new rent shall commence at the expiration of such services by death or otherwise.

General tenor of the regulations.

17. The whole tenor of the foregoing regulations will manifest the paternal view His Majesty had taken of this Colony; and, in deeply considering the permanent interest of the occupiers of lands, to what extent the Crown has resolved to sacrifice its rights and prerogatives in order to place property upon that solid and secure foundation, without which fair adventure and speculation cannot arise, and even common industry and labour will lose much of its effect.

Thus at length is this great measure matured and brought forward. It is the one that has long engaged the attention and anxious wish of each preceding Government, but which could not well admit of conclusion, except in times like the present—of unexampled tranquillity, uniform progress in civilization and good order, and the unbounded prospect of universal prosperity.

I feel the highest gratification in giving effect to these beneficent and paternal designs of His Majesty's Government; and persuade myself that the gratitude of the inhabitants of this Colony will be equal to the value of the inestimable gift thus extended to them on the part of the Crown, which, by graciously offering to their acceptance a perfect title to lands, that enables

them to provide for their children and descendants, and dispose of them as they please, grants to them, in fact, possession of an estate, and the high character and station of "a real landholder."

No. 7—1856.

They will thereby abandon an unworthy tenure, unfitted to the growing prosperity of the Colony, and only suited to the earliest and rudest institutions of the settlement; and being thus placed in their territorial possessions on the same footing as their fellow-subjects in Europe, the Cape of Good Hope in future may, with fair pretension, take its rank with other countries.

And that no person may plead ignorance hereof, this shall be published and affixed as usual.

No. 7—1856.]

[June 4, 1856.

## AN ACT

## For apportioning Quitrents upon the Subdivision of Fixed Property.

WHEREAS it is expedient that provision should be made, by law, for apportioning the quitrent payable by or out of fixed property which may become, or may have become subdivided amongst several owners: 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. So much of the proclamation of Sir John Francis Cradock, then Governor of the Colony, bearing date the 6th August, 1813, as may be repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

Repugnant laws repealed.

2. As often as the owner of any fixed property, in its original extent subject to the payment of quitrent to Her Majesty the Queen, shall, after the taking effect of this Act, sell or otherwise alienate any part, but not the whole, of such property, whether an undivided share thereof, or a portion thereof to be divided off by diagram, it shall be lawful for the seller and purchaser, by agreement<sup>(1)</sup> between themselves, or by their attorneys or agents, duly authorized, made in the presence of the Civil Commissioner of the division in which such property shall be situated, to fix and determine the shares or proportions of the quitrent previously payable by or out of the entire of the said property, which shall, for the future be payable by the seller and the purchaser, respectively, and from or out of their respective shares or portions of the said property, and the terms of such agreement shall be put in writing, and certified by the Civil Commissioner, and in every transfer deed which shall be passed in virtue of, and for carrying into effect

Seller and purchaser to agree upon the respective shares of quitrent.

Agreement to be certified by Civil Commissioner.

<sup>1</sup> For proceedings where parties concerned do not agree, see Act 10, 1875, *infra*.

- No. 7—1856. such sale or alienation, the amount of quitrent to be thenceforth payable from or out of the share or portion of such property as aforesaid, transferred by such transfer deed, shall be stated and embodied: Provided that in every such case as in this section mentioned the amount of quitrent which shall continue to be paid by the said party so selling or alienating as aforesaid shall be, by the Civil Commissioner, endorsed upon the title deed or transfer deed, as the case may be, under or by virtue of which such party holds such property; and provided, further, that on no division shall less than 5s. quitrent be payable; and provided, also, that in any farm subdivided for the purpose of a village, the quitrent thereon shall be redeemable at a twenty years' purchase.
- Amount of quitrent to be stated in transfer deed.
- Quitrent on original property to be endorsed on title deed.
- Minimum quitrent to be five shillings. Farms subdivided for purposes of village redeemable.
- Civil Commissioner to keep record-book of apportionment of quitrents
- Several purchasers of one property to agree as to their proportionate shares of quitrent.
- Act applicable to previous purchases.
- Each share of the entire property to pay its own proportion of quitrent, and no more.
3. The Civil Commissioner shall cause every such apportionment of quitrent so made as aforesaid to be recorded in a book to be kept by him for that purpose.
4. As often as any owner of fixed property shall sell or alienate the whole thereof to more persons than one, either in undivided shares, or in portions to be divided off by diagram, then the several purchasers may, in manner aforesaid, agree upon the proportionate amounts of quitrent to be thenceforth payable by each; and the 2nd and 3rd sections aforesaid shall, *mutatis mutandis*, apply to this case as well as to the case therein mentioned.
5. When any persons shall, under any deed of grant or transfer deed, or transfer deeds, made prior to the taking effect of this Act, own, amongst them, in either undivided or divided shares or portions, any extent of fixed property, subject to quitrent, as such extent was originally granted, or some such persons shall own a part of such extent in undivided shares, and the rest of such persons shall own the rest of such extent in portions divided off by diagram, such persons may, by any agreement made in manner and form as in the 2nd section of this Act mentioned, fix and determine the shares and proportions of the quitrent previously payable from or out of the entire property in its original extent, which shall thenceforth be payable from or out of each undivided share and each divided portion, and such shares and proportions of quitrent shall be endorsed by the Civil Commissioner upon the title deed, or transfer deed or deeds, under or by virtue of which the several shares or portions of such property shall be enjoyed by such owners respectively, and shall also be recorded by such Civil Commissioner, as in the 3rd section of this Act directed, and be stated and embodied in any transfer deed by which any such share or portion may be afterwards transferred.
6. As often as the quitrent originally payable by or out of any fixed property in its original extent shall have been apportioned in manner and form as by this Act provided, then each share or portion of such property shall be chargeable with its share or proportion of such quitrent, according to such apportionment, and no more, precisely as if such share or proportion had been

originally granted, subject to such share and proportion, and no more.

No. 7—1856.

7. In all cases in which any share or portion of fixed property in regard to which the quitrent shall have been apportioned as aforesaid, shall be again subdivided in any manner already referred to in this Act, then the rent first apportioned as aforesaid shall, in its turn, be again apportioned in manner and form as aforesaid; and so on, in regard to succeeding subdivisions, so long as such subdivision shall continue to be made.

If any share be again subdivided, the quitrent apportioned to it shall be subdivided in proportion.

8. Nothing in this Act contained shall extend to or affect any case of subdivision of fixed property in regard to which the parties shall not, by agreement, made in manner aforesaid, fix and determine, amongst each other, the quitrent to be afterwards payable, by or out of their several shares or portions respectively.

Act not to affect subdivisions of fixed property in regard to which there is no such agreement as is in the second section mentioned.

9. In all actions, suits, and proceedings for the recovery of apportioned quitrent in arrear, a certificate under the hand of the Civil Commissioner of the division in which the property shall be situated, shall be *prima facie* evidence that the amount mentioned in such certificate is due and owing by the person named therein, which certificate shall be in substance and effect as in the schedule to this Act set forth.

Certificate of Civil Commissioner to be *prima facie* evidence that quitrent is due.

10. This Act shall commence and take effect from and after the promulgation thereof.

Act when to commence.

#### SCHEDULE.

I, A. B., Civil Commissioner of the division of \_\_\_\_\_, do hereby certify that, from the records in my office, it appears that the sum of \_\_\_\_\_ pounds \_\_\_\_\_ shillings and \_\_\_\_\_ pence is the amount of apportioned quitrent, annually payable from and out of a certain undivided (*fourth*) part or share of the quitrent farm called \_\_\_\_\_ (*or otherwise describe the property*), situated in the Field-cornetcy of \_\_\_\_\_, in this division, of which part or share \_\_\_\_\_ is the owner; and I further certify that the sum of £ \_\_\_\_\_ is due and payable upon or in regard to such part or share, being for such quitrent, from the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

Form of certificate referred to in ninth section.

(Signed) A. B.,  
Civil Commissioner of the division of \_\_\_\_\_.

NOTE.—In case the apportioned quitrent shall be payable out of a portion of land divided off by diagram from any other part of any original extent, the certificate will describe such land as a certain piece or portion of land, formerly part of the quitrent farm called \_\_\_\_\_, and will substitute the words “piece or portion of land” for the words “part or share,” in the remainder of the certificate.

No. 10—1875.]

[June 30, 1875.

## ACT

## To Amend in certain respects Act No. 7 of 1856.

Preamble.

WHEREAS it is expedient that provision should be made by law for apportioning the quitrent payable by or out of fixed property which may become or have become subdivided amongst several owners in cases where the seller and purchaser or the owners shall be unable or unwilling to come to any such agreement as is in the Act No. 7 of 1856 mentioned: Be it enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council and House of Assembly thereof, as follows:—

Proceedings to be taken when joint owners cannot agree on the apportionment of quitrent under Act 7 of 1856.

1. In every case where the seller and purchaser or the owners of land subject to the payment of quitrent to Her Majesty the Queen shall be unable or unwilling to come to any agreement to fix and determine the shares or proportions of the said quitrent which should for the future be payable by such purchaser and seller respectively, or by such part owners respectively from or out of their respective shares or portions of such land in terms of the provisions of Act No. 7 of 1856, then it shall be lawful for such seller or purchaser, or for any part-owner, as the case may be, to request the Civil Commissioner of the division in which such land shall be situated to fix and appoint a day for the apportionment of such quitrent, and thereupon such Civil Commissioner shall fix and appoint a day for hearing the parties and apportioning the said quitrent, and upon the day so appointed the Civil Commissioner shall apportion the quitrent to be thereafter paid by the purchaser and seller respectively, or by the part-owners respectively, as to such Civil Commissioner shall seem just and equitable, Provided however that no such apportionment shall be made unless the party who shall have requested the Civil Commissioner to fix and appoint such day as aforesaid shall have served a notice in writing of such hearing upon the purchaser or seller, as the case may be, or upon the remaining part-owners, not less than fourteen days previous to the day fixed for hearing; Provided further that it shall be competent for any party interested who shall have appeared before such Civil Commissioner to bring the decision of such Civil Commissioner under the review of the Supreme Court within three months after the date of such decision; Provided further that on no division shall less than five shillings quitrent be payable.

Civil Commissioner to keep record book of such apportionment.

2. The Civil Commissioner shall cause every such apportionment of quitrent as aforesaid to be recorded in a book, to be kept by him for that purpose, and shall endorse such shares and portions of quitrent upon the title deed or transfer deed or deeds under or by virtue of which the several shares or portions of such

property shall be enjoyed by such purchaser or seller or part-owners respectively, and shall state and embody such shares and proportions of quitrent in any transfer deed by which such share or portion may be afterwards transferred.

No. 14—1878.

3. This Act may be cited for all purposes as the “Apportionment of Quitrent Amendment Act, 1875.”

Short title.

No. 14—1878.]

[August 2, 1878.

## ACT

For Regulating the manner in which the Crown Lands of the Colony shall be disposed of.

WHEREAS it is expedient to amend the law regulating the manner of disposing of the crown lands 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. The Act No. 2, 1860, entitled “An Act for regulating the manner in which Crown Lands at the Cape of Good Hope shall be disposed of,” the Act No. 19, 1864, entitled “An Act to provide for the leasing of Crown Lands and for other purposes,” and the Act No. 4, 1867, entitled “An Act to amend, in certain respects, the Act No. 19, 1864, ‘To provide for the leasing of Crown Lands and other purposes,’” are hereby repealed, save and except in so far as the provisions of the said Acts or any of them relate to the lands disposed of prior to the taking effect of this Act, or to the disposal of lands for which proceedings have been commenced prior to, or are pending at, the time of the taking effect of this Act; all which lands shall be dealt with as if this Act had not been passed.

Act 2 of 1860, Act 19 of 1864, and Act 4 of 1867 repealed.

2. All waste and unappropriated crown lands within this Colony shall, except as hereinafter is excepted, be disposed of on perpetual quitrent for the highest annual rent that can be obtained for the same by public auction.

Crown Lands to be disposed of at public auction on perpetual quitrent.

3. The public auction aforesaid shall, as regards the lands situated in any division except the division of the Cape, be held at the office of the Civil Commissioner of the division, and as regards lands situated in the division of the Cape, at such place in Cape Town as Government shall appoint.

Aforesaid sales—where to be held.

4. A notice of every auction to be held under this Act shall be published in the *Government Gazette* and in some newspaper published in or near to the division in which the land is situated, for not less than three months before the day appointed for holding such auction, and such notice shall describe the position and extent

How notice of sale to be given



No. 14—1878.

Notice to specify minimum quitrent and amount of survey expenses, &c., payable by purchaser.

Land to go to highest bidder above minimum.

First year's rent to be paid in advance.

Approved Sureties to be furnished for next two years.

When sureties not required.

Quitrent to be payable in advance.

Quitrent, how redeemable, wholly or in part.

Redemption not to alter nature of tenure.

Governor's consent required to any apportionment.

Expenses of survey, beacons, and title deeds—when to be paid.

In certain cases Crown lands may be leased for not more than three years.

of the particular lands intended to be put up to competition, and shall state a minimum, or upset annual quitrent, below which such lands will not be disposed of, as also the amount of the expenses of survey, erection of beacons, and title deeds to be paid by the purchasers as hereinafter mentioned.

5. The highest bidder who shall not have offered less than the minimum or upset quitrent shall be declared the purchaser, and every such purchaser shall be bound to pay the first year's rent under the quitrent grant, in advance, and secure the payment of the quitrent for the two next years by sureties whom the Civil Commissioner shall deem sufficient, which sureties shall bind themselves, in regard to such quitrent, as sureties *in solidum* and co-principal debtors, renouncing the exceptions of excussion and division: Provided that the Civil Commissioner shall, if required by the purchaser receive two years' rent in advance, in which event the aforesaid security shall not be required. And all quitrents payable under this Act shall commence upon and be reckoned from a day to be stated in the conditions of sale, and shall be payable in advance.

6. The annual quitrent payable upon any quitrent grant, whether a grant made after the taking effect of this Act, or upon any grant made previously to which the provisions of the third section of the schedule to the Act No. 2, 1860, are, not applicable, may be redeemed at any time by the payment of a sum equal to twenty times such annual quitrent, but not by the payment of any lesser sum, and any such quitrent may at and after the same rate be redeemed in parts or portions, provided such parts or portions be either three-fourths, or one-half, or one-fourth of the original quitrent as stated in the deed of grant, and in any case in which the quitrent upon any such grant as in this section mentioned has been apportioned under the provisions of the Act No. 7, 1856, or the Act No. 10, 1875, the apportioned quitrent upon any part or share may be redeemed in manner aforesaid: Provided that the redemption of the quitrent wholly or in part shall not be deemed to alter the nature of the tenure of the land: Provided also, that as to any apportionment of quitrent on land granted under the provisions of this Act, the consent of the Governor to such apportionment be first obtained.

7. The expenses of survey, erection of beacons, and of the title deed shall be paid to the Civil Commissioner within a certain time to be fixed by the Government and made known at the time of sale.

8. In any case in which lands shall have been put up to competition under this Act, and the minimum or upset rent shall not have been obtained, or if from particular circumstances the Governor should deem it inexpedient to dispose of particular lands upon perpetual quitrent, then such lands may be let on lease for any term not exceeding three years at the highest rent that can be

obtained for them by public auction, should such rent be deemed sufficient.

No. 14—1878.

9. No such lessee as is in the last preceding section mentioned shall be at liberty to cut down timber, trees, underwood, or bush-wood, except such as shall be reasonably necessary for his own use in and upon the lands leased by him.

Restrictions as to cutting wood, &c., by lessee in above cases.

10. All lands disposed of upon perpetual quitrent under this Act shall be subject to such special servitudes and conditions as may be set forth in the conditions of sale, and to the following general conditions, which must be stated in the title deed, viz.:

Lands sold on perpetual quitrent to be subject to certain general conditions.

- (a) The quitrent payable. (a) As to rent.
- (b) All roads and thoroughfares described in the diagram shall remain free and uninterrupted, unless the same be closed or altered by competent authority. (b) As to roads and thoroughfares.
- (c) Government shall always have the right to make new roads, railways, and railway stations, aqueducts, dams, and drains, or to conduct telegraphs over the land for the benefit of the public, and to establish convenient outspans for the use of travellers, on payment to the proprietor of such sum of money in compensation as three appraisers, one to be appointed by each side, and a third to be chosen by the two others, before proceeding to act, or any two of them, shall award. (c) As to rights retained by Government.
- (d) That the Government shall at all times have the right of resuming the whole or a portion of the land hereby granted, if required for public purposes, on payment to the proprietor of such sum of money in compensation as may be mutually agreed upon by the parties concerned, or, failing such agreement, as may be awarded by appraisers appointed in manner provided in the preceding clause (c). (d) As to right of resumption.
- (e) That the rights of the proprietor shall not extend to any deposits of gold, silver, or precious stones, which may at any time be or be discovered on the land hereby granted. (e) As to precious metals and stones.
- (f) No condition not expressed shall be presumed to exist. (f) No unexpressed condition to be presumed.

11. No land claimed by any registered owner of adjacent land as part of his property by reason of any alleged defective title deed, or supposed land marks of the said adjacent land, or land occupied *bonâ fide* and beneficially, without title deed at the date of the extension of the Colonial limits beyond it, or land conditionally occupied or claimed under any general notice or regulation of the Government, or under any promise or order of a Government officer duly authorized at the time to make such promise or give such order, shall be considered or treated as waste Crown land for the purpose of this Act, until the claim thereto in each case shall have been decided on by the Governor, who shall

Certain lands not to come under provisions of this Act till claims made to them have been decided on by Governor.

No. 14—1878.

Notice of such claims to be given and due diligence used in proving them.

have the power of rejecting the claim altogether, or of satisfying such claim by grant of the land or compensation out of the public revenue, or otherwise as shall appear equitable: Provided always that due notice of the nature of the claim, and reasonable proof that it may be substantiated, be received at the office of the Commissioner of Crown Lands and Public Works in sufficient time to admit of the withdrawal of the land from sale, and that the claimant use reasonable diligence to lay the proofs in support thereof before the officer or board to whom the question may be referred by the Governor.

Governor, with concurrence of Parliament, may grant land for public purposes.

12. (1) Grants or reserves of land may be made by the Governor for special public purposes, provided that no such grant or reserve shall be made until the Legislative Council and House of Assembly shall have communicated to the Governor their concurrence therein.

Governor may, on certain conditions, authorize sale of such land.

13. No land within the limits of any municipality, or land lying outside the municipal limits, but which has been by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for any municipality, shall be considered or treated as waste crown lands for the purposes of this Act. But the Governor shall have the power, upon the application of the commissioners of any municipality, to grant or authorize the sale of any portion or portions of such lands for public improvements for the benefit of the inhabitants resident within the limits of such municipality. The term municipality shall, in this section, embrace any corporate town, and the term commissioners any town council.

No municipal lands or commonage to come under terms of this Act.

No town or village commonage to come under terms of this Act.

14. No land lying within or outside any town or village which has been by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for such town or village, shall be considered or treated as waste crown land for the purpose of this Act.

What other lands shall not be considered waste Crown lands for purposes of this Act.

15. No forest lands or lands known to contain valuable minerals, or situated in the neighbourhood thereof, no lands required for military stations, defence of the frontier, public outspans, fishing stations on the sea coast or the banks of tidal rivers, of such extent as the Governor shall define, or required for any other public purpose, or so much of the land on the sea coast lying above and within two hundred feet of high water mark, shall be considered waste lands of the crown for the purpose of this Act, and no such land shall be disposed of, except in the manner set forth in section twelve in regard to the lands therein mentioned.

Reservations for roads, outspans and cattle thoroughfares

16. In all cases in which crown lands shall be disposed of, where sufficient public roads, outspans, and cattle thoroughfares, do not exist, but may be required, such extent of land as may be

<sup>1</sup> See Act 3, 1883, § 5.

necessary for establishing public roads, outspans, and cattle thoroughfares, shall be reserved for such purposes.

No. 14—1878.

17. No such lands as are referred to in "The Agricultural Lands Act, 1870," or in the "Washbank Lands Act, 1870," or in the "Agricultural Immigrants' Lands Act, 1877," shall be deemed to be waste crown lands for the purposes of this Act.

Lands referred to in certain statutes not to come under this Act.

18. As often as a piece or portion of crown land shall lie contiguous to or between farms belonging to private persons, and it shall be for the common advantage of such persons and the public, owing to the situation of such crown land, and the circumstances connected with it, that it should be attached to one or more of the contiguous farms, then any such person may apply to the Commissioner of Crown Lands and Public Works, stating the position of such crown land, and the extent thereof so far as the same shall be known to such applicant, and requesting the Commissioner of Crown Lands and Public Works, after making all such inquiries into the facts as he shall deem necessary, to certify to the Governor that such piece or portion of crown land should, in the opinion of the said Commissioner of Crown Lands and Public Works be dealt with under the provisions of this section.

When it appears desirable that Crown lands should be attached to adjoining farm or farms, application may be made to Commissioner of Crown Lands for certificate to that effect.

19. As often as the Commissioner of Crown Lands and Public Works shall certify as in the last preceding section mentioned, he shall cause to be published in the *Government Gazette*, and at least twice a month in some newspaper published in or near to the division in which such land is situated, a notice, stating the name of the applicant, the situation and boundaries of the land in question, and the extent thereof if then surveyed, and if not surveyed, its supposed extent, and stating that the application of such applicant will be considered by Government upon some day to be mentioned in such notice, not being sooner than three months from the day on which such notice was first published in the *Government Gazette*, and a copy of such notice shall be posted at the office of the Resident Magistrate of the district as soon as may be after such publication in the *Gazette*, and not later than two months before the day specified in such notice, for the consideration of the application.

Procedure to be followed if certificate granted.

20. All persons having or alleging an interest in the matter of such application may, in writing, send in to the Commissioner of Crown Lands and Public Works, on or before the day specified in such notice, such statements or representations as they shall think fit, either in favour of or against the application made, and the Government shall then decide whether the application in question should be granted, wholly or in part, or whether the piece or portion of land applied for by the applicant should be divided between him and any other person or persons, or should be wholly given to or divided between some person or persons other than the applicant.

Representations may be made for or against the application.

Government to decide the question.

21. In every case in which any piece or portion of crown land shall be allotted to any farm under the provisions of the three last

When application granted Governor to impose perpetual quitrent.

No. 14—1878.

preceding sections of this Act, the owner of such farm shall pay in cash the expenses of survey, erection of beacons, and title deed, and such land so allotted shall be subject to such perpetual quitrent as the Governor shall consider equitable and impose: Provided, however, that if any such applicant as in the eighteenth section mentioned, or any of the persons mentioned in the twentieth section, who may have sent in to the Commissioner of Crown Lands and Public Works any such statement or representation as in that section stated, shall feel aggrieved by any decision to which the Government shall come in reference to any such piece or portion of crown land, it shall be competent for such person or persons to require that the matter in dispute shall be referred to arbitration; whereupon the Government and the person requiring the arbitration shall each forthwith appoint an arbitrator, and these two arbitrators shall appoint a third, and the three arbitrators shall forthwith proceed to consider and decide the matter in dispute referred to them, and the decision agreed to by such arbitrators, or any two of them, shall be final.

If disputed, matter may be referred to arbitration.

Decision of majority of arbitrators to be final.

Half-yearly lists to be published of all lands allotted under four preceding sections.

22. The Commissioner of Crown Lands and Public Works shall cause to be published in the *Government Gazette*, during the months of January and July in every year, half-yearly lists made up to the 31st December and 30th June preceding, respectively, of all title deeds issued from the Surveyor-General's office of any such lands as are in the four preceding sections mentioned, which lists shall set forth in regard to each title deed the division and field-cornetcy in which the land is situated, the name of the grantee or grantees, the extent of the land granted and the quitrent imposed.

Short title.

23. This Act may be cited for all purposes as "The Crown Lands Act, 1878."

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No. 25—1882.]

[June 29, 1882.

### ACT

To Authorize the Reduction of the Quitrents payable on certain Lands in Griqualand West.

Preamble.

WHEREAS the late Government of Griqualand West by Government notice, dated the 21st day of July, 1879, intimated that it had been decided that all titles to farms in the said Province, the quitrent on which was in excess of one pound per thousand morgen, might be exchanged for other titles, subject to certain terms of occupation and tenure at a quitrent of one pound per thousand morgen, provided that such exchange were made on or before the thirtieth day of November, 1879: And whereas by further notice issued by the said Government, the said period was extended to the thirty-first day of December, 1879, and again to

the 31st day of March, 1880: And whereas, while certain persons, owners of such quitrent lands, availed themselves of the benefits of the said notices, others, in ignorance of the existence of such notices, and from other causes, were unable to do so: And whereas it is just and expedient that effect should be given to the intentions of the said late Government, and that the Governor of the Cape of Good Hope should be authorized, if it shall to him seem fit to do so, to reduce the quitrents on any grants of land in the late Province of Griqualand West on which the quitrents payable are in excess of one pound per thousand morgen, to such an extent, not less than one pound per thousand morgen, as he shall think fit, notwithstanding that application was not made within the time mentioned in the said notices respectively, and without reference to any conditions in the said notices set forth: 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:—

No. 25—1882.

1. It shall be lawful for the Governor to reduce the quitrents payable under any of the grants in the preamble of this Act referred to, to such an extent as shall seem to him to be fair and reasonable and from such date as he may determine: Provided that no such quitrent shall in any case be reduced below the rate of one pound per annum for each one thousand morgen granted.

Governor may reduce quitrents, but not below £1 per 1,000 morgen.

2. The reduction of such quitrents shall be recorded on the face of such grants by the Surveyor-General, or on the deeds of transfer by the Registrar of Deeds in case the land granted shall have been transferred from the original grantee, upon production of a certificate under the hand of the Commissioner of Crown Lands and Public Works, stating that such reduction has been authorized by the Governor under the provisions of this Act.

Reductions to be recorded on grants, or on transfers.

3. This Act may be cited for all purposes as “The Griqualand West Quitrents Reduction Act, 1882.”

Short title.

No. 2—1860.]

[July 17, 1860.

## ACT

For Regulating the Manner in which Crown Lands at the Cape of Good Hope shall be disposed of. (1)

WHEREAS it is expedient that the manner in which the crown lands at the Cape of Good Hope shall be disposed of should be regulated by law: 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:—

Preamble.

<sup>1</sup> Repealed by Act 14, 1878, save as to lands disposed of prior to the taking effect of latter Act.

No. 2—1860.

Lands to be disposed of under regulations in schedule, and not otherwise.

1. The conditions and regulations in the schedule to this Act contained shall be, and the same are hereby, established, and the lands to which they relate shall be disposed of according to such conditions and regulations, and not otherwise.

Schedule.

## SCHEDULE.

CONDITIONS and REGULATIONS upon which the CROWN LANDS at the Cape of Good Hope will be disposed of.

Previous regulations repealed.

Crown lands to be sold under annual quitrent and at reserved price, to cover survey expenses and title-deed.

How and where sale to be held in each division.

When quitrent redeemable.

Conditions as to payment of purchase money.

Interest on balance of purchase money remaining on mortgage.

1. The conditions and regulations relative to the disposal of crown lands in this Colony, published by Government notice of the 17th May, 1844, or by subsequent notices, are hereby cancelled; and, in future, all waste and unappropriated crown lands will be sold subject to an annual quitrent on each lot, and at a reserved price, sufficient at least to defray the costs of inspection, survey, erection of beacons, and title deed.

2. The sale will be by public auction, at the office of the Civil Commissioner of the division in which the land to be sold is situated, after four months' notice by proclamation, in the *Government Gazette*, descriptive of the position and extent of the land intended to be sold; but lands in the Cape division shall be sold at Cape Town, at such place as shall be notified in such proclamation.

3. The quitrent may be redeemed at any time, upon payment of fifteen years purchase, but when, by future subdivision of a lot and the quitrent thereon, any portion of the quitrent shall be less than ten shillings, it shall be obligatory upon the proprietor of such portion, within twelve months after such subdivision, to redeem the quitrent at fifteen years' purchase. <sup>(1)</sup>

4. The sales will be held on the following conditions as to the payment of the purchase money, viz.: the expenses of inspection, survey, erection of beacons, and title deed shall be paid on the day of sale, and one-fourth of the balance of the purchase money shall be paid within three months after the sale, failing either of which conditions no sale shall be considered as having been effected. When a sale is effected, the purchaser shall have the option of discharging the whole or any portion of the remaining three-fourths of the purchase amount at once, and on depositing the expense of the necessary bond, of retaining the balance of the purchase money aforesaid, on first mortgage of the land sold, payable in three equal instalments, at the expiration of the fifth, sixth, and seventh years respectively, from the date of sale, or at any previous time at the pleasure of the purchaser. The interest thereon shall be reckoned at the rate of six per cent. per annum,

<sup>1</sup> See Act 14, 1878, § 6.

from the day of sale, and be payable annually, either to the respective Civil Commissioners in whose division the land is situated, or the Treasurer-General in Cape Town.

No. 2—1860.

5. When any lands are mortgaged under the provisions hereinbefore contained, the Government may at any time discharge any part or parts of such lands from being subject to the mortgage, if a certificate be obtained, under the hand of the Surveyor-General, that the lands which remain subject to the mortgage are of sufficient and ample value to afford a security for the mortgage debts.

Lands mortgaged under preceding section may be discharged from mortgage.

6. In all cases in which there may be timber, or houses, or other valuable and destructible, or perishable, or exhaustible property, on or within the limits of any lot, the Governor may, at his discretion, direct that a clause be inserted in the conditions of sale, requiring that the purchaser provide, at the time of sale, two good and sufficient sureties for due payment of the purchase money, to the satisfaction of the Civil Commissioner of the division, or of the Surveyor-General, in case such land be sold in Cape Town.

In case of timber or other perishable property being within the limits of the land, surety for payment of purchase money may be required.

7. The lots will be sold subject to such special servitudes and conditions as may be set forth in the conditions of sale, and the following general conditions which must be stated in the title deed, viz.:—

General conditions to be inserted in title-deed.

- (a) The quitrent payable.
- (b) All existing roads and thoroughfares described in the diagrams, shall remain free and uninterrupted.
- (c) Government shall always have the right to make new roads, railways, and railway stations, aqueducts, dams, and drains, or to conduct telegraphs over the land, for the benefit of the public, and to establish convenient outspans for the use of travellers, on payment to the proprietor of such sum of money in compensation, as three appraisers, one to be appointed by each side, and a third to be chosen by the two others, before proceeding to act, or any two of them, shall award.
- (d) With regard to lands on or adjoining the sea coast or on the banks of public rivers (not being in a town or village), Government shall have power to resume any portion thereof, when required for public purposes, on payment to the proprietor of a just and fair price for the same, according to valuation, as under section *c*.
- (e) Lands adjoining public rivers or running streams shall be sold, subject to having such water-furrows made through or over them as the Government, acting with the advice of the Divisional Council, shall approve of and direct, for the supply of water to lands lying at a greater distance; compensation being made to the proprietors of such adjoining lands according to valuation as under section *c*.



No. 2—1860.

When title-deed to be issued.

Certain lands not to be deemed waste Crown lands.

How claims to such lands to be dealt with.

Grants of land may be made for public purposes, with consent of Parliament.

Municipal lands not to be deemed waste Crown lands.

Municipal lands may, upon application of commissioners, be granted for public purposes.

Town pasturage not waste Crown lands.

Crown lands in certain frontier divisions, how to be disposed

(f) No condition which is not clearly expressed shall be presumed to exist.

8. On settlement of the whole purchase money, by bond or otherwise, the title deed will be issued to the purchaser.

9. No land claimed by any registered owner of adjacent land as part of his property, by reason of any alleged defective title deed, or supposed land-marks of the said adjacent land, or land occupied *bonâ fide* and beneficially without title deed at the date of the extension of the Colonial limits beyond it, or land conditionally occupied or claimed under any general notice or regulation of the Government, or under any promise or order of a Government officer, duly authorized at the time to make such promise or give such order, shall be considered or treated as waste crown land, for the purpose of these regulations, until the claim thereto, in each case, shall have been decided on by the Governor, who shall have the power of rejecting the claim altogether or of satisfying such claim, by grant of the land or compensation out of the purchase money or otherwise, as shall appear equitable: Provided, always, that due notice of the nature of the claim, and reasonable proof that it may be substantiated, be received at the office of the Colonial Secretary in sufficient time to admit of the withdrawal of the lot from sale, and that the claimant use reasonable diligence to lay the proofs in support thereof before the officer or board to whom the question may be referred by the Governor.

10. Grants or reserves of land may be made by the Governor for special public purposes, provided that no such grant or reserve shall be made until the Legislative Council and House of Assembly shall have communicated to the Governor their concurrence therein.

11. No municipal land, or land within the limits of any municipality or land lying outside the municipal limits, but which has been, by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for any municipality, shall be considered or treated as waste crown land for the purposes of these regulations. But the Governor shall have the power, upon the application of the Commissioners of any municipality, to grant or authorize the sale of any portion or portions of such lands for public improvements, for the benefit of the inhabitants resident within the limits of such municipality.

12. No land lying within or outside any town or village, which has been, by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for such town or village, shall be considered or treated as waste crown land, for the purpose of this Act.

13. The crown lands in the divisions of Albany along the Fish River, Peddie, Stockenstrom, Victoria East, Queen's Town, and

Aliwal North, may be disposed of by the Governor, by public sale, on condition of personal occupation, or of personal occupation and such conditions of providing arms and armed men as have been imposed in the divisions of Victoria, Peddie, and Queen's Town, and it shall be deemed expedient to continue to enforce for the defence of the frontier. Such conditions, however, shall not be cancelled or changed except by Act of Parliament (1).

No. 2—1860.

14. No lands known to contain valuable minerals, or situated in the neighbourhood thereof, no lands required for military stations, defence of the frontier, public outspans, fishing stations on the sea-coast or the banks of tidal rivers, of such extent as the Government, with the advice of the Divisional Council, shall define, or required for any other public purpose, or so much of the land on the sea-coast lying above and within two hundred feet of high-water mark shall be considered waste lands of the crown for the purposes of these regulations, and all such land shall not be disposed of, except in the manner set forth in section ten in regard to the lands therein mentioned.

Lands containing valuable minerals, or required for military or certain other purposes.

15. In all cases in which crown lands shall be disposed of, where sufficient public roads, outspans, and cattle thoroughfares do not exist, but may be required, such extent of land as may be necessary for establishing public roads, outspans, and cattle thoroughfares shall be reserved for such purposes.

Public roads, outspans, and cattle thoroughfares to be provided for.

16. Whenever any Divisional Council may deem it expedient that waste crown lands be sold, or when any person may be desirous of purchasing particular parts of such land, an application may be made to the Colonial Secretary, in writing, setting forth as far as practicable the position, boundaries, and extent of the land referred to. But in the case of any person desirous of purchasing such land, his application may be addressed direct to the Divisional Council of the division in which the land is situate, who shall, upon the receipt thereof, forward the same to the Colonial Secretary.

Applications for purchase of land to be addressed to Colonial Secretary or Divisional Council.

17. The applications, after being duly recorded, shall be transmitted to the Surveyor-General, who shall communicate thereon with the chairman of the Divisional Council of the division in which the land is situate.

Such applications to be transmitted to Surveyor-General.

18. The chairman shall submit every application to the Divisional Council at the first meeting of the said Council, after the receipt thereof, at which there shall be two-thirds of the members present, and actually taking part in the proceedings; and all reports if any be agreed to on questions relating to land shall be signed by the members individually, at the time and place of their meeting, and in presence of each other, and the chairman shall certify the same on all copies required for communication with Government.

Applications to be submitted to Divisional Council.

Reports to be signed by members and certified by chairman.

<sup>1</sup> See Act 24, 1868, *infra*.

No. 2—1860.

Reports in which Surveyor-General does not concur with council, or special reports, to be submitted to Governor.

Council to transmit estimate of costs of inspection, failing which, applicant may be required to deposit amount of costs.

Members of Divisional Council may be deputed to make inspection after due notice given.

In whose presence inspection to be made.

All claims to land to be heard and noted.

Capabilities to be observed.

Record of proceedings to be kept.

Council to give directions for survey, diagrams, &c., to be transmitted to Surveyor-General.

19. The Surveyor-General shall submit, for the decision of the Governor, all reports on cases in which he is unable to concur with the Divisional Council, and all reports which the Council desire to be specially submitted for information of the Governor.

20. When the Governor directs that the sale shall proceed, the Council shall in the first place transmit an estimate of the probable cost of inspection and survey, and erection of beacons, in order to enable the Surveyor-General to comply with the financial regulations, by obtaining previous specific authority for the necessary expenditure, or in the event of such information not being sent, then the Surveyor-General may call on the applicant for a deposit sufficient to cover the aforesaid cost, which deposit shall be refunded when the land is sold; but should no sale take place, or the reserved price be more than the aforesaid deposit, no refund will be made.

21. Whenever the special appointment of an inspecting officer shall not appear to be rendered necessary by circumstances of a peculiar and technical character, the members of the Divisional Council may depute one or more of their number, where necessary, to inspect the land; but the inspection shall not take place until after fourteen days' notice to the Field-cornet of the ward, and a public notice, posted conspicuously for fourteen days immediately preceding such inspection at the office of the Civil Commissioner or other place in the chief town or village of the division where notices are usually placarded.

22. The said inspection shall be made in presence of the Field-cornet or acting Field-cornet of the ward and a sworn surveyor, duly qualified, to be employed by Government; and all claims affecting the land inspected shall be heard and carefully noted, whether relating to private rights or public convenience, as in the instance of outspans, thoroughfares, and other questions of a local nature, or when an unreserved disposal of the lot might convey to a purchaser a power of annoying neighbouring residents, or of damaging adjacent property; further, the capabilities of the soil for cultivation and maintenance of stock during the year or certain months, the supply of water and facilities for augmenting such supply, the means of communication with and distance from markets or ports; the quantity of timber, if any, should all be observed and estimated; and an accurate record of the proceedings drawn up and handed to the chairman, by whom the case will be laid before the first subsequent meeting of the Divisional Council, consisting of the number of members specified in the seventeenth section.

23. The Council shall then issue the necessary instructions for survey, or otherwise act as the case may appear to require, and, on the completion of diagrams, will transmit them with their reports and a copy of the record mentioned in the last section to the Sur-

veyor-General, who will take the further steps necessary for the sale of the land, or otherwise.

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24. The Divisional Councils will, from time to time, transmit to the office of the Surveyor-General a list of such surveyors as may be willing to undertake the survey and subdivision of particular lots or tracts of land in their division, and the duties of surveyors, or inspection of the same; and the Surveyor-General will, if he see fit, select the surveyor to be employed. Such surveyor will conform to the instructions of the Council in all matters relating to allotment, erection of beacons, and survey, according to previously authorized agreement and estimate, under the provisions of this Act, and attend to the directions of the Surveyor-General in all that relates to professional points.

Divisional Council to transmit to Surveyor-General list of Surveyors willing to undertake survey.

25. Whenever any improvements, such as the erection of buildings, the construction of dams, or of water-conduits for irrigation, or the like, shall at any time prior to the taking effect of this Act have been made upon crown land, by any occupier thereof, whose occupation shall not have been authorized by Government, it shall be lawful for the Governor, if he shall think fit, to compensate such occupier for the improvements so made. This compensation shall be made in the following manner: The buildings or other improvements in question shall be valued either by the inspecting officer or officers appointed by the Divisional Council to inspect crown lands, or by some competent appraiser, to be appointed by the Government, as the Government shall elect; and the lands on which such improvements have been made shall, when put up to public sale, be sold subject to the payment, out of the purchase money, of the amount of such valuation, and such amount shall be paid by the purchaser at the time of sale. If the occupier who made the improvements should not be the purchaser, then one-third of the value of such improvements shall be retained by the Government, and carried to the account of the public treasury; and the remaining two-thirds shall be paid to the said occupier. In case the said occupier should himself become the purchaser, the two-thirds to which he will have become entitled shall be retained by the Government, and received in payment or part payment of the purchase money for which he shall have become liable. Provided that whenever any such improvements have been made by any occupier whose occupation has been authorized by Government, such occupier shall receive or be allowed the entire value of such improvements. And provided that compensation cannot be claimed, and shall not be given, on account of expenditure upon improvements unconnected with the ordinary use of the land by the usual class of purchasers, or of extravagant improvements not adapted to increase the value of the land.

Compensation to be given to previous occupier for building and improvements.

Buildings, &c., to be valued.

How, if occupier does or does not become purchaser.

Compensation not to be given for extravagant improvements.

26. The privileges allowed to officers of the army and navy, and of the late East India Company's service, in respect to remission of purchase money of waste crown lands, may be claimed under the

Regulations as to remission of purchase money to military, naval, or Indian officers.

No. 2—1860.

foregoing regulations; the claimants adhering thereto, in all respects, as in the case of ordinary application and purchase, excepting that, in the settlement of the balance of the purchase money over and above the expenses of inspection, survey, erection of beacons, and title deed, which must be paid in cash, the letter of approval of remission by the Governor may be tendered and will be received, to the extent of such amount or balance of amount as may be therein stated, in satisfaction of the whole or part of such balance of purchase money, under such regulations as the Governor may consider necessary to ensure the accuracy of the public accounts in that particular class of cases.

Waste Crown lands may be sold to contiguous proprietors at valuation by Divisional Council.

27. As often as the Surveyor-General shall, on the recommendation of the Divisional Council, certify that a portion of crown land lies so contiguous to or between farms belonging to private persons, and that from the situation of such crown land, and all the circumstances connected with it, such crown land ought to be attached to one or more of the contiguous farms, then the Divisional Council may allot such crown land to one farm, or divide it amongst two or more farms, as may seem just and expedient, at a reasonable and equitable price, to be fixed by the Council, and approved of by the Governor, not being less than the expense of the inspection, survey, erection of beacons, and title deed. And such land shall be subject to a quitrent, to be assessed by the Council.

Quitrent to be assessed by council.

Applications for such land, how to be dealt with.

28. After the Surveyor-General shall have certified as in the last clause mentioned, then the Council shall cause to be published in the *Government Gazette* a notice stating the name of the applicant, the situation and boundaries of the land applied for, and the extent of such land, if it shall then have been surveyed, or if it have not been surveyed, its supposed extent, and stating that such application will be decided upon by the Council, at a meeting thereof, to be held upon some day to be mentioned in such notice, not being less than three months from and after the day upon which such notice shall have been first published in the *Government Gazette*. A copy of such notice shall also be posted at the office of the Resident Magistrate of the district for not less than three months before the day appointed for the meeting of Council to decide upon such application. (1)

Persons interested in such applications may appear in person or by deputy to support or object to application.

29. At the meeting of Council to decide upon any such application as aforesaid, it shall be competent for any person, having or alleging an interest in the matter of such application, to appear in person, or by agent authorized by any writing under the hand of such person, and to submit to the Council such matters for or against such application as he shall think fit; and the Council may, from time to time, adjourn the decision upon any such application to a future meeting as often as it shall be found expedient to do so.

<sup>1</sup> See Act 19, 1864, § 7.

30. The Council may grant any such application, either wholly or in part, as may appear desirable, and when an application by one person shall have been made and published for a certain lot of land, may in deciding upon such application and without the publication of any fresh notice, divide such land between the applicant and any other person or persons who may, at the meeting in the twenty-seventh clause mentioned, claim, and be found entitled to, a share of such land.

No. 2—1860.  
Applications may be granted wholly or in part.

31. When the Council shall have decided to recommend that any such land as is in the last clause mentioned, should be granted to any person or persons, the chairman of the Council shall forward such recommendation to the Surveyor-General, together with the diagram or diagrams of such land, and a statement of the price fixed, and of the quitrent assessed by the council, and the necessary title deed or title deeds shall be prepared and issued: Provided that the Governor, upon sufficient cause shown to him, shall be empowered to withhold the issue of such title deed or title deeds.

How, if council shall decide to grant application.

Governor may withhold title-deed.

32. The Surveyor-General shall cause to be published in the *Government Gazette*, during the months of January and July, in every year, half-yearly lists, made up to the 31st December and 30th June preceding, respectively, of all title deeds issued from the Surveyor-General's office of any such lands as are in the preceding clause mentioned, which lists shall set forth, in regard to each title deed, the division and field-cornetcy in which the land is situated, the name of the grantee or grantees, the extent of the land granted, the price fixed, and the quitrent assessed.

Surveyor-General to publish half-yearly returns of title-deeds issued under preceding section.

No. 8—1868.]

[Sept 2, 1868.]

### ACT

#### To Abolish Liability to Quitrent within the Limits of the Municipality of King William's Town.

WHEREAS it appears that, before the creation of the municipality of King William's Town, certain erven within the limits of the said municipality were granted by the late Government of British Kaffraria to certain parties, on condition, among other things, that the proprietors thereof should pay an annual quitrent, with a view to the application of the proceeds of such quitrents for the purpose of keeping in repair the streets of the said town, and other local purposes: And whereas by virtue of the provisions of the Ordinance for constituting the municipality of King William's Town, and by the Act No. 3 of 1865, annexing British Kaffraria to this Colony, the proprietors of the said erven have, in addition to the said liability to payment of quitrent, become liable to pay-

Preamble.

No. 21—1868.

ment of the municipal rates imposed for the purposes aforesaid, and also to the payment of road rates; and it is proper that the said proprietors should be relieved from such first-mentioned 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:—

Proprietors of lots of land within municipality of King William's Town relieved from payment of quitrent.

1. From and after the 1st day of July, in the present year, the liability to payment of quitrent of the proprietor of any lot of land situated within the limits of the municipality of King William's Town shall cease and determine. But nothing herein contained shall be construed to exempt any such proprietor from payment of any sum which may have or shall become due and payable before or on the said 1st day of July, in respect of any such land.

No. 24—1868.]

[Sept 2, 1868.

## ACT

To Relax the Conditions of Grants of Crown Land in certain Divisions of the Colony. (1)

Preamble.

WHEREAS in times past grants of land in certain of the Eastern Divisions of the Colony have been made by the Crown to private persons, on special conditions that they shall personally reside on such land, and be further liable to provide for the defence thereof, in manner set forth in the titles issued for the same: And whereas it does not appear to be necessary any longer to keep in force such special conditions, which have been found in certain respects irksome and vexatious: 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:—

Payment of quitrent.

1. The quitrent payable in respect to lands heretofore granted on condition of personal occupation by the owners thereof shall continue to be payable for the same, and the quitrent to be paid for all lands to be hereafter granted in any of the divisions mentioned in the thirteenth section of the Act No. 2 of 1860, or in the divisions of King William's Town (2) and East London, shall be fixed in manner provided by the said Act No. 2 of 1860.

Condition of personal occupation cancelled.

2. From the taking effect of this Act any special conditions which shall have been inscribed in any grant of land in this Colony in respect to the personal residence on such land of the owner thereof, or in respect to provision for the defence of the same, shall be held to be cancelled.

<sup>1</sup> See § 13, Sched. to Act 2, 1860, *supra*.

<sup>2</sup> See § 1, Act 8, 1868, *infra*.

No. 9.—Sd. P. Maitland.]

[July 4, 1844.]

## Ordinance for facilitating the Recovery of Land-rents in this Colony.

WHEREAS it is expedient to facilitate the recovery of land-rents belonging to the Colonial Government, due and in arrear, and for that purpose to remove certain difficulties of a legal nature which now exist and generally to make such provision for the recovery of the said rents as may prove effectual and at the same time free as far as may be from delay and expense: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance all laws and customs heretofore in force in this Colony in so far as the same are repugnant to or inconsistent with any of the provisions of this Ordinance shall be and the same are hereby repealed.

Preamble.

Previous laws repealed.

2. And be it enacted that it shall and may be lawful for the Civil Commissioner of each division of this Colony in every case in which any land-rent payable or belonging to the Colonial Government shall by the books of such Civil Commissioner's office appear to be due and in arrear to prepare or cause to be prepared a notice addressed to the person who shall by the books aforesaid appear to be the owner of the place or property in respect of which such land-rent shall have accrued due, and to all others whom it may concern; and such notice shall in substance be in the form in the first schedule hereunto annexed is set forth; and such notice shall be served by leaving the same with the person in actual occupation of the said place or property, or in case such person cannot be found at his usual place of residence then by leaving the same at the residence of such person with the wife of such person or any child or servant of such person who shall appear to be of the age of sixteen years or upwards. And it shall be the duty of the person employed to serve any such notice, to have and preserve a copy thereof, and to mark upon such copy as speedily as may be the time at which and the place and manner in which the original notice was served, by way of a memorandum to refresh if needful the memory of the person so serving the said notice.

Notice to pay arrears.

3. And be it enacted that it shall and may be lawful for the person so appearing as aforesaid to be the owner of such place or property or for any mortgagee, lessee, or other person having any interest therein at any time within thirty-one days from the day of the service of such notice as aforesaid to lodge at the office of the Civil Commissioner in writing any objections to the payment of any part of the amount claimed in the said notice as due and in arrear, which may be disputed or denied, and if such objections shall be duly lodged within the time aforesaid but shall not be

Objections to notice of arrears.

Action to follow objections for the trial thereof.



Ord. 9—1844.

allowed by such Civil Commissioner, and if the party lodging the same shall, within seven days after the lodging thereof, give security by way of recognizance to Her Majesty the Queen, and either with or without sureties as the said Civil Commissioner shall require, to pay the amount which such party disputes or denies together with the costs of the suit next hereinafter mentioned in case such suit shall be determined against the party so objecting as aforesaid and giving such security, the said Civil Commissioner shall forthwith cause proceedings to be commenced in some competent Court, for the recovery of the amount of rent in controversy, and shall not resort to the remedy by distress and sale as in the next succeeding section mentioned.

Recovery of rent by distress and sale in specified cases.

4. And be it enacted that in case no such objections as aforesaid shall have been lodged, or if lodged and disallowed, in case no such security as aforesaid shall have been given, and in case the amount of the land-rent mentioned in such notice as aforesaid shall not within the space of thirty-one days from the day on which notice shall have been served, be duly paid and discharged, or in case such objections as aforesaid shall have been lodged and allowed but the residue or balance remaining after the allowance of the same shall not be paid and discharged within the said space of thirty-one days from the day of the serving of the notice, then it shall and may be lawful for the Civil Commissioner aforesaid in every case in which the person appearing as aforesaid, by the books aforesaid, to be the owner of the place or property in question, shall be in the actual occupation of such place or property, to place in the hands of the messenger of any Resident Magistrate's Court, within that Civil Commissioner's division an authority in writing, empowering such messenger to seize and arrest all goods and chattels, being in and upon the place or property aforesaid, which goods and chattels would be distrainable by law for rent in arrear, and such authority shall in substance be in the form set forth in the second schedule hereunto annexed; and all goods and chattels so seized under or by virtue of any such authority as aforesaid shall be dealt with, treated and considered, to all intents and purposes as if the same had been attached under process of execution issued upon a judgment of the Court of the Resident Magistrate of the district in which such seizure shall have been made, but no greater sum shall in any case be levied and raised than the sum mentioned in the said authority, together with such usual costs and charges, as would have been attendant upon the seizure and sale of the said goods and chattels, had the same been attached under such process as aforesaid.

Restriction as to seizure and sale.

Distress may be levied on occupier under contract for ownership.

5. And be it enacted that in every case in which the person in actual occupation of any such place or property as aforesaid not being the owner thereof shall yet have entered into such occupation under or in pursuance of some contract or agreement for becoming the owner of the same, the power of distress and sale in the last

preceding section mentioned may be exercised by the Civil Commissioner aforesaid, in manner and form as in the said section stated, precisely as if the person so in occupation under such contract or agreement were in law the owner.

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6. And be it enacted that in all cases in which neither the person appearing as aforesaid by the books aforesaid to be the owner of the place or property in question, nor any such occupant as in the last preceding section mentioned, shall be in the actual occupation of such place or property or in which although in such occupation no sufficient goods and chattels shall appear to exist, whereof could be made in manner aforesaid the rent due and in arrear; or in which, by reason of any difficulties to him appearing, such Civil Commissioner as aforesaid shall decline to resort to the mode of proceeding in the last preceding section mentioned, it shall and may be lawful for such Civil Commissioner, at any time after the expiration of thirty-one days from the day on which such notice as aforesaid shall have been duly served, but not sooner, in case the rent in arrear shall still remain due and unpaid, to proceed according to law in some competent Court for the recovery of the land-rent due and in arrear, or for such other and alternative relief as by reason of the non-payment of the said rent the Colonial Government shall be legally entitled to demand.

Cases in which recovery of rent may be sought by action.

7. And be it enacted that any mortgagee, sub-lessee, or other person having any interest in any such place or property as aforesaid, shall be entitled at any time before the execution of the decree of any such Court as aforesaid, to pay and satisfy the amount of land-rent in arrear, with costs, and thereupon to be deemed and taken in case he shall not by reason of some stipulation or agreement be himself responsible for the said rent, to have, in regard to the amount so paid and satisfied, the like rights and remedies against the real debtor, as those which do or shall by law belong to the Colonial Government in regard to the recovery of its land-rents and its costs of suit.

Persons who may pay rent and have remedies of the government for its recovery.

8. And be it enacted that if in any such suit or proceeding as aforesaid, a decree should be pronounced declaring the quitrent grant, or lease of any such place or property, and the right or title derived from, by, or under it to be cancelled, annulled, forfeited, and avoided for or by reason of non-payment of the rent reserved and conditioned to be paid, then, in case the place or property in question shall, at the time of the pronouncing of such decree be under any mortgage either conventional or tacit (the hypothecation of Government for the rent due and in arrear alone excepted), the Civil Commissioner shall instead of entering upon or taking possession of such place or property under such decree be bound and obliged to cause the said place or property, and all right and title to, and interest in, the same, existing by virtue of the quitrent grant or lease thereof to be sold by public sale (in case no mortgagee or other interested person shall previously to such

Cases in which civil commissioner shall sell and not enter into possession for recovery.

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sale pay off the land-rent due and in arrear with all costs and charges), and such Civil Commissioner shall after deducting from the purchase money the amount of rent due and in arrear together with costs and the charges of the said sale pay over the surplus if any to the party or parties legally entitled to the same.

Sales to be by the sheriff.

9. And be it enacted that every such sale as is in the last preceding section mentioned shall be held by the Sheriff and shall be conducted in like manner as sales of immovable property seized or attached by such Sheriff in execution of legal process.

Moneys payable to absent mortgagees.

10. And be it enacted that whenever any such mortgagee as aforesaid shall be absent from the Colony or shall not be discoverable the Civil Commissioner shall cause all such moneys as would be payable to such mortgagee if present to be paid into the guardian's fund to the credit of such mortgagee, there to be subject to the same provisions in all respects which are provided by Ordinance No. 105, bearing date the 5th day of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony.

Where land is derelict.

11. And be it enacted that in every case in which any place or property in regard to which any arrear of land-rent shall be due to the Colonial Government shall be abandoned, deserted, or left derelict, and the person having or claiming title to the same shall after being duly summoned <sup>(1)</sup> make default, it shall and may be lawful for the Supreme or some Circuit Court as the case may be, upon proof to the satisfaction of the said Court by affidavit or otherwise as to such Court shall seem fit that a certain amount of land-rent is due and in arrear, in respect of the said place or property, and that such place or property has been and is abandoned, deserted, or left derelict, to decree in a summary manner that the right, title, and interest of the grantee or lessee of the said place or property, and that of all other persons claiming by, through, or under him shall thenceforth be to all intents and purposes cancelled, annulled, forfeited, and avoided, and to adjudge and decree the said place or property to have reverted to the Colonial Government wholly free and unencumbered, and in the same plight and condition, as if the particular title, under and by virtue of which such place or property was previously held had never been created; and as often as any such decree as last aforesaid, shall be pronounced, the Civil Commissioner shall take possession on behalf of the Colonial Government of the place or property in question, and the said Government shall be at liberty to dispose of the same in whatever manner it shall seem fit. Provided always, that nothing in this section contained shall be taken or construed so as to prevent the Colonial Government from claiming from any competent Court a like decree of forfeiture of title for non-payment of rent in any case in which by law the said Government shall be

<sup>1</sup> See § 2, Ord. 7, 1846, and § 3, Act 3, 1879.

entitled to claim the same. And provided also, that if in any case the place or property so abandoned or deserted shall be under mortgage at the time of any such decree as aforesaid, then the provisions in the eighth, ninth, and tenth sections of this Ordinance contained shall be deemed and taken to apply to the same as fully as if the said sections were each of them herein again repeated.

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12. And be it enacted that for the hearing and determining in any of the Courts of this Colony (except the Supreme Court and the Court of the Resident Magistrate of Cape Town) of any suit, action, or proceeding for the recovery of land-rent or for any other purpose relating to this Ordinance, it shall not be necessary for the Civil Commissioner to produce the original title deed of any such place or property as aforesaid or any duplicate thereof or any deed of transfer relating to such place or property; but on the contrary the entry or entries in the books of the Civil Commissioner purporting to contain the leading heads of the grant or lease or other instrument of title of such place or property shall *prima facie* be deemed and taken to be admissible and sufficient evidence to prove the amount of the rent reserved, and all other matters contained in such entry or entries of which the original grant or lease or other instrument of title might but for the present section be in law the best evidence: Provided always, that it shall be competent for any person defending any such action as aforesaid to produce and prove any such grant or lease or other instrument as aforesaid, and thereupon such deed so produced and proved shall in case of any discrepancy between the said entries and said deed be deemed and taken to be the best evidence of every matter and thing in the said deed contained.

In actions for recovery of rent what proof of title necessary.

13. And be it enacted that in the interpretation of this Ordinance the term "Civil Commissioner" shall mean the officer for the time being acting as such; and that the terms "Colonial Government" and "Government" shall mean respectively Her Majesty's Local Executive Government within this Colony; and that the term "land-rents due and in arrear" shall extend to and comprise quit-rents, loan-rents, and all other sorts of periodical payments to the Colonial Government, arising out of lands and due and in arrear, as also the amount which would have been paid for stamped receipts had the said rents instead of being allowed to fall into arrear been regularly paid, and stamped receipts as by law required been regularly given for the same; and that the term "owner" shall mean the person in whom whether in his individual or in some fiduciary capacity the complete *dominium* or legal right in any place or property held by any quitrent grant or lease or other title from and under the Colonial Government, shall for the time being be vested; and that the singular number shall include the plural number; and that the masculine gender shall include females as well as males.

Interpretation clause.  
"Civil commissioner."  
"Colonial government."

"Land-rents due and in arrear."

"Owner."

Ord. 9—1844.

## SCHEDULE No. 1.

To A. B., and all others whom it may concern.

Notice is hereby given that the sum of £———, being the amount of — year's quitrent (or other rent as the case may be), up to the — day of —, in the year of our Lord —, is now due and owing to Government upon the place — (here describe the farm or other property according to its title or other description), and that unless the said sum of £—— shall be paid to the undersigned within thirty-one days from the day of the service of this notice, then such proceedings will be had and taken, in regard to the said arrear, as are by law, and especially by the Ordinance No. 9, 1844, entitled "An Ordinance for facilitating the recovery of Land-rents in this Colony," authorized and enjoined.

Dated this — day of —, in the year of our Lord —.

\_\_\_\_\_  
Civil Commissioner for the Division of—

## SCHEDULE No. 2.

To —, messenger of the Court of the Resident Magistrate of —.

You are hereby authorized and required, in pursuance of the provisions of the Ordinance No. 9, 1844, entitled "An Ordinance for facilitating the recovery of Land-rents in this Colony," to repair to the place — (here describe the farm or other property, according to its title or other description), whereof — is the owner and occupier (or whereof — is in possession, under a contract, for the purchase thereof), and there to seize and arrest such goods and chattels, being in and upon the said place, as by virtue of the fourth section of the Ordinance aforesaid may lawfully be seized and arrested, and whereof can be levied and made the sum of £——, being the amount of quitrent (or other rent, as the case may be) due upon the said place —, up to the — day of —, 18—; and for seizing and arresting the said goods and chattels, and levying thereout the said sum of £——, in manner and form as by the said Ordinance is provided, this shall be your warrant and authority.

Dated this — day of —, in the year of our Lord —.

\_\_\_\_\_  
Civil Commissioner for the Division of—

No. 7.—Sd. P. Maitland.]

[Feb. 16, 1846.

Ordinance for regulating the manner of summoning for  
Land-rent in cases of Desertion of the Land.

Preamble.

WHEREAS it is expedient to amend the law relative to the manner of summoning persons having or claiming title to any

place or property abandoned, deserted, or left derelict, in regard to which any arrear of land-rent shall be due to the Colonial Government, as well as all persons by whom any purchase money of lands or erven bought by them from the said Government, shall be due and owing to the said Government: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all laws and customs heretofore in force in this Colony, in so far as the same are repugnant to or inconsistent with, any of the provisions of this Ordinance shall be and the same are hereby repealed accordingly.

Ord. 7—1846.

Repeal of former laws.

2. And be it enacted that every person having or claiming title to any such place or property as aforesaid, shall be, and be deemed to have been, duly summoned, within the intent and meaning of the eleventh section of Ordinance No. 9, 1844, entitled "Ordinance for facilitating the recovery of Land-rents in this Colony," when and as often as one edictal citation, granted by the Supreme Court, and directed to the owner, or supposed owner of the place or property in question, and all others having or claiming title thereto, shall have been published in the *Government Gazette* of this Colony for some space of time, to be fixed by the said Court, not less than three weeks and not exceeding three months; and if no person having or claiming title as aforesaid shall appear at the time and place in such citation limited and fixed for such appearance, then all persons having or claiming title as aforesaid shall be deemed to have made default, and thereupon the same consequences, in all respects shall attach as if default had been made after three or any other number of edictal citations, had successively been granted and published in the usual and customary manner.

Citation of debtors for land-rent by edictal summons.

3. And be it enacted, that in every case in which it shall be necessary to summon by edict any person by whom any amount of such purchase money as aforesaid shall be due and owing for the recovery of such amount, such person shall be, and be deemed to have been, duly summoned, to and for all intents and purposes of law, when and as often as one edictal citation, as in the second section of this Ordinance mentioned, shall have been published as in the said second section stated, precisely as if such purchase money were so much land-rent.

Edictal summons for debtor of purchase money.

4. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Non-application to Natal.

5. And be it enacted that this Ordinance shall commence and take effect from and after the date of promulgation thereof.

Time of taking effect.

No. 3—1879.]

[Sept. 8, 1879.

## ACT

To make better Provision for the Disposal of certain  
Derelict Lands.

Preamble.

WHEREAS the existing process by which the Government is able to resume possession of derelict land is both expensive and tedious, and it is desirable to substitute a simpler process for dealing with such land: 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:—

When Land left  
derelict for ten years,  
Governor may re-  
sume possession.

1. Whenever any land rent due to the Colonial Government in respect of any place or property held from the Crown shall remain unpaid for the space of ten years, and such place or property shall be abandoned, deserted, and left derelict, and neither the grantee or lessee, as the case may be, of such place or property, nor his lawful representatives in regard to the same can be found, it shall be lawful for the Governor to advertise such place or property as derelict in the *Government Gazette*, and any other newspaper he may think fit, not less than once in each of three consecutive calendar months, and if within three months from the date of such last-mentioned advertisement, neither the grantee or lessee as the case may be, of such place or property, nor his lawful representatives shall establish his or their claim to the same, and pay the land rent so overdue, the Governor shall at the expiration of such last-mentioned period of three months, resume possession of the said place or property, and deal with the same under the provisions of any law in that behalf for the time being in force in this Colony: Provided always, that if the place or property, with regard to which the proceedings in this Act mentioned shall be taken, shall be under mortgage, the provisions of the eighth, ninth, and tenth sections of Ordinance 9 of 1844, with reference to the sale of such place or property, and the application of the funds thereof, shall apply to the same.

To apply to lands  
already left derelict  
for ten years.

2. The provisions of the preceding section shall apply as well to any place or property for which the land rent has already been unpaid for ten years, and which has already been left derelict as to any place or property upon which such land rent shall hereafter be unpaid for ten years, and shall hereafter be left derelict.

Powers of Govern-  
ment under previous  
statutes not affected.

3. Nothing in this Act contained shall be taken to deprive the Colonial Government of any powers vested in it by the provisions of Ordinance No. 9 of 1844 and Ordinance No. 7 of 1846, or by any other law for the time being in force in this Colony; it being the express object and intention of this Act that the Colonial Government shall have the option of dealing with derelict crown lands, either under the provisions hereinbefore contained, or under

any statutory enactment, or any other law which may now or hereafter be in force in this Colony and be applicable to such cases.

No. 18—1870.

4. This Act may be cited as the “Derelict Lands Act, 1879.”

Short title.

No. 18—1870.]

[May 5, 1870.

### ACT

To enable the Governor to dispose, on certain terms, of certain Crown Lands, commonly called the Waschbank Lands.

WHEREAS certain crown lands in the division of Aliwal North, commonly called the Waschbank Lands, have for a long period been occupied without title, and valuable improvements have in many cases been made thereon by the occupiers thereof, and it is expedient that such occupiers, on paying a reasonable price, should be confirmed in the occupation of such lands respectively by the issue to them of lawful title thereto: 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 appoint one or more than one qualified and trustworthy appraiser, who shall visit the lands which shall have been so occupied as aforesaid on and up to the first day of January, 1869, and shall fairly and truly appraise the value of the lands respectively so occupied as aforesaid, dividing the same according to the occupation thereof, as the same have been already surveyed, and shall, in making such appraisal, take into consideration the value of the land only, as well as its original capacities for improvement, but not of any improvements which shall have been actually made thereon, and shall attest and sign his appraisal thereof, and shall submit the same to the Governor, either in parts or altogether, and the Governor on receiving and approving such appraisal, either of the whole or any part of such lands, may offer the same for sale to the occupiers respectively of the said lands at the sum at which the same shall have been so appraised, and if such occupiers shall accept such offer, and shall pay such sum or secure the same, with interest after the rate of six pounds sterling per centum per annum, to the satisfaction of the Governor, it shall be lawful for the Governor to grant such lands respectively to the said occupiers upon perpetual quitrent, reserving thereout such quitrent as to the Governor shall seem fit, not being less than a sum of one shilling for every ten morgen of land.

Value of lands to be appraised and mode of appraisal.

Terms on which occupier may obtain grant.

2. If any such occupier as aforesaid shall refuse or neglect within three months after such offer shall have been communicated

On non-acceptance of terms by occupier, land may be sold to highest bidder.

KK



No. 18—1870.

to him to accept such offer or to pay or secure to the satisfaction of the Governor the purchase money aforesaid, then such of the said lands as shall have been occupied by him may be put up for sale to the highest bidder, on such conditions as to the Governor shall seem fit, without reference to the Act No. 2 of 1860, at an upset price not less than that at which the same shall have been offered to such occupier as aforesaid, under an annual quitrent of not less than one shilling per ten morgen, or for lease under or by virtue of Act No. 19 of 1864.

Short title.

3. This Act may be cited as the "Waschbank Lands Act, 1870."

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### CUSTOMS.

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- |                                                                       |                                                                         |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------|
| 1. <del>Act</del> <i>Repealed</i> (Duties imposed, Foreign Reprints). | 9. Act 34—1835, (Exemption from Duty, Goods imported into Walfish Bay). |
| 2. " 13—1884, ( do General).                                          | 10. " 8—1886, ( do Railway Materials Defined).                          |
| 3. " 6—1885, ( do Inland Customs).                                    | 11. " 1—1864, (Management, — Revenue Protection).                       |
| 4. " 22—1884, ( do Rebate).                                           | 12. " 10—1872, ( do — General.)                                         |
| 5. " 20—1884, § 8 Tariff 15 ( do ).                                   | 13. " 26—1872, ( do — Coasting Trade).                                  |
| 6. " 5—1874, (Exemption of Penguin Islands from Customs Laws).        |                                                                         |
| 7. " 8—1855, (Exemption from Duty, Ships' Stores).                    |                                                                         |
| 8. " 38—1882, ( do Railway Materials for Orange Free State).          |                                                                         |

No. 4—1854.]

*Repealed by Act 18-1895*

[Sept. 26, 1854.

### ACT

For authorizing the Importation into the Colony of the Cape of Good Hope of Books, being Foreign Reprints of Books first composed, or written, or printed, or published in the United Kingdom, and in which there shall be Copyright.

Preamble.

WHEREAS, by an Act passed in the session of Parliament holden in the fifth and sixth years of her present Majesty's reign, entitled "An Act to amend the Law of Copyright," it is amongst other things enacted, that it shall not be lawful for any person, not being the proprietor of the copyright, or some other person authorized by him, to import into any part of the United Kingdom, or into any part of the British dominions, for sale, or hire, any printed book, first composed, or written, or published in any part of the United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions: And whereas, by an Act passed in the

session of Parliament holden in the eighth and ninth years of the reign of her present Majesty, entitled "An Act to regulate the Trade of the British Possessions abroad," books, wherein the copyright is subsisting, first composed, or written, or printed in the United Kingdom, and printed or reprinted in any other country, are absolutely prohibited to be imported into the British possessions abroad: And whereas, by an Act passed in the session of Parliament holden in the tenth and eleventh years of her present Majesty's reign, entitled "An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom," it is enacted, that, in case the Legislature or proper Legislative authorities, in any British possession, shall be disposed to make due provision for securing or protecting the rights of British authors in such possession, and shall pass an Act, or make an Ordinance for that purpose, and shall transmit the same, in the proper manner, to the Secretary of State, in order that it may be submitted to Her Majesty; and in case Her Majesty shall be of opinion that such Act or Ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession,—it shall be lawful for Her Majesty, if she think fit so to do, to express Her Royal approval of such Act or Ordinance, and thereupon to issue an Order-in-Council, declaring that so long as the provisions of such Act or Ordinance continue in force within such Colony, the prohibitions contained in the aforesaid Acts, and hereinbefore recited, and any prohibitions contained in the said Acts, or in any other Acts, against the importing, selling, letting out for hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, shall be suspended as far as regards such Colony: And whereas, by an Act passed in the session of Parliament holden in the sixteenth and seventeenth years of her present Majesty's reign, entitled "An Act to amend and consolidate the Laws relating to the Customs of the United Kingdom and the Isle of Man, and certain Laws relating to Trade and Navigation, and the British Possessions," the said prohibition against the importation of foreign reprints of books as aforesaid is re-enacted, subject to the powers vested in Her Majesty of suspending such prohibition in certain cases as aforesaid: And whereas it is expedient to permit the importation into the Colony of the Cape of Good Hope of books so prohibited as aforesaid, subject to the restrictions contained in the said recited Act, entitled "An Act to amend the Law relating to the protection in the Colonies of Works entitled to Copyright in the United Kingdom," and to the provisions hereinafter contained: Be it therefore enacted by His Honour the Lieutenant-Governor, by and with the advice and consent of the Legislative Council and House of Assembly, that from and after the time when this Act shall come

*Repealed*

No. 4—1854.

into operation, it shall be lawful to import into the Colony of the Cape of Good Hope all books and reviews of whatsoever nature or kind, bound or in covers, from whatsoever country the same shall be imported, being reprints of books or reviews first composed, or written, or printed, or published in the United Kingdom.

An *ad valorem* duty of 20 per cent. to be paid on reprints.

2. And be it enacted, that on the importation into this Colony of every reprint of any such book or review as aforesaid, of whatsoever nature or kind the same may be, first composed, written, printed, or published in the United Kingdom, and protected at the time of such importation by the Act of the Imperial Parliament to enforce the law of copyright, whether imported from the United States, or from any other foreign country, there shall be paid an *ad valorem* duty, on the *bonâ fide* price of such reprint, of twenty per cent.: Provided always, that before the reprint of any book or review as aforesaid, such book or review shall have been duly registered according to the provisions of the above recited Act of the Imperial Parliament, passed in the session holden in the fifth and sixth years of Her Majesty's reign, entitled "An Act to amend the Law of Copyright:" Provided also, that the said duty shall not be paid on newspapers or other periodicals containing only extracts from such books or reviews as aforesaid.

Duty to be remitted to the Commissioners of Customs at London.

3. And be it enacted, that the said duty shall be paid to the Collector of Customs of the Colony, who is hereby directed, whenever he is required so to do, to report the same to the Governor for the time being, and the Governor for the time being will remit the same to the Commissioners of Customs at London, with a detailed account thereof, at least once a year, in order that the said duty may be duly paid over to the registered proprietor of the copyright of such books or reviews respectively.

Penalties for importing, using, selling, &c., reprints contrary to this Act.

4. And be it enacted, that after this Act shall come into operation, it shall not be lawful for any person to import or bring, or cause to be imported or brought, into this Colony, for use, sale, or hire, any reprint referred to in this Act, and hereby made liable to the duty aforesaid, contrary to the true intent and meaning hereof; or knowingly to sell, publish, or expose to sale, or let to hire, or have in his or her possession, for use, sale, or hire, any such reprint as aforesaid; and every such reprint so imported or brought into this Colony, sold, published, exposed for sale, or let for hire, shall be forfeited and sold, and one half of the proceeds of the sale thereof shall be paid to the seizing officer, and the other half to the registered proprietor of the copyright of the book or review from which such reprint is made; and every person so offending, being duly convicted thereof, shall, for every such offence, forfeit and pay the sum of five pounds sterling money, and double the value of every copy of such reprint which he or she shall so import or cause to be imported into this Colony; or shall knowingly sell, publish, expose to sale, or let to hire, or shall have

in his or her possession, for sale or hire, contrary to the true intent and meaning of this Act, to be recovered in the Court of the Resident Magistrate of the district in which the offence shall have been committed; one half of such penalty to be paid to the officer seizing, and the remainder thereof to be paid to the Treasurer-General of the Colony, and remitted to the use of the proprietor of the copyright in the manner hereinbefore provided for.

No. 13—1884.

5. And be it enacted, that at the time of the entry of any reprint of any book or review as aforesaid, it shall be the duty of the officer passing such reprint to stamp the same, and the Collector of Customs of this Colony shall furnish to the several officers who may require the same the necessary stamps for such purpose.

Book or review to be stamped at the time of entry.

6. And be it enacted, that in the construction of this Act, every public officer therein described by the name of his office shall mean not only the person filling such office, but also his lawful substitute or person provisionally appointed to discharge the duties of such office; and the word books shall be construed to mean and include every volume, pamphlet, review, magazine, or periodical work, (other than newspapers and gazettes, and maps, charts, and plans, published separately as well as collectively); and every word importing the singular number or masculine gender only, shall be applied to several persons and things, as well as one person or thing, and shall include females as well as males, and *vice versa*, unless in any of the above cases there be something in the subject or the context plainly to exclude such construction.

Interpretation of terms.

7. (1) And be it enacted, that this Act shall not be in force until after having been allowed and confirmed by Her Majesty, and the due proclamation thereof.

Act when to take effect.

No. 13—1884.]

[July 15, 1884.]

ACT

For Altering the Duties of Customs in the Colony of the Cape of Good Hope.

WHEREAS it is expedient to alter the duties of Customs upon articles imported into this Colony and liable to such duties: 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. In lieu and instead of the duties of Customs now leviable upon articles imported into this Colony under any Act heretofore in force, there shall be raised, levied, collected, and paid to Her Majesty, her heirs and successors, upon goods imported or

What customs duties to be payable.

<sup>1</sup> See Gazette of 25th June, 1855, publishing Order in Council.

No. 13—1884.

brought into any part of the Colony of the Cape of Good Hope, the several duties of Customs, as the same are respectively inserted, described, and set forth in the schedule to this Act annexed.

What goods to be free of duty.

2. All goods described as free in the said schedule, shall be exempt from duty on the importation thereof into the Colony of the Cape of Good Hope.

When contracts have been entered into, amount of increased or decreased duty to be added or deducted.

3. Whereas contracts or agreements may have been made for the sale or delivery of any of the articles or goods upon which by this Act duties of Customs have been increased or imposed when such duties have not hitherto been leviable, or decreased, or repealed, which contracts or agreements may have been made with no reference to such increase, imposition, decrease, or repeal, and thereby several contracting parties may be materially affected: It shall be lawful for the seller in case such increase or imposition shall accrue before the clearance and delivery from the warehouse of such goods, and after payment of any new duty or the amount of any increase in the duty, to add so much money to the contract price as will be equivalent to such duty or increase of duty, and he shall be entitled to be paid and to sue for and to recover the same, and it shall be lawful for the purchaser under any such contract or agreement, in case such decrease or repeal shall take effect before the clearance and delivery from the warehouse at such decreased duty or free of duty, as the case may be, to deduct so much money from the contract price as will be equivalent to such decrease of duty or repealed duty, and shall not be liable to pay or to be sued for or in respect of such deduction.

Short title and dates of taking effect.

4. This Act may be cited for all purposes as "The Customs Tariff Amendment Act, 1884," and the rates of duty imposed by this Act shall commence and take effect from the dates as set forth opposite the respective articles in the annexed schedule.

#### SCHEDULE OF CUSTOMS DUTIES. (1)

ARTICLE.	RATE.			DATE TO HAVE EFFECT FROM.
	£	s.	d.	
Agricultural Implements, for every £100 value .. .. .	10	0	0	Promulgation of this Act. 28th May, 1884.
Ale and Beer.. .. the gallon	0	1	3	
Bags for Flour, Grain, Coal, and Wool, for every £100 value ..	10	0	0	Promulgation of this Act.

<sup>1</sup> Printed as amended by § 4, Act 6, 1885, *infra*.

ARTICLE.	RATE.	DATE TO HAVE EFFECT FROM.
	£ s. d.	
Boots and Shoes, viz. :		
Men's .. .. the dozen pairs	0 8 0	28th May, 1884.
Women's .. .. do.	0 6 0	Do.
Boys' and Girls' .. .. do.	0 3 0	Do.
Children's .. .. do.	0 2 0	Do.
Slippers and Goloshes .. .. do.	0 2 0	Do.
and for every £100 value .. .. do.	10 0 0	Do.
Butter, including Butterine or any other substance imported for mixing with or for use as Butter .. .. the 100 lb.	0 12 6	28th May, 1884.
Candles .. .. the lb.	0 0 3	1st July, 1884.
Carriages, Carts, Waggon, and other wheeled vehicles, including wheel-barrows, for every £100 value .. ..	20 0 0	Do.
Axles, Springs and Lamps for Carts and Carriages, for every £100 value .. ..	10 0 0	Promulgation of this Act.
Cartridges, for every £100 full value and for every lb. of Gunpowder therein .. ..	15 0 0	} Do. do.
Cement, per 400 lbs. .. ..	0 0 6	
Cheese .. .. the 100 lbs.	0 1 6	1st July, 1884.
Chicory .. .. do.	0 16 8	28th May, 1884.
Cider .. .. the gallon	0 16 8	Do.
Cinnamon or Cassia.. .. the lb.	0 0 6	Do.
Cloves .. .. the lb.	0 0 3	Promulgation of this Act.
Coals, Coke, and Patent Fuel, the ton of 2,000 lbs. .. ..	0 0 3	Do.
Cocoa and Chocolate .. .. the 100 lbs.	0 1 0	1st July, 1884.
Coffee .. .. the 100 lbs.	0 16 8	28th May, 1884.
Coffee .. .. the 100 lbs.	0 16 8	1st July, 1884.
Confectionery: Jams, Jellies, and Manufactured Sweets, not being medicated or properly classed as Apothecaryware, but including Sweetmeats of all sorts, and other articles with which sugar is largely compounded for preserving purposes .. .. the 100 lbs.	0 16 8	28th May, 1884.
Corks and Bungs, for every £100 value .. ..	0 16 8	28th May, 1884.
	10 0 0	Promulgation of this Act.

No. 13—1884.

ARTICLE.	RATE.	DATE TO HAVE EFFECT FROM.
	£ s. d.	
Corn and Grain, viz.:		
Barley .. .. the 100 lbs.	0 1 0	1st July, 1884.
Maize .. .. do.	0 1 0	Do.
Oats .. .. do.	0 1 0	Do.
Rye .. .. do.	0 1 0	Do.
Wheat .. .. do.	0 1 0	Do.
Dates .. .. do.	0 4 2	28th May, 1884.
Dynamite, Blasting Powder, Blasting Compound, Gun Cotton, and Fuze .. .. the lb.	0 0 6	29th May, 1884.
Flour, Wheaten and Wheaten Meal, the 100 lbs. .. ..	0 3 6	1st July, 1884.
Fruits, Dried: Currants, Raisins, and Figs .. the 100 lbs.	0 12 6	28th May, 1884.
Other Sorts .. do.	0 12 6	Do.
Ginger, Dry, the lb... ..	0 0 3	Do.
Preserved Chow Chow and other similar preserves .. the lb.	0 0 4	Promulgation of this Act.
Gunpowder .. .. do.	0 0 6	Do.
Guns or Gun Barrels the barrel	1 0 0	Do.
Hops .. .. for every £100 value	10 0 0	Do.
Iron, Bar, Bolt and Rod, for every £100 value .. ..	10 0 0	Promulgation of this Act.
Iron Wire } for Fencing, for every Steel Wire } £100 value	10 0 0	Do.
Lard, the 100 lbs. .. ..	0 12 6	28th May, 1884.
Mace .. .. the lb.	0 0 3	Promulgation of this Act.
Malt, for every £100 value.. ..	10 0 0	Do.
Marble, for every £100 value ..	10 0 0	1st July, 1884.
Matches, viz.:		
Wooden, in boxes or other packages containing not more than 100 matches, the gross	0 4 0	Do.
In boxes or other packages containing more than 100 and not more than 200 matches, the gross .. ..	0 8 0	1st July, 1884.
(And at the same rate for larger boxes)		
Wax Vestas and Fusees in boxes or other packages, containing up to 50 Vestas or Fusees, the gross .. ..	0 4 0	Do.

ARTICLE.	RATE.	DATE TO HAVE EFFECT FROM.
In boxes or other packages containing up to 100 Vestas or Fusees, the gross.. ..	£ s. d. 0 8 0	1st July, 1884.
(And at the same rate for every additional 50 Vestas or Fusees)		
Meat, Salted or Cured, and not in cases, hermetically sealed, the 100 lbs. .. .. .	0 8 4	28th May, 1884.
Metal Composition and Sheathing, for every £100 value .. ..	10 0 0	1st July, 1884.
Mules.. .. . each	1 0 0	Promulgation of this Act.
Nutmegs .. .. . the lb.	0 0 3	Do.
Nuts, all kinds, excepting Cocoa Nuts, the 100 lbs. .. ..	0 8 4	28th May, 1884.
Oils, of all descriptions, including Mineral, imported in vessels containing not less than one Imperial Pint (Chemical, Essential, Perfumed and Castor Oils, and Fish Oils in the raw state, the produce of Africa excepted), the Imperial gallon .. ..	0 1 0	Promulgation of this Act.
Paddy, the 100 lbs. .. .. .	0 2 6	1st July, 1884.
Pepper, the lb. .. .. .	0 0 3	28th May, 1884.
Pictures and Engravings, and Frames for same, for every £100 value .. .. .	15 0 0	1st July, 1884.
Pimento, the lb. .. .. .	0 0 3	28th May, 1884.
Pistols or Pistol Barrels, each ..	0 10 0	Promulgation of this Act.
Rattans, for every £100 value ..	15 0 0	1st July, 1884.
Rice, the 100 lbs. .. .. .	0 4 2	Do
Rosin, for every £100 value ..	10 0 0	Promulgation of this Act.
Salt, in Bulk or in Bags, or other packages of not less than 100 lb., the 100 lb .. .. .	0 0 3	Promulgation of this Act.
Soap, Common, Brown, Blue, Yellow, or Mottled, the 100 lbs. ..	0 4 2	28th May, 1884.
Soda Caustic, for every £100 value	10 0 0	Promulgation of this Act.



No. 13—1884.

ARTICLE.	RATE.		DATE TO HAVE EFFECT FROM.
	£	s. d.	
Spirits or Strong Waters of all sorts, not sweetened, mixed, or perfumed, and not exceeding the strength of proof by Sykes' Hydrometer, and so in proportion for any greater strength of proof, imported in bottles, each of not greater content than six to the Imperial gallon, per dozen bottles .. .. .	1	1 0	Promulgation of this Act.
Spirits or Strong Waters, of all sorts, not sweetened, mixed or perfumed, and not exceeding the strength of proof by Sykes' Hydrometer, and so in proportion for any greater strength of proof, imported in bottles each of not greater content than twelve to the Imperial gallon, per dozen bottles .. .. .	0	10 6	28th May, 1884.
Spirits or Strong Waters, in bottles of greater capacity or contents than the above, per Imperial gallon .. .. .	0	10 0	28th May, 1884.
Spirits or Strong Waters, not in bottle, per Imperial gallon ..	0	10 0	28th May, 1884.
Spirits, sweetened or mixed, so that the degree of strength cannot be ascertained, imported in bottles, each of not greater content than six to the Imperial gallon, per dozen bottles .. .. .	1	4 0	Do.
Spirits, do., do., imported in bottles, each of not greater content than twelve to the Imperial gallon, per dozen bottles .. .. .	0	12 0	Do.
Spirits, do., do., not in bottle, the Imperial gallon .. .. .	0	12 0	Do.
Spirits, Perfumed, the Imperial gallon .. .. .	0	15 0	Do.
Sugar, Refined or Candy, the 100 lbs.	0	8 4	Promulgation of this Act.
Unrefined, do. .. .. .	0	8 4	1st July, 1884.
Melasses, do. .. .. .	0	8 4	Promulgation of this Act.

ARTICLE.	RATE.	DATE TO HAVE EFFECT FROM.
	£ s. d.	
Staves, for every £100 value ..	10 0 0	1st July, 1884.
Tallow .. the 100 lbs.	0 4 2	Promulgation of this Act.
Tamarinds .. do. ..	0 8 4	28th May, 1884.
Tea .. .. per lb. ..	0 0 8	Promulgation of this Act.
Tin, viz. :—Plate or Sheet, for every £100 value .. .. .	10 0 0	Do.
Tobacco, not Manufactured, the lb.	0 1 0	Do.
Manufactured (not Cigars or Snuff), the lb. .. ..	0 2 0	Do.
Cigars, the lb. .. ..	0 4 0	Do.
And for every £100 value ..	10 0 0	Do.
Cigarettes, the lb. (gross) ..	0 3 0	Do.
Snuff, the lb. .. ..	0 4 0	Do.
Turmeric, the lb. .. ..	0 0 3	28th May, 1884.
Turpentine, the gallon .. ..	0 1 0	Do.
Varnish, „ .. ..	0 3 0	Do.
Vinegar „ .. ..	0 0 6	Do.
Wine, in bottles each of not greater content than six to the Imperial gallon, per dozen bottles ..	0 12 0	28th May, 1884.
In bottles each of not greater content than twelve to the Imperial gallon, per dozen bottles .. .. .	0 6 0	Do.
In other bottles, or in wood, the Imperial gallon .. ..	0 5 0	Do.
Wood, Unmanufactured, other than Teak, the cubic foot .. ..	0 0 2	Promulgation of this Act.
Wood, other than Teak, planed or grooved, the cubic foot ..	0 0 3	1st July, 1884.
Teak, the cubic foot .. ..	0 0 4	Do.
Goods not being enumerated or described, nor otherwise charged with Duty, and not prohibited to be imported or used in the Colony of the Cape of Good Hope, for every £100 value ..	15 0 0	28th May, 1884.

FREE.

- Animals, Living, excepting Mules.
- Anchors and Chain Cables for Ships' use.
- Bottles of Common Glass, imported full of Wine, Beer, or other liquid liable to Customs Duty.

No. 13—1884.

- Books, printed, not being Foreign Reprints of British Copyright Works.  
 Bullion or Coin.  
 Cotton in its raw state.  
 Creosote.  
 Diamonds or other Gems in their rough state.  
 Feathers, Ostrich, undressed.  
 Fish.\*  
 Flowers of Sulphur.  
 Fruit, green—including Cocoanuts.  
 Guano and other Manures.  
 Hair, viz.:—Angora.\*  
 Hides, viz.:—Ox and Cow.\*  
 Horns, viz.:—Ox and Cow.\*  
     Wild Animals.\*  
 Ice.  
 Ivory.\*  
 Machinery, viz.: Agricultural, Mining and Sawing.  
 Maps and Charts.  
 Photographs.  
 Printed Music.  
 Oil, Fish, in a raw state.  
 Ore, Copper and other.\*  
 Paper for Printing purposes.  
 Printers' and Bookbinders' Materials.  
 Provisions or other Stores for H. M's Land and Sea Forces, when the  
     Customs Duties shall not have been paid thereon.  
 (1) Railway Materials.  
 Seeds, Bulbs or Plants (Garden).  
 Sheep Dip.  
 Skins, viz.: Goat.\*  
     Seal.\*  
     Sheep.\*  
     Wild Animals.\*  
 Specimens Illustrative of Natural History.  
 Telegraph Materials.  
 Wine imported or taken out of Bond for the use of military officers  
     serving on full pay in this Colony, and also for the use of officers  
     of Her Majesty's Navy serving on board any of Her Majesty's  
     ships, subject, however, to such regulations as the Governor shall  
     think fit to make: And, provided, that if any such wine shall be  
     subsequently sold in this Colony, except for the use or consump-  
     tion of any of Her Majesty's military or naval officers serving as  
     aforesaid, the same shall be forfeited and be liable to seizure  
     accordingly.  
 Wool, viz., Sheep's\*  
 All Articles of Military, Naval, or Volunteer Uniforms or Appoint-  
     ments imported by Imperial and Colonial Officers stationed in  
     this Colony for their own use.  
 Maize and other Farm Produce, the growth of St. John's River  
     Territory.

\* Being the growth and produce of Africa, and not manufactured, but in the raw state.

<sup>1</sup> See Act 8, 1886, *infra*.

No. 6—1885.]

[July 14, 1885.

ACT

To Amend and Add to the Laws relating to Customs Duties.

WHEREAS it is expedient to amend in certain respects the laws relating to Customs duties, and to provide more effectually for the collection of duties on goods imported across the inland border 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. All laws now or hereafter to be in force relating to the Customs, and all regulations of the Customs, shall so far as the same are applicable, extend and apply to all goods imported across the inland border of this Colony, as fully and effectually as if such inland border were part of the high seas within one league of the coast of this Colony: Provided always that the Governor may, from time to time, prescribe the several forms of bills of entry, reports, warrants, and other necessary documents, and frame such rules and regulations as may be necessary for the due and more convenient collection of duties payable on goods imported across the inland border of this Colony: and any person who shall contravene any such rule or regulation shall be liable to a fine not exceeding three hundred pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding twelve months, or to both such fine and such imprisonment; and provided further that the owner, driver, or other person in charge of any animal or vehicle in or upon which any such goods are so imported, shall, *mutatis mutandis*, be in the same position as the master of any vessel importing such goods by sea.

Customs laws to extend to goods imported over inland border.

Governor may prescribe forms of bills of entry and other necessary documents

Penalty for contravention of regulations.

2. If any goods liable to the payment of duties shall be imported by land or sea into any part of this Colony, the Customs and other duties thereon not having been first paid or secured according to law, then such goods shall become forfeited to the Colonial Treasury: provided that nothing herein contained shall be taken to affect or remove any other penalty which shall be incurred under any other law in force by such importation.

Forfeiture of goods imported without duty paid.

3. For the purposes of the twenty-sixth section of the "Customs Act, 1872," and of the declaration and the oaths thereby required to be made, the current value of any goods the duties on which are imposed *ad valorem*, or according to the value thereof, shall be taken to be the cost or value of such goods when placed on board the ship or vessel by which the same are imported and brought into this Colony, and shall include the cost of all packages in which the said goods are contained, and also all cost and charges attending the transport of the said goods from the place

How goods charged with *ad valorem* duty to be estimated.

No. 22—1884.

How in regard to goods imported across inland border.

where the same were manufactured or purchased to the place or port of shipment to this Colony, but shall not include marine insurance or freight to the Colony, nor shall it include agents' commission for purchasing, provided such commission does not exceed five per cent. : Provided that in respect of any such goods brought into this Colony across the inland border thereof the value upon which Customs duties shall be payable shall be the current value of such goods and the packages wherein the same are contained at the place in Africa from whence the same were imported into this Colony : and so much of the said section and of any other law as may be inconsistent with or repugnant to the provisions hereof is hereby repealed.

Act 1 of 1864, the "Customs Act, 1872," and "The Customs Tariff Amendment Act, 1884," amended.

4. The Act No. 1 of 1864, entitled "An Act for the better Protection of the Customs Revenue in certain cases," shall be read and construed as if the words "taken out of bond by being" in the first section thereof were omitted therefrom ; and the twenty-sixth section of the "Customs Act, 1872," shall be read and construed as if the words "with the addition of ten pounds per centum" were omitted wherever they occur therein, and the words "with the addition of five pounds per centum" were substituted for the words so omitted ; and "The Customs Tariff Amendment Act, 1884," shall be read and construed as if in the Schedule of Customs Duties thereunto annexed the words "not perfumed" occurring between the words "soap, common, brown, blue, yellow, or mottled," and the words "the 100 lbs." were omitted.

Short title.

5. This Act may be cited as "The Customs Amendment Act, 1885."

No. 22—1884.]

[July 25, 1884.

## ACT

For Authorizing the Governor to Grant a Rebate of Customs Duty in respect of Goods removed Overland to certain Places beyond the Borders of the Colony.

Preamble.

WHEREAS it is expedient to grant a rebate of Customs duties payable on goods imported into this Colony when such goods shall be removed overland to certain places beyond the borders of the 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 :—

Rebate of duties on goods imported and removed overland to places beyond the Colony.

1. Whenever any goods imported, or warehoused on importation, into this Colony, upon which duties shall not have been paid shall be removed overland to any state or territory beyond the borders thereof to which the Governor shall by proclamation

declare this Act to apply, it shall be lawful for the Governor to grant such rebate of the Customs duties payable on the said goods, as notice may from time to time be given of in the *Gazette*, but such rebate shall in no case exceed the difference between the amount of Customs duties payable at the time on such goods in this Colony and the Colony of Natal, respectively.

No. 22—1884.

2. The Governor may make and publish, and from time to time as he shall see occasion, alter, by notice published in the *Gazette*, regulations for the removal and conveyance to and across the borders of the Colony of such goods as aforesaid.

Regulations to be framed.

3. Any person who shall contravene any regulation made and published as in the preceding section mentioned, shall be liable to a fine not exceeding three hundred pounds sterling, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding twelve months, or to both such fine and imprisonment; and all goods removed in contravention of any such regulation, and all vehicles and animals made use of in the removal of such goods shall become forfeited to the Colonial Treasury.

Penalty for contravening regulations.

4. No Custom duties shall be payable in respect of the importation into the Colony across the inland border thereof of any articles grown or produced in South Africa, other than the following, namely: wine, beer, spirits, tobacco, coffee, sugar, molasses, and any other article that may hereafter be excepted by proclamation of the Governor.

What goods imported overland liable to duty.

5. This Act may be cited as the "Customs Rebate Act, 1884."

Short title.

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(1) § 8. Tariff 15, Schedule 2, Act 20 of 1884.]

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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.

Rebate of duty on sugar.

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<sup>1</sup> For full text of this Act, see under "Stamps and Licences."

No. 5—1874.]

[July 6, 1874.

## ACT

To Exempt for the present the Island of Ichaboe and Penguin Islands from the operation of the Customs Laws of this Colony.

Preamble.

WHEREAS in case of the annexation of the Island of Ichaboe and certain other islands, islets, and rocks following and hereafter called the Penguin Islands, to wit: Hollandsbird, Mercury, Long Island, Seal Island, Penguin Island, Halifax, Possession, Albatross Rock, Pomona, and Plum-pudding and Roastbeef, or Sinclair's Island, it is expedient that the Customs laws of this Colony should not at present be in force therein: 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:—

Islands to be deemed Foreign ports for Customs purposes.

1. Notwithstanding that the said Island of Ichaboe and the said Penguin Islands may be annexed to this Colony, the said Islands shall, for the purposes of the laws relating to the Customs of this Colony, be deemed to be foreign ports respectively until the Parliament shall otherwise determine.

Short title.

2. This Act may for all purposes be cited as the "Ichaboe and Penguin Islands Customs Act, 1874."

No. 8—1855.]

[June 8, 1855.

## AN ACT

To amend Ordinance No. 6 <sup>(1)</sup> of 1853, entitled an Ordinance "For the general management and regulation of the Customs in the Colony of the Cape of Good Hope."

Preamble.

WHEREAS it is expedient to permit the shipment of stores from the bonded warehouses, for the use of vessels visiting the ports of this Colony:

Bonded goods may be shipped as stores for any ship not being on her voyage from one colonial port to another, free of duty.

1. Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, that it shall be lawful for the proper officers of Customs to deliver, from any of the bonded warehouses in this Colony, any articles whatever, duly warehoused therein, being original packages as imported, to be shipped free from Customs duty as stores for the use of any vessel, not being then on any voyage from any one port to any other port of this Colony: Provided always that such

<sup>1</sup> Ord. 6 of 1853 is repealed by Act 10 of 1872, which see *infra*.

delivery and shipment shall be under such rules and regulations as the Collector of Customs shall direct; and any such articles shipped as stores contrary to such rules and regulations shall be forfeited, and shall be dealt with in the same manner as is provided in the Ordinance No. 6, of 1853, in respect of goods forfeited, or liable to forfeiture, for breaches of the Customs laws.

No. 38—1882.

2. This Act shall commence and take effect from and after the promulgation thereof.

Act, when to commence.

No. 38—1882.]

[June 29, 1882.

ACT

To Exempt from Charges for Customs Duty certain Material Imported through this Colony for the Orange Free State Railways.

WHEREAS the House of Assembly, on the thirteenth day of June 1882, adopted a resolution in the terms following: that is to say "This House concurs in the proposal that all material imported through this Colony for the Orange Free State Railways shall be exempt from charges for Custom duty; the term material to include rails, sleepers, fastenings, iron girders and bridge work, locomotives, ballast trucks, goods waggons and carriages, and that a Bill be introduced for the purpose of carrying out this resolution:" And whereas it is expedient to give effect to the said resolution: 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 case the Government of the Orange Free State shall undertake the construction by contract or otherwise of any railway, which shall be connected with any railway now being or hereafter to be constructed in this Colony, it shall be lawful for the Governor to exempt from the payment of Customs duty, or to refund such duty after payment as to him may seem fit, upon all such material imported through this Colony for the said Railway as is mentioned and described in the preamble to this Act.

Government may exempt from Customs Duty railway material for Orange Free State.

2. This Act may be cited as "The Customs Duty Exemption Act, 1882."

Short title.

No. 34 of 1885.]

[August 11, 1885.

ACT

To Provide for the Importation of Goods Free of Duty through the Port or Settlement of Walfish Bay.

WHEREAS by Act No. 35 of 1884, commonly called the "Walfish Bay and St. John's River Territories Annexation Act,

Preamble.



No. 34—1885.

1884," the port or settlement of Walfish Bay is annexed to the Colony: and whereas in consequence of the said annexation there are payable certain Customs duties under the provisions of Act No. 13 of 1884, commonly called "The Customs Tariff Amendment Act, 1884," upon certain goods imported or brought through and into the said port or settlement: and whereas it is expedient to provide for the importation of the said goods through and into the said port or settlement free of all duty: 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 duty on goods imported through Walfish Bay.

1. Notwithstanding anything to the contrary contained in the provisions of "The Customs Tariff Amendment Act, 1884," or in any other law of the Colony, there shall not be payable upon any of the goods specified in the schedule of the said Act the duties therein prescribed, or any duties whatsoever, in respect of the importation or bringing into the said port or settlement of such goods through the said port of Walfish Bay.

Walfish Bay deemed a foreign port for purposes of export from other colonial ports, and of import into the Colony.

2. Whenever any goods, not being the produce of the Colony, of any nature or kind whatsoever shall be exported from any port in this Colony other than the said port or settlement, and shall be imported or brought through and into the said port or settlement, such goods shall for all purposes be deemed and taken to have been exported from such first-mentioned port to a foreign port, and whenever any such goods shall be imported or brought into this Colony from the said port or settlement, such goods shall be deemed and taken to be imported into the Colony from a foreign port.

Operation and suspension of Act.

3. This Act shall come into operation upon a date to be fixed by the Governor by proclamation in the *Gazette*, and the operation thereof may be by proclamation thereafter suspended from a date to be named in such proclamation, and after the said date the then existing provisions of the law of the Colony shall come into and be in force as though this Act had not been passed.

Short title.

4. This Act may be cited as the "Walfish Bay Customs Act, 1885."

Act No. 8 of 1886.]

[July 6, 1886.

### ACT

To Define "Railway Materials" for the purposes of "The Customs Tariff Amendment Act, 1884."

Preamble.

WHEREAS it is provided by the second section of the Customs Tariff Amendment Act No. 13 of 1884, and by the schedule to the said Act, that railway materials shall be exempt from Customs

duty on the importation thereof into the Colony of the Cape of Good Hope: and whereas it is desirable to define the term "railway materials" for the purposes of the said Act: 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:—

No. 8—1886.

1. The term "railway materials" shall for the purposes of the said Act be taken to mean rails, sleepers, fastenings for rails on sleepers, iron girders, iron bridge work, culvert tops, locomotives, tenders, ballast trucks, goods wagons, railway carriages, engine water tanks, turntables, and railway signals.

Railway materials defined for purposes of Act 13 of 1884.

No. 1—1864.]

[May 4, 1864.

AN ACT

For the better Protection of the Customs Revenue in certain cases.

WHEREAS, as often as any increase of Customs duty has been brought under the consideration of Parliament, it has been found that the particular articles proposed to be affected by such increase are, during the progress of the Act framed for the purpose of imposing such increased duty, taken out of bond at the lower rate of 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:—

Preamble.

1. When and as soon as any member of the Executive Council, acting for and on behalf of the Governor of the Colony, shall, in the House of Assembly give notice of a resolution or resolutions to be offered for the adoption of the said House, whereby it shall be proposed to affirm the expediency of increasing the rate of Customs duty payable upon the importation of any goods, merchandise, matters, or things, it shall be lawful for the officers of the Customs department, acting under instructions to that effect from the Governor aforesaid, to refuse to permit any of the goods, merchandise, matters, or things, mentioned in such resolution, or resolutions, to be entered for consumption, unless, and until, the person proposing to pay duty upon the same shall, together with a surety to be approved of by the principal officer of Customs at such port of entry, enter into a bond conditioned for the payment of such increased duty as Parliament may afterwards think fit to authorize and impose, and such bond shall, in substance, be in the form contained in the schedule annexed to this Act. <sup>(1)</sup>

Officer of customs empowered to demand bond from importers on notice being given in House of Assembly to propose increased duties

Form of bond.

2. In case Parliament shall, by any Act thereof, passed during the same session, direct and appoint that the rate of Customs duty

Liability of persons entering into bond for difference between rate paid

<sup>1</sup> Printed as amended by Act 6 of 1885, *supra*.

No. 1—1864.  
and rate made payable by Act of Parliament

previously payable upon any article or articles mentioned in any such resolution or resolutions shall be increased, it shall be lawful for the Collector of Her Majesty's Customs in this Colony to call upon the person who entered for consumption the said article or articles, to pay the difference between the duty paid by him, and the increased duty payable under the said Act, and in case he shall refuse or neglect so to do, the said bond shall by the said Collector, be put in suit for the recovery of such difference.

Exception in case of sale in bond previous to notice of resolution.

3. Provided, however, that whenever a *bona fide* sale in bond, duty to be paid by the seller, of any of the goods, merchandise, matters or things, in this Act referred to, shall have been made previous to the day of the notice of the resolution or resolutions aforesaid, and no delivery of the aforesaid articles shall at that time have taken place, then and in such case the person proposing to pay the duty upon the same shall, upon solemn declaration, by him to that effect, be bound and obliged to pay only such rate of duty as existed upon the day of the giving of the notice of the resolution or resolutions aforesaid.

When Bill is read a first time, the same effect and consequences to follow.

4. If, in any case, the Governor shall, instead of causing such a resolution or resolutions as aforesaid, to be offered to the House of Assembly, send down to the said House a Bill, having for its object an increase of the Customs duty payable upon the certain article or articles enumerated in such Bill, then, when, and as soon, as such Bill shall have been read a first time, the same effects and consequences shall follow as those in the preceding sections mentioned, in regard to the giving of notice of the resolution or resolutions therein described.

Right of demanding bond to extend only over a single session

5. The right of requiring such bonds as aforesaid to be entered into shall, in no case endure longer than till the end of the session of Parliament in which any such resolution or resolutions, or any such Bill, as aforesaid, shall have been brought under the consideration of Parliament; and such right may, by order of the Governor be terminated sooner, in case it shall appear that Parliament declines to sanction the proposed increase of Customs duty.

And whereas the Governor did, on Friday, the 29th day of April, 1864, instruct the officers of Customs at the several ports of this Colony to require all persons paying duties of Customs on imported articles, after the said day, to enter into a bond to pay such increased rates of duty as may be proposed by the Governor and sanctioned by the Parliament, during the present session; And whereas it is fitting that the Governor should be indemnified for issuing such instruction as aforesaid, and all officers of Customs indemnified for acting upon the same; Be it enacted as follows:

Indemnity for demand made upon persons to give such bond previous to passing of this Act.

6. The Governor of the Colony, and all officers of Customs of this Colony, are hereby jointly and severally indemnified, freed, and discharged from all actions, suits, and proceedings whatsoever brought or instituted, or which may, hereafter, be brought or instituted against them in any of the Courts of this Colony, for or in

respect of the instruction aforesaid, or anything done or to be done in pursuance thereof; and if any person or persons who shall, under and by virtue of such instructions have been required to enter into such a bond as aforesaid, and who shall have refused to do so, and who shall by reason of such refusal, have been refused permission to pay Customs duties upon any article or articles imported into this Colony, shall, whether before or after the taking effect of this Act, have brought or instituted any action, suit, or proceeding against the Governor or any officer or officers of Customs, for or in respect of such refusal, such action, suit, or proceeding shall be dismissed, and the defendant or defendants shall be entitled to his or their full costs.

7. The provisions of the third section of this Act shall apply to all articles in bond upon the said twenty-ninth day of April, 1864, in like manner, as if upon that day, notice of a resolution or resolutions, for an increase of duty upon such articles, had been given under this Act.

No. 1—1864.

Articles in bond on 29th April, 1864, to be subject to provisions of 3rd section.

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SCHEDULE.

Know all men by these presents, that we, A B, of Cape Town, and C D, of the same place, merchants, are held and firmly bound to Her Majesty the Queen in the sum of £——— [*Here insert a sum reasonably sufficient to cover such amount as may become claimable*]; to be paid by us, jointly and severally and each for the whole, as co-principal debtors.

Dated at Cape Town, this —— day of —— 186—.

(Signed)      A B,  
                          C D.

*Witness :*

E F.

Whereas there is now under the consideration of Parliament a proposal to increase the rate of Customs duty payable upon certain articles enumerated in such proposal; and whereas the said A B has applied to pay duty, according to the existing tariff, upon certain articles enumerated in the said proposal, namely [*Here insert the articles mentioned in the Resolution or Bill which A B proposes to pay duty upon.*]

Now the condition of the above bond is such that if the said A B shall, upon demand, pay to the principal officer of Customs at this port of —— the difference between the amount of the Customs duty now to be paid by him upon the above articles, and the amount of such duty calculated according to the rate of duty which shall, by any Act or Acts to be passed during the present session of Parliament, be made payable upon the said articles, or any of them, then the above bond to be null and void, but otherwise to be of full force and effect.

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No. 10—1872.]

[July 31, 1872.

## ACT

## (1) To Provide for the better Management of the Customs of the Colony of the Cape of Good Hope.

## Preamble.

WHEREAS it is expedient that the laws in force for the general management of the Customs in this Colony should 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:—

## Ordinance No. 6 of 1853 repealed.

1. The Ordinance No. 6 of the year 1853, intituled "An Ordinance for the General Management and Regulation of the Customs in the Colony of the Cape of Good Hope," shall be and the same is hereby repealed.

## Definition of terms.

2. For the purpose of any Act of the Legislature of this Colony relating to the Customs, the following terms, whenever they occur, shall respectively have the following significations, that is to say:—the term "ship" shall signify any ship or vessel, howsoever built or rigged; the term "master" of any ship shall signify the person having or taking the charge or command of such ship; the term "owner" or "owners" of any ship shall signify alike one owner, if there be only one, and any or all the owners, if there be more than one, the term "mate" of any ship shall signify the person next in command of such ship to the master thereof; the term "seaman" shall signify alike seaman, mariner, sailor or landsman, being one of the crew of any ship; the term "warehouse" shall signify any place, whether house, shed, yard, or other place in which goods entered to be warehoused upon importation may be lodged, kept, and secured without payment of duty; and the term "Queen's warehouse" shall signify any place provided by the Crown for lodging goods therein for security of the Customs.

## Officers of customs.

3. Every person employed on any duty or service relating to the Customs by order or with the concurrence of the Governor or the Collector or other principal officer of Customs, whether previously or subsequently expressed, shall be deemed to be the officer of the Customs for that duty or service, and every act, matter, or thing required by any law at any time in force to be done or performed by, to, or with any particular officer nominated in such law for such purpose, being done or performed by, to, or with any person appointed by the Governor or the Collector or other principal officer of Customs to act for or in behalf of such particular officer, the same shall be deemed to be done or performed by, to, or with such particular officer.

## Declaration on admission to office.

4. Every person who shall be appointed to any office or employ-

<sup>1</sup> See Act 6 of 1855 *supra* as to Inland Customs.

ment in the service of the Customs shall, on his admission thereto, make the following declaration, that is to say :—

No. 10—1872.

I, A. B., do solemnly declare that I will be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge and inspection in the service of the Customs of the Cape of Good Hope, and that I will not require, take, or receive any fee, perquisite, gratuity, or reward, whether pecuniary, or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter, or thing done or performed, or to be done or performed in the execution or discharge of any of the duties of my office or employment on any account whatever, other than my salary, and what is or shall be allowed me by law or by any special order or regulation of the Governor.

5. If any officer, clerk, or other person acting in any office or employment in or belonging to the Customs in this Colony, shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatever, directly or indirectly, from any person (not being a person duly appointed to some office in the Customs and duly authorized in that behalf) on account of anything done or to be done by him in, or in any way relating to his said office or employment, except such as he shall receive under and by order or permission of the Governor, every such officer so offending shall, on proof thereof to the satisfaction of the Governor, be dismissed from his office; and if any person (not being a person duly appointed to some office in the Customs and duly authorized in that behalf) shall give, offer, or promise to give any such fee, perquisite, gratuity, or reward, such person shall, for every such offence, forfeit the sum of one hundred pounds sterling.

Dismissal of officers taking unauthorized fees.

Penalty on person giving fees.

Penalty £100.

6. Upon examinations and inquiries made by the Collector or principal officer of the Customs within this Colony or by the principal officer of Customs in charge of any port for ascertaining the truth of facts relative to the Customs, or the conduct of officers or persons employed therein, any person examined before such officer as a witness may be required to deliver his testimony on oath, or by way of solemn declaration, which oath or solemn declaration shall be administered by or taken before such Collector or other principal officer of Customs as shall examine any such witness and who is hereby authorized to administer such oath, and to take such solemn declaration; and if any person shall be convicted of making a false oath or solemn declaration touching any of the facts so testified on oath or solemn declaration, or of giving false evidence on his examination on oath or by solemn declaration before any such Collector or principal officer of Customs, every such person so convicted as aforesaid shall be deemed guilty

Inquiry by collector upon oath.

- No. 10—1872. of perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.
- Officers before whom oath may be taken. 7. In all cases wherein proof on oath or by solemn declaration shall be required by any law relating to the Customs, or for the satisfaction or consideration of the Governor, in any matter relating to the Customs, the same may be made before the Collector or other principal officer of the Customs of the port where such proofs shall be required to be made, or before the persons acting for them respectively, and who are hereby authorized and empowered to administer the same.
- Hours of attendance. 8. It shall be lawful for the Governor from time to time to appoint the hours of general attendance of the respective officers of the Customs at their proper offices and places of employment, and to appoint the times during such hours at which any particular parts of the duties of such officers respectively shall be performed by them.
- Holidays. 9. No day shall be kept a public holiday by the Customs except Sundays, Christmas Day, Good Friday, and New Year's Day in every year, and any days proclaimed by the Governor as a general fast or a general thanksgiving, and also such days as shall have been or shall be appointed for the celebration of the birthdays of Her Majesty and of her successors.
- Boarding and searching of ships. 10. It shall be lawful for the proper officers of Customs to board any ship arriving at any port in this Colony, or being within one league of the coast thereof, and freely to stay on board until all goods laden therein shall have been duly delivered from the same, and such officers shall have free access to every part of such ship, with power to fasten down hatchways and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board of such ship; and if any place or any box or chest be locked and the keys be withheld, such officers, if they be of a degree superior to tidewaiters, may open any such place, box, or chest, in the best manner in their power, and if any goods liable to duty be found concealed on board of any such ship they shall be forfeited, and if the officer shall place any lock, mark, or seal upon any goods on board, and such lock, mark, or seal be wilfully opened, altered, or broken before due delivery of such goods, or if any such goods be secretly conveyed away, or if the hatchways, after having been fastened down by the officer, be opened, the master of such ship shall forfeit the sum of one hundred pounds sterling.
- Penalty £100. 11. It shall be lawful for the Collector or other principal officer of Customs of any port of this Colony to station any officer or officers on board of any ship while within the limits of such port, and the master of every ship on board of which any officer is so stationed, shall provide according to his means every such officer sufficient accommodation and subsistence in accordance with his rank, and in case of neglect or refusal so to do, shall forfeit the sum of
- Stationing of officers on board of ship.
- Penalty £20.

twenty pounds sterling; but in the absence of express agreement such master shall not be liable to reimburse the Government for any other expenses incurred.

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12. It shall be lawful for the officers of the Customs at any port in this Colony, to refuse to admit any person to do any act at such port as master of any British ship, unless the name of such person shall be inserted in or have been endorsed upon the certificate of registry of such ship as being the master thereof, or until the name shall have been so endorsed by the proper officer at such port as aforesaid.

Master's name on registry of ship.

13. The unshipping, carrying and landing of all goods, and the bringing of the same to the proper place after landing for examination, or for weighing, or for gauging, and the putting the same into the scales, and the taking the same out of and from the scales after weighing, shall be performed by or at the expense of the importer.

Examination of goods at importer's expense.

14. No articles of foreign manufacture, nor any packages of such articles bearing any names, brands or marks purporting to be the names, brands or marks of manufacturers resident in the United Kingdom, or any British Possession, and no base or counterfeit coin, and no indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engraving, or any other indecent or obscene articles, shall be imported or brought into this Colony; and it shall be lawful for the Governor, by proclamation, to prohibit the importation of gunpowder, arms, ammunition, or utensils of war from any place or places other than the United Kingdom or some British Possession; and if any of the articles herein enumerated shall be imported or brought in contrary to the provisions hereof, the same shall be forfeited.

Prohibitions.

Power of Governor.

Penalty.

15. The ports of Cape Town, Simon's Town, Port Beaufort, Mossel Bay, Port Elizabeth, Port Alfred, and East London, and such other ports within this Colony as may be hereafter declared by the Governor by proclamation for that purpose, shall be free ports,—that is to say, ports into or from which any goods may be imported or exported; and if any goods shall be imported into or exported from any other ports than free ports, except in conformity with the provisions of any Act relating to the Customs, all such goods shall be forfeited.

Free ports.

Penalty.

16. If any goods, wares, or merchandise liable to the payment of duties of Customs on importation shall be imported by the Crown, or by any party legally entitled to claim exemption from such duties, and shall afterwards be sold by the Crown or by such party in the like condition as when the same were imported, then and in every such case such goods, wares, and merchandise shall be charged with such duties as shall by law be payable on the importation of the same at the time of such sale; and any such goods, wares, or merchandise which shall be sold after having been in use, except in the case of guns, pistols, gun-barrels, pistol-

Liability to duty of Crown property or of goods legally exempted when subsequently sold.



- No. 10—1872. barrels, and gunpowder, which shall in every case be charged with the duty leviable on such articles on importation, shall be charged with a duty of ten pounds sterling per centum on the amount for which the same shall be sold, in case such rate shall not exceed in amount the duty which would have been payable thereon on the importation thereof: and in case such rate of ten pounds sterling per centum shall exceed such duty, then such goods, wares, or merchandise shall on such sale as aforesaid be charged with the same duties as would be payable on the importation thereof at the time of such sale; and all sales to be held under the provisions of this section shall be made in conformity with such regulations as shall from time to time be made in that behalf by the Governor, with the advice of the Executive Council: and any such goods, wares, or merchandise which may be sold in violation of the provisions hereof, shall be forfeited.
- Regulations for sale. Penalty. Weights and measures. Governor to manage duties. Duties collected to be paid into Colonial Treasury. Report at custom-house of ship's arrival within twenty-four hours. Particulars of report. List of unconsumed stores. Deposit of manifest when ship has no goods for port of arrival.
17. All duties shall, unless otherwise specially provided, be charged, paid, and received on and according to the weights and measures by law established in this Colony; and in all cases where such duties are imposed according to any specific quantity, or any specific value, the same shall be deemed to apply proportionally to any greater or less quantity or value; and all such duties shall be under the management of the Governor.
18. The gross produce of the duties received under any law in force in this Colony relating to the Customs shall be paid by the Collector or other principal officer of Customs into the hands of the Treasurer-General of this Colony, or other proper officer authorized to receive the same.
19. The master of every ship arriving at any port or place in this Colony, whether laden, or in ballast, shall, within twenty-four hours after such arrival, and before bulk be broken, come to the Custom-house for the port or place where he arrives, and there make due report in writing, in duplicate, of such ship, and shall make and subscribe a declaration to the truth of the same, before the Collector or other proper officer of Customs at such port, and such report shall contain the particulars of the arrival and voyage of such ship, stating her name, country, and tonnage (and, if British) the port of registry, the name and country of the master, the country of the owners, the number of the crew, and how many are of the country of such ship, and whether she be laden or in ballast, and, if she has on board any goods for any port in this Colony, the marks, numbers, and contents of every package and parcel of goods on board, and where the same were laden, and where, and to whom consigned, and where and what goods, if any, had been unladen during the voyage; as also a list of all unconsumed stores on board of such ship, as far as such particulars are known to him; and the master of any ship arriving at any port or place in this Colony without having on board any goods for any port therein, shall, when reporting his ship, deposit at the Custom-

house the manifest or bills of lading of the cargo of such ship (which shall be returned to him when clearing his vessel outwards); and the master shall, at the same time, answer all such questions concerning the ship and cargo, and the crew, passengers, and voyage, as shall be demanded of him by such officer of Customs; and if any goods be unladen from any ship before such report be made, or if the master fail to make such report, or make an untrue report, or do not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds sterling, and if any goods be not reported, such goods shall be forfeited: Provided, however, that if at any port which the Governor shall consider as not sufficiently sheltered, it shall be not reasonably possible for the master, having regard to the nature of his voyage, to present himself in person at the Custom-house, for the purpose of making such report and answering such questions as aforesaid, then, if the agent for the ship or other person duly authorized by the master shall, for and on behalf and at the risk of the master, make such report and answer all such questions as aforesaid, such report may be taken as made and such answers as given by the master under the provisions of this section, and shall be considered in all respects and for all purposes as his report and answers respectively.

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Master bound to give information required.

Penalty £100.

Report may, in certain cases, be made by agent for ship, instead of by master.

20. If any of the goods on board of any ship arriving at any port of this Colony shall be consigned to any other port or ports in the same, the master shall at the time of making report, in manner provided in the preceding section, deliver an extract of such report, describing the goods consigned to the port of arrival; and when such ship shall clear for any such other port, the duplicate of the report made on first arrival shall be returned to the master, enclosed under the proper seal of the proper officer of Customs at such port of arrival, addressed to the proper officer of Customs at such other port as aforesaid: And the master shall deliver the same to the proper officer of Customs at such other port, together with an extract, in duplicate, if so required by such officer, describing the goods consigned to such lastmentioned port; and if the master shall fail to make such extract as aforesaid, or shall make an untrue extract, he shall forfeit the sum of one hundred pounds sterling; and if any goods shall be landed at any port, which are not entered in the extract of goods consigned to the same, they shall be forfeited.

Duty of master when any goods are consigned to ports other than that of arrival.

Penalty.

21. The master of every ship bound from any port or place in this Colony shall, before any goods be laden therein, deliver to the Collector, or other proper officer of Customs, an entry outwards, under his hand, of the destination of such ship, stating her name, country and tonnage (and, if British) the port of registry, the name and country of the master, the country of the owners, the number of the crew, and how many are of the country of such ship; and if any goods be laden on board of any ship before such entry be made, the master of such ship shall forfeit the sum of

Entry outwards of ship bound from the Colony.

Penalty £50.

- No. 10—1872. fifty pounds sterling; and before such ship depart the master shall bring and deliver to the Collector or other proper officer of Customs a content, in writing, under his hand, of the goods laden and the names of the respective shippers and consignees of the goods, with the marks and numbers of the packages or parcels of the same, together with a victualling bill containing a full account of all stores shipped on board of such vessel from bond, and shall make and subscribe a declaration to the truth of such content and victualling bill as far as any such particulars are known to him; and the master of every ship bound from any port or place in this Colony, whether in ballast or laden, shall, before departure, come before the Collector or other proper officer of Customs, and answer all such questions concerning the ship and the cargo, if any, and the crew, passengers, and voyage, as shall be demanded of him by such officer, and thereupon the Collector or other proper officer of Customs, if such ship be laden, shall make out and give to the master a certificate of the clearance of such ship for her intended voyage, containing an account of the total quantities of the several sorts of goods laden therein, or a certificate of her clearance in ballast, as the case may be; and if the ship shall depart without such clearance, or if the master shall deliver a false content, or shall not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds sterling.
- Delivery of content to officer of customs before departure. shall bring and deliver to the Collector or other proper officer of Customs a content, in writing, under his hand, of the goods laden and the names of the respective shippers and consignees of the goods, with the marks and numbers of the packages or parcels of the same, together with a victualling bill containing a full account of all stores shipped on board of such vessel from bond, and shall make and subscribe a declaration to the truth of such content and victualling bill as far as any such particulars are known to him; and the master of every ship bound from any port or place in this Colony, whether in ballast or laden, shall, before departure, come before the Collector or other proper officer of Customs, and answer all such questions concerning the ship and the cargo, if any, and the crew, passengers, and voyage, as shall be demanded of him by such officer, and thereupon the Collector or other proper officer of Customs, if such ship be laden, shall make out and give to the master a certificate of the clearance of such ship for her intended voyage, containing an account of the total quantities of the several sorts of goods laden therein, or a certificate of her clearance in ballast, as the case may be; and if the ship shall depart without such clearance, or if the master shall deliver a false content, or shall not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds sterling.
- Victualling bill. together with a victualling bill containing a full account of all stores shipped on board of such vessel from bond, and shall make and subscribe a declaration to the truth of such content and victualling bill as far as any such particulars are known to him; and the master of every ship bound from any port or place in this Colony, whether in ballast or laden, shall, before departure, come before the Collector or other proper officer of Customs, and answer all such questions concerning the ship and the cargo, if any, and the crew, passengers, and voyage, as shall be demanded of him by such officer, and thereupon the Collector or other proper officer of Customs, if such ship be laden, shall make out and give to the master a certificate of the clearance of such ship for her intended voyage, containing an account of the total quantities of the several sorts of goods laden therein, or a certificate of her clearance in ballast, as the case may be; and if the ship shall depart without such clearance, or if the master shall deliver a false content, or shall not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds sterling.
- Certificate of clearance. shall make out and give to the master a certificate of the clearance of such ship for her intended voyage, containing an account of the total quantities of the several sorts of goods laden therein, or a certificate of her clearance in ballast, as the case may be; and if the ship shall depart without such clearance, or if the master shall deliver a false content, or shall not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds sterling.
- Penalty £100. shall forfeit the sum of one hundred pounds sterling.
- Stiffening order may be granted previous to entry outwards. 22. Notwithstanding anything in the last foregoing section contained, it shall be lawful for the principal officer of Customs of any port, if it shall be made to appear to him that it is necessary to lade any heavy goods or ballast on board of any ship before the whole of the inward cargo shall have been discharged, to grant a stiffening order for that purpose, prior to the entry outwards of such ship.
- Entry of goods previous to being landed or shipped. 23. Except as is hereafter provided, no goods shall be laden or water-borne to be laden on board of any ship, or unladen from any ship in this Colony until due entry shall have been made of such goods, and warrants granted for the lading or unlading of the same, and no goods shall be so laden or water-borne, or so unladen, except at some place at which an officer of Customs is appointed to attend the lading or unlading of such goods, or at some place for which a sufferance shall have been granted by the Collector or other principal officer of Customs of the port for the lading or unlading of such goods, and no goods shall be so laden or unladen, except in the presence or with the permission, in writing, of the proper officer: Provided, however, that before entry be made for the landing of any goods, the same may be landed, for the purpose of facilitating the dispatch of the vessel, by order of the Collector or other principal officer of Customs of the port, within the hours duly appointed for the transaction of business of the Customs and at a duly appointed and approved landing-place; but in every such case the same shall be by the
- Exception in favour of facilitating dispatch of ship. shall be by the

importer thereof, or by the agent of the ship, taken to the Queen's warehouse, and may be there detained until due entry shall have been made thereof, and the duties and charges payable thereon shall have been paid, or the goods duly warehoused, and such charges as may be due thereon paid; and if such entry shall not be duly made, and such duties and charges duly paid, or such goods duly warehoused, and such charges as may be due thereon paid, within the period of three months, then such goods may be sold on account of the owners thereof, and the balance of the proceeds of the sale, if any, after payment of all duties and charges, including expenses of warehouse and sale due in respect thereof, not exceeding, as to warehouse rent, a rent for three months, shall be paid to the owners thereof, and all goods laden or water-borne, or unladen, contrary to the provisions of this Act, unless in conformity with any Act for the regulation of the coasting trade of this Colony, shall be forfeited. (<sup>1</sup>)

Penalty.

24. The person entering any goods on behalf of any importer or exporter shall deliver to the Collector or other proper officer of Customs a separate bill of the entry of the goods imported or exported on behalf of each separate importer or exporter; and such bill may be in the form in that behalf, as the case may be, in the first schedule hereto annexed, containing the name of the importer or exporter, and of the ship and of the master, and of the place from or to which bound, and of the place within the port where the goods are to be laden or unladen, and the particulars of the quality and quantity of the goods and of the packages containing the same, and the marks and numbers on the packages, and setting forth whether such goods be the produce of the United Kingdom or of any British Possession or not, and shall also, at the same time, deliver such duplicates of such bill, as may be required, not exceeding two, in which all sums and numbers may be expressed in figures; and the particulars to be contained in such bill of entry shall be written and arranged in such form and manner as the Collector or other principal officer of Customs shall require, and such person shall, at the same time, pay down all duties due upon the goods, unless the same shall be entered to be warehoused, and the Collector or other proper officer of Customs shall thereupon grant his warrant for the lading or unlading of such goods.

Particulars of bill of entry.

25. If the importer of any goods, or his agent, shall make and subscribe a declaration before the Collector or other proper officer of Customs that he cannot, for want of full information, make perfect entry thereof, it shall be lawful for the Collector or such other proper officer to receive an entry by bill of sight, which may be in the form in that behalf in the first schedule hereto annexed,

Entry by bill of sight.

<sup>1</sup> See Act 26 of 1872, *infra*, and also § 2 Act 6, 1885, *supra*

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for the packages or parcels of such goods by the best description which can be given, and to grant a warrant thereupon, in order that the same may be landed and secured to the satisfaction of the officer of the Customs, and at the expense of the importer, and may be seen and examined by such importer, or his agent, in the presence of the proper officers; and within three days after the goods shall have been so landed, the importer, or his agent, shall make a perfect entry thereof and pay down all duties due thereon or duly warehouse the same; and in default of such entry, such goods shall be taken to the Queen's warehouse, and if the importer or his agent shall not, within three months after such landing, make perfect entry of such goods, and pay the duties due thereon, or duly warehouse the same, paying at the same time the charges of removal and Queen's warehouse rent, such goods shall be sold for the payment thereof, and the overplus, if any, shall be paid to the proprietor of the goods.

Valuation of goods subject to *ad valorem* duty.

26. <sup>(1)</sup> In all cases where the duties imposed upon the importation of articles into this Colony are charged, not according to the weight, tale, gauge, or measure, but according to the value thereof, such value shall be ascertained by the declaration of the importer of such articles, or his agent, in the manner and form following, that is to say:

Form of declaration to entry.

I, A. B., do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is \_\_\_\_\_

Witness my hand, the — day of —. A.B.

The above declaration signed the — day of —, in the presence of

C.D., Collector (or other proper officer).

Declaration to be signed in presence of customs officer.

Which declaration shall be written on the bill of entry of such articles and shall be subscribed with the hand of the importer thereof, or of his agent, in the presence of the Collector or other proper officer of the Customs, and the said value, with the addition of five pounds <sup>(2)</sup> per centum, shall be the sum whereon duty shall be levied: Provided that if, upon view and examination of such articles by the proper officer of the Customs, it shall appear to him that the said articles are not valued according to the current value thereof, at the port whence the same were imported, then and in such case the Collector or other proper officer may, if he deem it fitting so to do, require the importer, or his agent, to declare on oath before him to the truth of the aforesaid declaration, according to the best of the belief of such importer or his agent,

And to be made under oath if required.

<sup>1</sup> See § 3, Act 6 of 1885, *supra*, as to what is to be deemed the current value of goods on which *ad valorem* duties are imposed.

<sup>2</sup> Five pounds substituted for ten by Act 6 of 1885, § 4, *supra*.

and to adduce any documentary evidence he may possess in support thereof: Provided, also, that if it shall appear to the Collector or other proper officer, whether such oath as aforesaid shall have been required or not, that such articles have been declared at a value below the current value thereof at the place from whence the same were imported, the articles shall, in such case, be examined by two competent persons, one to be nominated and appointed by the Governor, and the other by the importer; and such two persons shall, before entering into the enquiry, appoint an umpire, and shall then declare on oath before the Collector or proper officer of Customs, what is the current value of such articles at the port whence the same were imported, and in case such persons shall not agree, then the declaration of such value on oath, as aforesaid, of the umpire shall be final; and if any importer shall fail, within three days from his being required so to do by the proper officer of Customs, to make an appointment as hereinbefore provided, or if no declaration shall be made by the persons appointed, or by the umpire selected by them, within three days from their appointment or selection, then, in any such case, the declaration of the person to be appointed as aforesaid by the Governor shall be final, and the duties shall be charged and paid upon the value as ascertained and declared in conformity therewith, with the addition of five pounds <sup>(1)</sup> per centum thereon as aforesaid: Provided, further, that should the value so ascertained and declared under any of the provisions hereinbefore contained for arbitration exceed by fifteen per cent. and not by thirty per cent. the value originally declared by the importer, there shall be payable on such goods double the amount of duty otherwise chargeable thereon, and should the value so ascertained and declared as aforesaid exceed by thirty per cent. and not by sixty per cent. the value originally declared by the importer, then there shall be payable on such goods four times the amount of duty otherwise chargeable thereon, and should the value so ascertained and declared as aforesaid exceed by sixty per cent. or upwards, the value originally declared by the importer, then such goods shall be forfeited: Provided that in regard to such articles as aforesaid as shall be shipped from any port in the United Kingdom, the reasonable costs and charges attending the transport thereof from the place in the United Kingdom where the same shall have been manufactured or purchased to the port of shipment shall not be reckoned as part of the current value thereof for payment of duty. <sup>(2)</sup>

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Documentary evidence. Examination of goods when customs officer is not satisfied with declared value.

Fines on undervaluation.

Penalty. Transport expenses in United Kingdom not included in valuation.

Proceedings on refusal of importer to pay duty.

27. If the importer of such articles shall refuse to pay the duties imposed thereon under the preceding section, it shall and may be lawful for the Collector or other principal officer of Customs of the port, and he is hereby required, to take and secure

<sup>1</sup> Five pounds substituted for ten by Act 6 of 1885, § 4, *supra*.

<sup>2</sup> But see § 3, Act 6, 1885, *supra*.

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the same, with the casks or other packages thereof, and to cause the same to be publicly sold within the space of twenty days at the most after such refusal made, and at such time and place as such officer shall, by four or more days' public notice, appoint for that purpose, which articles shall be sold to the highest bidder; and the money arising from the sale thereof shall be applied, in the first place, in payment of the said duties, together with the charges which shall have been occasioned by the said sale, and all costs and charges of arbitration, and the overplus, if any, shall be paid to such importer, or proprietor, or any other person authorized to receive the same.

Entry to be made of goods within fourteen days of ship's arrival.

28. Every importer of any goods shall, within fourteen days after the arrival of the importing ship, make due entry inwards of such goods, and land the same; and in default of such entry, it shall be lawful for the officers of Customs to convey such goods to the Queen's warehouse, and if the duties due upon such goods be not paid within three months after such fourteen days shall have expired, together with all charges of removal and warehouse rent, the same shall be sold, and the produce thereof shall be applied, first to the payment of freight and charges, next of duties, and the overplus, if any, shall be paid to the proprietor of the goods, or any person authorized to receive the same.

Rent of Queen's warehouse.

29. Whenever any goods shall be taken to and secured in any of the Queen's warehouses in this Colony for security of the duties thereon, or to prevent the same coming into home use, it shall be lawful for the Collector or other principal officer of Customs to charge and demand and receive warehouse rent for such goods for all such time as the same shall remain in such warehouse: Provided, always, that it shall be lawful for the Collector of Customs, with the sanction of the Governor, to fix the rates or amount of rent which shall be payable for any goods secured in any of the Queen's warehouses aforesaid.

Rate chargeable.

Temporary discharge of distressed vessels.

30. If at any time it shall be necessary temporarily to discharge the cargo of any ship arriving at any port in this Colony, in order that such ship may be repaired, it shall be lawful for the master of such ship to place such cargo, during the progress of such repairs, in any convenient store or warehouse, which may for that purpose be to the satisfaction of the Collector or other principal officer of Customs of the port specially and exclusively set apart and secured.

Particulars of goods in entry.

31. No entry nor any warrant for the landing of any goods or for the taking of any goods out of any warehouse shall be deemed valid unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages purporting to be the same in the report of the ship, or in the certificate, or other document, where any is required, by which the importation or entry of such goods is authorized, nor unless the goods shall have been properly described in such entry by the denomination and with the characters and circumstances according

to which such goods are charged with duty, or may be imported ; and any goods taken or delivered out of any ship or out of any warehouse by virtue of any entry or warrant not corresponding or agreeing in all such respects, or not properly describing the same, shall be deemed to be goods landed or taken without due entry thereof, and shall be forfeited : Provided, however, that should the goods so declared to be forfeited be contained in any entry or warrant embracing more than one package, and it shall be shown that the non-correspondence or non-agreement, or improper description as aforesaid arose without any wilful default or neglect of anyone connected with such goods, and that such non-correspondence, or non-agreement, or improper description does not exist as to the whole of the packages in such entry or warrant, only the package or packages not corresponding or agreeing with the particulars of the same hereinbefore-mentioned, or not properly described as aforesaid, shall be forfeited.

Penalty.

32. The ports of Cape Town, Simon's Town, Mossel Bay, Port Elizabeth, Port Alfred, and East London, and such other ports within this Colony as may hereafter be declared by the Governor, by proclamation, to be fit for that purpose, shall be "free warehousing ports" for the purpose of any Act relating to the Customs.

Free warehousing ports.

33. It shall be lawful for the Governor, with the advice of the Executive Council, by proclamation in the *Government Gazette* to establish ports within this Colony for such particular and limited purposes, and for such periods as shall be specified in such proclamation : And it shall be lawful, in case export only be allowed from any such port, and there shall be no officer of Customs resident thereat, that the export entry of any ship or vessel taking in cargo at such port for export may be passed, and her clearance may be granted at such free port as shall be ordered by the Governor for that purpose, before such ship or vessel shall clear for the port of export aforesaid.

Ports for limited purposes.

34. It shall be lawful for the Collector or other principal officer of Customs, by notice, in writing, under his hand, to appoint, from time to time, such warehouses at any of the free warehousing ports, as shall be approved of by him for the warehousing and securing of goods therein for the purposes of any Act relating to the Customs, and also in such notice to declare what sort of goods may be so warehoused, and also, by like notice, to revoke or alter any such appointment or declaration : Provided, always, that every such notice shall be published in the *Government Gazette*.

Bonded warehouses.

35. It shall be lawful for the importer of any such goods to warehouse the same in the warehouses so appointed without payment of any duty on the first entry thereof, subject, nevertheless, to the rules, regulations, restrictions and conditions hereinafter contained : Provided, always, that any goods warehoused at any warehousing port, may be delivered under the authority of the proper officer of

Storing of goods in bonded warehouses without payment of duty.



- No. 10—1872. Customs, upon a sufferance granted in that behalf without payment of duty, except for any deficiency thereof, for the purpose of removal to another warehousing port in this Colony, under bond, to the satisfaction of such officer, for the due arrival and re-warehousing of such goods at such other port.
- Stowage of goods. 36. All goods so warehoused shall be stowed in such parts or divisions of the warehouse and in such manner as the Collector or other principal officer of Customs of the port shall direct, and the warehouse shall be locked and secured in such manner, and shall be opened and visited only at such times and in the presence of such officers, and under such rules and regulations as the Collector or other principal officer of Customs shall direct, and all such goods shall, after being landed upon importation, be carried to the warehouse, or shall, after being taken out of the warehouse for exportation, be carried to be shipped under such rules and regulations as the Collector or other principal officer of Customs shall direct.
- Securing and opening of warehouse. 37. Upon the entry of any goods to be warehoused, the importer of such goods, instead of paying down the duties due thereon, shall give bond with one sufficient surety, to be approved of by the Collector or other principal officer of Customs of the port, in double the duties payable on such goods, with condition for the safe depositing of such goods in the warehouse mentioned in such entry, and for the payment of all duties due upon such goods, or for the exportation thereof, or shipment thereof as stores, according to the first account taken of such goods upon the landing of the same, and with further condition that the whole of such goods shall be so cleared from such warehouse and the duties upon any deficiency in the quantity according to such first account shall be paid within five years from the date of the first entry thereof; and with further condition that no part thereof shall be taken out of such warehouse until cleared from thence, upon due entry and payment of duty, or upon due entry for exportation, or for the shipment as stores; and with further condition that if, at end of two years from the date of such bond, the quantity of goods of any particular denomination in respect of which the same shall have been given, still remaining in the warehouse, shall be so reduced that the duties payable on the balance shall not exceed ten pounds sterling, that then such balance shall be cleared from the warehouse, and the duties thereon forthwith paid; and if after such bond shall have been given, the goods, or any part thereof, shall be sold or disposed of, so that the original bonder shall be no longer interested in or have any control over the same, it shall be lawful for the Collector or other principal officer of the port to admit fresh security, to be given by the bond of the new proprietor, or other person having control over such goods, with his sufficient surety, and to cancel the bond given by the original bonder of such goods, or to exonerate him to the extent of the fresh security so given; but
- Importer to give bond and security in double duties payable.
- Stores.
- Fresh security on cessation of bonder's interest.

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nothing in this section contained shall be deemed to invalidate or to alter the condition of any bond given under the law heretofore relating to the Customs of this Colony, but every such bond shall remain in force as if this Act had not been passed.

38. It shall be lawful for the proprietor or occupier of any bonded warehouse, appointed under authority of this Act, if he be willing to give general security by bond, with two sufficient sureties, to the satisfaction of the Collector or other principal officer of Customs, for the payment of the full duties of importation on all such goods as shall at any time be warehoused therein, or for the due exportation thereof, upon the like terms and conditions with regard to times of payment and clearance of balances as those contained in the bond in the last foregoing section mentioned, and where such general securities shall have been given in respect of any bonded warehouse, it shall not be necessary for the importer to give bond as by the last foregoing section required in respect of the particular goods imported and entered to be warehoused therein; but nothing herein contained shall be deemed to invalidate or to alter the conditions of any bond given under the law heretofore in force with regard to the Customs of this Colony, but every such bond shall remain in force as if this Act had not been passed.

General bond of proprietor or occupier of bonded warehouse.

39. If any goods which have been entered to be warehoused shall not be duly carried into and deposited in the warehouse, or shall afterwards be taken out of the warehouse, without due entry and clearance, or having been entered or cleared for exportation, shall not be duly carried and shipped, or shall afterwards be re-landed, except with the permission of the proper officer of the Customs, such goods shall be forfeited.

Forfeiture of goods entered to be warehoused if removed without permission.

40. Upon the entry and landing of any goods to be warehoused, the proper officer of Customs shall take a particular account of the same, and shall, if he see fit, mark the contents on each package, and shall enter the same in a book to be kept for that purpose; and no goods which shall have been so warehoused shall be taken or delivered from the warehouse except upon due entry and under the care of the proper officers for exportation, or upon due entry and payment of duty for home use; and whenever the whole of the goods warehoused under any entry shall be cleared from the warehouse, for home use, or whenever further time shall be granted for any such goods to remain warehoused, an account shall be made out of the quantity upon which the duties have been paid if any and of the quantity exported if any, and of the quantity (to be then ascertained) of the goods still remaining in the warehouse, as the case may be, deducting from the whole the quantity contained in any whole packages, if any, which may have been abandoned for duties; and if upon such account there shall, in either case, appear to be any deficiency of the original quantity, the duty payable upon the amount of such deficiency shall then be paid; except as to the following goods, namely, ale,

Account of goods entered to be warehoused to be taken.

Delivery from warehouse.

Account of goods cleared, &c.

Payment of duty on deficiency.

Exceptions.

- No. 10—1872. beer, spirits and wine in the wood, and currants, figs, dates, raisins, unrefined sugar, and tobacco (not being cigars or snuff), the duties whereon, when cleared from the warehouse for home use, shall be charged upon the quantity of such goods, ascertained by weight, measure and quantity, and in case of spirits by the quantity, if not overproof, or by the strength, if overproof, at the time of actual delivery thereof, unless there is reasonable ground to suppose that any portion of the deficiency or difference between the weight, measure, and quantity as above mentioned, ascertained on landing and first examination of such lastmentioned goods and that ascertained at the time of actual delivery, has been caused by illegal or improper means, in which case the proper officer of Customs shall make such allowance only for loss as he may consider justly to have arisen from natural evaporation, or other legitimate cause; in no instance are the allowances to exceed, in the case of ale, beer, spirits and wine, those specified in the second schedule hereto annexed: Provided that nothing in this section contained shall extend or apply to any goods entered and cleared from the warehouse for exportation, as hereinafter in the forty-seventh section of this Act mentioned and provided for.
- Exception. 41. It shall be lawful for the Collector or other principal officer of Customs, under such regulations as he shall see fit, to permit moderate samples to be taken by the importer or his agent of any goods so warehoused without entry and without payment of duty, except as the same shall eventually become payable as on a deficiency of the original quantity.
- Samples of warehoused goods. 42. It shall be lawful for the Collector or other principal officer of Customs, under such regulations as he shall see fit, to permit the proprietor or other person having control over the goods so warehoused to sort, separate, and pack and repack any such goods, and to make such lawful alterations therein, or arrangements and assortments thereof as may be necessary for the preservation of such goods or in order to the sale, exportation, or shipment as stores to ships not being then proceeding coastwise, either in original packages, or such other packages as the Collector or other principal officer of Customs may authorize, or in order to other legal disposal of the same, and also to permit any parts of such goods so separated to be destroyed, but without prejudice to the claim for duty upon the remaining quantity of such goods; and, further, to permit, by the admixture of vinegar, or salt, crude, in the proportions shown in the second schedule hereto annexed, with unsound wine, to enable the person entering such wine for home use to receive delivery upon the payment of the duty upon
- Sorting, repacking, or destroying goods under collector's authority. admixture of vinegar or salt to unsound wine. Abandonment of whole packages. of vinegar: Provided, always, that no duty shall be payable upon any goods so destroyed as aforesaid, and that it shall be lawful for any person to abandon any whole packages to the officers of Customs for the duties which would otherwise have been chargeable thereon.

43. All goods warehoused or re-warehoused shall be duly cleared, either for exportation or for home consumption, according to the terms of the conditions of the bonds whereunder the same shall have been warehoused or re-warehoused; and if any such goods be not so cleared, it shall be lawful for the Collector or other principal officer of Customs to cause the same to be sold, and the produce shall be applied, first to the payment of the duties, next to warehouse rent and other charges, and the overplus, if any, shall be paid to the proprietor: Provided, always, that it shall be lawful for the Collector or other principal officer of Customs to grant further time for any such goods to remain warehoused if he shall see fit so to do.

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Clearing of goods in terms of bond.

Time may be extended.

44. Upon the entry outwards of any goods to be exported from the warehouse, the person entering the same shall give security, by bond, in double the duties of importation on the quantity of such goods, or if such goods are prohibited to be imported for home use, in double the value of such goods, with one sufficient surety, to be approved of by the Collector or other principal officer of Customs of the port of export, that the same shall be landed at the place for which they are entered outwards, or be otherwise accounted for to the satisfaction of such Collector or other principal officer, and the Collector or other principal officer of Customs of the port, should he see fit, may require that a certificate should be produced by the exporter from the proper authorities at the port or place of destination in proof of the actual landing thereof of the goods shipped: Provided, always, that it shall be lawful for any person who shall have duly made entry at any port in this Colony of any goods to be there lodged in the warehouse, and who shall in all other respects have complied with the law respecting the warehousing of such goods to tranship the same for exportation within the limits of the said port into any vessel, without the actual landing thereof on shore, if such person shall in all respects comply with and observe the regulations in the next following section mentioned, or such other regulations and conditions as may be hereafter made or required by the Collector or other principal officer of Customs for effecting any such transhipment.

Export of bonded goods.  
Bond to be given for double duty or double value.

Transshipment of bonded goods.

45. In case of the transshipment of goods entered to be warehoused at any of the free warehousing ports of this Colony, the bond required to be given by the thirty-seventh section of this Act upon the entry of the goods shall be dispensed with, and the transshipment allowed to take place under the care and superintendence of the officers of Customs, on due entries inwards and outwards being previously passed for the goods, and bond being entered into for the exportation of the same, in like manner as if they had been actually landed and deposited in the warehouse.

Transshipment in bond.

46. Transshipment, within any free warehousing port in this Colony, of goods in transit from any place beyond the limits of this Colony, consigned to any other place beyond the limits of this

Transshipment of transit goods.

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Colony, shall be deemed to be transhipment of goods entered to be warehoused at such free warehousing port; but in any such case where the value and contents of any package of such goods are unknown to the persons desiring to tranship the same, the specification of such contents and value in the bills of entry of such goods may be dispensed with, and the bond for the exportation thereof may be given upon such estimated value as the persons so desiring to tranship the same, and the Collector or other principal officer of Customs of the port shall agree to.

Duty not charge-  
able on deficiency of  
goods entered and  
cleared for exporta-  
tion.

47. No duty shall be charged in respect of any deficiency in goods entered and cleared from the warehouse for exportation unless the officers of Customs have reasonable ground to suppose the deficiency, or any part thereof, has arisen from illegal abstraction; if any goods duly entered for delivery from the warehouse for removal to another port in this Colony, or for exportation, shall be destroyed by unavoidable accident, either in the delivery from the warehouse, or the shipping thereof, the Collector or other principal officer of Customs shall remit the duties due thereon; if goods entered to be warehoused or entered to be delivered from the warehouse, shall be destroyed by fire or other unavoidable accident, either on shipboard, or in landing, or in receiving into the warehouse, or in the warehouse, the Collector or other principal officer of Customs shall return the duties, if any, paid thereon.

Or on goods acci-  
dentally destroyed.

Act to apply to  
existing bonded  
warehouses.

48. All appointments of warehouses for the warehousing of goods at present in force shall continue in force as if the same had been made under the authority of this Act.

Liability of bonded  
goods to duty at date  
of entry.

49. All goods whatsoever, which now are or may be deposited in any warehouse or place of security, under lawful authority, without payment of duty upon the first importation thereof, or which may be imported and on board of any ship or vessel, shall, upon being entered for home consumption, be subject and liable to such and the like duties as may at the time of passing such entry be due and payable upon the like sort of goods under any Act for the time being in force relating to the Customs.

Boarding and  
searching of ships.

50. It shall be lawful for the officers of Customs to go on board of any ship in any port in this Colony, and to rummage and search all parts of such ship for prohibited or uncustomed goods, and also to go on board of any ship hovering within one league of the coast of this Colony, and in either case freely to stay on board of such ship, so long as she shall remain in such port or within such distance; and if any such ship be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for the officers of Customs to bring such ship into port and to search and examine her cargo, and to examine the master on oath touching the cargo and voyage; and if there be any goods on board prohibited to be imported into this Colony, such ship and her cargo shall be forfeited, and if the master shall not truly answer the

Examination of  
ship hovering about  
port.

Penalties on disco-  
very of prohibited  
goods, and on master  
untruly answering,  
£100.

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questions which shall be demanded of him on such examination, he shall forfeit the sum of one hundred pounds sterling.

51. Any officer of Customs may search any person on board of any ship or boat within the limits of any port in this Colony, or any person who shall have landed from any ship or boat, provided such officer shall have good reason to suppose that such person has any uncustomed or prohibited goods secreted about his or her person; and if any passenger or other person on board of such ship or boat, or who may have landed from such ship or boat, shall, upon being questioned by such officer whether he or she has any dutiable goods upon his or her person, or in his or her possession, deny the same, and any such goods shall, after such denial be discovered to be, or to have been at the time of such denial, in his or her possession, such goods shall be forfeited, and such person shall forfeit treble the value of such goods.

Searching of persons.

Penalty.

52. Before any person shall be searched by any officer as aforesaid, such person may require such officer to take him or her before the Collector or other principal officer of Customs of the port who shall if he see no reasonable cause for search, discharge such person, but if otherwise, direct such person to be searched, and, if a female, she shall not be searched by any other than a female.

Person may require to be brought before collector before being searched.

Female to search female.

53. Any person required to take such person before such Collector or other principal officer of Customs of the port, shall do so with all reasonable dispatch; and any officer guilty of any contravention of this enactment shall forfeit the sum of ten pounds sterling.

Penalty on customs officer contravening foregoing section £10.

54. All vessels, boats, carriages, and cattle made use of in the removal of any goods liable to forfeiture under any Act relating to the Customs, shall be forfeited, except it shall be shown that the same were made use of in the removal of goods liable to forfeiture without the consent or knowledge of the owner thereof, or his agent or other person in possession or charge thereof with the consent of such owner, and every person who shall knowingly by himself or by his agent in that behalf assist or be otherwise concerned in the unshipping, landing, or removal, or in harbouring of such goods, or into whose hands or possession the same shall knowingly come, shall forfeit the treble value thereof, or the penalty of one hundred pounds sterling at the election of the principal officer of Customs, and the averment of any information or libel to be exhibited for the recovery of such penalty that the officer proceeding has elected to sue for the sum mentioned in the information shall be deemed sufficient proof of such election without any other or further evidence of such fact.

Forfeiture of vessels, &c., carrying goods liable to forfeiture.

Penalty on persons unshipping, landing, &c., such goods, £100.

55. All goods, and all ships, vessels, and boats, and all carriages, and all cattle liable to forfeiture under any Act relating to the Customs shall and may be seized and secured by any officer of the Customs; and every person who shall in any way hinder, oppose, molest, or obstruct any officer of Customs, or any person acting in

Seizure of vessels, &c., by customs officers.

Penalties on obstruction, £200.

No. 10—1872.  
 Period within which  
 seizure may be made.

his aid and assistance, shall, for every such offence, forfeit the sum of two hundred pounds sterling: Provided that no such seizure shall be made at any time later than six months reckoned from the day on which such goods, ships, or other articles first became liable to forfeiture, unless, firstly, such goods, ships, or other articles shall, before the expiration of such six months, have been removed out of this Colony, in which case such goods, ships, or other articles may, when found again in this Colony, be seized at any time, if then owned by the same person who owned the same when they became liable to forfeiture, or by any person who became owner with knowledge or notice that the same were so liable, or if in the possession or charge of any person who took such possession or charge with such knowledge or notice; or unless, secondly, such goods, ships, or other articles, although never removed out of this Colony, shall be found in the possession of some such owner as above described, or of some person who took such possession with such knowledge or notice as aforesaid.

Collusive seizure or  
 agreement not to  
 seize.

56. If any officer of Customs, or any person duly employed for the prevention of smuggling, shall make any collusive seizure, or deliver up, or make any agreement to deliver up or not to seize any vessel, boat, or goods, liable to forfeiture under any Act relating to the Customs, or shall take any bribe, recompense, gratuity, or reward for the neglect or non-performance of his duty, every such officer or other person, shall forfeit for any such offence the sum of five hundred pounds sterling; or may be liable on conviction to imprisonment, with or without hard labour, for any period not exceeding five years; and every person who shall give or offer, or promise to give, or procure to be given, any bribe, recompense, or reward to, or shall make any collusive agreement with any such officer or person as aforesaid in this Colony, to induce him in any way to neglect his duty, or to do, or conceal, or connive at anything whereby the provisions of any Act relating to the Customs may be evaded, shall forfeit the sum of two hundred pounds sterling.

Penalty on officers  
 and others.

Period within  
 which notice of claim  
 may be given by owner  
 of seized vessel,  
 &c.

57. All vessels, boats, goods, and other things which shall have been or shall hereafter be seized as forfeited in this Colony under any Act relating to the Customs, shall be deemed and taken to be condemned, and may be dealt with in the manner hereinafter by the sixtieth section of this Act directed, unless the person from whom such vessels, boats, goods, and other things shall have been seized, or the owner of them, or some person authorized by him, shall within one calendar month from the day of seizing the same, give notice, in writing, to the person or persons seizing the same, or to the Collector or other principal officer of Customs of the port where the same shall have been seized, that he claims the vessel, boat, goods, or other things, or intends to claim them, and in default of giving such notice as aforesaid, no action, suit, or proceeding shall be capable of being brought or instituted against

In default of notice,  
 action grounded  
 on seizure barred.

any officer of Customs grounded merely upon the seizure of any of the vessels, boats, goods, or other things so seized as aforesaid.

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58. Under the authority of any writ of assistance granted by the Supreme Court of this Colony, or Court of Vice-Admiralty having jurisdiction in this Colony (which Court or Courts are hereby authorized and required to grant such writs of assistance upon application made to them for that purpose by the principal officer of Customs within this Colony), it shall be lawful for any officer of the Customs, taking with him any officer of the law proper for the execution of criminal warrants, to enter any building or other place in the daytime, and to search for and seize and secure any goods liable to forfeiture under any Act relating to the Customs, and, in case of necessity, to break open any doors and any chests or other packages for that purpose; and such writs of assistance when issued, shall be deemed to be in force during the whole of the reign in which the same shall have been granted, and for twelve months from the conclusion of such reign.

Powers under writs of assistance granted by Supreme or Vice-Admiralty Courts.

59. If any person shall, by force or violence, assault, resist, oppose, molest, hinder, or obstruct any officer of the Customs or other person employed as aforesaid in the exercise of his office, or any person acting in his aid or assistance, such person, being thereof convicted, shall be liable to a fine not exceeding five hundred pounds sterling, or to be imprisoned, with or without hard labour, for any period not exceeding five years.

Penalty on obstruction of officers, £500, or imprisonment, five years.

60. All things which shall be seized as being liable to forfeiture under any Act relating to the Customs shall be taken forthwith to and delivered into the custody of the Collector or other principal officer of Customs, at the Custom-house next to the place where the same were seized, who shall secure the same, and, after condemnation thereof, the Collector or such other principal officer shall cause the same to be advertised and sold by public auction to the highest bidder: Provided, always, that it shall be lawful for the Governor to direct that, in lieu of such sale, any of such things shall be destroyed, or shall be reserved for the public service: Provided, also, that the produce of such sale shall be exempt from the payment of auction dues thereon.

Disposal of seizures.

61. All penalties and forfeitures which may have been heretofore, or may be hereafter incurred under any Act relating to the Customs, may be prosecuted, sued for, and recovered in the Supreme Court, or in the Court of the Eastern Districts (in case the act or omission entailing such forfeiture shall have taken place in any of the districts in or over which such Court shall have jurisdiction), or in any Circuit Court having jurisdiction, or in the Vice-Admiralty Court of this Colony.

Governor may direct things seized to be destroyed.

Auction dues not chargeable.

Recovery of penalties, &c.

62. If any goods, or any ship, or vessel, shall be seized as forfeited under any Act relating to the Customs, and detained, it shall be lawful for the Supreme Court, or Court of the Eastern Districts in the case supposed in the preceding section mentioned,

Authority for delivery of seizure under security by bond.



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Custody of bond.

or any judge of either of these Courts, or the judge of the Vice-Admiralty Court aforesaid, with the consent of the Collector or other principal officer of Customs, to order the delivery thereof, on security by bond, with two sufficient sureties, to be first approved by such Collector or other principal officer, to answer double the value of the same in case of condemnation; and such bond shall be taken to the use of Her Majesty, in the name of the Collector or other principal officer of the Customs in whose custody the goods, or the ship, or the vessel may be lodged, and such bond shall be delivered to and kept in the custody of such Collector or officer, and in case the goods, or the ship, or vessel shall be condemned, the value thereof shall be paid into the hands of such Collector, or officer, who shall thereupon cancel such bond.

Mode of procedure in suits for penalties, &amp;c.

63. Every suit for the recovery of any penalty or forfeiture under any Act relating to the Customs shall be commenced in the name of the Collector or other principal officer of the Customs, or of Her Majesty's Attorney-General for this Colony; and if a question shall arise whether the person suing is such Collector or other principal officer of the Customs, *viva voce* evidence may be given of such fact, and shall be deemed legal and sufficient evidence.

Proof of improper seizure on claimant of goods.

64. If any goods shall be stopped or seized for non-payment of duties, or any other cause of forfeiture, and any dispute shall arise whether the duties have been paid for the same, or the same have been lawfully imported or lawfully laden or exported, the proof of the affirmative of these facts shall be on the owner or claimer of such goods, and not on the officer who shall seize or stop the same.

Period for commencing proceedings for condemnation limited.

65. When and as often as the Collector or other principal officer of Customs at the port within this Colony, where any vessel, boat, goods, or other things shall have been seized as forfeited under any Act relating to the Customs shall have received the certain notice, in writing, hereinbefore in the fifty-seventh section of this Act mentioned, the said Collector or other officer shall, within one month, cause proceedings to be commenced in the Supreme Court of this Colony, or in the Eastern Districts Court as the case may require, or in some competent Circuit Court thereof, or in the Vice-Admiralty Court thereof, for the purpose of obtaining the condemnation of the matters or things which shall have been so seized.

Defendant to declare on oath property in seizure.

66. When and as often as the said Collector or other officer shall cause such proceedings as in the last preceding section mentioned to be commenced, no owner or other lawful claimant shall make any claim or be admitted to defend the said suit, or in any way to dispute the legality of the said seizure, unless oath to the property in the matter or thing so seized be made by the owner, or by his attorney, or agent, by whom such action, suit, or proceeding shall be defended, to the best of his knowledge and belief;

and every person making a false oath thereto shall be deemed to be guilty of the crime of perjury, and shall be liable to the punishment by law provided for the said crime.

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Penalty on false oath.

67. No owner or other lawful claimant shall be admitted to enter a claim in the Vice-Admiralty Court aforesaid, or to defend any action, suit, or proceeding in any other Court as aforesaid, in regard to anything seized in pursuance of any Act relating to the Customs, until sufficient security shall have been given in the Court where such proceedings shall have been instituted, in a penalty not exceeding one hundred pounds sterling, to answer and pay such costs as may be awarded against the party giving such security.

Security for costs of suit, £100.

68. No writ shall be sued out against, nor a copy of any process served upon any officer of the Customs for anything done by him in pursuance of any Act relating to the Customs until one calendar month after notice, in writing, shall have been delivered to him, or left at his usual place of abode, by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained, the cause of the action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent, and no evidence of the cause of such action shall be produced except of such cause as shall be contained in such notice, and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs.

Notice of action to be given to customs officer within one month.

69. Every such action shall be brought within three calendar months after the accruing of the cause thereof, and the defendant may plead the general issue, and give the special matter in evidence, and if the plaintiff shall become non-suited, or shall discontinue the action, or if judgment shall be given against the plaintiff, the defendant shall receive as costs full indemnity for all expenses incurred by him in or about the cause of action, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

Period for bringing action limited.

70. In case any action or suit instituted by any officer of Customs, or by the said Attorney-General, shall be brought to trial on account of any seizure made under any Act relating to the Customs, and judgment shall be given for the defendant, and the Court before which such cause shall have been tried shall find and adjudge that there was probable cause of seizure, the defendant shall not be entitled to any cost of suit; and in case any action or suits shall be brought by any person against any officer of Customs for or on account of any such seizure by such officer made, wherein judgment shall be given for the plaintiff, such plaintiff, in case the Court by and before which such cause shall have been tried shall find and adjudge that there was probable cause of seizure, shall

Costs of suit where probable cause of seizure is found by judgment.

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recover only the things seized, or the value thereof, without costs of suit.

Tender of amends and effect thereof.

71. It shall be lawful for such officer, within one calendar month after such notice as aforesaid, to tender amends to the party complaining, or his attorney or agent, and to plead such tender in bar to any action, together with any other pleas, and if the Court shall find the amends sufficient, it shall give a judgment for the defendant, except as to the amends tendered, and in such case, or in case the plaintiff shall become non-suited, or shall discontinue his action, then such defendant shall be entitled to full costs; but if upon the trial of any such cause the Court shall find and adjudge that no amends were tendered, or that the same were not sufficient, or shall find against the defendant upon such other plea or pleas, then such Court shall give judgment for the plaintiff, with such damages as such Court shall think proper, together with costs of suit.

Payment and disposal of penalties and forfeitures.

72. All penalties and forfeitures recovered under any Act relating to the Customs shall be paid into the hands of the Collector or other principal officer of Customs of the port where such penalties or forfeitures shall be recovered, and shall be divided, paid, and applied as follows, that is to say,—after deducting the charges of prosecution, if any, and of the costs of sale from the produce, two third parts of the net produce shall be paid into the hands of the Collector or other principal officer of Customs of such port for the use of Her Majesty the Queen in her Colonial Treasury, and the other third part shall be placed at the disposal of the Governor, for the purpose of granting thereout such sum or sums of money, or the whole thereof, to such officer or officers, or other persons as may have rendered efficient service, either by information or active assistance, in leading to the recovery of such penalty or forfeiture, and the balance of such third part, if any, shall be repaid to the public treasury for the use of Her Majesty: Provided that if it shall be made to appear to the Governor of the Colony in any particular case that one third part will be insufficient for the adequate acknowledgment of such services as above mentioned, such third part may be increased to one-half of such net produce, instead of one third.

Power of Governor.

Bar of suit for penalties, &c., after three years.

73. All actions or suits for the recovery of any of the penalties or forfeitures imposed by any Act relating to the Customs may be commenced or prosecuted at any time within three years after the offence committed, but not later: Provided that nothing in this section contained shall extend to alter or affect any of the provisions of the fifty-fifth section of this Act.

Exception.

Proceedings in appeal from Vice-Admiralty Court.

74. No appeal shall be presented from any decree or sentence of the Vice-Admiralty Court aforesaid, touching any penalty or forfeiture imposed by any Act relating to the Customs, unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced:

Provided, always, that in every case in which proceedings shall have been or shall hereafter be instituted in the Vice-Admiralty Court aforesaid, against any ship, vessel, boat, goods, or effects, or for the recovery of any penalty or forfeiture under any Act relating to the Customs, the execution of any sentence or decree restoring such ship, vessel, boats, goods, or effects to the claimant thereof, which shall be pronounced by the said Vice-Admiralty Court in which such proceedings shall have been had, shall not be suspended by reason of any appeal which shall be prayed and allowed from such sentence: Provided that the claimant shall give sufficient security, to be approved of by the Court, to render and deliver the ship, vessel, boat, goods, or effects concerning which such sentence or decree shall be pronounced, or the full value thereof, to be ascertained, either by agreement between the parties, or, in case the said parties cannot agree, then by appraisement under authority of the said Court, to the appellant or appellants in case the sentence or decree, so appealed from, shall be reversed, and such ship, vessel, boat, goods or effects be ultimately condemned.

No. 10—1872.  
Non-suspension of  
decree restoring ship,  
&c., on appeal.

Security by claim-  
ant.

75. It shall and may be lawful for the Governor to direct any vessel, boat, goods, or commodities whatever, seized under any Act relating to the Customs, to be delivered to the proprietor or proprietors thereof, whether condemnation shall have taken place or not, and also to mitigate or remit any penalty or fine incurred under any such Act, or to release from confinement any person or persons committed under any such Act as aforesaid, on such terms and conditions as to him shall appear to be proper: Provided, always, that no person shall be entitled to the benefit of any order for such delivery, mitigation, remission, or release, unless such terms and conditions are fully and effectually complied with: And provided that if the proprietor or proprietors of the goods seized as aforesaid shall accept the terms and conditions prescribed by the Governor, he or they shall not have or maintain any action for recompense or damage on account of such seizure or detention; and the person making such seizure shall not proceed in any manner for condemnation.

Power of Governor  
to restore seizures  
and to mitigate or  
remit penalties.

But terms prescrib-  
ed to be complied  
with.

And action for dam-  
age barred.

76. If any person shall in this Colony counterfeit, or falsely, or wilfully use, when counterfeited, or falsified, any entry, warrant, cocket, transire, or other document for the unlading, lading, entering, reperting, or clearing any ship or vessel, or for the landing, shipping, or removing of any goods, stores, baggage, or article whatever, or shall, by any false statement, procure any writing or document to be made for any such purposes, or shall falsely make any oath or affirmation required by any Act relating to the Customs, or shall forge or counterfeit a certificate of the said oath or affirmation, or shall publish such certificate, knowing the same to be so forged or counterfeit, every person so offending shall for every such offence, forfeit the sum of two

Falsification of  
documents, &c.

False oath or de-  
claration.

No. 10—1872.  
Penalty £200.

hundred pounds sterling, and such penalty shall and may be prosecuted, sued for, and recovered in like manner, and by such ways and means as any penalty may be prosecuted, sued for, and recovered under the provisions and directions of this Act.

Forms in schedule.

77. All entries, reports, warrants, clearances, and other documents required to carry out the provisions of this Act, shall, as near as may be, follow the forms thereto respectively applicable, as set forth in the first schedule hereto annexed, and where any of such forms require a declaration to be made thereto by a master, shipper, or other person, such declaration shall be made before the Collector or other proper officer of the Customs at the port where such declaration is required or directed to be made.

Short title.

78. This Act may for all purposes be cited as the "Customs Act, 1872."

### SCHEDULE I.

(FORM A.)

Rotation No. —.

Port of —

#### MASTER'S REPORT INWARDS.

Particulars of Arrival		Date ———
		Time ——— o'clock—m.
Name of Ship		
Whether British, or of what Country		
If British, Port of Registry		
Number of Crew	British Men, Country of Ship	—————
Name and Country of the Master in full		
Name and Country of the Owner		
Whether in Ballast or Laden	Tonnage	
Names of any other Ports at which the Vessel may have touched (since her loading) and discharged part Cargo		

Marks of Packages.	Numbers of Packages.	Where and by whom Laden.	Quantity and Contents of every Package and Parcel of Goods on Board, as far as any such particulars can be known to the Master.		Where and to whom consigned.
			Number of Packages.	Description.	

Whether any Goods have been unladen during this Voyage, and if so

What Goods unladen as far as can be known by the Master.	Where.

I do declare that this report now made and subscribed by me is a just report of the name of the abovementioned ship, its burden, build, property, number, and country of mariners, the present master and voyage; and that it further contains a true account of the lading of the ship, with the particular marks, numbers, quantity, quality, and consignment of all the goods and merchandise in the said ship, to the best of my knowledge, and that bulk hath not been broke, nor any goods delivered out of the said ship since her loading in—

\_\_\_\_\_, Master.

Signed and declared at the Custom-house, the \_\_\_\_\_ day of \_\_\_\_\_, in the presence of \_\_\_\_\_

\_\_\_\_\_ Sub-Collector.

\_\_\_\_\_

Port of —

LIST OF UNCONSUMED STORES.

On board the —, —, Master, from —, — Men,  
 — Passengers or Troops, — Guns, — Tons.

Description.	Quantities.	Description.	Quantities.
Ale or Beer (in bottle) .. ..		Molasses .. ..	
Ditto (in wood) .. ..		Nutmegs .. ..	
Barley (Pearl) .. ..		Oatmeal .. ..	
Beef .. ..		Oil (Lamp) .. ..	
Bread and Biscuit .. ..		Peas .. ..	
Butter .. ..		Pepper .. ..	
Candles .. ..		Pickles .. ..	
Cassia .. ..		Pork .. ..	
Cheese .. ..		Raisins .. ..	
Chow-Chow or Preserved Ginger		Rice .. ..	
Cigars .. ..		Soap .. ..	
Cinnamon .. ..		Spirits (sweetened) in bot. ..	
Cloves .. ..		Ditto ditto in wood ..	
Coffee (raw) .. ..		Ditto (unsweetened) in bot. ..	
Cocoa .. ..		Ditto ditto in wood ..	
Currants .. ..		Sugar (refined) .. ..	
Figs .. ..		Ditto (unrefined) .. ..	
Fish (preserved) .. ..		Ditto (candy) .. ..	
Flour (wheaten) .. ..		Tamarinds .. ..	
Fruits (bottled) .. ..		Tea .. ..	
Ditto (dried) .. ..		Tobacco (manufactured) .. ..	
Ginger (preserved) or Chow Chow		Ditto (unmanufactured) ..	
Ginger (dry) .. ..		Vegetables (preserved) .. ..	
Jams .. ..		Vinegar (in bottles) .. ..	
Lard .. ..		Ditto (in wood) .. ..	
Mace .. ..		Wine (in bottles) .. ..	
Meats (preserved) .. ..		Ditto (in wood) .. ..	

I declare the above to be a true account.

—, Master.

Declared before me at the Custom-house,  
 this — day of —, 18—.  
 —, Sub-Collector.

Rotation No. —.

Port of —

MASTER'S CONTENT OUTWARDS.

Name of Ship			
Whether British, or of what Country			
If British, Port of Registry			
Number of Crew	{ British Men	{ Country of Ship	—

Name and Country of the Master in full					
Name and Country of the Owner					
Whether in Ballast or Laden				Tonnage	
Where Bound					
Marks of Packages.	Numbers of Packages.	Whence and by whom shipped.	Quantity and Contents of every Package and Parcel of Goods on Board, as far as any such particulars can be known to the Master.		Whither and to whom consigned.
			Number of Packages.	Description and Contents.	

I, \_\_\_\_\_, Master of the vessel abovenamed, do declare that the content above written now tendered and subscribed by me is a just and true account of all the goods laden on board my ship for the present voyage, and of the names of the respective shippers and consignees of the said goods, and of the marks and numbers of the packages containing the same.

\_\_\_\_\_, Master.

Signed and declared before me,  
 at the Custom-house, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
 \_\_\_\_\_, Sub-Collector.

Recapitulation of Abstract of this Content (to be made by Examining Officer on the back of form C.)

(FORM D.)

CONTENT OUTWARD—ADDITIONAL.

Port of \_\_\_\_\_  
 Additional Content in the \_\_\_\_\_, \_\_\_\_\_, Master, for \_\_\_\_\_

Marks and Numbers of Packages.	Whence and by whom shipped.	Quantity and Description of Goods.	Whither and to whom consigned.

NN



No. 10-1872

I, \_\_\_\_\_, Master of the vessel abovenamed, do declare that the content above written, now tendered and subscribed by me, is a just and true account of all the goods laden on board my ship for the present voyage, in addition to the goods mentioned in the content declared to by me on the \_\_\_\_\_ day of \_\_\_\_\_ last; and also of the names of the respective shippers and consignees of such goods, and of the marks and numbers of the packages containing the same.

\_\_\_\_\_, Master.

Declared before me, at the Custom-house, the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_, Sub-Collector.

\_\_\_\_\_  
(FORM E.)

No. —.

CERTIFICATE OF CLEARANCE.

CAPE OF GOOD HOPE.

Port of \_\_\_\_\_

These are to certify to all whom it doth concern, that \_\_\_\_\_, Master or Commander of the \_\_\_\_\_, Burthen \_\_\_\_\_ Tons \_\_\_\_\_ Ship, bound for \_\_\_\_\_, having on board \_\_\_\_\_, hath here entered and cleared his Vessel according to Law.

Date of Clearance \_\_\_\_\_

\_\_\_\_\_, Sub-Collector.

\_\_\_\_\_  
(FORM F.)

STIFFENING ORDER.

Port of \_\_\_\_\_

Place within the Port where the }  
Goods may be shipped and laden }

(1) Quantity and Description of the Goods. Application having been made to me to permit (1) \_\_\_\_\_ to be shipped on board the \_\_\_\_\_, \_\_\_\_\_ Master, for \_\_\_\_\_, before the whole of her inward cargo is discharged, in order to stiffen the said vessel, and to prevent her upsetting, you may permit the same to be done accordingly, previous to her being entered outwards, taking care that no expense be incurred by the Crown or risk to the revenue.

\_\_\_\_\_, Sub-Collector.

Custom-house,

(date), \_\_\_\_\_

To the Examining Officer.

\_\_\_\_\_

(FORM G.)

No. 10-1872.

LANDING SUFFERANCE.

Place within the Port where the Goods }  
are to be unladen and landed. } \_\_\_\_\_

Port of \_\_\_\_\_

Custom-house,  
this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

Suffer to be landed from on board the \_\_\_\_\_, whereof  
\_\_\_\_\_ is Master, from \_\_\_\_\_

Marks of Packages.	Numbers of Packages.	Description and Number of Packages.

To be deposited in the Queen's Warehouse for security of duty,  
on account of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.  
(No. —)

(FORM H.)

SHIPPING SUFFERANCE.

Place within the Port where the Goods }  
are to be laden and shipped } \_\_\_\_\_

Port of \_\_\_\_\_

Custom-house, this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

Suffer to be shipped on board the \_\_\_\_\_, whereof \_\_\_\_\_  
is Master, for \_\_\_\_\_

Marks of Packages.	Number of Packages.	Description and Number of Packages.

On account of \_\_\_\_\_

\_\_\_\_\_, Sub-Collector.  
No. —  
NN 2

BILL OF ENTRY.—For Payment of Duty.

Port of }  
 \_\_\_\_\_ }

[Stamp.]

\_\_\_\_\_ Importer.

In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, from \_\_\_\_\_, \_\_\_\_\_ Ship.

PACKAGES.			Particulars of the Quality and Quantity of all the Goods contained in the several Packages, and whether such Goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not.	Current value of Goods at the Port whence imported.	Duty.
Marks.	Numbers.	Number and description.			
Total No of Packages.			Total .. £		

I \_\_\_\_\_, do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is

Duty, £ \_\_\_\_\_

Witness my hand, the \_\_\_\_\_ day of \_\_\_\_\_ 18—.

Place within the Port where the Goods }  
 are to be unladen and landed }

The above declaration signed the \_\_\_\_\_ day of \_\_\_\_\_ 18—, in the presence of \_\_\_\_\_,

\_\_\_\_\_, Sub-Collector.

To the Examining Officer.

No. —.

N.B.—This Form must be filled up on one side only of the paper whereon it is written.

(FORM J.)

No. 10—1872.

[Stamp.]

Port of }  
 \_\_\_\_\_ }

BILL OF ENTRY.—WAREHOUSING.

\_\_\_\_\_, Importer.

In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, from \_\_\_\_\_, \_\_\_\_\_  
 Ship.

PACKAGES.			Particulars of the Quality and Quantity of all the Goods contained in the several Packages, and whether such Goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not.	Current Value of Goods at the Port whence imported.	
Marks.	Numbers.	Number and description.			
Total No. of Packages.			Total, £		

I, \_\_\_\_\_, do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is

The above to be warehoused in \_\_\_\_\_ Bond \_\_\_\_\_ Warehouse by virtue of Act No. \_\_\_\_\_ of 1872, Bond having been given.

Witness my hand the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

Place within the Port where the Goods }  
 are to be unladen and landed, } \_\_\_\_\_

The above declaration signed the \_\_\_\_\_ day of \_\_\_\_\_ 18—, in the presence of \_\_\_\_\_

\_\_\_\_\_, Sub-Collector.

To the Examining Officer.

No. —.

N.B.—This Form must be filled up on one side only of the paper whereon it is written, and shall be printed or written in red ink.

[Stamp.]

Port of }  
\_\_\_\_\_ }

BILL OF ENTRY.—EXPORT.

\_\_\_\_\_, Exporter.

In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, for \_\_\_\_\_,  
\_\_\_\_\_Ship.

PACKAGES.			Particulars of the Quality and actual Quantity of all the Goods contained in the several Packages, and stating whether they are the Produce or Manufacture of this Colony, or of what Country.	Current Value at this Port.	
Marks.	Numbers.	Number and Description.			
Total No. of Packages.			Total, £		

I, \_\_\_\_\_, do hereby declare that the articles mentioned in this entry, and contained in the packages specified herein, are truly described in the above schedule.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

Place within the Port where the Goods }  
are to be laden and shipped. } \_\_\_\_\_

The above declaration signed this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

In the presence of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

To the Examining Officer.

No. \_\_\_\_.

N.B.—This Form must be filled up on one side only of the paper whereon it is written.

(FORM L.)

No. 10—1872.

Port of \_\_\_\_\_ }  
 \_\_\_\_\_ } BILL OF SIGHT. [Stamp.]  
 \_\_\_\_\_, Importer.  
 In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, from \_\_\_\_\_,  
 \_\_\_\_\_ Ship.

PACKAGES.

Marks.	Numbers.	Number and Description.

I, \_\_\_\_\_, do hereby declare that I cannot, for want of full information, make perfect entry of the above packages and their contents, and that I have not received sufficient invoice, bill of lading, or other advice, from whence the quality, quantity, or value of the goods herein mentioned can be ascertained.

Witness my hand, the \_\_\_\_\_ day of \_\_\_\_\_, 18—

The above declaration signed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, in the presence of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

Warrant granted on the above declaration that the packages described may be landed at \_\_\_\_\_, and be brought to the examining warehouse, to enable the importer to see and examine them in the presence of the proper officer of Customs, such examination, as well as the other requirements of section — of Act No. — of 1872, to take place within three days.

Dated at the Custom-house, the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_, Sub-Collector.

No. —.

To the Examining Officer.]

N.B.—This Form must be filled up on one side only of the paper whereon it is written.

[Stamp.]

BILL OF ENTRY.—For Payment of Duty.

Port of \_\_\_\_\_ } Perfect on Bill of Sight.

Dated \_\_\_\_\_ day of \_\_\_\_\_, 18—. No. —. \_\_\_\_\_, Importer.]

In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, from \_\_\_\_\_, \_\_\_\_\_ Ship.

PACKAGES.			Particulars of the Quality and Quantity of all the Goods contained in the several Packages, and whethe such Goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not, as far as such can be ascertained.	Current Value of Goods at the Port whence imported.	Duty.
Marks.	Numbers.	Number and Description.			
Total No. of Packages.			Total, £		

I, \_\_\_\_\_, do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is

Duty, £—. Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

The above declaration signed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, in the presence of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

I certify that the packages described in the above bill of entry were opened in my presence and examined, and that the values set opposite the description of the several packages and goods are, to the best of my belief, the current value of the goods therein contained at the port whence the same are imported.

\_\_\_\_\_, Examining Officer.  
No. —.

N.B.—This Form must be filled up on one side only of the paper whereon it is written.

(FORM N.)

No. 10-1872.

Port of \_\_\_\_\_ )

[Stamp.]

**BILL OF ENTRY.—WAREHOUSING.**

Perfect on Bill of Sight.

Dated \_\_\_\_\_ day of \_\_\_\_\_, 18—.

No. —.

\_\_\_\_\_, Importer.

In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, from \_\_\_\_\_, \_\_\_\_\_ Ship.

PACKAGES.			Particulars of the Quality and Quantity of all Goods contained in the several Packages, and whether such Goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not, as far as such can be ascertained.	Current Value of Goods at the Port whence imported.	
Marks.	Numbers.	Number and Description.			
Total No. of Packages.			Total, £		

I, \_\_\_\_\_, do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is

The above to be warehoused in \_\_\_\_\_ Bond \_\_\_\_\_ Warehouse by virtue of Act No. \_\_\_\_\_ of 1872. Bond having been given.

Witness my hand the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

The above declaration signed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, in the presence of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

I certify that the packages described in the above bill of entry were opened in my presence and examined, and that the values set opposite the description of the several packages and goods are, to the best of my belief, the current value of the goods therein contained at the port whence the same are imported.

\_\_\_\_\_, Examining Officer.

No. —.

N.B.—This form shall be printed or written in red ink.



(FORM O.)

Port of \_\_\_\_\_ }  
 \_\_\_\_\_ }

SUFFERANCE FOR REMOVAL IN BOND.

For Warehoused Goods.

\_\_\_\_\_, Remover.

In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, from \_\_\_\_\_, \_\_\_\_\_  
 Ship.

PACKAGES.			Particulars of the Quality and present actual Quantity of all the Goods contained in the several Packages, and stating whether they are the Produce or Manufacture of the United Kingdom, or of some British Possession or not.	Value according to the account taken at the first Landing.	
Marks.	Numbers.	Number and Description.			
Total No. of Packages.			Total, £		

I, \_\_\_\_\_, do hereby declare that the articles mentioned in this sufferance, and contained in the packages herein specified, originally warehoused \_\_\_\_\_ day of \_\_\_\_\_, 18—, ex \_\_\_\_\_, from \_\_\_\_\_, by \_\_\_\_\_, in \_\_\_\_\_ Bonded Warehouse, and now entered for removal, for which bond is given, are truly described in the above schedule.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

Place within the Port where the Goods } \_\_\_\_\_  
 are to be laden and shipped. } \_\_\_\_\_

The above declaration signed this \_\_\_\_\_ day of \_\_\_\_\_, 18—, in the presence of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

To the Examining Officer.

No. —.

N.B.—This Form must be filled up on one side only of the paper whereon it is written, and shall be printed or written in red ink.

(FORM P.)

No. 10-1872

Port of \_\_\_\_\_ }  
 \_\_\_\_\_ }

[Stamp.]

BILL OF ENTRY.—DUTY PAID FOR WAREHOUSED GOODS.

\_\_\_\_\_, Importer.

In the \_\_\_\_\_, whereof \_\_\_\_\_, is Master, from \_\_\_\_\_, \_\_\_\_\_ Ship.

PACKAGES.			Particulars of the Quality and original Quantity of all the Goods contained in the several Packages, and whether such goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not.	Value according to the account taken at the first landing.	Duty.
Marks.	Numbers.	Number and Description.			
Total Number of Packages.			Total, £		

I, \_\_\_\_\_, do hereby declare that the articles mentioned in this entry, and contained in the packages specified, warehoused the \_\_\_\_\_ day of \_\_\_\_\_, 18—, by \_\_\_\_\_ in \_\_\_\_\_ Bonded Warehouse, and now entered for consumption, were, at the first landing thereof, of the value of \_\_\_\_\_.

Witness my hand, the \_\_\_\_\_ day of \_\_\_\_\_, 18—

Duty £—.

The above declaration signed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, in the presence of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

No. —

N.B.—This Form shall be printed or written in red ink.

Port of \_\_\_\_\_ }  
 \_\_\_\_\_ }

BILL OF ENTRY.—EXPORT FOR WAREHOUSED GOODS.

\_\_\_\_\_, Exporter.

In the \_\_\_\_\_ whereof \_\_\_\_\_ is Master, for \_\_\_\_\_, \_\_\_\_\_  
 Ship.

PACKAGES.			Particulars of the Quality and present actual Quantity of all the Goods contained in the several Packages, and stating whether they are the Produce or Manufacture of the United Kingdom, or of some British Possession, or not.	Value according to the Account taken at the first landing.
Marks.	Numbers.	Number and Description.		
Total number of Packages.			Total ..£	

I, \_\_\_\_\_, do hereby declare that the articles mentioned in this entry, and contained in the packages herein specified, originally warehoused \_\_\_\_\_ day of \_\_\_\_\_, 18—, ex \_\_\_\_\_, from \_\_\_\_\_, by \_\_\_\_\_, in \_\_\_\_\_ Bond \_\_\_\_\_ Warehouse, and now entered for exportation, for which bond is given, are truly described in the above schedule.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18— .

Place within the Port where the Goods are } \_\_\_\_\_  
 to be laden and shipped }

The above declaration signed this \_\_\_\_\_ day of \_\_\_\_\_, 18—, in the presence of \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

To the Examining Officer.

No. —,

N.B.—This Form must be filled up on one side only of the paper whereon it is written, and shall be printed or written in red ink.

Port of }  
 \_\_\_\_\_ }

VICTUALLING BILL.

Stores delivered from the bonded warehouse at this port, and shipped on board the \_\_\_\_\_, \_\_\_\_\_ Master, for \_\_\_\_\_, \_\_\_\_\_ Men, \_\_\_\_\_ Passengers or Troops, \_\_\_\_\_ Guns, \_\_\_\_\_ Tons.

Description.	Quantities.	Description.	Quantities.
Ale or Beer (in bottle) ..		Meats (preserved) .. ..	
Ditto (in wood) .. ..		Molasses .. ..	
Barley (Pearl) .. ..		Nutmegs .. ..	
Beef .. ..		Oatmeal .. ..	
Bread and Biscuit .. ..		Oil (Lamp) .. ..	
Butter .. ..		Peas .. ..	
Candles .. ..		Pepper .. ..	
Cassia .. ..		Pickles .. ..	
Cheese .. ..		Pork .. ..	
Chow-Chow or Preserved		Raisins.. ..	
Ginger .. ..		Rice .. ..	
Cigars .. ..		Soap .. ..	
Cinnamon .. ..		Spirits (sweetened) in bot. ..	
Cloves .. ..		Ditto ditto in wood..	
Coffee (raw) .. ..		Ditto (unsweetened) in bot.	
Cocoa .. ..		Ditto ditto in wood..	
Currants .. ..		Sugar (refined) .. ..	
Figs .. ..		Ditto (unrefined) .. ..	
Fish (preserved) .. ..		Ditto Candy .. ..	
Flour (wheaten) .. ..		Tamarinds .. ..	
Fruits (bottled) .. ..		Tea .. ..	
Ditto (dried) .. ..		Tobacco (manufactured) .. ..	
Ginger (preserved) or Chow-		Ditto (unmanufactured) ..	
Chow .. ..		Vegetables (preserved) .. ..	
Ginger (dry) .. ..		Vinegar (in bottles) .. ..	
Jams .. ..		Ditto (in wood) .. ..	
Lard .. ..		Wine (in wood) .. ..	
Mace .. ..		Ditto (in bottles) .. ..	

I declare the above to be a true account.

\_\_\_\_\_, Master.

Declared before me at the Custom-house,  
 the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

\_\_\_\_\_, Sub-Collector.

Examined \_\_\_\_\_, 18 \_\_\_\_,

\_\_\_\_\_, Examining Officer.

Cleared \_\_\_\_\_, 18 \_\_\_\_.

N.B.—This Form shall be printed or written in red ink,

(FORM S.)

REQUISITION TO SHIP STORES FROM BOND.

Place within the Port where the Stores are } \_\_\_\_\_  
to be laden and shipped. }

Port of \_\_\_\_\_  
Cape of Good Hope,  
\_\_\_\_\_, 18—.

To the Sub-Collector of Customs.

SIR,—I request permission to ship, as Stores, from the Bonded Warehouse at this Port, on board the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, bound for \_\_\_\_\_, the undermentioned articles, which I certify are *bonâ fide* intended for the use of the said ship, viz.:—

Quantity and Quality of the Goods.	Name of Importing Ship, and where from.	When warchoused, and by whom.	Bonding Warehouse.

I have the honour to be,

Sir,  
Your obedient Servant,

No.—

\_\_\_\_\_, Master.

Permission granted this \_\_\_\_\_ day of \_\_\_\_\_, 18—.  
\_\_\_\_\_, Sub-Collector.

N.B.—This Form must be filled up on one side only of the paper whereon it is written, and shall be printed or written in red ink.

SCHEDULE II.

Wastage Allowance on Ale and Beer, in Bonded Warehouses, when entered for Home Use.

For any period.								Per cent.
Not exceeding	3	months	..	..	..	..	..	1 gallon
„	6	„	..	..	..	..	..	2 gallons
„	9	„	..	..	..	..	..	3 „
„	12	„	..	..	..	..	..	4 „
„	15	„	..	..	..	..	..	5 „

And no allowance will be permitted for any further time in addition to the above, nor for any period less than two months.

Wastage Allowance on Spirits, in Wood, in the Bonded Warehouse, when entered for Home Use :

No. 10—1872.

For any period.	Per cent.
Not less than 3 months and not exceeding 6 months	1 gallon.
Exceeding 6 months and not exceeding 12 "	2 gallons.
" 12 " " " 18 "	3 gallons.
" 18 " " " 2 years	4 gallons.
" 2 years and upwards .. .. .	5 gallons.

On the quantity, if not overproof, and on the strength, if overproof, and if the fractional parts amount to fifty hundredths of a gallon, one gallon to be allowed for such fraction.

Wastage Allowance on Wine, in Wood, in Bonded Warehouses, when entered for Home Use.

For any period.	On casks containing less than 30 gallons.	On casks containing 30 gallons and not exceeding 70 gallons.	On casks of 70 gallons and upwards.
In the warehouse not less than 6 months and not exceeding 1 year .. .. .	Per cent. 2	Per cent. 1½	Per cent. 1
Exceeding 1 year and not exceeding 2 years ..	2	3	2
Do. 2 years do. do. 3 do. ..	6	4½	3
Do. 3 do. do. do. 4 do.	8	6	4
Do. 4 do. do. do. 5 do.	10	7½	5
Do. 5 do. do. do. 6 do.	12	9	6
Do. 6 do. do. do. 7 do.	14	10½	7
Do. 7 do. do. do. 8 do.	16	12	8
Do. 8 do. do. do. 9 do.	18	13½	9
Do. 9 do. do. do. 10 do.	20	15	10
Total allowance not to exceed under any circumstances.	5 gallons.	7 gallons.	9 galls.

The duty is to be remitted on deficiencies of wine in warehouse to the extent of 2 per cent. additional to the above scale on the ullage content of each cask without application to the Collector or other principal officer of Customs, provided such deficiencies have arisen from natural causes.

No. 26—1872.

Table of Quantities of Vinegar, or Salt Crude, required to be mixed into unsound Wine, previous to its delivery from the Bonded Warehouse as Vinegar, for Home Use, viz. :

	Vinegar the gallon.	Salt crude, the lb.
For any quantity of unsound wine, not exceeding 20 gallons	1	..
Exceeding 20 gallons and not exceeding 45 gallons .. ..	2	1
Do. 45 do. do. 75 do. .. ..	4	2
Do. 75 do. do. 100 do. .. ..	6	3
And so on in proportion.		

The duty is to be levied on the re-gauged quantity.

No. 26—1872.]

[July 31, 1872.

## ACT

For Regulating the Coasting Trade of the Colony of the Cape of Good Hope.

Preamble.

WHEREAS by an Imperial Act passed in the thirty-second year of the reign of Her Majesty Queen Victoria, intituled "An Act for Amending the Law relating to the Coasting Trade and Merchant Shipping in British Possessions," it is enacted that, subject to certain conditions in the said Act contained, the Legislature of a British Possession may, by any Act or Ordinance, from time to time, regulate the coasting trade of the same: And whereas it is desirable to make provision for regulating the coasting trade 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:—

Conveyance of goods and passengers.

1. Subject to the provisions of any Act of the Imperial Parliament of the United Kingdom, and so long as Her Majesty's Order in Council of the 7th day of December, 1855, shall remain unrevoked and in force, goods and passengers may be conveyed from any one port of this Colony to any other port thereof in other than British ships.

Definition of coasting trade and coasting vessels.

2. All trade by sea from any one part, port, or place in this Colony to any other part thereof shall, except as hereinafter provided, be deemed to be a coasting trade, and all ships while employed therein shall, except as hereinafter provided, be deemed to be coasting ships: Provided that no ship arriving from a port beyond the limits of this Colony, although bound to more than

Exception as regards ship arriving from or proceeding

one port in this Colony, and no ship clearing outwards from any port in this Colony for a port beyond the limits of this Colony, although bound to one or more intermediate ports in this Colony, shall be deemed a coasting ship, nor shall her voyage between such ports in this Colony be deemed a coasting voyage.

No. 26—1872.  
to port beyond colonial limits.

3. Any goods which shall be the growth, produce, or manufacture of this Colony, or which shall have already paid duty on importation into this Colony, may be shipped and conveyed coastwise from any one port in this Colony to any other port thereof in any ship, although such ship may not be a coasting ship.

Certain goods may be conveyed coastwise by other than coasting vessels.

4. If any goods shall be unshipped from any coasting ship arriving coastwise, or be shipped or water-borne to be shipped to be carried coastwise, unless in the presence or with the authority of the proper officer of the Customs and at such times and places as shall be appointed or approved by him for that purpose, the same shall be forfeited, and the master of the ship on board whereof any such goods shall be shipped, or wherefrom such goods shall be unshipped, shall forfeit a sum not exceeding fifty pounds sterling, and every person who shall land or ship, or place on board any lighter or boat to be shipped, or assist or be otherwise concerned in landing, shipping, or placing on board any lighter or boat to be shipped any of such goods otherwise than in the presence or with the authority of the proper officer, or otherwise than at such times or places as shall be appointed or approved by him for that purpose, shall, in like manner, forfeit a sum not exceeding fifty pounds sterling.

Goods illegally landed or shipped forfeited.

Penalty on master £50.

Penalty on other persons £50.

5. All persons shipping goods on board of any coasting ship shall furnish the master with a shipping-note, stating generally the description of goods, and, so far as may be known to the said shipper, whether the goods be the produce of this Colony or otherwise; and the master shall be bound to exhibit such note whenever so required to the proper officer of the Customs at the port whence the goods shall have been shipped, and also at the port to which the same shall have been shipped, and at any intervening port at which such coasting ship may touch on its voyage between such ports; and any goods respecting which any false statement shall be made in any such shipping-note, shall be forfeited.

Shippers to furnish shipping note.

Penalty.

6. Before any coasting ship shall depart from the port of lading, an account, with duplicate thereof, signed by the master, shall be delivered to the Collector or other proper officer of Customs at such port, and such officer shall retain the duplicate and return the original account, dated and signed by him, and such account shall be the clearance of the ship for the voyage, and the transire or pass for the goods expressed therein: and if any such account be false, the master shall forfeit the sum of twenty pounds sterling: Provided, always, that the Collector or principal officer of Customs may, whenever it shall appear to him expedient, permit general or special transires to be given under such regulations as such Collector

Clearance and transire.

Special transire may be given.



- No. 26—1872. or principal officer may direct, for the lading or clearance and for the entry and unloading of any coasting ship to proceed to any place in this Colony therein mentioned, and there to discharge the whole or any part of the cargo of such coaster, and there to reload a cargo for shipment back to the port whence such coasting ship obtained such transire, or such other port in this Colony as shall be therein mentioned, and the same may be revoked by notice, in writing, under the hand of such Collector or other principal officer as aforesaid, delivered to the master or owner of any such ship, or any of the crew on board.
- And may be revoked. Record by master. 7. The master of any ship proceeding coastwise to load or discharge cargo under the permission of a transire shall keep a correct record of the dates of the ship's arrival and departure at any port or ports, place or places, and of the goods laden on board or discharged, thereat, and whether, so far as the said master may have been informed such goods are the produce of the Colony or otherwise, and such record shall be open for the inspection of any officer of Customs at all times and places, and should any master make any false entry in such record, or wilfully omit to make the proper entries thereon, he shall be liable to a penalty of twenty pounds sterling for each offence.
- Penalty £20. Transire to be delivered within 24 hours. 8. Within twenty-four hours after the arrival of any coasting-ship at the port of discharge, and before any goods be unladen, the transire, with the name of the place or wharf where the lading is to be discharged noted thereon, shall be delivered to the Collector or other proper officer of Customs at such port of discharge, who shall note thereon the date of delivery, and if any goods be unladen contrary hereto, the master shall forfeit a sum not exceeding twenty pounds sterling, and if any goods shall be laden on board of any ship in any port or place in this Colony and carried coastwise, or having been brought coastwise shall be unladen in any such port or place contrary to these or any other lawful regulations relating to the coasting trade of this Colony, such goods shall be forfeited.
- Goods forfeited. Prosecution, in whose name. 9. Every suit for the recovery of any penalty or forfeiture under this Act shall be commenced in the name of the Collector or other principal officer of the Customs, or of Her Majesty's Attorney-General for this Colony; and if a question shall arise, whether the person suing is such a Collector or other principal officer of the Customs, *viva voce* evidence may be given of such fact, and shall be deemed legal and sufficient evidence.
- Boarding of ships by officers. 10. Any officer of the Customs may go on board of any coasting ship in any port or place in this Colony, or at any period of her voyage, search such ship and examine all goods on board, and all goods then lading or unloading, and demand all documents which ought to be on board of such ship, and the Collector or other proper officer may require that all or any such documents shall be brought to him for inspection, and the master of any ship refusing
- Penalty £20.

to produce such documents, or to bring the same to the Collector or other proper officer when required, shall forfeit and pay the sum of twenty pounds sterling.

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11. The days fixed as Customs holidays, and the hours for general attendance of the respective officers of Customs at the proper offices and places of employment, and the times during such hours at which any particular part or parts of the duties of such officers respectively shall be performed by them, shall be the same as those provided in the general law for Customs management and regulations.

Holidays and hour of attendance.

12. The forms to be used in carrying out the provisions of this Act shall, as near as may be, be those set forth in the first and second schedules hereto annexed, as the same shall be respectively applicable; and where any of such forms requires a declaration to be made thereto by a master, consignee, or other person, such declaration shall be made before the Collector or other proper officer of the Customs at the port where such declaration is required to be made.

Forms.

13. This Act shall take effect when and so soon as the Governor shall, by proclamation to be published in the *Government Gazette*, declare that Her Majesty has been pleased to assent to the same.

Commencement of Act.

SCHEDULE I.

[Forms to be used for Ships exclusively employed in the Coasting Trade.]

TRANSIRE.

Port of

Ship's Name	Rotation No.		
Whether British, or of what Country			
If British, Port of Registry			
Number of Crew	British Men,	Country of Ship	
Name and Country of Master in full			
Name and Country of Owner			
Whether in Ballast or Laden		Tonnage	
Where bound			

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Marks of Packages.	Number of Packages.	Names of the Shippers of the Goods, and where Shipped.	Quantity and Contents of every Package and Parcel of Goods on board, as far as any such particulars are known to the Master.		Names of the Consignees of the Goods, and where to be discharged.
			Number of Packages.	Description of Packages and Contents.	

I declare the above to be a true account.

Signed, \_\_\_\_\_, Master.

Declared before me at the Custom-house, and cleared this \_\_\_\_\_ day of \_\_\_\_\_, 18 ..

Signed, \_\_\_\_\_, Sub-Collector.

Port of } LANDING SUFFERANCE.

Place within the Port where the goods are to be landed and unladen.

Custom-house, \_\_\_\_\_, 18

Suffer to be landed from on board the \_\_\_\_\_, whereof \_\_\_\_\_ is master, from \_\_\_\_\_, for account of consignees, \_\_\_\_\_, a cargo coastwise, consisting of goods, the growth, produce, or manufacture of this Colony, as also imported articles upon which Customs duties have been paid, not including \_\_\_\_\_ as per master's report inwards or transire from \_\_\_\_\_.

\_\_\_\_\_, Sub-Collector.

No. \_\_\_\_\_

Port of } SHIPPING SUFFERANCE.

Place within the Port where the goods are to be laden and shipped.

Custom-house, \_\_\_\_\_, 18

Suffer to be shipped on board the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, \_\_\_\_\_, for account of shippers, \_\_\_\_\_, a cargo coastwise, consisting of goods, the growth, produce, or manufacture of this Colony, as also imported articles upon which the Customs duties have been paid, not including \_\_\_\_\_

No.

\_\_\_\_\_ Sub-Collector.

SCHEDULE II.

No. 26—1872

Form to be used for the delivery, free of duty, of Goods which arrive at any Port in this Colony from any other Port in the same, in other than coasting ships.

LANDING SUFFERANCE.—FREE OF DUTY.

In the \_\_\_\_\_, whereof \_\_\_\_\_ is Master, from \_\_\_\_\_,  
 \_\_\_\_\_, Consignee.

Packages.		Number of Packages.	Description, quality, and quantity, and whether such Goods are the growth, produce, or manufacture of this Colony or Duty Paid on importation.	Value.		
Marks.	Numbers.					
			Total £			

I, \_\_\_\_\_, declare that the above is a true account of the goods specified, and that the goods and packages were *bona fide* shipped at the port of \_\_\_\_\_ in this Colony, for this port, and are entitled to be delivered free of duty.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—  
 \_\_\_\_\_, Consignee.

Place within the Port where the goods }  
 are landed and unladen, } \_\_\_\_\_  
 Declared before me at the Custom-house,  
 this \_\_\_\_\_ day of \_\_\_\_\_, 18—  
 No. — \_\_\_\_\_, Sub-Collector.

[February 5, 1813.

PROCLAMATION (1)

By His Excellency Lieutenant-General Sir JOHN FRANCIS CRADOCK, &c., &c.

WHEREAS, by the laws now in force, there is no limited time for the duration of the imprisonment of any person or persons against whom an execution for debt, process of Court, or precept or warrant of any Court or competent authority, in the nature of an execution for the levying of any fine or fines, penalty or penalties, Preamble.

<sup>1</sup> See Ord. 6, 1839, § 2, Acts 20, 1856, § 20 and 8, 1879, § 6 (Printed under *Resident Magistrates Courts and General Law Amendment* respectively).

Proc. Feby. 5, 1813.

is issued for the non-payment of such debt and costs, or such fine or penalty, as such debtor or debtors, offender or offenders, are ordered and commanded to pay; but such debtor or debtors, offender or offenders, are thereby committed to prison, until such time as they can pay or satisfy such debt, fine, or penalty, so that it may happen a person may be confined many months for a small sum of money :

Confinement for debts, &c., not exceeding twenty rixdollars, not more than one month.

Now be it hereby declared, ordained, and enacted that no person or persons whatsoever shall be confined for any debt, fine, penalty, or contempt of Court or other authority, not exceeding the sum of twenty rixdollars; more than one month; and every Magistrate, Fiscal, Deputy Fiscal, Landdrost, or Deputy Landdrost, or others having the care, custody, or superintendence of any prison or place of confinement, is hereby ordered and directed to discharge from such prison or place of confinement at the end of such month such person or persons, without demanding or receiving any fees or other expenses than that of their diet, at the rate of ten stivers for each day.

Fifty rixdollars not more than six months

And whereas it has occurred that a debtor or debtors have been confined for a long and indefinite period of time for small debts not exceeding fifty rixdollars :—Be it enacted and ordained, and it is hereby enacted and ordained, that no person shall be detained in prison for more than six calendar months, for any original debt not exceeding fifty rixdollars exclusive of all costs of suit; and the Fiscal, Deputy Fiscals, Landdrosts, Deputy Landdrosts, and all others having the care and superintendence of jails, prisons, or places of confinement are hereby directed and commanded to liberate all and every person or persons so confined at the expiration of the six calendar months, as aforesaid, and all and every person is forbidden again to arrest for such debt aforesaid, any person or persons so liberated; but nothing herein shall be construed to discharge such debt or debts, or to deprive the creditor or creditors of any and every other remedy against the goods, lands, or property of such debtor or debtors which now exists by law.

Other remedies of creditor reserved.

And that no person may plead ignorance hereof, this shall be published and affixed as usual.

No. 11—1867.]

[August 16, 1867.

### ACT

To make Provision for the Payment of Judgment Debts found to be due by Public Bodies empowered to levy Rates.

Preamble.

WHEREAS it is expedient that provision should be made for the payment of just debts, liabilities, and obligations found to be due or payable by public bodies empowered to levy rates : 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. 11—1867.

1. Whenever any judgment shall be recovered, or decree or order lawfully made in or by any competent Court, for the payment by any public body empowered to levy rates of any sum of money for debt, damages, costs, or other cause whatsoever, to any party to a cause or suit, or any person whatsoever, in case it shall appear by the return of the Sheriff or other officer whose duty it may be to execute any such judgment, decree, or order, that such Sheriff or other officer has not found sufficient assets of such public body available to answer such judgment, decree, or order, to satisfy the same, it shall be lawful for the party or person to whom such sum of money shall have been payable to apply by petition to the Supreme Court, or in case the rateable property upon which such public body is empowered to levy rates shall be situate within the local limits of the jurisdiction of the Court of the Eastern Districts, then, if such creditor shall so elect, by petition to such last-named Court, in either case annexing to such petition copies of the judgment, decree, or order, and of the writ or warrant of execution and of the return thereto, and praying for such relief in the premises as the said Courts respectively shall be empowered to afford; and a rule *nisi* shall thereupon be granted, requiring such public body to show cause why the relief prayed should not be granted.

Proceedings upon insufficiency of assets to satisfy judgment.

Court may grant rule *nisi*.

2. Such rule shall thereupon be served upon such public body at their office, or if the Court should otherwise order, then in such manner as the Court shall direct, and shall be returnable in such manner as the Court by general or any special order shall direct.

Service of rule, and how returnable.

3. If before the time for showing cause against such rule the said judgment, decree, or order shall not be satisfied in full, together with interest and costs properly incurred in respect thereof, and if at the time for showing cause as aforesaid, or such adjourned time as the Court may order, either then, or from time to time, no sufficient cause shall be shown against the making absolute of such rule, then the same shall be made absolute; and if such public body shall not satisfy the said Court by sufficient securities that it can and will fully satisfy such judgment, decree, or order, with interest and all costs properly incurred in respect thereof, and also such other debts as are hereinafter mentioned, if any, with interest, within a reasonable time, to the satisfaction of the said Court, then the Court shall assess and impose such a rate or rates on the rateable property upon which such public body is empowered to levy rates, to be levied at such time or times as to the said Court shall seem fit and necessary, to satisfy, either at once or by instalments, as to the said Court shall seem right, from and out of the net proceeds of such rate or rates, all moneys payable under or by virtue of such judgment, order,

Rule may be made absolute.

And a rate assessed to satisfy judgment.

- No. 11—1867.  
Rate limited. or decree and also, if the Court shall see fit so to order, such other moneys as are hereinafter mentioned: Provided, always, that no such rate shall exceed one penny per pound of the value of every rateable tenement upon which such public body is empowered to levy rates; but a second rate not exceeding one penny per pound shall be assessed; and so on until all such debts and costs as aforesaid shall have been 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.
- More than one rate may be assessed;  
But not within twelve months. 4. If on showing cause against such rule  *nisi*  as aforesaid, it shall appear to the Court that there are other debts due by the public body on which such rule has been served, which will not probably be paid without the intervention of the Court, it shall be lawful for the Court, but not imperative upon it, if it shall make absolute such rule, before assessing such a rate or rates as aforesaid, to order an enquiry before the Master whether any, and what, debts other than that upon the said judgment, decree, or order are due by the said public body to any, and what, persons.
- Court may order inquiry by Master into further liabilities. 5. If the Court shall make such order, then the Master shall, by a notice of not less than twenty-one days in the *Government Gazette* and one or more papers circulating in the district within which the property rateable by such public body shall be situate, a copy of which notice shall be affixed on the door of the Magistrate's office of the district, call a meeting of all persons claiming to be creditors of the said public body, for proof of debts, and such debts, if not admitted by the said public body, or evidenced by their books and accounts, shall be proved by affidavit; and any such person claiming to be a creditor may appear and prove his debts by proxy.
- Master to call meeting of creditors. 6. When by the report of the Master the Court shall be informed of the whole amount of the debts found by him to be due and owing by such public body, whether there be or be not other disputed claims, it shall be lawful for, but not imperative on, the Court to include the debts so found to be due or owing in the sum for the payment whereof such rate or rates as aforesaid shall be by the said Court assessed and levied; and the net amount or amounts assessed and levied by means of such rate or rates as aforesaid shall be paid and administered, first in defraying the costs of the petitioner as well of the petition and the proceedings thereunder as of his original action or suit against the said body incurred subsequent to judgment, and thereafter, save as hereinafter is mentioned, in payment of the claims of such petitioner and the other creditors, if any, *pro rata*, until all the debts proved, with interest thereon, shall be fully satisfied.
- Proof of debt. 7. The decision of the Master as to any claim of debt shall be open to review by the Court, which may direct such debt to be proved in such manner as it shall see fit, or may direct an action to be brought for the purpose of establishing the same; but it shall
- Liabilities reported by Master may be liquidated out of rate assessed.
- Apportionment of proceeds of rate in such case.
- Proof of debt allowed by Master subject to review.

not be compulsory on such Court to delay the assessment or levy of such rate or rates as aforesaid until such claim shall be finally decided.

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Assessment of rate not necessarily delayed thereby.

8. If any judgment for damages shall be recovered by any person against such public body, pending the proceedings under such petition as aforesaid, and before such rate or rates shall have been ordered by the said Court to be levied, then it shall be lawful for the person so recovering judgment to enter before the Master a claim upon such judgment, and to make application to the Court to be admitted to the benefits of the proceedings pending, and the Court may allow such application, and take such judgment into account in assessing such rate or rates as aforesaid.

Judgment for damages may be included in sum for liquidation of which rate is assessed.

9. As often as the Court shall assess any rate for the purpose of paying any creditor or creditors under this Act, 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 also in one or more newspapers circulating in the district within which the property to be rated shall be situated, and a like notice affixed on the door of the Magistrate's office of the district, of every rate assessed as aforesaid, and of the day on which such rate will become due and payable, and such notice shall be in substance as follows:

Court to appoint receiver of rates.

Notice of rate assessed and when due.

(NAME OF PUBLIC BODY.)—RATE UPON IMMOVABLE PROPERTY.

Notice is hereby given that the Honourable the (Supreme Court or the Court of the Eastern Districts, as the case may be) has this day assessed, under the provisions of the "Public Bodies Debts Act, 1867," for payment of debts, a rate of \_\_\_\_\_ per pound upon the value of all the rateable property within the (limits of district over which power of rating extends), which rate will become due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and of which rate A. B., of \_\_\_\_\_, has been appointed the receiver. Dated at (Cape Town or Graham's Town, or elsewhere, as the case may be), the \_\_\_\_\_ day of \_\_\_\_\_, 18—,

Form of notice.

M. or N.,

Registrar of the (name of Court).

Such notice shall be published not less than twenty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

10. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent Court.

Receiver may recover rate.



No. 11—1867.  
Disposal of surplus. 11. Any surplus which shall remain of the proceeds of any such rate as aforesaid, after the payment of all the matters or things properly payable thereout, and the full discharge of all the debts which it was assessed to discharge, shall be paid to the public body whose debts it was raised to discharge.

Effect of order of Court on debentures and other securities. 12. Any such order of Court as aforesaid, referring to the Master to report upon the debts of any such public body as aforesaid, shall have the effect of making all debentures, securities, and engagements, lawfully granted or entered into by such public body, due and payable forthwith, notwithstanding that the same might not, but for such order, have been payable till some future date; but nothing in this Act contained shall be construed to give validity to any debt or engagement contracted in the name or on behalf of any public body, which such body was not legally authorized to contract; but such debt or engagement shall be the debt or engagement of the person or persons contracting the same in the name of the said public body: Provided, always, that any tort committed by such body, through breach or neglect of the duties to perform which was part of the object of its creation as such body, shall be an obligation on the body in its corporate capacity, whether any individual be or be not also liable for the results of such breach or neglect.

Jurisdiction of Eastern Districts Court. 13. In all cases prosecuted under this Act in the Court of the Eastern Districts, the said Court shall have the like jurisdiction subject to the like limitations and the same appeals as are provided by the Act No. 21 of 1864 with regard to other matters within the jurisdiction of the same Court.

How order for reference to Master is to be notified when public body in Eastern Districts is respondent. 14. Whenever any order for reference to the Master under this Act shall be made in any case wherein any public body, empowered to levy rates upon immovable property lying within the local limits of the jurisdiction of the Court of the Eastern Districts shall be the respondent, then notice of such order shall be forwarded forthwith by the Registrar of the Supreme Court, in case such order shall be made in the Supreme Court, to the Court of the Eastern Districts, through its Registrar, or in case such order shall be made in the Court of the Eastern Districts, then by the Registrar of such last-named Court to the Supreme Court, through its Registrar.

Proceedings when there are several petitions, and order for reference to Master has been made on one petition. 15. In case more than one petition under this Act shall be presented, either in the Supreme Court or in the Court of the Eastern Districts, or in case one or more than one such petition shall be presented in one of such Courts, and one or more in the other of them, such petitions may be prosecuted until an order shall have been made for reference to the Master upon some one petition, or until notice shall be received by the Court in which any such petition is pending that such an order for reference to the Master has been made in the other of the two Courts to which jurisdiction is given in matters under this Act, and after such order for reference, or such notice as aforesaid, no further separate proceeding shall be

had in any other such petition pending in either of such Courts, save only that each petitioner shall be at liberty to have his costs up to that date estimated and awarded, as to the Court in which his petition shall be pending shall seem fit; and all such petitions shall be consolidated, and each petitioner shall be entitled to come in under the reference, and to prove such costs in addition to his judgment debt; and such costs, together with his costs in his original action against such public body, incurred subsequent to judgment, shall be paid next after the like costs of the petitioner upon whose petition the order for reference shall have been obtained, and if more petitioners than one are in such condition as aforesaid, then their costs of their proceedings under this Act, as well as of their original actions against such public body, incurred subsequent to judgment, shall be paid rateably next after the costs of the petitioner upon whose petition such order for reference as aforesaid shall have been made, notwithstanding anything in the sixth section hereof contained; and in other respects the provisions of the said sixth section shall be carried into effect.

No. 11—1867.  
Costs of petitioner.

16. If an order for reference be made in the Supreme Court in any case wherein a public body is respondent, and before notice thereof shall be received by the Court of the Eastern Districts a like order shall have been made by such last-mentioned Court in any case where the same public body is respondent, then on notice of the order made in the Supreme Court being received by the Court of the Eastern Districts, all further proceedings in the last-mentioned Court shall be stayed, and the proceedings theretofore had therein shall be consolidated with the proceedings in the Supreme Court, and shall be forwarded by the Registrar of the Court of the Eastern Districts to the Registrar of the Supreme Court, and shall become thenceforward and be recorded in the Supreme Court as if the same had been originally taken in the Supreme Court.

When orders for reference have been made in both Courts, proceedings to be consolidated.

17. Nothing in this Act contained shall apply in the case of any debt due by the municipality of Cape Town, or in any other case where full provision is otherwise made for the objects contemplated by this Act; nor shall this Act be taken to repeal any Act for the like purpose made in special cases, but shall apply only to such public bodies and in such cases as are otherwise insufficiently provided for.

Act not to apply to Municipality of Cape Town, or in any case specially provided for.

18. This Act may be cited as the "Public Bodies' Debts Act, 1867."

Short title.

## DEEDS REGISTRY.

- |                                                             |                                              |
|-------------------------------------------------------------|----------------------------------------------|
| 1. Placaat 19 June, 1714, (Establishment of Debt Registry). | 6. Ord. 14—1844, (Preparation of Deeds).     |
| 2. „ 22 April, 1793, (Regulations do. ).                    | 7. „ 27—1846, (Conventional Hypothecations). |
| 3. „ 23 May, 1805, (Reform of do.).                         | 8. „ 3—1865, § 16 (British Kaffraria).       |
| 4. Ord. 39—1828, (Registrar of Deeds).                      | 9. „ 39—1877, § 29 (Griqualand West).        |
| 5. „ 2—1836, (Acting do. ).                                 |                                              |

For Ante-nuptial Contracts see under “ Marriage.”

## ESTABLISHMENT OF THE DEBT REGISTRY.

[June 19—1714.

Maurits Pasques de Chavonnes, Councillor Extraordinary of Netherlands India and Governor on behalf of the United Netherlands Chartered East India Company at the Cape of Good Hope and its dependencies, and the Council thereof, make known:

How that it hath come to our knowledge, &c., &c. [*The first part of the Placaat has reference to the Education of Minors, under guardianship of the Orphan Chamber, and is obsolete.*]

Preamble.

Further, it having been experienced that there hath hitherto remained unused and not adopted in practice in this Government, the registration of Kusting Brieven, Obligations before Schepenen and Orphan Masters and other Bonds passed before Commissioners of the Court here, whereby from time to time, divers lands, houses, erven, and other property, are bound, as well specially as generally, in favor of the holders thereof, whereby not only many difficult lawsuits are caused, but likewise the good inhabitants, or the Company's servants, who are inclined to put out their money at a proper interest, are kept back, inasmuch as it can never be seen what may be due by any persons by Kusting Brieven or Obligations before Schepenen, Orphan Masters, and writings of Mortgage on their immovable property, which, for the welfare of the good inhabitants, ought not to be.

Mortgage Bonds must be exhibited at the Secretary's office.

Now, therefore, we, desiring to provide by these presents in the premises, have considered it highly necessary to order and command all Company's servants, or inhabitants belonging to this Government, as we order and command all of them and each in particular and every one whom in any respect it may concern, that all persons shall be bound, within the period of four months, or before the 19th of the ensuing month of October, to exhibit at the Secretary's office at this place, all such Kusting Brieven, Obligations before Schepenen, Orphan Masters, and other writings of Mortgage, executed before Commissioners of the Court, whereby any immovable property has been bound or hypothecated, and to give in to the Secretary the amounts or contents of their writings of

Mortgage and of such as may be from any cause in their possession, and which shall in future be required to take place in every case when any such writings of Mortgage shall be obtained, to the end that a proper Register may be formed and kept thereof, and it may always be possible to see when any immovable property is lawfully mortgaged, so that all persons may, in the putting out of money, regulate themselves accordingly; under the penalty that whoso neglects doing this shall forfeit the preference which would otherwise, in that respect, be awarded to him before other creditors.

June 19, 1714.

And that no one may pretend ignorance hereof, we order that these presents shall be published and affixed as usual at the proper time and place, in such manner as has been resolved to be fitting, for the benefit of the Commonwealth and the service of the Honourable Company.

Unregistered Bonds deprived of preference.

Thus done and decreed in the Castle of Good Hope, the 19th June, 1714, and published on———\* thereafter.

(Signed) M. P. DE CHAVONNES.

By Order of the Governor and Council,

(Signed) PIETER DE MEYER, Sec.

## REGULATIONS FOR THE PREVENTION OF CONFUSION IN THE DEBT REGISTRY.

[April 22—1793.

### PUBLICATION.

WHEREAS it hath been discovered and hath come to our knowledge that, in the registration of bonds passed before Magistrates and Orphan Masters whereby landed property is specially hypothecated, numerous abuses have heretofore taken place in the register, which is for this purpose kept at the Political Secretary's office, from which nothing but confusion and injury can result, as well to the creditors as debtors, and it has therefore become necessary for the public interest as well, that every one who has advanced money upon hypothec of landed property should have the certainty and knowledge that these hypothecs have been properly notified, in order to retain his right of preference; as also that every one of the inhabitants may be satisfied that in the aforesaid register of debts no other debts are entered against him than those actually due by him.

Preamble.

Therefore it is that we, in order to be able to rectify the aforesaid Register of Debts here, and to purify it of errors existing

\* This date is not filled in in the MSS.

April 22, 1793.

therein, in such manner that every one may henceforward be able to rely on it with perfect confidence, have resolved to ordain and enact, as is hereby ordained and enacted :

Commission to examine bonds.

That all holders of mortgages, bonds before Magistrates, and of bonds passed for the residue of purchase money under which landed property hath been specially hypothecated, shall be held and bound to appear before commissioned members of the Court of Justice of this Government (who shall attend gratis for this purpose, to commence from the 8th of the next month of May, on Wednesdays and Fridays, in the Judicial Court-room, in the morning, from nine to twelve o'clock), to exhibit all the bonds passed before Magistrates (mortgages), and Kusting Brieven, and bonds passed before Orphan Masters belonging to them, in order that it may be examined whether all these obligations are found to be duly registered, so that, if this formality have been observed, proof thereof, under their signature, may be thereon endorsed, and those of which the registration may have been neglected, may at once be registered of the date on which the exhibition shall be made, and in like manner notice hereof under their hand shall be given by endorsement of the instruments.

Bonds not exhibited deprived of preference.

That, in order to give sufficient time and opportunity for this purpose to the inhabitants of this Colony, a period of six weeks be left to the inhabitants of the Cape Valley and its neighbourhood, and to the inhabitants of the country districts a period of three months,—but to count from the 8th May next, when commissioned members of the Court of Justice shall first attend for the purpose,—under the penalty, that those who neglect to cause the beforementioned terms, shall henceforward be and remain deprived of the preference to which they would otherwise be entitled by virtue of the registration of the bonds of which they are holders; and that the debts which thereafter may be created on the property hypothecated to them, unless the forementioned hypothec already existing shall have been confirmed according to the manner above prescribed, shall be preferent before those which may have been previously contracted and shall be found to have remained unregistered through the fault of the holders of the bonds.

Cancellation of paid debts remaining uncanceled.

That all the inhabitants shall be at liberty within the above-mentioned periods, and at the said days and places, to address themselves to the commissioned members of the Court of Justice, in order to receive likewise gratis information of the debts with which they are burdened in the aforesaid Register of Debts, so that, if it be found that their settled debts have not been properly cancelled, these may be, on production of the evidence required thereto, cancelled, and their property relieved therefrom, of which, at the same time, due evidence shall be furnished them.

And in order that every one may be able to have the necessary use of our salutary intentions herein and enjoy their salutary

effect, this shall be published and affixed in the ordinary place, wherever it is customary that such affixion is made.

May 23, 1805.

Thus done and decreed in the Castle of Good Hope, the 22nd April, 1793, and published and affixed the day following.

RHENIUS.

## REFORM OF THE DEBT REGISTRY.

[May 23—1805.]

### PUBLICATION.

Jan Willem Janssens, Governor and General-in-Chief, and the Court of Policy for the Colony of the Cape of Good Hope and its dependencies in South Africa, &c., &c., &c., to all and each who may see and hear these presents: Greeting, make known:

That whereas, it appears from the past records of the Government Secretary's office, that the public Debt Registries, whereby all mortgages, legal hypothecations, and notarial or secretarial obligations are made public, are by no means in such order as that would be possible safely to rely on them, inasmuch as it has sometimes been found that not only have debts standing open been long since paid, but even that unpaid debts through the ordinary affix in the margin, "*solvit*," appeared in the registry as already liquidated, that hence, repeatedly, very great uncertainty and confusion, and besides ruinous lawsuits, must arise between the several inhabitants of the Colony, and, in addition, distrust in the public Debt Registry be created, by which the certainty of ownership and mutual confidence in private transactions would be weakened; that these same causes in the year 1793, led the Government of the day to issue a publication on the 23rd of April of that year to reform the abuses which had crept in, and to establish the public Debt Register on a more certain footing for the future; that this useful work was immediately begun and further accurately set forth, until, in the year 1795, it became necessary to stop it temporarily, on account of the attack on the Colony by the English, and after the surrender of the Colony it wholly ceased; that the manner in which the work was begun and continued was in every respect of a good tendency, and therefore, could at present be usefully proceeded with, were it not that from the time which has elapsed and during which the old Debt Registers have been continued, an entire retracing of steps and revision thereof became necessary; that the revision is the more necessary, because the increasing population of the Colony has enlarged the utility and the great importance of accurate public Debt Registers; while, on the contrary, the continuance of the present renders the evil, which has crept in, daily less capable of cure, and more and more endangers the certainty of ownership, hypothecs, &c.:

Preamble.

May 23, 1805.

Now, therefore, the Governor and Council, in order to effectually provide herein, have considered it necessary to cause the public Debt Register to be revised with all possible accuracy, and thereafter to be brought into such order, that not only all uncertainty concerning the present registered debts may be removed, but in future, the danger of uncertainty and confusion as far as may be possible shall be prevented. And now, therefore, to this end, resolved to order and decree, and order and decree by these presents :

First commission appointed.

1. That during the ensuing months of June, July, and August, a Commission, consisting of a member of the Court of Policy, a member of the Court of Justice, and a member of the Colonial Orphan Chamber, expressly to be appointed thereto by these bodies respectively, shall twice a week attend in the Government Court-hall in the Castle, at such times as they among themselves shall agree and shall make known to the public, in order to examine whether the "Kusting Brieven," "Schepenen"—Orphan Masters—and Bank-Obligations, and likewise, other public writing acknowledgements of debt are, or are not duly registered.

Bonds to be exhibited to the commission.

2. That for this purpose all holders of such bonds of which it is here customary to give notice at the public Debt Registry, shall be bound to exhibit the same, or to cause the same to be exhibited by duly qualified persons on the specified days to this Commission, in order to be compared with the Debt Register.

Certificate on bonds duly registered.

3. That the Commission shall, in the case of such bonds as they shall find to be properly registered, make known the finding on the back, or at the foot of all such bonds, under the signature of two members of the said Commission.

Registration of bonds not duly registered.

4. That whenever, on examination, any bonds are found to be unentered in the Debt Registry, the Commission shall redress this omission by formally making the registration, and in proof hereof, shall note on the back, or at the foot of the exhibited bond, with the addition of the signatures of the entire Commission, that the bond is registered, with the addition of the date of the exhibition.

New debts register.

5. That after the expiration of the aforesaid period of three months, the examination shall be held as concluded, and that then the Governor and Council shall nominate a second Commission in order to frame an entirely new Debt Register, in which shall only be entered such bonds as have been exhibited to the first Commission.

Bonds not exhibited deprived of preference.

6. That all bonds not exhibited to the first Commission, and consequently not entered in the new Debt Registry, shall be deprived of the right of preference, unless the holders before the end of the present year shall, in a satisfactory manner, have caused it to appear to the Court of Justice, that they were prevented for reasons valid in law from satisfying this order, in which case the Commissioners of the Court of Justice who attend weekly for the

purpose of having acts passed before them, shall be authorized to enter such bond in the new register.

May 23, 1865.

7. That in future all registrations shall be signed by the Master of the Records and the first clerk in the Government Secretary's office, as likewise, all cancellations, which shall not be effected as heretofore by merely placing the word *solvit* in the margin of the registration, but, on the contrary, shall be effected by a proper counter entry on the opposite page of the Debt Registry, so that each debtor therein shall henceforth have a proper *debit* and *credit* side.

How registrations and cancellations are to be signed.

8. That in like manner as takes place in the Loan Bank, according to the fifth article of the instructions thereon, immediately after the registration, the hypothec or burden shall be notified by endorsement by the Master of the Records and first clerk on the deed of transfer.

Endorsement of hypothec on title deed.

9. [This section has reference to the mortgage of slaves and is no longer applicable.]

10. That during the session of the first Commission, and on the days to be by it fixed, every person shall be at liberty to inquire of the Commission for what debts he appears liable according to the Debt Registry; and if it be found that any person appears indebted in any amount which he, in a satisfactory manner, proves to the Commission to have been paid by him, on exhibition of such proof the debt shall be at once cancelled, which cancellation, in like manner as all further proceedings of the Commission, shall take place *gratis*.

Cancellation of debts proved to have been paid.

And whereas, it hath further appeared to the Governor and Council that the registration of *kinder-bewyzen*, and antenuptial contracts, although expressly ordered by a proclamation of the 23rd April, 1793, does, notwithstanding, not take place universally, by which means it could easily occur that those ignorant of the legal hypothec might be misled in the valuation of the mortgage on which it is desired to raise money either with the Loan Bank or the Orphan Chamber, or with private individuals, they have resolved to order and decree, and order and decree by these presents.

Registration of *kinder-bewyzen* and antenuptial contracts.

11. That all those persons who have already obtained legal hypothecs on the property of their spouses by virtue of antenuptial contracts, shall also give notice thereof to the *first* Commission during the period fixed by article 1, in order that the same course may be followed as in respect to conventional hypothecs, under the penalty that those who do not give such notice shall be deprived of the right of legal hypothec, to which they would be otherwise entitled, and that consequently all conventional special hypothecs which are constituted after that date and are duly registered, shall be preferred to anterior non-registered antenuptial contracts.

Conventional special hypothecs duly registered preferent to anterior non-registered antenuptial contracts.

12. That under a like penalty, all antenuptial contracts which

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May 23, 1805.

shall be passed after this date must be publicly notified in the Debt Registry at the Government Secretary's Office. <sup>(1)</sup>

Notice of deeds of Kinderbewys to be given by the Notaries before whom they are executed, within twenty-four hours of their execution.

13. That of all deeds of Kinderbewys, whether passed at the Orphan Chamber, or before a notary, or secretary and witnesses, due written notice shall be given within twenty-four hours after the execution of the deed by the secretary of the Orphan Chamber, the respective notaries, and the secretaries of the country districts, signed by the person before whom the deed has been passed, under penalty that in case of omission of such notices, the officers named in this article shall be responsible for all damages which the orphans may suffer through their negligence. The notices of the secretaries in the country districts shall be prepared within twenty-four hours, in order to be transmitted with the first safe opportunity that offers to the capital; and

Widowers and widows not entitled to publication of banns before due registration of the Kinderbewys.

14. That, finally, in order to secure the interests of minors by all possible means, the commissioners of marriage causes may grant no publication of banns of marriage to widowers, or widows, having children of a former marriage, unless it satisfactorily appears to them, that not only in accordance with the nineteenth article of the Marriage Ordinance proper security shall be given, but that the deed passed thereof has been duly registered at the office of the Government Secretary. <sup>(2)</sup>

We order and command the Court of Justice, the Attorney-General, and all whom it may concern, to obey and cause to be obeyed, this our publication, with all punctuality, for we have found such necessary for the welfare of this Colony.

And that no one may plead any ignorance hereof, this shall be published and affixed in all places where it is customary to make publication and affixion.

Thus resolved and decreed in the Court of Policy, at the Cape of Good Hope, the 15th May, 1805, and published the 23rd thereafter.

Governor and Council aforesaid.

J. W. JANSSENS.

By order,

J. A. TRUTER, Sec.

<sup>1</sup> See § 2 Act 21 of 1875 (Marriage.)

<sup>2</sup> See also § 22 Ord. 105 (Estates); § 1, Act 12 of 1856 and § 6, Act 9 of 1882 (Marriage).

No. 39.—Sd. Richard Bourke.] [January 19, 1828.

Ordinance of His Honour the Lieutenant-Governor in Council for enabling the Registrar of Deeds to certify and enregister all such Acts, Transfers, Mortgages, and other deeds, as were heretofore certified and enregistered before two Members of the Court of Justice and the Colonial Secretary.

WHEREAS heretofore in this Colony, deeds of transfer of landed property, mortgages, and other like acts and instruments, have been certified and enregistered before, and subscribed by, two members of the Court of Justice, in the presence of the Colonial Secretary, before the said deeds and instruments could be duly registered; and whereas in consequence of the abolition of the Court of Justice, the said registration can no longer be in such manner carried on: Be it therefore enacted, by His Honour the Lieutenant-Governor in Council, that from and after the passing of this Ordinance, and until further and other provision be made in this respect, all such deeds, of any and whatsoever kind, as have been heretofore certified and enregistered as aforesaid shall be certified and enregistered before and subscribed by, the Registrar of Deeds; and all such deeds so certified by the said Registrar, shall be enregistered and be and become as valid and effectual, to all intents and purposes, as if the same had been certified and enregistered before, and subscribed by, two members of the Court of Justice, in the presence of the Colonial Secretary.

Preamble.

All deeds to be certified and enregistered by the registrar of deeds.

2. And whereas the Colonial Debt Registers have heretofore been kept at the office of the Colonial Secretary, and entries made therein, from time to time, by one of the clerks of that office: Be it therefore enacted, that from and after the passing of this Ordinance, the said registers shall be kept by, and all entries shall be made therein by and under the direction of, the said Registrar of Deeds.

Registers of debt to be kept.

No. 2.—Sd. B. D'Urban.] [May 26, 1836.

Ordinance for rendering valid and effectual, all such Acts, Transfers, Mortgages, and other Deeds, as have been made and passed in the Register Office, between the 16th day of October, 1835, and the 31st day of March, 1836, and which have been certified and enregistered before and subscribed by Jan Godlieb Brink, Esq., and William John Mackrill, Esq., and to authorize and empower the Governor to appoint an Acting Registrar of Deeds.

WHEREAS the Hon'ble Joseph Harvey, Esq., the Treasurer and

Preamble.

Ord. 2—1836.

Accountant-General and Registrar of Deeds of this Colony, obtained leave to absent himself from the duties of his office, and did on the 16th day of October, 1835, retire from the performance of his said duties, and the duties required to be done and performed by the Registrar of Deeds have, from the said 16th day of October, 1835, until the 31st day of March, 1836, been done and performed by Jan Godlieb Brink, Esq., and William John Mackrill, Esq.: And whereas doubts have arisen as to the validity of all such acts and deeds as were certified and enregistered before and subscribed by the said Jan Godlieb Brink, Esq., and William John Mackrill, Esq., between the said 16th day of October, 1835, and the 31st day of March, 1836; and it is expedient to declare and establish the legality and validity of all such acts and deeds:

Deed certified during absence of registrar of deeds validated.

1. 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 acts, transfers, mortgages, and other deeds which were certified and enregistered before and subscribed by the said Jan Godlieb Brink, Esq., and William John Mackrill, Esq., respectively, as performing the duties which ought to have been done and performed by the Registrar of Deeds between the 16th day of October, 1835, and the 31st day of March, 1836, shall from the respective times of their having been so certified, enregistered, and subscribed, be and be deemed and taken to be as legal, valid and effectual, to all intents and purposes as if the same had been certified and enregistered before and subscribed by the Registrar of Deeds for this Colony.

Acting registrar may be appointed.

2. And be it further enacted, that it shall be lawful for the Governor, when and so often as occasion shall require, in case of the absence, sickness, or other disability of the Registrar of Deeds for the time being, to appoint some other fit and proper person to act as, and in lieu of, the said Registrar; which appointment shall be duly notified in the *Government Gazette*; and all acts, transfers, mortgages, and other deeds, which shall be certified and enregistered before, and subscribed by, such person, during the subsistence of such his appointment, shall be, and be deemed and taken to be as legal, valid, and effectual, to all intents and purposes, as if the same had been certified and enregistered before and subscribed by the Registrar of Deeds for this Colony.

No. 14—Sd. P. Maitland.]

[August 28, 1844.

Ordinance for the better Regulation of the Office of the Registrar of Deeds. (1)

Preamble.

WHEREAS it is expedient to make provision for authorizing all persons who may be desirous so to do to prepare, or cause to be

<sup>1</sup> For admission of Conveyancers see under "Practitioners."

prepared, by such persons, qualified in the manner hereinafter provided, as they shall select, certain of the deeds now drawn or prepared exclusively in the Deeds Registry Office of this Colony; and to regulate the fees to be hereafter charged and taken in the said office: 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, it shall and may be lawful for the Registrar of Deeds for the time being, or the officer for the time being acting as such, and he is hereby required, duly to register all fit and proper transfer deeds and deeds of hypothecation, now exclusively prepared in the said office, which shall be prepared or drawn by any advocate of the Supreme Court of the Colony, or any person authorized as in the next succeeding section of this Ordinance mentioned, but not by any other person or persons whomsoever; and the said Registrar may require proof, by signature or otherwise, as he shall think fit, that every such deed as aforesaid, tendered for registration, has been prepared by some person qualified as aforesaid.

2. [Superseded by Act 12 of 1858 § 8.]

3. [Superseded by § 2 Act 20 of 1884.]

SCHEDULE OF FEES. [Repealed by Act 20 of 1884. See Stamps and Licences.]

Ord. 27—1846.

Preparation of transfer deeds and deeds of hypothecation.

No. 27—Sd. P. Maitland.]

[October 3, 1846.

### Ordinance for amending Law relative to Conventional Hypothecations.

WHEREAS it is found that parties to whom, or in whose favour, mortgages or hypothecations, as well general as special, have been passed, sometimes abstain from registering the same against their debtors, until the increasing embarrassments of such debtors, or other reasons, render it necessary to secure a preference over other creditors, who may have dealt with such debtors in total ignorance, that any such mortgages or hypothecations were in existence: And whereas such a practice may be used so as to cover fraud, and is one which tends to defeat the objects or limit the advantages of the Debt Registry of this Colony, and which should therefore be suppressed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every deed or instrument of mortgage or hypothecation, commonly called a general bond, executed after the commencement and taking effect of this Ordinance, shall, if executed by the debtor or mortgagor within the limits of the municipality of Cape Town, be tendered for registration in the Deeds Registry office within the space of seven days next after the

Preamble.

Registration of general bonds within seven days after execution in Cape Town, within fourteen days in western divisions, within twenty-eight days in eastern divisions.

598 DEEDS REGISTRY (CONVENTIONAL HYPOTHECATIONS).

Ord. 27—1846.

day of the execution thereof; and if so executed elsewhere within the limits of the Western Division of this Colony, shall be tendered as aforesaid within the space of fourteen days next after such execution as aforesaid; and if so executed within the limits of any of the Eastern Districts, shall be tendered as aforesaid within the space of twenty-eight days next after such execution as aforesaid; and no such deed or instrument which shall be tendered for registration after the expiration of the term hereinbefore limited for the tendering of the same shall be (except as in the next succeeding section is excepted) registered, and if registered such registration shall be null and void. Provided always, that nothing in this Ordinance contained shall be deemed or taken to extend to any deed or instrument executed elsewhere than in any of the places aforesaid, nor to deprive any deed or instrument executed within any of the said places of any force or effect which though unregistered, it may by law possess. Provided also, that nothing in this Ordinance contained shall be construed so as to entitle any instrument to be registered, which instrument would not by law be now entitled to registration.

Order by judge on proof of absence of fraud or neglect of registration after lapse of due time.

2. And be it enacted, that if, in any case, the occurrence of peculiar circumstances shall prevent any such deed or instrument as aforesaid, which should have been tendered for registration within some one of the certain times or spaces aforesaid, from being so tendered, it shall and may be lawful for any person whom it shall concern to apply to any Judge of the Supreme Court for an order directing the Registrar of Deeds to register the said deed or instrument, notwithstanding the time or space aforesaid shall have elapsed, and such judge, upon being satisfied by the person applying, that the delay has not arisen from fraud or neglect, may, should he think fit, make such order; and thereupon the Registrar of Deeds shall register such deed or instrument, and such registration and the effect thereof shall be taken and judged of precisely as if this Ordinance never had been passed.

Insertion of date of execution.

3. And be it enacted, that every such deed or instrument as aforesaid, executed as aforesaid within any of the places aforesaid shall, in some part or portion thereof, set forth the date and place of the execution thereof; and if any notary public, or any other person whomsoever, shall, knowingly and wilfully, insert or set forth, in any such deed or instrument, any false or erroneous date or place, such notary public, or other person, shall, for such offence forfeit any sum not exceeding one hundred pounds, and not less than ten pounds, to be recovered for his own use, with costs of suit, by any person suing in any competent Court for, the recovery of the same.

Penalty on notary inserting false date.

Necessity of express words and maximum amount in deeds to cover future advances.

4. And whereas it is expedient that notice, as particular as possible, should be given upon the face of every deed or instrument of hypothecation of the amount which such hypothecation is intended to secure; and whereas as often as such deeds or instru-

No. 3—1865.

ments are framed so as to cover or secure future debts or advances to an indefinite amount, no such notice is conveyed, and inconveniences may thence result: and whereas it is expedient to amend the law in this respect: Be it enacted, that no deed or instrument of hypothecation, whether general or special, executed at any time after the commencement and taking effect of this Ordinance, shall be of any force or effect to give any preference or priority to the payment of any advances, debts, or demands, made or accruing after the date of the registration of such deed or instrument, unless it shall be expressed in such deed or instrument, that the same is meant or intended to cover or secure future advances, debts, or demands generally, or some particular description thereof to be in the said deed or instrument described, and unless also some certain sum shall be expressed in such deed or instrument as a sum beyond which such future advances, debts, or demands, shall not be deemed to be covered or secured by the hypothecation made or created by such deed or instrument: Provided always, that nothing herein contained shall be construed so as to give validity or effect to any deed or instrument or any part of any deed or instrument which before this Ordinance would have been invalid or ineffectual.

5. And be it enacted, that every such deed or instrument as aforesaid, which shall have been executed before, but shall remain unregistered upon the day of the commencement and taking effect of this Ordinance, shall be tendered for registration within the space of one month next after such day, and if not so tendered shall not be registered, or if registered, such registration shall be null and void. Provided always, that the provisions in the second section of this Ordinance contained shall apply to every such last-mentioned deed or instrument, when and as often as the occurrence of peculiar circumstances shall prevent the same from being tendered for registration within the said space of one month.

Registry within  
one month of deeds  
already executed.

6. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Non-extension to  
Natal.

7. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking  
effect.

Act 3—1865.]

\* \* \* \* \*

16. Nothing in this or any other Act or Ordinance which shall be in force in this Colony at the time of such incorporation shall be construed so as to introduce into that part of the Colony formed by such incorporation the operation of the Deeds Registry of the Cape of Good Hope; and the Deeds Registry of British Kaffraria shall, in regard to that part of the Colony formed by such incorporation, remain and be of the same force and effect after such

Deeds registry of  
British Kaffraria to  
remain unaltered.

No. 39—1877.

incorporation as before such incorporation ; and no deed of transfer or hypothecation executed by any person domiciled in that part of the Colony formed by such incorporation shall be registered otherwise than in the local Deeds Registry there established, or, if registered elsewhere, shall derive any benefit from such registration<sup>(1)</sup>.

\* \* \* \* \*

Act 39—1877.]

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Deeds Registry,  
Griqualand West, to  
remain unaltered.

29. Nothing in this or any other law which shall be in force in this Colony at the time of such annexation as aforesaid shall be construed so as to introduce into that part of the Colony formed by such annexation, the operation of the Deeds Registry of the Cape of Good Hope : and the Deeds Registry of the said province shall, in regard to that part of the Colony formed by such annexation, remain and be of the same force and effect after such annexation as before such annexation ; and no deed of transfer or hypothecation executed by any person domiciled in that part of the Colony formed by such annexation shall be registered otherwise than in the local Deeds Registry there established, or if registered elsewhere, shall derive any benefit from such registration<sup>(1)</sup>.

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## DEFENCE.

- |                                                   |                                                          |
|---------------------------------------------------|----------------------------------------------------------|
| 1. Act 11—1880, (Colonial Forces, Discipline).    | 7. Act 9—1878, (Colonial Forces, Cape Mounted Riflemen). |
| 2. „ 24—1883, ( do. Command).                     | 8. „ 5—1878, ( do. Yeomanry).                            |
| 3. „ 18—1885, ( do. Board for Trial of Offences). | 9. „ 7—1878, ( do. Burglers and Levics).                 |
| 4. „ 16—1878, ( do. Pensions).                    | 10. „ 4—1884, ( do. ).                                   |
| 5. „ 15—1880, ( do. Artillery).                   | 11. „ 10—1882, ( do. Volunteers).                        |
| 6. „ 7—1881, ( do. Infantry).                     | 12. „ 17—1856, (Services of Military Pensioners).        |

No. 11—1880.]

[July 29, 1880.

## ACT

To Provide for the Better Maintenance of Discipline in certain Colonial Corps while on Active Service. <sup>(2)</sup>

Preamble.

WHEREAS it is necessary for the safety of the Colony that discipline and good order should be maintained in the Colonial

<sup>1</sup> See § 8 Act 21, 1875 (Marriages). For full text of this Act see Annexation.

<sup>2</sup> In case of war, police force may be employed in defence of Colony, and shall be subject to provisions of this Act, § 7, Act 12—1882 (Police).

forces when called out for active service in time of warfare or disturbance of the public peace, and that mutiny, desertion, and other disgraceful offences should be rigorously dealt with: And whereas the means which at present exist for maintaining such discipline and good order in various of the Colonial forces are wholly inadequate for the purpose, and it is desirable to render such means more effectual: 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:—

No. 11—1880.

1. All members of mounted yeomanry regiments, all volunteers, all burghers, all members of Colonial commissariat or transport forces attached to a field force, and all members of native levies, when called out for active service within this Colony or beyond the borders thereof, who may be charged with any of the offences in the schedule hereto, shall be tried by and before the Court of the Resident Magistrate of the district in which such offence has been committed, or a board of officers as hereinafter provided, and shall upon conviction be liable to a fine not exceeding £10, and in default of payment thereof to be imprisoned with or without hard labour for any period not exceeding six months unless such fine be sooner paid, or to be imprisoned without the infliction of any fine for any period not exceeding six months, with or without hard labour, or to both such fine and imprisonment.

Offences in schedule to be tried by resident magistrate or board of officers.

Penalties.

2. Upon any member of any of the said forces being charged with having committed any of the said offences, the charge shall be forthwith reported to the officer in command of the district within which the offender shall be serving, or in his absence to the senior officer of the forces with which the offender shall be then serving, and such officer shall, having regard to the nature and magnitude of the offence, direct in writing whether the said offender shall be proceeded against before the said Court of Resident Magistrate or board: Provided that nothing herein contained shall prevent the said officer to whom such report shall be made as aforesaid, from ordering the discharge from custody of any prisoner in case it appears to him that there are not sufficient grounds for putting such prisoner upon his trial; and if the proceedings are directed to be before a Court of Resident Magistrate as aforesaid, they shall be in all respects the same as in the case of an ordinary offender or supposed offender against the law, and the said offender shall be in the same plight and condition as any other person charged with any criminal offence.

Members charged with offences to be reported to officer commanding district

Power of commanding officer to order discharge of accused.

3. The board hereinbefore mentioned shall consist of not less than three officers, or in case the offender be under the rank of a commissioned officer, of not less than two officers and one non-commissioned officer, who shall be selected and summoned by the officer in command of the district within which the offender shall be serving, or in his absence by the senior officer of the forces with

Constitution of board of officers.



No. 11—1880.

which the offender shall be then serving. The senior officer amongst the members of the board so selected and summoned as aforesaid, shall be the president of such board, and the decision of the majority of the members of such board shall be deemed to be the decision of such board: Provided that, in case the members of the said board shall be equally divided in opinion, the decision of the president shall be deemed to be the decision of the board: Provided, further, that if there be any officer, or in case the offender be under the rank of a commissioned officer as aforesaid, any non-commissioned officer, of the branch of the Colonial forces to which the offender belongs, who, without delay or detriment to the service, may be selected and summoned as aforesaid to act upon such board, such officer, or non-commissioned officer, as the case may be, shall, unless he be the person making the charge or be summoned as a witness at the hearing of such charge, form one of the said board, and if no such officer or non-commissioned officer be available as aforesaid, or if every such officer or non-commissioned officer shall have made the charge or be summoned as a witness as aforesaid, then the president of the said board shall report that circumstance specially in the proceedings.

Mode of proceeding at trial.

4. The proceedings before and at any trial by a board as aforesaid, shall, as near as may be, be the same as those from time to time prescribed as to criminal cases in a Court of Resident Magistrate; and all the evidence which may be given before such board shall be taken down in writing by the president thereof, by whom also the witnesses shall be duly sworn; and any person so sworn, who shall wilfully and corruptly give false evidence before any such board, shall be deemed to be guilty of the crime of perjury, and upon conviction thereof, shall suffer any punishment by law provided for that crime.

How attendance of witnesses to be compelled.

5. Every person who may be required to give or produce evidence in any case pending before any such board shall be summoned, in writing, by any officer of the forces with which the offender shall be then serving; and all witnesses so duly summoned who shall not attend, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or not produce the documents under their power or control required to be produced by them, or to answer all such questions as the said board may legally demand of them, shall be liable to be dealt with by such board in like manner as if such witness had been a witness duly summoned to appear before a Resident Magistrate in a criminal case pending in the Court of such Resident Magistrate.

After sentence, proceedings to be transmitted to Supreme or Eastern Districts Court.

6. When and as often as any such board as aforesaid shall sentence any offender under this Act to be imprisoned, with or without hard labour, for any period exceeding seven days, or to pay a fine exceeding five pounds, the president of such board shall forthwith, after pronouncing such sentence, transmit the original proceedings in the case, together with such remarks, if any, as he

may desire to append, to the Registrar of the Supreme Court, or if the trial has taken place within the jurisdiction of the Eastern Districts Court, to the Registrar of that Court; and the provisions of the 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, *mutatis mutandis*, extend and apply to such proceedings as if the same had been proceedings in a case decided by a Court of Resident Magistrate which, under the said forty-seventh section, would have had to be sent for review by a judge of one of the superior Courts.

7. All offenders arrested for any offence under this Act, and all offenders sentenced to imprisonment by any board as aforesaid, may be imprisoned in any building set apart as a guard-room or prison by order of the officer commanding: Provided that, in case the sentence shall exceed fourteen days' imprisonment with or without hard labour, the person convicted shall be removed to the nearest public gaol, there to undergo such sentence, and when so removed he shall be in the same plight and condition as if the sentence had been a sentence of one of the ordinary courts of law of this Colony: And provided also, that so long as any man shall be imprisoned in any guard-room or prison as aforesaid, the same shall as to such offender be deemed to be a public gaol, and the prisoner shall be deemed to be a prisoner confined therein within the meaning of the Ordinance No. 24 of 1847, intituled "Ordinance for improving the Gaols of this Colony;" but every board aforesaid and the Resident Magistrate of the district shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such guard-room or prison as by the Ordinance aforesaid are given to the Resident Magistrate of the district as to the public gaols within his district.

Where offenders to be imprisoned.

8. Nothing in this Act contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Act in all cases in which he would by law, without this Act, be liable to such prosecution; but no member of any of the said forces acquitted or convicted of any crime or offence under the provisions of this Act, shall be liable to be again tried for the same crime or offence: Provided that nothing herein contained shall prevent a member of any of the said forces who has been acquitted or convicted from being dismissed from the said force or reduced in rank therein.

This Act not to be a bar to other legal proceedings.

9. Whenever it shall be necessary to enforce enactments, provisions, and regulations in this Act mentioned, in any place situate beyond the borders of this Colony, the sentences, fines, and penalties which shall be pronounced and inflicted for the purpose of such enforcement shall be as valid and effectual, and shall be carried into effect in the same manner as if the same had been pronounced or inflicted within this Colony.

Sentences and other proceedings to be valid beyond the colonial border.

No. 11—1880.  
Short title.

10. This Act may be cited as the “Colonial Forces Discipline Act, 1880.”

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SCHEDULE OF OFFENCES REFERRED TO IN THIS ACT.

1. Beginning, inciting, causing, or joining in any mutiny or sedition.
2. Being present at any mutiny or sedition, and not using his utmost endeavour to suppress the same.
3. Conspiring with any other person to cause a mutiny or sedition.
4. Knowing of any mutiny or sedition, and not without delay giving information thereof to his immediate commanding officer.
5. Striking or offering violence, or using threatening language to a superior officer in the forces, being in the execution of his duty.
6. Disobeying the lawful command of a superior officer in the force.
7. During the period for which he shall be engaged in active service in any of the said forces deserting from the same or refusing to serve therein, or being absent without leave or advising or persuading any other member of the said forces to desert from the same, or knowingly receiving and entertaining any deserter, and not immediately on discovery giving information to his commanding officer, or taking other means to cause such deserter to be apprehended.
8. Misbehaving before the enemy, or shamefully abandoning or delivering up any fort, post, camp, station, or guard committed to his charge, or which it was his duty to defend, or inciting any other person so to do.
9. Discharging any firearms, making any signal, or by other means whatsoever, intentionally occasioning false alarm in action, camp, or quarters.
10. Casting away his arms in presence of the enemy.
11. Being, while a sentinel, found sleeping on his post, or leaving the same before being regularly relieved.
12. Disclosing, verbally or in writing, the numbers, position or preparations of the force or forces to which he is attached, and by such disclosure producing effects injurious to the service to which he belongs.
13. Being in the command of a guard, piquet, or patrol, and without proper authority releasing any prisoner committed to his charge or suffering him to escape.
14. Being found drunk on any duty under arms.
15. Malingering, feigning, or producing disease or infirmity, or wilfully maiming or injuring himself or any other member of the force, whether at the instance of such other member or not, or causing himself to be maimed or injured by any other person, with intent thereby to render himself or such other member unfit for service.
16. Taking any bribe or gratuity whatever with reference to any duty imposed upon him.
17. Selling, pledging, wilfully damaging, destroying, or otherwise disposing of any horse, saddle, bridle, gun, clothing, or ammunition, or other article of equipment, which by the regulations of the said force for the time being he shall be required to keep and possess.

No. 24—1883.]

[September 27, 1883.

## ACT

To Provide for the command of the Colonial Forces during any vacancy in the office of Commandant-General <sup>(1)</sup> and for the amalgamation of the Wings of the "Cape Mounted Riflemen."

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. During any vacancy in the office of Commandant-General of the Colonial Forces all duties and powers which are by any law imposed upon, vested in, or discharged by such Commandant-General are hereby imposed upon, and vested in, and shall be discharged by such officer as shall for the time being be, or be by the Governor appointed to act as, senior officer of the Colonial Forces. During vacancy in Office of Commandant-General senior officer to perform duties.

2. The Governor may make regulations for or in respect of the performance of such duties by the senior officer, and for furnishing such reports and returns by the senior officer, or by other officers to him, as may be deemed necessary. Governor may make regulations respecting duties, reports, and returns.

3. Notwithstanding anything contained in the "Cape Mounted Riflemen Act, 1878," the Governor may constitute the force called the "Cape Mounted Riflemen" one division, and when so constituted all duties and powers by the said Act directed to be performed and exercised by the Field Officer commanding either wing thereof shall be performed and exercised by the officer then commanding the said force. Wings of C.M. Riflemen may be constituted one division.

4. This Act may be cited as the "Colonial Forces Command Act, 1883." Short title.

No. 18—1885.]

[August 7, 1885.

## ACT

To Amend in certain respects the provisions of the "Cape Mounted Riflemen Act, 1878," and of the "Cape Infantry Act, 1881."

WHEREAS it is expedient to amend in certain respects the provisions of the Act No. 9 of 1878, commonly called the "Cape Mounted Riflemen Act, 1878," and of the Act No. 7 of 1881, commonly called the "Cape Infantry Act, 1881": Be it enacted by the Governor of the Cape of Good Hope, with the advice and Preamble.

<sup>1</sup> See § 5, Act 5, 1878, *infra*.

606 DEFENCE (CAPE MOUNTED AND INFANTRY FORCES).

No. 18—1885.

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

Officer of either force qualified to serve on board for trial of offences of members of other force.

1. Notwithstanding anything to the contrary contained in either the Act No. 9 of 1878, or the Act No. 7 of 1881, any officer of either the Cape Mounted Riflemen, or the Cape Infantry, who would under the twelfth section of the first or the fourteenth section of the second of the Acts abovementioned be qualified to be selected and summoned by any Field Officer of the force in which he serves, to serve upon either of the boards mentioned in the said sections, shall also be qualified to be selected and summoned by any Field Officer of the other of the said two forces to serve upon the board, to serve upon which each Field Officer shall by either of the said sections be authorized and empowered to select and summon officers of the force under his command, and any officer so selected and summoned shall thereupon be qualified to serve upon such board as though he actually served in such other force.

Jurisdiction of F.O. commanding the force over offences committed by members of others.

2. Any Field Officer commanding either of the aforesaid forces, shall, in the absence of any Field Officer commanding the other force, be qualified and empowered to exercise all and singular the powers of jurisdiction over offences committed by members of such other force conferred upon such absent Field Officer by the provisions of either of the aforesaid Acts or of this Act.

Military secretary has jurisdiction and seniority in absence of field officers commanding.

3. The Military Secretary for the time being of the Defence Department of the Colony shall, in the absence of any Field Officer commanding either of the said forces be qualified and empowered to exercise all and singular the powers of jurisdiction over offences committed by members of either force conferred upon any such absent Field Officer by the provisions of either of the aforesaid Acts or of this Act, and the said Military Secretary shall at all times be qualified, *ex-officio*, to sit upon any board constituted for the trial of such offences, and shall after any Field Officer commanding either of the said forces be deemed and taken to be the senior officer present.

*Ex-officio* a member of board.

Short title.

4. This Act may be cited as the "Cape Mounted and Infantry Forces Amendment Act, 1885."

No. 16—1878.]

[August 2, 1878.

ACT

To Provide Pensions, in certain cases, for Members of the Colonial Volunteer and Colonial Yeomanry Forces, and the Widows and Families of such Members.

Preamble.

WHEREAS it is desirable to make provision for granting pensions, in certain cases, to the widows and families of members of the

Colonial Volunteer Forces <sup>(1)</sup> and the Colonial Yeomanry Force, <sup>(2)</sup> and in certain other cases to the members of such forces individually: 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. 16—1878.

1. It shall and may be lawful for the Governor, acting by and with the advice of the Executive Council, and subject to the approval of Parliament, to assign to the widow, widow and family, or family of any member of a Volunteer Corps, or of the Mounted Yeomanry Force of this Colony, respectively, who may be killed in action or during active service, and to any member of any such corps or of such force, respectively, who may receive during his service any wound or injury permanently injurious in its consequences, a pension or allowance of not exceeding seventy pounds per annum.

Governor may assign pensions to certain persons not exceeding £70 per annum.

2. This Act may be cited as the “Volunteer and Yeomanry Pension Act, 1878.”

Short title.

No. 15—1880.]

[July 29, 1880.

## ACT

To provide for the Establishment and Regulation of a force to be called “The Cape Field Artillery.”

WHEREAS it is expedient that the defensive forces of the Colony should be strengthened by the establishment of a sufficient force of field artillerymen, and that efficiency and discipline should be maintained in such force when established as aforesaid: 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:—

Preamble.

1. The Governor shall cause such number of fit and able men as Parliament shall, from year to year, provide for, to be embodied to serve as a field-artillery force within the said Colony or beyond the borders thereof as occasion may require.

Power to embody field artillery.

2. The force so embodied shall be called “The Cape Field Artillery.”

Name of force.

3. It shall and may be lawful for the Governor, as occasion shall require, to appoint and issue Commissions to a sufficient number of officers of such rank as may be required for the purposes of such force, and all such officers shall be under and subject to the orders of the Commandant-General of the Forces of this Colony.

Officers to be appointed by Governor.

<sup>1</sup> See Act 10—1882, *infra*.

<sup>2</sup> Act 5—1878, *infra*.

No. 15—1880.  
Oath of allegiance,  
&c., to be taken.

4. Every person who shall be enrolled in the said force shall be bound to serve for five years, and shall, upon enrolment, be required to pass a medical examination, and take the following oath or make an affirmation to the same effect before some duly authorized person, that is to say:—"I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law, and that I will faithfully serve in the Cape Field Artillery for five years, unless I shall be sooner discharged. So help me God." Provided always that such members of the Cape Mounted Riflemen as shall be embodied in the said force shall not be bound to serve, unless by special agreement, for a longer period than the residue of the period for which such persons may be bound to serve in the force, called "The Cape Mounted Riflemen."

Necessary arms and  
equipments to be pro-  
vided.

5. It shall and may be lawful for the Governor, from time to time, as occasion shall require, to provide pieces of artillery and other arms, ammunition, and all necessary equipment for the said force, and to procure for such force all necessary barrack and store accommodation.

Regulations to be  
made.

6. It shall and may be lawful for the Governor, from time to time, to make such regulations respecting the training, arms, accoutrements, ammunition, clothing, and equipment of such force, and respecting all other matters connected therewith, as may be required for promoting the discipline and efficiency thereof.

Certain sections of  
Act 9 of 1878, *mutatis  
mutandis*, to apply.

7. All and singular the provisions of section nine, and every subsequent section of Act No. 9 of 1878, and the schedule to the said Act shall, *mutatis mutandis*, apply to the force by this Act constituted: Provided always that the words "then commanding officer" shall be substituted for the words "field officer" or "field officers of the wing," wherever such words occur in the said Act No. 9 of 1878: Provided, further, that officers of the Cape Mounted Riflemen shall be eligible to be members of boards of officers under this Act.

Short title.

8. This Act may be cited for all purposes as the "Cape Field Artillery Act, 1880."

No. 7—1881.]

[June 25, 1881.

### ACT

To organize, establish and regulate a Force for the better  
Defence of the Colony, to be called "The Cape  
Infantry." (1)

Preamble.

WHEREAS it is expedient that the permanent armed force for the defence of the Colony should be increased: Be it therefore

<sup>1</sup> Amended by Act 18, 1885, *supra*.

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. 7—1881.

1. The Governor, with the advice of the Executive Council, shall cause such a sufficient number of fit and able men as Parliament shall from year to year provide for, to be enrolled and embodied and serve as an armed force, who shall be sworn before a Justice of the Peace to act as a military force for the defence of the Colony.

Governor may embody sufficient number of men.

2. The force so embodied shall be called "The Cape Infantry."

"The Cape Infantry."

3. Every person so enrolled as in the first section of this Act provided, shall be enlisted and bound to serve in the said force for the term of five years: and at the expiration of such period of service, it shall be competent for any such person, with the approval of the officer commanding such force, to re-enlist, and be bound to serve therein for a further period of three years.

Enlistment for 5 years and option of enlisting for 3 years further.

4. The said force shall be under the command of a competent field-officer to be styled Lieutenant-Colonel, one or more other field-officers to be styled Majors, and officers to be styled Captains, Lieutenants, and Second-Lieutenants respectively, and such other officers as may from time to time be found necessary to the discipline, training, and efficiency of the said force, and all such officers shall be under and subject to the orders and command of the Commandant-General (<sup>1</sup>) of the Forces of this Colony, to whom such field-officers shall from time to time as occasion may require, or whenever they shall be called upon so to do by the Commandant-General, report on the condition of the force under his command, and on all matters of importance connected therewith; and shall consult with and be guided by the advice of the said Commandant-General in respect of the subjects of such reports.

How force to be commanded.

5. The Governor shall, with the advice aforesaid, by warrant under his hand, appoint the several officers in the preceding section mentioned, and may from time to time displace and remove such officers and appoint others in their place as to him shall seem meet.

Governor to appoint officers.

6. It shall be lawful for the commanding officer of the said force to appoint such number of sergeants, corporals and buglers as the Governor may from time to time authorize to be appointed: Provided always that the said commanding officer, acting upon the judgment of a board of officers constituted as hereinafter mentioned shall have the power to displace or reduce to a lower rank such sergeants, corporals and buglers respectively.

Commanding officer to appoint non-commissioned officers.

7. The Governor, acting as aforesaid, shall from time to time 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 shall also direct the

Governor to make certain Regulations.

<sup>1</sup> See § 1 Act 24, 1883, *supra*.



No. 7—1881.

employment and distribution of the said force, within or without the colonial boundary, as to him shall seem meet.

Duties of the officers.

8. It shall be the duty of the field and other officers of the said force, to suppress all tumults and riots, in any part of the Colony where they may be on duty, and to assist in the defence of the Colony, and to discharge military duties in connection therewith.

Persons enrolled to pass medical examination and take oath of allegiance.

9. Every person who shall be enrolled, or who shall re-enlist in the said force shall, upon such enrolment or re-enlistment, be required to pass a medical examination and take the following oath, or make an affirmation to the same effect, before some duly authorized person, that is to say :—

“I, A. B., do swear that I will bear true and faithful allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law, and that I will faithfully serve in the Cape Infantry of the Colony of the Cape of Good Hope, for—————years unless I shall be sooner discharged.”

Governor to provide arms and accoutrements.

10. The Governor shall provide from time to time as occasion may require, arms, ammunition and all necessary equipments and camp equipage for persons enrolled in the said force.

How offenders against regulations to be tried.

11. Any member of the force who may be charged with the offence of contravening any regulation which may be made, under and by virtue of this Act, or any of the offences in the schedule hereinafter mentioned, may be tried by and before :—1. Any of the superior Courts of Law in this Colony within the jurisdiction of which such offence shall have been committed. 2. The Court of the Resident Magistrate of the district in which such offence has been committed ; or 3. A board of officers as hereinafter mentioned. And shall, upon conviction be liable to be punished as follows :—

Punishments.

1. If the conviction shall be before any of the said superior Courts, such Court may sentence the offender to be imprisoned with or without hard labour for a period not exceeding five years, or to pay a fine not exceeding twenty pounds, and, in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding one year ; or to both such fine and such imprisonment.
2. If the conviction shall be before a Court of Resident Magistrate, such Court may sentence the offender to pay a fine not exceeding ten pounds, and in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding six months ; or to be imprisoned as aforesaid without the infliction of any fine ; or to both such fine and such imprisonment.
3. If the conviction shall be by a board of officers, such board may sentence the offender as mentioned in the last preceding paragraph.

12. In case any non-commissioned officer or private shall offend against any such regulation as aforesaid, it shall be lawful for any officer commanding a company, or any officer commanding a detachment of the said force, to stop from the pay of such offender any sum not exceeding one pound, or to sentence him to imprisonment with or without hard labour for any period not exceeding fourteen days, or to sentence him to such punishment as may be provided on that behalf in any such regulation as aforesaid, or such officer may take proceedings for the purpose of such offender being tried under the eleventh section of this Act; provided that such offender shall, if he so request, have a right to have such proceedings taken instead of being tried by such officer; and provided also that any officer who shall try any offender under the provisions of this section shall forthwith after such trial forward the proceedings in, and full particulars of, the case to the field-officer commanding the said force.

No. 7—1881.

Power to stop pay of offenders and to pass certain sentences.

13. Upon any member of the force being charged with any of the offences in this Act mentioned, the charge, in case the offence shall not have been summarily dealt with under the last preceding section, shall be forthwith reported to the officer in command of the company or detachment to which such offender is then attached, who shall thereupon forthwith report the particulars of the case to the officer in command of the force, who shall having regard to the said particulars and the nature and magnitude of the offence, direct whether the offender shall be proceeded against before a board of officers as aforesaid, before the Court of Resident Magistrate having jurisdiction in the case, or (as to offences in the eleventh section hereof mentioned) before a superior Court as aforesaid: Provided that nothing herein contained shall prevent either of such officers from ordering the discharge of any prisoner in case it appears to him that there are not sufficient grounds for putting such prisoner upon his trial; and if the proceedings are directed to be before a superior Court, or before a Court of Resident Magistrate, they shall be the same in all respects as in the case of an ordinary offender or supposed offender against the law, and the said offender shall be in the same plight and condition as any other person charged with any criminal offence.

Cases not dealt with under last section to be reported to commanding officer.

14. The board of officers hereinbefore mentioned shall consist of not less than three officers of the said force, <sup>(1)</sup> of whom the field-officer commanding may be one; and the said officers shall be selected and summoned by the said field-officer. The said field-officer, if present, and if not, the senior officer present, shall be the president of such board, and the decision of the majority of the members of such board shall be deemed to be the decision of such board; Provided that, in case the members of the said board shall be equally divided in opinion, the decision of the president shall be deemed to be the decision of the board.

Constitution of board of officers.

<sup>1</sup> But see § 1 Act 18, 1885, *supra*.

No. 7—1881.  
Form of proceeding  
before such board.

15. The proceedings before and at any trial by a board of officers shall, except otherwise herein mentioned, as near as may be, be the same as those from time to time prescribed as to criminal cases in a Court of Resident Magistrate; and all the evidence which may be given before such board shall be taken down in writing by the president thereof, by whom also the witnesses shall be duly sworn; and any person so sworn, who shall wilfully and corruptly give false evidence before any such board, shall be deemed to be guilty of the crime of perjury, and upon conviction thereof, shall suffer any punishment by law provided for that crime.

Summoning wit-  
nesses.

16. Every person who may be required to give or produce evidence in any case pending before any such board of officers shall be summoned, in writing, by any officer of the said force; and any witness so duly summoned who shall not attend, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or shall not produce the documents under his power or control required to be produced by him, or to answer all such questions as the said board may legally demand of him, shall be liable to be dealt with by such board in like manner as if such witness had been a witness duly summoned to appear before a Resident Magistrate in a criminal case pending in the Court of such Resident Magistrate.

When proceedings  
to be transmitted for  
review and to what  
Courts.

17. When and as often as any such board of officers as aforesaid shall sentence any offender under this Act to be imprisoned, with or without hard labour, for any period exceeding fourteen days, or to pay a fine exceeding one pound, the president of such board shall forthwith, after pronouncing such sentence, transmit the original proceedings in the case, together with such remarks, if any, as he may desire to append, to the Registrar of the Supreme Court, or if the trial has taken place within the jurisdiction of the Eastern Districts Court, or of the High Court of Griqualand West, to the Registrar of such Courts respectively, and the provisions of the 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, *mutatis mutandis*, extend and apply to such proceedings, as if the same had been proceedings in a case decided by a Court of Resident Magistrate which, under the said forty-seventh section would have had to be sent for review by a judge of one of the superior Courts.

Where imprison-  
ment to take place.

18. All offenders arrested for any offence under this Act, and all offenders sentenced to imprisonment by an officer or board of officers as aforesaid, may be imprisoned in any building set apart as a guard-room or police prison by order of the field-officer commanding: Provided that in case the sentence shall exceed fourteen days' imprisonment with or without hard labour, the person convicted shall be removed to the nearest public gaol,

there to undergo such sentence, and when so removed he shall be in the same plight and condition as if the sentence had been a sentence of one of the ordinary Courts of Law of this Colony : And provided also, that so long as any man shall be imprisoned in any guard-room or prison as aforesaid, the same shall as to such offender be deemed to be a public gaol, and the prisoner shall be deemed to be a prisoner confined therein within the meaning of the Ordinance No. 24 of 1847, intituled "Ordinance for improving the Gaols of this Colony," but every board of officers aforesaid and the Resident Magistrate of the district shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such guard-room or prison as by the Ordinance aforesaid are given to the Resident Magistrate of the district, as to the public gaols within his district.

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19. No period during which any offender shall be imprisoned for any offence for which he shall be afterwards convicted, or during which he shall be imprisoned under a sentence of any Court or board as aforesaid, shall be reckoned for any purpose as part of the period of the service of such offender unless the Court or board aforesaid ordering such imprisonment shall otherwise direct.

Term of imprisonment not to reckon as part of service.

20. Nothing in this Act contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Act in all cases in which he would by law, without this Act, be liable to such prosecution ; but no member of the said force acquitted or convicted of any crime or offence under the provisions of this Act, shall be liable to be again tried for the same crime or offence : Provided that nothing herein contained shall prevent a member of the said force who has been acquitted or convicted from being dismissed from the said force or reduced in rank therein.

Provisions of Act not to interfere with prosecutions under the ordinary law.

21. It shall be lawful for the said field-officers commanding the said force to suspend or dismiss from his employment any non-commissioned officer or private whom they shall think remiss or negligent in the execution of his duty, or otherwise unfit for the same ; and when any such non-commissioned officer or private shall be so dismissed, or shall otherwise cease to belong to the said force, all powers and authorities vested in him by virtue of this Act shall cease and determine : Provided however, that no sentence of dismissal shall take effect unless and until the same be confirmed by the Commandant-General of the Colonial Forces.

Power of field officers to suspend or dismiss non-commissioned officers.

22. The several sections of Act No. 9 of 1878, being the "Cape Mounted Riflemen Act, 1878," numbered consecutively from 20 to 35, including both of such sections, together with the schedule of offences annexed to the said Act shall, *mutatis mutandis*, be taken to apply to the several members of the force intended to be embodied and enrolled under this Act, and shall be read as if, *mutatis mutandis*, they had been inserted herein and formed part of the provisions of this Act.

Certain Sections of Act No. 9 of 1878 to apply.

23. This Act may be cited as the "Cape Infantry Act, 1881."

Short title.

No. 9—1878.]

[August 2, 1878.

## ACT

To Organize, Establish, and Regulate a Force for the better Protection of Life and Property in the Colony, to be called "The Cape Mounted Riflemen."<sup>(1)</sup>

Preamble.

WHEREAS it is expedient that the present constitution of the force known as the "Frontier Armed and Mounted Police," should be amended and remodelled, and a new force created upon the basis thereof: 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:—

Repeal of Acts 3 of 1855, 21 of 1856, 3 of 1868, and 14 of 1875.

1. The several Acts of Parliament, being respectively No. 3 of 1855, No. 21 of 1856, No. 3 of 1868, No. 2 of 1875, and No. 14 of 1875, are hereby repealed: Provided that such repeal shall not invalidate or affect anything lawfully done under any such Acts, or under any rules or regulations duly framed under the same, previously to the passing of this Act: Provided also that such repeal shall not have the effect of discharging any person enrolled or embodied under the provisions of the said Acts respectively from any service which he may be liable to fulfil under such Acts respectively, or of infringing upon any rights acquired under such Acts as aforesaid.

## PART I.—CONSTITUTION OF THE FORCE.

Embodiment of men, and purpose thereof.

2. The Governor, with the advice of the Executive Council shall cause such a sufficient number of fit and able men, as Parliament shall, from year to year, provide for, to be embodied to serve as an armed and mounted force, who shall be sworn before a Justice of the Peace to act as a Police in and throughout the Colony, for preserving the peace and preventing robberies and other crimes, and apprehending offenders against the peace, and also as a Military Force for the defence of the Colony.

Title of the force.

3. The force so embodied shall be called "The Cape Mounted Riflemen," and the existing force known as the "Frontier Armed and Mounted Police" shall be incorporated with it and merged therein.

Force to be divided into two wings. Organization thereof.

4. The said force shall consist of two divisions or wings,<sup>(2)</sup> each of which shall be under the command of a competent field officer, to be styled Lieutenant-Colonel, and other officers, to be styled Captain and Lieutenant respectively, to be from time to time appointed as hereinafter provided, and all such officers shall be under, and subject to, the orders and command of the Com-

<sup>1</sup> Amended by Acts 24, 1883, and 18, 1885, *supra*.

<sup>2</sup> But see § 3 Act 24, 1883, *supra*.

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mandant-General (<sup>1</sup>) of the forces of this Colony, to whom such field officers shall, from time to time, as occasion may require, or whenever they shall be called upon so to do by the said Commandant-General, report on the condition of the force under their command, and on all matters of importance connected therewith; and shall consult with and be guided by the advice of the said Commandant-General in respect of the subjects of such reports.

5. The Governor, with the advice aforesaid, shall, by warrant under his hand, appoint the field officers in the preceding section mentioned, and such other officers as he may deem expedient for the general superintendence and management of the said force, saving all just rights now existing; and may from time to time displace and remove such officers and appoint others in their place, as to him shall seem meet: Provided that no officer so appointed shall be promoted to any higher grade than that to which he was first nominated, without passing a satisfactory examination in such subjects as the Governor with the advice aforesaid, shall from time to time settle and appoint, and before such examiners as the Governor, acting as aforesaid, shall from time to time nominate.

Field and other officers to be appointed by Governor.

6. The Governor, acting as aforesaid, shall, from time to time, 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 shall also direct the employment and distribution of the said force, within or without the Colonial boundary, as to him shall seem meet.

Governor to make regulations.

7. It shall be the duty of the field and other officers of the said force, to suppress all tumults, riots, affrays, or breaches of the peace, in any part of the Colony where they may be on duty, and to assist in the defence of the Colony, and to discharge military duties in connection therewith when called upon so to do.

Duty of officers.

8. The members of the aforesaid force, so sworn as aforesaid, shall (except as in the thirty-fourth section is excepted) throughout the Colony have all such powers and privileges, and be liable to all such duties and responsibilities as any police officers or constables may, by law, have or be liable to, and shall obey all lawful directions touching the execution of their office which they may from time to time receive from their officers.

Powers and privileges of the force.

## PART II.—DISCIPLINE.

9. Any member of the force who may be charged with the offence of contravening any regulation which may be made, under and by virtue of this Act, or any of the offences in the schedule hereto, may be tried by and before:—1. Any of the superior Courts of Law in this Colony within the jurisdiction of which such offence shall have been committed. 2. The Court of the

Offences and penalties.

<sup>1</sup> See § 1, *ibid.*

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Resident Magistrate of the district in which such offence has been committed; or 3. A board of officers as hereinafter mentioned. And shall, upon conviction, be liable to be punished as follows:

1. If the conviction shall be before any of the said superior Courts such Court may sentence the offender to be imprisoned with or without hard labour for a period not exceeding five years, or to pay a fine not exceeding twenty pounds, and, in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding one year; or to both such fine and such imprisonment.
2. If the conviction shall be before a Court of Resident Magistrate, such Court may sentence the offender to pay a fine not exceeding ten pounds, and in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding six months; or to be imprisoned as aforesaid without the infliction of any fine; or to both such fine and such imprisonment.
3. If the conviction shall be by a board of officers, such board may sentence the offender as mentioned in the last preceding paragraph.

Stoppage of pay in certain instances.

10. In case any non-commissioned officer or private shall offend against any such regulation as aforesaid, it shall be lawful for any officer commanding a troop, or any officer commanding a detachment of the said force, to stop from the pay of such offender any sum not exceeding one pound, or to sentence him to imprisonment with or without hard labour for any period not exceeding fourteen days, or to sentence him to such punishment as may be provided on that behalf in any such regulation as aforesaid, or such officer may take proceedings for the purpose of such offender being tried under the ninth section of this Act; provided that such offender shall, if he so request, have a right to have such proceedings taken instead of being tried by such officer; and provided also that any officer who shall try any offender under the provisions of this section shall forthwith after such trial forward the proceedings in, and full particulars of, the case to the field officer commanding the wing in which such offender is serving.

Offences not summarily dealt with to be reported and proceedings thereupon.

11. Upon any member of the force being charged with having committed any of the offences in this Act mentioned, the charge, in case the offence shall not have been summarily dealt with under the last preceding section, shall be forthwith reported to the officer in command of the troop or detachment to which such offender is then attached, who shall thereupon forthwith report the particulars of the case to the field officer of his wing of the force, who shall, having regard to the said particulars and the nature and magnitude of the offence, direct whether the offender shall be proceeded

against before a board of officers as aforesaid, before the Court of Resident Magistrate having jurisdiction in the case, or (as to offences in the ninth section hereof mentioned) before a superior Court as aforesaid: Provided that nothing herein contained shall prevent the said officer or the field officer from ordering the discharge of any prisoner in case it appears to him that there are not sufficient grounds for putting such prisoner upon his trial; and if the proceedings are directed to be before a superior Court, or before a Court of Resident Magistrate, they shall be the same in all respects as in the case of an ordinary offender or supposed offender against the law, and the said offender shall be in the same plight and condition as any other person charged with criminal offence.

12. The board of officers hereinbefore mentioned shall consist of not less than three officers of the said force, <sup>(1)</sup> of whom the field officer commanding the wing in which the accused is serving may be one; and the said officers shall be selected and summoned by the said field officer. The said field officer, if present, and if not, the senior officer present, shall be the president of such board, and the decision of the majority of the members of such board shall be deemed to be the decision of such board: Provided that, in case the members of the said board shall be equally divided in opinion, the decision of the president shall be deemed to be the decision of the board.

Constitution of board of officers to try offences.

13. The proceedings before and at any trial by a board of officers shall, except otherwise herein mentioned, as near as may be, be the same as those from time to time prescribed as to criminal cases in a Court of Resident Magistrate; and all the evidence which may be given before such board shall be taken down in writing by the president thereof, by whom also the witnesses shall be duly sworn; and any person so sworn, who shall wilfully and corruptly give false evidence before any such board, shall be deemed to be guilty of the crime of perjury, and upon conviction thereof, shall suffer any punishment by law provided for that crime.

Proceedings before such board to be similar to those in criminal cases before magistrates.

14. Every person who may be required to give or produce evidence in any case pending before any such board shall be summoned, in writing, by any officer of the said force; and all witnesses so duly summoned who shall not attend, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or not produce the documents under their power or control required to be produced by them, or to answer all such questions as the said board may legally demand of them, shall be liable to be dealt with by such board in like manner as if such witness had been a witness duly summoned to appear before a Resident Magistrate in a criminal case pending in the Court of such Resident Magistrate.

Summoning of witnesses.

<sup>1</sup> See Act 18, 1885, § 1, *supra*.



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Sentences to hard labour to be transmitted to Supreme or Eastern Districts Court, and appeal allowed thereon.

15. When and as often as any such board as aforesaid shall sentence any offender under this Act to be imprisoned, with or without hard labour, for any period exceeding fourteen days, or to pay a fine exceeding one pound, the president of such board shall forthwith, after pronouncing such sentence, transmit the original proceedings in the case, together with such remarks, if any, as he may desire to append, to the Registrar of the Supreme Court, or if the trial has taken place within the jurisdiction of the Eastern Districts Court, to the Registrar of that Court; and the provisions of the 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, *mutatis mutandis*, extend and apply to such proceedings, as if the same had been proceedings in a case decided by a Court of Resident Magistrate which, under the said forty-seventh section, would have had to be sent for review by a judge of one of the superior Courts.

Places of imprisonment for officers under this Act.

16. All offenders arrested for any offence under this Act, and all offenders sentenced to imprisonment by an officer or board of officers as aforesaid, may be imprisoned in any building set apart as a guard-room or police prison by order of the field officer commanding: Provided that, in case the sentence shall exceed fourteen days' imprisonment with or without hard labour, the person convicted shall be removed to the nearest public gaol, there to undergo such sentence, and when so removed he shall be in the same plight and condition as if the sentence had been a sentence of one of the ordinary Courts of Law of this Colony: And provided also, that so long as any man shall be imprisoned in any guard-room or prison as aforesaid, the same shall as to such offender be deemed to be a public gaol, and the prisoner shall be deemed to be a prisoner confined therein within the meaning of the Ordinance No. 24 of 1847, intituled "Ordinance for improving the Gaols of this Colony," but every board of officers aforesaid and the Resident Magistrate of the district shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such guard-room or prison as by the Ordinance aforesaid are given to the Resident Magistrate of the district, as to the public gaols within his district.

Term of imprisonment not to reckon in term of service.

17. No period during which any offender shall be imprisoned for any offence for which he shall be afterwards convicted, or during which he shall be imprisoned under a sentence of any Court or board as aforesaid, shall be reckoned for any purpose as part of the period of the service of such offender unless the Court or board aforesaid ordering such imprisonment shall otherwise direct.

Provisions of Act not to prevent prosecutions under other laws.

18. Nothing in this Act contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Act in all cases in which he would by law, without this Act, be

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liable to such prosecution; but no member of the said force acquitted or convicted of any crime or offence under the provisions of this Act, shall be liable to be again tried for the same crime or offence: Provided that nothing herein contained shall prevent a member of the said force who has been acquitted or convicted from being dismissed from the said force or reduced in rank therein.

19. It shall be lawful for the said field officers, respectively, to suspend or dismiss from his employment any non-commissioned officer or private whom he shall think remiss or negligent in the execution of his duty, or otherwise unfit for the same; and when any such non-commissioned officer or private shall be so dismissed, or shall otherwise cease to belong to the said force, all powers and authorities vested in him by virtue of this Act shall cease and determine: Provided, however, that no sentence of dismissal shall take effect unless and until the same be confirmed by the Commandant-General of the Colonial forces.

Power of suspension and dismissal of non-commissioned officers.

### PART III.—PRIVILEGES AND PENSIONS.

20. Every officer and man 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.

No tolls payable by riflemen on duty.

21. If any person duly authorized to collect tolls in respect of any ferry shall wilfully subject any officer or man 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.

Penalty for attempting to exact tolls.

22. If any person, not being an officer or man of the said force, shall wilfully personate such officer or man, or if any such officer or man of the force, not then being on duty, shall falsely represent himself to be such officer or man on duty, with the intent to evade the payment of any toll legally payable by him, such person shall, on conviction, be liable to a penalty of not exceeding five pounds sterling, or, in default thereof, to imprisonment for a period not exceeding one calendar month, unless such fine be sooner paid.

Penalty for personation of riflemen.

23. It shall be lawful for the Governor, with the advice of the Executive Council, and under the conditions hereinafter mentioned, to order that any member of the said force, of whatever rank, shall be superannuated, and thereupon to authorize and direct that such member shall receive from and out of the public revenue of this Colony a gratuity or yearly pension as follows, that is to say, if such member shall have served in the said force for a period less than fifteen years, a gratuity equal to one month's pay

Superannuation, pensions, and gratuities.

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for each year's service, the pay being taken to be that received by such member at the time of his superannuation, and if such member shall have served in the said force for a period of fifteen years, an annual pension equal to fifteen-fiftieths of the yearly pay of such member, which pay shall be taken to be the average of his yearly pay for the three years next preceding his superannuation, and an additional one-fiftieth of such yearly pay for each year such member shall have served in the said force beyond the said period of fifteen years; but no such member shall receive a pension equal to more than thirty-fiftieths of his yearly pay as aforesaid, unless in the cases hereafter mentioned, and provided that no member of the said force who shall be under the age of fifty years shall be capable of receiving any such gratuity or pension, unless it shall be certified in writing by the surgeon of the said force, or some other competent medical officer, to be appointed by the Governor acting by and with the advice aforesaid, for the purpose, that such member from infirmity of mind or body is incapable of discharging the duties of his situation, and that such infirmity is likely to be a permanent one.

Gratuities of riflemen wounded or injured in execution of duty.

24. In case any member of the said force shall be disabled for the performance of his duty by reason of any wound or injury received by him when in the field and engaged with an enemy, or in the actual execution of his duty, or any member of the said force shall, in the opinion of the Governor, acting by and with the advice aforesaid, have merited the same, it shall be lawful for the Governor, with such advice, to award to such member, whatever may be his age or time of service, such gratuity not exceeding an amount equal to three years' pay, or such yearly pension not exceeding the full pay of such member, as to him may seem fit: Provided that the reasons for giving any such gratuity or pension shall be set forth in the warrant or authority granting the same, and a return showing the amounts and particulars of any payments under this section shall be laid on the table of both Houses of Parliament at the then next ensuing session of Parliament.

Penalty for false statements.

25. If any member of the said force in receipt of a pension under this Act shall wilfully or knowingly have made, or caused to be made, any false statement or representation, in order to obtain such pension, he shall forfeit all right and claim to such pension, and no pension shall be claimable by any pensioner during the time he may be undergoing punishment for any crime.

Calculation of pensions and gratuities.

26. In calculating the amount of any gratuity or pension payable under this Act, if the person to receive the same shall at the time of his superannuation have been obliged to keep a horse or horses out of his pay, the sum of twenty pounds for the keep of each such horse shall be deducted from such pay.

Pensions and gratuities not to be executable or assignable.

27. No pension payable under this Act shall be assignable or transferable, nor shall the same be attached, arrested, or levied

upon, for or in respect of any debt or claim due by the recipient thereof, or his wife.

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28. Nothing in this Act contained shall be construed so as to entitle any member of the said force to claim as a matter of right any gratuity or pension as aforesaid, or to prevent any such person from being unconditionally dismissed or discharged from the said force.

No pension, &c claimable of right.

#### PART IV.—GENERAL.

29. If any licensed or unlicensed dealer in wines and spirits, or any intoxicating liquors, shall knowingly harbour or entertain any man belonging to the said force, or permit such man to abide or remain in his house, shop, room, or other place, during any part of the time appointed for his being on duty elsewhere, every such dealer shall, for a first offence, forfeit and pay any sum not exceeding ten pounds, to be recovered in a summary way; and for a second or subsequent offence shall be liable, besides such penalty, to imprisonment for any period not exceeding one month, with or without hard labour.

Penalty on dealers in wines and spirits for harbouring riflemen on duty.

30. If any person shall, in consequence of any sale, pledge, or other disposition made by any member of the said force, in contravention of paragraph No. 17 of the schedule to this Act, 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, and, in default of payment thereof, shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months unless such fine be sooner paid.

Penalty for taking pledges, &c., of horses arms, and accoutrements.

31. No animal, article, matter, or thing mentioned in paragraph seventeen in the schedule to 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.

No such articles executable nor subject to sequestration.

32. It shall be lawful for the Governor acting by and with the advice aforesaid to award, to any of the men belonging to the said force, such sum of money as to him shall seem meet, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service.

Compensation for extraordinary services.

33. 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 cause of action shall have arisen, or offence be 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 com-

Limitation of actions and prosecutions against riflemen.

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mencement of the action; 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 exception, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client.

Ordinance No. 25  
of 1847 not to apply.

34. Nothing contained in the Ordinance No. 25, 1847, entitled “Ordinance for improving the Police of the Colony,” shall extend to the force aforesaid in this Act mentioned.

Costs of carrying  
out Act.

35. All costs and charges for carrying out this Act shall be paid out of such moneys as Parliament shall provide for the purpose.

Short title.

36. This Act may be cited for all purposes as the “Cape Mounted Riflemen Act, 1878.”

#### SCHEDULE OF OFFENCES REFERRED TO IN THIS ACT. (1)

1. Beginning, inciting, causing, or joining in any mutiny or sedition.
2. Being present at any mutiny or sedition, and not using his utmost endeavour to suppress the same.
3. Conspiring with any other person to cause a mutiny or sedition.
4. Knowing of any mutiny or sedition, and not without delay giving information thereof to his immediate commanding officer.
5. Striking or offering violence, or using threatening or insubordinate language to a superior officer in the force, being in the execution of his duty.
6. Disobeying the lawful command of a superior officer in the force.
7. During the period for which he shall have engaged to serve in the said force deserting from the same or refusing to serve therein, or advising or persuading any other member of the said force to desert from the same, or knowingly receiving and entertaining any deserter, and not immediately on discovery giving information to his commanding officer, or taking other means to cause such deserter to be apprehended.
8. Misbehaving before the enemy, or shamefully abandoning or delivering up any fort, post, camp, station, or guard committed to his charge, or which it was his duty to defend, or inciting any other person so to do.
9. Discharging any firearms, making any signal, or by other means whatsoever, intentionally occasioning false alarm in action, camp, or quarters.
10. Casting away his arms in the presence of an enemy.
11. Being, while a sentinel, found sleeping on his post, or leaving the same before being regularly relieved.
12. Disclosing, verbally or in writing, the numbers, position, or preparations of the force or forces to which he is attached, and by such disclosure, producing effects injurious to the service to which he belongs.
13. Being in the command of a guard, piquet, or patrol, and without proper authority, releasing any prisoner committed to his charge, or suffering him to escape.

<sup>1</sup> This Schedule to apply to Acts 15, 1880, and 7, 1881; see §§ 7 and 22 of those Acts respectively, *supra*.

14. Being found drunk on any duty under arms.

15. Malingering, feigning, or producing disease or infirmity, or wilfully maiming or injuring himself or any other member of the force, whether at the instance of such other member or not, or causing himself to be maimed or injured by any other person, with intent thereby to render himself, or such other member, unfit for service.

16. Taking any bribe or gratuity whatever with reference to any duty, imposed upon him, or wilfully neglecting to execute any warrant entrusted to him.

17. Selling, pledging, or otherwise disposing 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.

No. 5--1878.

No. 5—1878.]

[August 2, 1878.

ACT

For the establishment of a Colonial Yeomanry Force. (1)

WHEREAS it is expedient to make better provision for the defence of this Colony, and for that purpose to establish a Mounted Yeomanry force therein: 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. It shall be lawful for the Governor aforesaid, to cause fit and able men, of European extraction, not exceeding in number three thousand, who are willing to serve, to be enrolled and embodied as Mounted Yeomanry, for the defence of the said Colony, and for general military service within the said Colony or beyond the borders thereof, wherever the interests of the Colony may require.

Enrolment of not more than 3,000 men as colonial yeomanry

2. There shall be three regiments of such Mounted Yeomanry, each not exceeding one thousand in number, of which number as many as the Governor shall deem fit shall be specially trained to artillery practice.

Three regiments to be formed.

3. The said several regiments shall respectively be as follows, that is to say: There shall be for the divisions of King William's Town, East London, Victoria East, Peddie, Albany, Bathurst, and Alexandria, one regiment, to be styled the First Cape Yeomanry Regiment; for the divisions of Queen's Town, Aliwal North, Albert, Middelburg, Cradock, Fort Beaufort, Wodehouse, Stockenstrom, and Bedford, one regiment, to be styled the Second Cape Yeomanry Regiment; and for the Divisions of Graaff-Reinet, Somerset East, Uitenhage, Port Elizabeth, and Humansdorp, one regiment, to be styled the Third Cape Yeomanry Regiment.

Divisions represented in each regiment.

<sup>1</sup> See also Acts 11, 1880, and 16, 1878, *supra*.

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Stations of each regiment.
4. The head-quarters of the said First Cape Yeomanry Regiment shall be stationed at King William's Town; of the said Second Cape Yeomanry Regiment at Queen's Town; and of the said Third Cape Yeomanry Regiment at Uitenhage; but the Governor, may hereafter, whenever it may appear desirable so to do, order and direct that the head-quarters of any of the said regiments be changed to a more convenient place.
- Governor to appoint commandant-general.
5. The Governor shall have the power of appointing a qualified person to be Commandant-General<sup>(1)</sup> of all the Colonial Forces, who shall be responsible for the efficiency of such forces.
- Men enrolled must be residents of divisions represented by their regiment.
6. Every person enrolled and embodied in any of such regiments of Yeomanry as aforesaid, shall be resident within some one of the said several divisions for which such regiment shall be raised as aforesaid, and in enrolling and embodying men under this Act they shall be chosen with a view, as nearly as may be, to convenient access to places of muster as in this Act provided.
- Officers to be appointed.
7. It shall and may be lawful for the Governor, as occasion shall require, to appoint for every such regiment the following permanent staff, that is to say: One commanding officer to be styled Colonel, one Adjutant or Instructor of Musketry, one Paymaster and Quartermaster, one Sergeant-Major, five Staff-Sergeants, and two Clerks: Provided always that the said Governor may at any time, if he so thinks fit, accept the resignation of, and may displace, remove, or dismiss, all or any of such persons; and in all cases of vacancy by resignation, death, removal, or otherwise, it shall and may be lawful for the said Governor to appoint other persons to fill such vacancies.
- Commissions to be issued.
8. It shall and may be lawful for the Governor, from time to time as occasion may require, to appoint and issue commissions to a sufficient number of Captains, Lieutenants, and Surgeons for every such regiment.
- Non-commissioned officers—how removable.
9. It shall and may be lawful for the commanding officers of the said regiments respectively, to appoint such number of Sergeants and Corporals as the Governor may from time to time authorize to be appointed: Provided always, that the said respective commanding officers, acting upon the judgment of a regimental court-martial, shall have the power to displace or reduce to a lower rank, such Sergeants and Corporals respectively; such court-martial to consist of three officers of the said Yeomanry force, of whom one shall be of at least the rank of a Captain, and the displacement or reduction to be subject to the review and approval of the Commandant-General of the Colonial Forces.
- Oath to be taken.
10. Every person who shall be enrolled in any of the said regiments shall be bound to serve for three years, and shall, upon enrolment, be required to pass a medical examination, and take the following oath, or make an affirmation to the same effect, before some duly authorized person, that is to say:—

<sup>1</sup> See 24, 1883, § 1, *supra*.

“I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors, according to law, and that I will faithfully serve in the Mounted Yeomanry of the Colony of the Cape of Good Hope for three years, unless I shall be sooner discharged.”

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11. Persons enrolled in the said several regiments shall be bound to muster and to attend local drill and rifle or artillery practice one day in each month, and they shall further be liable to be called out and to muster once in each year for training, for a period not to exceed seven consecutive days. And it shall and may be lawful for the Governor to name convenient times and places for the said monthly and yearly musters, and to make regulations for giving due notice of the times and places for the same, and for the general management of such musters.

Muster and drill.

12. Every person so enrolled, as aforesaid, shall be bound to supply himself with, and to maintain and keep in good order and condition, a suitable horse, saddle, and bridle, which shall be subject to the approval of such person or persons as the Governor may appoint for that purpose, to defray the expenses of which the yearly sum of £25 for the first year, and for each of the two succeeding years the sum of £15 shall be granted to him, one moiety thereof to be payable at the end of each half-year of service, upon satisfactory proof that during such time he has owned, maintained, and kept serviceably the said horse, saddle, and bridle, and under such other conditions as the Governor shall provide by any regulations to be framed under this Act.

Every man bound to keep horse, saddle, and bridle.

Allowances for that purpose.

13. Pay shall be allowed for the yearly trainings only, at the following rates, that is to say:—

Pay.

Captains	..	..	..	15s.	per diem.
Lieutenants	..	..	..	11s.	”
Surgeons	..	..	..	31s. 6d.	”
Sergeants	..	..	..	6s.	”
Corporals	..	..	..	5s.	”
Privates	..	..	..	4s.	”

In all cases with rations and forage for horses. In case the force shall be called out for actual service they shall be paid at the same rate for every day they shall be in such service.

14. It shall and may be lawful for the Governor to provide from time to time, as occasion may require, arms, ammunition, and all necessary equipments and camp equipage for persons enrolled in the said several regiments, and to provide for such regiments a sufficient number of pieces of field artillery, and to procure the necessary store and other accommodation.

Governor to provide arms, &c.

15. It shall and may be lawful for the Governor from time to time to make such regulations respecting the training, arms, ammunition, and equipment of the said regiments respectively, and

Regulations to be made by Governor subject to sanction of Parliament.

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respecting all other matters connected therewith, as may be required for promoting the discipline and efficiency thereof: Provided, however, that all such regulations shall be laid before both Houses of Parliament within fourteen days from the making thereof, if Parliament be in session, and if Parliament be not then in session, within fourteen days next after the commencement of the next ensuing session thereof.

Governor's power to discharge men.

16. It shall and may be lawful for the Governor from time to time to dispense with the services of any of the persons enrolled under this Act, and to grant, if he should so think fit, the discharge of any person enrolled in any of the said regiments, upon such conditions as to him shall seem proper.

Commanding officers to make returns to commandant-general.

17. Every commanding officer appointed under this Act shall return, or cause to be returned, to the Governor or to the Commandant-General of Colonial Forces, within one month after the said annual muster, a true state of his regiment, and shall at the same time report upon the quantity and condition of the arms, accoutrements, ammunition, horses, saddles, bridles, and camp necessaries and stores, provided for the use of the said regiment, and shall make thereafter quarterly returns and reports of the same.

Governor to provide transport.

18. It shall and may be lawful for the Governor, to provide from time to time, as occasion may require, the necessary transport for the arms, clothing, ammunition, accoutrements, and stores, for the use of the said regiments.

Discharged men to give up arms and accoutrements.

19. If the services of any person enrolled under the provisions of this Act shall be dispensed with, or his term of service shall have expired, he shall deliver up, in good order, fair wear and tear only excepted, all arms, accoutrements, and appointments, being public property issued to him, or in his possession or custody, and shall pay all money due or becoming due by him under the regulations framed under this Act, and the rules of the regiment to which he shall belong; but nothing herein contained shall prevent the Governor from giving such directions with respect to any of such cases as may appear just and proper.

Penalty for not attending musters.

20. Every person enrolled under this Act, who shall not appear at the time and place appointed for any of the said monthly or annual musters, shall forfeit and pay a sum not exceeding £5, unless he shall have duly obtained leave of absence from the commanding officer of his regiment, or unless his absence be caused by illness, in which case he shall be bound to furnish at or before such muster to the said commanding officer of his regiment a certificate to that effect from a duly qualified medical practitioner, or other proof to the satisfaction of such commanding officer.

Penalty for selling, destroying, or damaging arms or accoutrements.

21. In case any person so enrolled, as aforesaid, shall sell, pledge, destroy, or wilfully damage any arms, accoutrements, or other regimental effects, he shall be liable, upon conviction by the Resident Magistrate of the district within which the offence shall have been committed, to be imprisoned with or without hard labour

for a period not exceeding three months, or to pay a fine not exceeding £10, and, in default of payment, to be imprisoned with or without hard labour for a period not exceeding the term of three months, or until such fine be paid, and in each case to pay the value of the said articles.

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22. Every person enrolled as aforesaid, who is guilty of any of the offences following, that is to say:—

Offences.

- (1.) Absenting himself without leave from any muster, inspection, or parade during any part of the time provided therefor.
- (2.) Refusing or neglecting to obey any lawful order of his superior officer while at any muster, inspection, or parade.
- (3.) Being insolent towards his superior officer while in the execution of his duty as such officer.
- (4.) Behaving in a disorderly manner, or in a manner contrary to good discipline, while attending any muster, inspection or parade.
- (5.) Being in a state of intoxication during the period fixed for any muster, inspection, or parade.
- (6.) Failing to keep in proper and serviceable order his horse, saddle, bridle, arms, accoutrements, ammunition, or equipments, shall incur a penalty not exceeding £2 for each offence.

Penalty.

23. Any person interrupting or obstructing any of the said regiments, or any part thereof, at muster, inspection, or parade, shall upon conviction by the Resident Magistrate of the district be liable to a penalty not exceeding £5 for every such offence; and if such person, after having been warned to desist, shall continue to offend, he may be arrested by the order of the senior officer present, and detained in custody until he can be brought before the Resident Magistrate of the district in which the offence was committed, to be dealt with according to law.

Penalty for obstructing regiments.

24. All fines paid by persons enrolled as aforesaid, and recovered under this Act, shall be paid to the commanding officer of the regiment to which the offender belongs, and shall be accounted for to the Commandant-General of Colonial Forces and paid into the public treasury.

How penalties to be accounted for.

25. The arms, ammunition, accoutrements, and other equipments of persons enrolled under this Act, and the horses, saddles, and bridles kept or used by such persons for the discharge of their duties under this Act, shall be exempt from seizure in execution under legal process.

Arms, &amp;c., not liable to seizure under legal process.

26. No person enrolled as aforesaid shall, while in the discharge of his duty under this Act, be liable for any tolls, and no carts, wagons, carriages, horses, or other beasts, shall, while employed or used in duties, provided for by this Act, be liable to any tolls.

No tolls payable by men on duty.

- No. 5—1878. 27. Any person enrolled under this Act may, for any offence specified in this Act, be placed under arrest by his superior officer until such offence can be conveniently adjudicated upon, and all offences shall unless otherwise in this Act provided, be disposed of and penalties inflicted by the commanding officer of the regiment to which the offender shall belong, or in his absence by the senior officer present. All fines not paid within such time as the said commanding or senior officer shall name at the time of infliction, and the value of the articles which any person shall be liable to pay under section twenty-one, shall be recoverable in the Court of any Resident Magistrate in a suit in the name of the said commanding officer on production of a certificate of the conviction signed by the officer by whom the fine was inflicted, and for the purposes of this section the provisions of Ordinance No. 6 of 1839 shall apply.
- Arrest, &c., of offenders. Fines, how recoverable.
- Courts of inquiry. 28. The Governor may at any time, if he should think fit, order a court of inquiry to be assembled for the hearing upon oath and for adjudication of any complaints arising out of the management or discipline of the said regiments and the constitution of such Court shall be subject to any regulations which the Governor may from time to time make with regard thereto, under the provisions of this Act.
- Orders by Governor and officers may be verbal. 29. All orders by the Governor or by any officer authorized to be given by this Act or given in execution of this Act, shall be valid and effectual, if verbally given on parade or issued in any other manner customary in Her Majesty's military service, unless in cases when this Act specially requires any such order to be in writing and the production of an order in writing purporting to be made according to the provisions of this Act shall be *prima facie* evidence of such order without proving the signature thereto or the authority of the person making such order.
- Costs of carrying out Act. 30. The cost and charges of carrying out this Act shall be defrayed out of such moneys as Parliament shall vote for the purpose.
- Meaning of term "Governor." 31. The words "the Governor" in the enacting clauses of this Act shall mean the Governor acting by and with the advice of the Executive Council.
- Short title. 32. This Act may be cited as the "Cape Mounted Yeomanry Act, 1878."

No. 7—1878.]

[August 2, 1878.

## ACT

To Provide for the Organization of the Inhabitants of this Colony for the Defence thereof. (<sup>1</sup>)

Preamble. WHEREAS it is expedient to make provision for enrolling and organizing the able-bodied inhabitants of this Colony for the

<sup>1</sup> Amended by Act 4, 1884, *infra*.

defence thereof and the protection of life and property therein :  
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 :—

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1. The Act No. 16 of 1855, intituled “ An Act for the Organi-  
zation of the Inhabitants of the several Divisions of this Colony for  
the Internal Defence of their respective Divisions,” is hereby  
repealed.

Act 16 of 1855 re-  
pealed.

2. The Field-cornets throughout the Colony shall, within the  
first month of the next ensuing year, make out a list containing  
the names of all the male residents in their respective Field-  
cornetries between the ages of 18 and 50 years, who are not  
exempted from liability to serve under this Act, and in such list  
shall state the age, residence, and calling, and as nearly as possible  
the race to which each person belongs, and in the case of Kafirs  
from what tribe they take their origin, which lists shall be, as  
nearly as may be, in the form to this Act annexed, and the said  
Field-cornets shall, as soon as such lists are made out, transmit  
the same to the Civil Commissioner of the district within which  
their Field-cornetry is situate. Provided, however, that until such  
lists have been completed, the lists which have already been framed  
under the provisions of the said Act No. 16 of 1855, shall be and  
remain the lists for the purposes of this present Act; provided  
also that for performing the aforesaid services, each Field-cornet  
shall be entitled to such remuneration as to the Governor shall  
seem just.

Field-cornets to  
frame lists of all  
males between 18 and  
50 years of age.

Until framed, lists  
under repealed Act  
to remain lists for  
this Act.

3. All persons disqualified for service as burghers or levies by  
bodily or mental infirmity, the members for the time being of the  
Legislative Council and House of Assembly, Ministers of Religion,  
Judges, Teachers in Schools, Constables, persons serving in any of  
the Military or Naval Departments of Her Majesty, or in the  
Cape Mounted Yeomanry, or in the Frontier Armed and Mounted  
Police, or any other force to be created upon the basis thereof, or  
in the divisional or other police, or in the Civil Service of this  
Colony, and all merchant seamen under articles, shall be exempt  
from serving in the burgher force or levies under this Act, except  
with their own consent.

Persons exempt  
from burgher service

4. In any municipality or borough for which there shall be no  
Field-cornet, the duties devolving upon that officer under this Act  
shall be executed by such person as may be appointed in that  
behalf by the Governor, and every municipality or borough shall  
for the purposes of this Act be deemed to be one or more Field-  
cornetries, as the Governor may direct.

When no field-cor-  
net, special officer to  
be appointed.

5. If any Field-cornet shall neglect to make out the list as  
hereinbefore mentioned and furnish it to the Civil Commissioner  
of his division as aforesaid, or shall furnish an imperfect list, it  
shall be made out or compiled as the case may be by such person  
or persons as may be appointed in that behalf by the Governor.

In case of failure  
by field-cornet to  
make proper list.

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Provisions for hearing objections to lists.

6. Every such Civil Commissioner shall forthwith upon the receipt of such list, cause a copy thereof to be affixed at the residence of each Field-cornet, and at each Court-house within the division, and shall cause a notice to be inserted in a local newspaper, if any, and posted at or near the residence of each Field-cornet, and at each Court-house as aforesaid, of the day on which and the place at which he will hold a court for the purpose of hearing objections to such list, which day shall not be sooner than two weeks nor later than four weeks after the day of affixing the aforesaid copy at the Court-house of such Civil Commissioner.

Civil commissioner to hold court for the purpose.

7. Upon the day and at the place so notified the Civil Commissioner shall hold a court, at which he shall, on due proof by the oath of such persons as he shall see fit to examine, or by declaration or affidavit, correct all errors in such list, either by adding the names of persons liable to service which may have been omitted therein, or by striking out from the list of those so liable the names of any persons entitled to be exempt: Provided that such court may be adjourned from day to day until all questions as to the correctness of the list are determined, and provided that the decision of such Civil Commissioner shall be final. Provided also that the Governor shall from time to time distinguish in every such list between persons to be enrolled as burghers and persons to be enrolled as levies, and shall thereupon cause separate lists thereof to be made, which shall respectively be the lists for the purposes of this Act: Provided also, that the lists which have been already framed under Act No. 16 of 1855, shall also be subject to this lastmentioned proviso.

Mode of proving title to exemption.

8. In every case in which exemption shall be claimed on account of bodily or mental infirmity, the party so claiming shall be required to furnish proof to the satisfaction of the Civil Commissioner, and if he claim it on account of age, but cannot afford proof of the validity of his claim, the decision of his liability to service shall be in the discretion of the said Civil Commissioner.

How burgher forces to be officered.

9. The burgher force to be enrolled under this Act shall be officered by Field-captains, one of whom shall command the burghers enrolled in each Field-cornetcy, and by a Field-commandant in each Division, who shall command all the burgher forces enrolled therein; and all such officers shall be elected as hereinafter enacted: Provided that if the burghers in two or more Field-cornetcies be called out and assembled together, and the Field-commandant be not present, the senior Field-captain present shall act as provisional Field-commandant during the absence of the Field-commandant. The levies to be enrolled under this Act shall, when called out, be officered by persons appointed by the Governor: Provided, further, that seniority or the relative precedence of officers of the same rank, elected or appointed under this Act shall be determined by the date of the election or appointment, and where the election or appointment shall have

been on the same day, by the order in which the names of the parties so elected or appointed shall appear in the *Government Gazette*: Provided that no person employed in the civil service of the Colony shall be eligible to be elected or appointed either as Field-commandant, Field-captain, or Deputy Field-captain.

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10. Upon the completion of such lists as aforesaid each Field-cornet shall fix a day, not to be later than one month after the date of such completion, on which the burghers of his Field-cornetcy shall assemble, at a place to be by him appointed, to elect a Field-captain and a deputy to act in the absence of such Field-captain, and subject to such regulations or orders as may be made by the Governor, as hereinafter mentioned, to assist the Field-captain for such Field-cornetcy: Provided that such election shall be decided by a majority of burghers belonging to the said Field-cornetcy then present, and that notice of the names of the Field-captains and their deputies so elected be forthwith transmitted by the chairman of such meeting to the Civil Commissioner of the division: Provided, moreover, that every such election shall be subject to the approval of the Governor: Provided, further, that in the case of non-election on the day so fixed as aforesaid, the Governor shall appoint such Field-captains and deputies respectively from amongst the said burghers.

Mode of electing field-captains.

11. Within one month after the election or appointment of the Field-captains and their deputies, and in the case of election the approval of such election by the Governor, the said Field-captains or their deputies not being less than two-thirds of the said Field-captains in the said division, shall assemble on a day and at a place to be fixed by the Civil Commissioner, and shall by a majority of those present, elect their Field-commandant: Provided that such election shall also be subject to the approval of the Governor: Provided also, that in the event of an election not taking place on the day so fixed as aforesaid, the Governor shall appoint a Field-commandant from amongst the Field-captains elected or appointed.

Field-captains to elect field-commandants.

12. All Field-commandants, Field-captains, and Deputy Field-captains elected and approved of or appointed, as above provided, shall serve for three years or until other persons be elected or appointed in their stead, in the manner above provided for their first election or appointment, and shall be then re-eligible. If any Field-captain or Deputy Field-captain shall at any time decline to serve he shall give notice thereof to the Field-commandant of his division, and if any Field-commandant shall so decline to serve he shall give notice thereof to the Civil Commissioner of the division, and thereupon proceedings shall be taken in the same manner as above provided for the election or appointment of a successor to such officer.

Officers' term of service.

13. When and as often as any Field-commandant, Field-captain, or Deputy Field-captain shall die or resign during the period for which he has been elected or appointed to serve, or any Field-com-

Provisions for cases of death or resignation of officers.

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mandant, Field-captain, or Deputy Field-captain shall during such period be absent from his Division or Field-cornetcy, as the case may be, for three consecutive months, another Field-commandant, Field-captain, or Deputy Field-captain, as the case may be, shall be elected or appointed in the place of the one so dying or resigning or being absent, in manner above provided for a first election or appointment: Provided that any Field-commandant, Field-captain, or Deputy Field-captain vacating office by reason of absence shall be eligible to be re-elected or re-appointed.

Field-cornets to furnish lists of burghers who have died or left or attained 50 years.

14. (1) Every Field-cornet shall (*within the first month of each succeeding year*) furnish to the Civil Commissioner of his division a list of all burghers or levies who have died or have passed the age of fifty, or have ceased to reside in his Field-cornetcy during the preceding year, together with a list of all persons liable to serve as burghers or levies who have reached the age of eighteen or have taken up their residence during the same period in his Field-cornetcy; and unless such latter persons prove their claim to exemption before the Civil Commissioner within fourteen days after they shall have received notice, as in the sixth section provided, that their names have been included in the list so furnished as aforesaid, their names shall be added by the said Civil Commissioner at the end of the respective rolls, and the names of all such former persons shall be erased from the respective rolls by the said Civil Commissioner: Provided always that in case of addition, the Governor shall distinguish between burghers and levies as hereinbefore mentioned.

Power of Governor to assemble burgher forces.

15. The Governor, may from time to time assemble the burgher force and levies, or such part or parts of such forces respectively as may to him appear expedient, for inspection or for inspection and rifle practice under their own officers, at such time and times and at such place or places within their respective divisions as he may direct.

Burghers to be divided into two classes.

16. The Governor shall, from time to time, cause the burghers enrolled under this Act, exclusive of officers, to be divided into two classes, the first class to include all enrolled burghers between the ages of eighteen and thirty, and the second class to include all enrolled burghers between the ages of thirty and fifty.

Governor may call out portions or whole of force.

17. Whenever it shall be necessary for the defence of the Colony or any part thereof, or for the protection of life and property therein or in any part thereof, the Governor, may by proclamation call out the burgher force and levies, or such part or parts of the said forces respectively as he may consider necessary, for service at such place or places within the said Colony or beyond the borders thereof, as he may from time to time think fit to direct: Provided, however, that no person actually serving in any volunteer corps enrolled as such under any law for the time being

<sup>1</sup> Amended by Act 4, 1884, § 3 *List to be furnished at such time as the Governor may direct.*

in force in this Colony as to volunteer corps shall be called upon to serve in any other way than in and with such volunteer corps : Provided, also, that in case a portion only of the said burgher force be called out, the first drafts shall be taken in the respective divisions from the said first class of burghers.

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Volunteers ex -  
empted from service  
as burghers.

18. Whenever it shall be necessary to assemble or to call out the whole or part of the burgher force of any division, the Civil Commissioner shall give notice thereof to the Field-commandants and to the Field-captain or captains whose companies or any part of whose companies it may be necessary to call out, who shall thereupon proceed to call out in such manner as they may be directed by the Governor, the required number of burghers, and shall at the same time appoint a time and place at which the burghers so called out shall assemble ; and if it be required to summon a general assembly of the burghers of the division, or the burghers or any of the burghers of more than one Field-cornetcy, the Civil Commissioner shall in his summons to the Field-commandants and Field-captains signify at what time or times, and in what place or places, such burghers shall meet for the service required of them. The calling out of levies shall be subject to such regulations as the Governor may make under the provisions of this Act.

Mode of calling  
out burghers.

19. In case it shall be necessary to call out a portion only of the burghers of any class, the persons so to be called out shall be determined by ballot, to take place under such regulations in that behalf as the Governor may from time to time make : Provided, however, that the Governor shall have the power, if he shall so think fit, to dispense at any time with the services of any person so drawn whose labour shall be the sole support of his family.

Ballot to determine  
who to serve in case  
a portion only called  
out.

20. Any Commandant, Field-captain, Deputy Field-captain, or burgher who, having received due notice, as in the sixth section provided, of his liability to serve, and having received due notice of his having been called out to serve on any occasion, shall absent himself without a lawful cause for his absence, or shall withdraw himself before permission to that effect be given by some competent authority, or shall refuse or wilfully neglect to obey any lawful command of his superior officer, shall upon conviction be liable to a fine, if a Commandant, Field-captain, or Deputy Field-captain, of not exceeding £50, and if any ordinary burgher, of not exceeding £25, which shall be recoverable by summary process in the Court of the Resident Magistrate of the district in which the offender resides, and shall be paid into the public treasury, but no conviction and fine so paid shall be deemed or taken to exempt the person convicted from liability to be again called out after such conviction to perform burgher service. And in case of non-payment of any such fine, the offender shall be liable to imprisonment with or without hard labour for a term not exceeding three months, or until such fine be paid. And any

Penalties for not  
serving when duly  
called out.



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member of levies absenting himself without lawful cause when called out under this Act, shall be liable to a fine of not exceeding £5 or in default of payment, to imprisonment with or without hard labour for a term not exceeding three months, unless such fine be sooner paid; such fine to be recoverable as hereinbefore mentioned, and no such conviction or fine to exempt the person convicted from liability to be again called out, after such conviction as hereinbefore provided.

Substitutes may be provided.

21. Any burgher or member of levies called out for service under this Act shall be entitled to provide as his substitute any other competent person approved of by his Field-commandant, or in the case of a member of levies by his commanding officer, who shall consent to serve in the place and stead of such burgher or member of levies, and such burgher or member of levies shall thereupon be exempt from service under the said call, and the said substitute shall be in the same plight and condition as if he had been a burgher or member of levies duly called out: Provided that in case as often as the person serving as a substitute shall himself be called out before the expiration of the period for which he consented to serve as substitute shall have expired, the burgher or member of levies for whom he serves shall be bound to serve for the remainder of the said period or to provide another substitute approved of as aforesaid.

Offences and penalties.

22. Every burgher, or member of levies, when called out for service, who shall be guilty of any of the following offences, that is to say,—

1. Absenting himself without leave from any muster, inspection, or rifle practice during any part of the time provided therefor.
2. Refusing or neglecting to obey any lawful order of his superior officer while at any muster, inspection or rifle practice.
3. Being insolent towards his superior officer while in the execution of his duty as such officer.
4. Behaving in a disorderly manner, or in a manner contrary to good discipline, while attending any muster, inspection or rifle practice.
5. Being in a state of intoxication during the period fixed for any muster, inspection, or rifle practice.
6. Failing to keep in proper and serviceable order any horse, saddle, bridle, arms, accoutrements, ammunition, or equipments (if any) entrusted to him;

shall, upon conviction by the Resident Magistrate of the district within which the offence shall be committed, incur a penalty not exceeding £2 for each offence, and in default of payment shall be liable to imprisonment with or without hard labour for a term not exceeding fourteen days, unless such fine be sooner paid.

23. Each Field-commandant, Field-captain, Deputy Field-captain, burgher, and member of levies when called out into active service under this Act shall, while so serving, receive rations for himself and forage for his horse, if mounted, and be paid per diem according to the following scale :

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Pay during service.

Each Field-commandant . . . . .	£1 0 0
Each Field-captain or Deputy Field-captain	0 15 0
Each burgher who shall provide his own horse, saddle and bridle . . . . .	0 4 0
Each burgher who shall not provide his own horse, saddle, and bridle . . . . .	0 3 0
Each member of levies at a rate not exceeding	0 2 6

24. The widow or family of any burgher or member of levies who may be killed in action, and any burgher or member of levies who may receive during his service any wound or injury permanently injurious in its consequences, shall receive a pension or allowance not exceeding £70 per annum, the amount whereof shall be fixed by the Governor.

Provision for widows and families.

25. Every mounted burgher, whose own horse shall be killed or carried off by or abandoned to the enemy, or be destroyed to prevent the same falling into the enemy's hands, or who shall while on active service suffer loss by the enemy of his own saddle, gun, or accoutrements, shall be paid the value of the same, such value to be certified by the Commandment of the force to which the burgher belongs : Provided that such value shall not exceed £25 for the horse, £10 for the gun, and £5 for the saddle and accoutrements.

Compensation for loss of horse, arms, or accoutrements.

26. When the burgher force of any division or any part thereof shall be called out for active service, the Field-commandant, or the Field-captains or Deputy Field-captains of the several wards of such division, are authorized to require from those who possess them such wagons, horses, mules, oxen, and gear, together with such provisions, forage, or other necessaries as shall be needed for the service of such force, and every inhabitant shall be bound to render obedience to such requisition : Provided that with reference to such requisition the aforesaid officers shall conform to the instructions which they may have received from the Civil Commissioner of the division to which they belong.

Power to take horses, provisions, &c., for public service.

27. When any articles aforesaid shall be so obtained, the officer obtaining the same shall justly estimate the value thereof, and shall give a certificate, certifying that he has obtained from—— the articles in question, and that the same are fairly worth £—— ; and the Civil Commissioner of the district within which the articles shall have been obtained shall, on presentation of such certificate, and in case the amount shall not appear to him excessive in value, pay the sum stated in such certificate by a draft on the Treasurer of the Colony in the usual form : Provided that

Payment to be made for articles so taken.

No. 7—1878.

if the value placed on such article be deemed excessive, or if the late owner shall object to the same as being inadequate, the question shall be referred to the arbitration of three persons, of whom one shall be nominated by the Government, one by the said owner, and the third by the two persons so nominated, before entering upon the said arbitration, and the decision of the said arbitrators, or of any two of them shall be final. And all articles so obtained shall be the property of the Government.

Governor may take measures to provide, in certain cases, horses, arms, &c.

28. The Governor may, from time to time, take such measures as may be deemed expedient for providing, at the public expense, horses, arms, ammunition, accoutrements, and equipments for such burghers and levies as may not possess the same, of their own, and for the due preservation and custody of all public property provided for the use of the said forces.

Power to civil commissioner, field-cornets, and others to make inquiries.

29. In order the better to enable the Civil Commissioner, Field-cornets, and other persons charged with the preparation or revision of lists under this Act to obtain the information necessary for the purposes of this Act, they are hereby authorized and empowered to ask such questions concerning names, ages, residence, calling, or race, as may be necessary for the preparation or revision of such lists as aforesaid, and every person refusing or neglecting to answer, or wilfully giving a false answer to any such question shall, for every such refusal or neglect or false answer, be liable upon conviction by the Resident Magistrate of the district, to pay a fine not exceeding £5, and 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.

Penalty for refusing to answer.

Governor authorized to make regulations for discipline, &c.

30. The Governor may, from time to time, make regulations and orders respecting the general government, discipline, and management of the said forces, and the constitution, assembling, and proceedings of courts of inquiry to hear, receive, and examine evidence relating to, and to report on, any matter connected with such force or any charge brought against a member thereof, and may from time to time alter and repeal any such regulations and orders, and may call for such returns as may from time to time seem requisite: Provided that all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, or after the commencement of the next session, if Parliament be not then sitting, as the case may be.

Costs of carrying out Act.

31. The cost and charges of carrying out this Act shall be defrayed out of such moneys as Parliament shall provide for that purpose.

Meaning of "Governor."

32. The words "the Governor" in the enacting part of this Act shall mean the Governor acting by and with the advice of the Executive Council.

Short title.

33. This Act may be cited as the "Burgher Force and Levies Act, 1878."

## FORM OF ORIGINAL LIST.

No. 7-1878.

Division \_\_\_\_\_.

Field-cornetcy \_\_\_\_\_.

No.	Name.	Age.	Residence.	Calling.	Race.	Remarks.
1	A. B.	29	Queen's Tn.	Farmer.	As the case may be. <ul style="list-style-type: none"> <li>E. (European or European extraction).</li> <li>K. (Kafir).</li> <li>F. (Fingo).</li> <li>H. (Hottentot).</li> <li>O. (Other coloured race).</li> </ul>	

## FORM OF BURGHER LIST.

Division \_\_\_\_\_.

Field-cornetcy \_\_\_\_\_.

No.	Name.	Age.	Residence.	Calling.	Race.	Remarks.
1	C. D.	30	Wodehouse	Carpenter	E—European or European Extraction.	

## FORM OF LEVY LIST.

Division \_\_\_\_\_.

Field-cornetcy \_\_\_\_\_.

No.	Name.	Age.	Residence.	Calling.	Race.	Remarks.
2	E. F.	25	Shiloh	Agricultural Labourer	E—European Extraction K—Kafir F—Fingo H—Hottentot O—Other Coloured Race	

No. 4—1884.]

[July 11, 1884.

## ACT

## To Dispense with Annual Burgher and Levy Lists.

Preamble.

WHEREAS it is expedient in order to diminish the expense of providing the lists required by the "Burgher Force and Levies Act, 1878," to be furnished annually to make provision for having such lists furnished from time to time as may be deemed necessary: 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:—

Inconsistent portions of "Burgher Act, 1878," repealed.

1. So much of the "Burgher Force and Levies Act, 1878," as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Lists already framed to continue.

2. The burgher and levy lists, respectively, last framed under the provisions of the "Burgher Force and Levies Act, 1878," shall be and remain the lists for the purposes of the said Act, until other lists shall have been framed under the provisions of this Act.

Field-cornets to furnish new lists when required by Governor.

3. Instead of furnishing to the Civil Commissioner of his division the list of burghers and levies in the first month of each year as is provided by the fourteenth section of the said Act, every Field-cornet shall furnish the list by the said section required at such time as the Governor may direct; and such lists shall embrace the period since the last preceding list shall have been furnished.

Short title.

4. This Act may be cited as "The Burgher and Levy Lists Act, 1884."

No. 10—1882.]

[June 14, 1882.

## ACT

For the Regulation of Volunteer Corps. <sup>(1)</sup>

Preamble.

WHEREAS it is expedient that provision should be made for the formation and maintenance of Volunteer Corps: 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:—

Repeal of "Volunteer Act, 1878."

1. The "Volunteer Act, 1878," shall be and the same is hereby repealed.

Regulations to continue.

2. All regulations made under the provisions of the "Volunteer Act, 1878," shall be deemed to be regulations made under the provisions of this Act, and may be varied, altered, or repealed by the Governor.

<sup>1</sup> Volunteers exempt from service as Burghers. Act 7, 1878, § 17. See also Acts 16, 1878, and 11, 1880 *supra*.

3. The Governor may accept the services of any Corps of Volunteers, Naval as well as Military, upon such terms and conditions as may be deemed fit and proper, and may discontinue the services of and cause to be disbanded any such corps, and dispense with the services of or dismiss any member of any Volunteer Force.

No. 10—1882.

Governor may accept services of Volunteer corps and disband, &amp;c.

4. In accepting the services of any Corps of Volunteers for military duties, such acceptance may be for service upon any or either of the conditions following :—

Conditions of acceptance.

- (1). In any districts to be specified in the notice of acceptance and published in the *Government Gazette*.
- (2). For and during any period, and wherever the interests of the Colony may require, within the Colony or beyond the borders thereof, as the Governor may direct.

5. All Corps of Volunteers shall, whenever summoned by proclamation issued by the Governor, forthwith assemble, and shall be liable to march or embark on board ship or otherwise, according to the terms and conditions upon which such corps respectively engaged to serve: And all such Corps of Volunteers and the members thereof, shall, from the time of the issuing of any such proclamation as aforesaid, and so long as their services may lawfully be required by the Governor, continue and be subject to the "Colonial Forces Discipline Act, 1880," or any Act hereafter to be passed for the discipline of Colonial Forces.

Volunteer corps to be summoned for service by proclamation.

Discipline.

6. When any Volunteer Corps shall be assembled or called out for service, the Governor may place such corps under the command of such officer as he may appoint; but such corps shall be led by their respective officers under such command as aforesaid.

Governor to appoint commanding officer.

7. All persons enrolled in any Volunteer Corps when assembled or called out for active service shall be entitled to pay (if demanded) during the period of their being assembled or on such service, at and after such rates according to their respective rank and situations, as the Governor may determine.

Pay while on service.

8. Every Volunteer Corps may recommend its own commissioned officers, under the rank of a commanding officer for appointment by the Governor: And all persons so recommended for appointment may be required to pass an examination as to their fitness before such officer or officers as may from time to time be appointed by the Governor.

Volunteers may recommend officers for appointment.

Examinations.

9. Any volunteer may, at any time before the issue of any such proclamation as is in the fifth section mentioned, quit his corps, upon compliance with the following conditions :—

When a Volunteer may quit his corps.

- (1) If he shall give fourteen days' notice, in writing, of his intention to quit the corps to his commanding officer.
- (2) If he shall deliver up in good order and condition, fair wear and tear only excepted, all arms, clothing, and accoutrements being the property of Government or of the corps issued to him.

No. 10—1882.

(3) If he shall pay all money due or becoming due by him under any of the regulations of the force, either before or at the time of, or by reason of, his quitting the corps.

Vesting of property belonging to corps

10. All money and other property belonging to, or used by any Volunteer Corps, not being the property of Government or of any individual, shall be vested in the commanding officer for the time being of such corps, for the purpose of all legal proceedings, whether civil or criminal, either before or after the disbanding of any such corps.

For what purposes Governor may make rules.

11. The Governor may, from time to time, make rules, orders, and regulations for all or any of the matters or things following, and may vary, alter, or repeal such rules, orders, and regulations:—

- (1) Respecting the enrolment and disbanding of any Volunteer Corps.
- (2) The appointment, promotion, and rank of volunteer officers.
- (3) The appointment of non-commissioned officers.
- (4) The relative rank of volunteer officers, and of any other Colonial Force, now existing or hereafter to be created.
- (5) The requisites necessary to deem a volunteer an effective.
- (6) The constitution, assembling, and mode of procedure of courts of enquiry to receive and examine evidence relating to, and report upon any matter connected with the government or discipline of any Volunteer Corps, or on any charge brought against any officer or member of any such corps.
- (7) The power of arrest and maintenance of discipline.
- (8) The payment and recovery of subscriptions, fines, and penalties.
- (9) The general government, discipline, and management of Volunteer Corps.

Rules to be laid before Parliament.

And all such regulations 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 sitting then within fourteen days after the commencement of the next session.

Penalty for contravention of rules.

12. Every volunteer who shall be guilty of contravening any of the regulations or orders made by the Governor shall upon conviction be liable to a penalty not exceeding ten pounds.

Parliament to provide for costs.

13. The cost and charges of carrying out this Act shall be defrayed out of such moneys as Parliament shall provide for that purpose.

Short title.

14. This Act may be cited for all purposes as the "Volunteer Act, 1882."

No. 17—1856.]

[June 4, 1856.]

## AN ACT

For Rendering more effective the Services of such Military Pensioners receiving Pensions from the Colonial Revenue as shall be called out to assist in preserving the Public Peace.

WHEREAS, by an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in a session of Parliament, holden in the sixth and seventh years of Her Majesty the now Queen, and entitled "An Act for rendering more effective the services of such out-pensioners of Chelsea Hospital as shall be called out to assist in preserving the Public Peace," provision is made for organizing and equipping certain of the out-pensioners of the Royal Hospital at Chelsea, for the purpose of rendering them more efficient when called out to assist in preserving the public peace: And whereas it is expedient to declare and enact that military pensioners resident in this Colony, whose pensions are payable and paid from the public revenue of this Colony, should be placed, for the purpose of more effective service in this Colony, under the provisions of the Act 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 thereof, that it shall be lawful for Her Majesty, and Her Majesty is hereby authorized, from time to time to order, that so many of the military pensioners resident in this Colony, whose pensions are payable and paid from the public revenue of this Colony, as to Her Majesty shall seem fit, shall be enrolled as a local force for the preservation of the public peace in this Colony: and that for the purpose aforesaid all and singular the provisions of the hereinbefore in part recited Act shall, so far as applicable, apply and extend to all such military pensioners as aforesaid enrolled for service within this Colony, precisely as if such military pensioners were out-pensioners of Chelsea Hospital, and this Colony were a portion of the United Kingdom.

Preamble.

Queen may order pensioners to be enrolled.

Imperial act to apply to such pensioners.

2. This Act shall commence and take effect from and after the promulgation thereof.

Act, when to commence.

No. 48—1882.]

[September 1, 1882.]

## ACT

To Amend and Consolidate the Laws for the Regulation of the Trade in Diamonds, and to provide for the trial and punishment of certain Offences.

WHEREAS it is expedient to amend and consolidate the laws regulating the trade in diamonds, and to provide for the trial and

Preamble.

SS



No. 48—1882.

punishment of certain offences: 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 first schedule hereto to the extent which the same are therein expressed to be repealed and all other laws or ordinances repugnant to or inconsistent with the provisions of this Act, are hereby repealed; except as to offences committed and proceedings taken, and except as in this Act is excepted.

#### I.—WHO MAY DEAL IN DIAMONDS.

Possession of uncut diamonds unaccounted for.

2. It shall not be lawful for any person, except as in this Act is excepted, to have in his possession any rough or uncut diamond; and any such person as aforesaid who shall be found in the possession of any rough or uncut diamond and shall be unable to account satisfactorily for, or prove his right to, the possession of such rough or uncut diamond, or to produce his proper permit for the same in accordance with the provisions of this Act, shall, on conviction, be liable to the penalties provided by the following section.

Prohibition against and penalties for buying or dealing in rough or uncut diamonds except licensed, &c.

3. It shall not be lawful for any person or any firm or joint-stock company, save as in this Act excepted, to buy, deal in, or receive by way of barter, pledge, or otherwise, either as principal or agent, any rough or uncut diamond, or to be an accessory to such buying, dealing in, or receiving as aforesaid, unless such person so buying, dealing in, or receiving as aforesaid, shall be duly licensed or authorized to deal in diamonds either as buyer or seller, broker or factor, or shall be duly licensed to carry on the trade or business of a diamond cutter, or unless such person, firm, or joint-stock company, buying, dealing in, or receiving as aforesaid, shall be a banker within the Colony; and any person convicted of contravening this section shall be liable to a penalty not exceeding one thousand pounds, or to imprisonment with or without hard labour for any period not exceeding fifteen years, or to both such penalty and imprisonment: Provided, however, that when any person shall have been sentenced under the provisions of this Act, to any greater term of imprisonment than five years, it shall be lawful for the Governor to remit any portion of such term in excess of such five years, on condition of such person so sentenced leaving and not returning to any part of Griqualand West or to any district in which this Act shall be in force, as the case may be, during the remainder of his sentence; and if any person, a portion of whose sentence shall have been so remitted, shall notwithstanding, return within the time aforesaid, such person shall be liable to be re-arrested and imprisoned for a term equal to the portion of the sentence unexpired at the time of his release from custody: Provided also that nothing herein contained shall in any manner affect Her Majesty's prerogative of mercy.

Terms on which portion of sentence may be remitted.

4. In all cases where a fine has been inflicted on any person for contravening any of the provisions of this Act it shall be lawful for the Court to sentence such person to an additional term of imprisonment, without hard labour, for a period not exceeding one year, unless such fine shall have been sooner paid as the Court may think fit: Provided that in cases where any person shall have been in the first instance sentenced to imprisonment in addition to any fine, such further period of imprisonment shall take effect from the termination of the first sentence, and shall not exceed the term to which he was originally sentenced.

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Imprisonment  
when fine not paid.

5. It shall not be lawful, save as hereinafter excepted, for any person not being a banker, licensed diamond dealer, or a registered claimholder, or the duly accredited and registered agent of a registered claimholder or joint-stock company, or the holder of a washing permit or prospecting licence, or otherwise duly authorized under the provisions of this Act, to sell, offer or expose for sale, barter, pledge, or in any way either as principal or agent dispose of or deliver any rough or uncut diamond or diamonds: Provided that it shall not be lawful for such banker or diamond dealer, or duly authorized person, to sell, offer, or expose for sale, barter, pledge, or in any way dispose of or deliver any rough or uncut diamond, unless such diamonds shall be actually the property or in the lawful possession of such banker or diamond dealer: and provided also that it shall not be lawful for any such registered claimholder, or the duly accredited and registered agent of a registered claimholder or joint-stock company, or the holder of a washing permit or prospecting licence, to sell, offer, or expose for sale, barter, pledge, or in any way dispose of or deliver any rough or uncut diamond unless such rough or uncut diamond shall have been obtained or found in soil taken from any claim registered in the name of such claimholder or joint-stock company, or in the soil or ground mentioned and specified in such washing permit, or in ground not being a public diamond field worked under such prospecting licence, and any person convicted of contravening this section shall be liable to the penalties provided by the third section of this Act: and provided also that the onus of proof of the *bonâ fide* possession within the meaning of this section of any such diamond as aforesaid shall in all cases rest on such banker, diamond dealer, registered claimholder, duly accredited and registered agent of a registered claimholder or joint-stock company, holder of a washing permit and prospecting licence, or otherwise duly authorized person as aforesaid.

Who may sell and  
deal in diamonds.

6. Any person being the proprietor of any landed property in the title to which there shall be no reservation of minerals or precious stones to the Crown and which may not be proclaimed a public digging or mine, who may find, win, or pick up any rough or uncut diamond or diamonds upon such farm or landed property, shall within fourteen days thereafter make a solemn declaration of

Persons finding dia-  
monds on private  
property to make de-  
claration within 14  
days.

No. 48—1882.

In case land belongs to a company.

the fact, and upon production of such declaration the Resident Magistrate of the district shall grant a permit to such person to hold or sell or dispose of such diamond. And in the case of a company being the proprietor of any such landed property, the secretary, manager, or other duly authorized representative of such company whose name shall be registered in the office of the Resident Magistrate of the district in which such landed property is situate, shall make the declaration aforesaid. And any person contravening the provisions in this section contained for declaring such finds as aforesaid, shall be liable, upon conviction, to a penalty not exceeding one hundred pounds, or in default of payment to be imprisoned with or without hard labour, for a period not exceeding one year. Provided that any person who shall sell, offer, or exchange, or barter, pledge, or in any way dispose of or deliver any rough or uncut diamond found, won, or picked up on any such landed property without the permit aforesaid shall be liable to the penalties provided by the third section of this Act.

Persons competent to purchase not to buy, &c., from persons incompetent to sell.

7. Any banker or licensed dealer registered claimholder, authorized or registered agent of a registered claimholder or joint-stock company, holder of a washing permit, prospecting licence, dealer in or cutter of diamonds, buying or receiving by way of barter, pledge or otherwise, either as principal or agent, any rough or uncut diamond from any person or in any way dealing with the same with any person not being a banker or licensed dealer, or cutter of diamonds, or a registered claimholder, or a registered and accredited agent of a registered claimholder or joint-stock company, or not having a washing permit or prospecting licence, or permit under the sixth section of this Act, shall be liable on conviction to the penalties in the third section in this Act provided, and shall in addition forfeit any licence or permit which such person may hold and any right of renewal of the same for such time as the Court may direct, and no such person shall thereafter be registered as the agent of any claimholder or joint-stock company.

Licensed dealers to adhere to terms of licence.

8. Any licensed diamond dealer or diamond cutter, in any way dealing in rough or uncut diamonds otherwise than in the manner specially authorized by the licence held by him, shall on conviction thereof be liable to the penalties in the third section of this Act provided, and shall in addition forfeit his licence and any right of renewal of the same for such time as the Court may think fit and direct.

No dealings allowed between sunset or sunrise, or on Sundays.

9. It shall not be lawful for any banker or diamond dealer to buy, deal in, or receive by way of barter, pledge or otherwise, or to sell, barter, pledge, or in any way for the purposes of trade dispose of or deliver, or for any licensed diamond broker or factor to act as such diamond broker or factor, or in any way to negotiate the purchase or sale of diamonds between other persons, or act as agent or factor between buyer or seller in respect of any rough or uncut diamond or diamonds between sunset and sunrise, or on

Sundays, and every person contravening this section shall incur a penalty not exceeding one thousand pounds and in default of payment shall be liable to be imprisoned with or without hard labour for any term not exceeding one year, and shall in addition be liable to forfeit any licence which such person may hold and any right of renewal of the same for such time as the Court may direct.

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10. If in any proceeding under this Act, the Court has to be satisfied either that the prisoner, or any witness, or other person, is not authorized or licensed to deal in diamonds within the meaning of the section under which such accused person is being tried, such prisoner, witness, or other person shall be deemed to be unlicensed, or unauthorized, unless such prisoner shall prove to the satisfaction of such Court, that he, or such witness or other person is duly authorized or licensed as aforesaid.

Burthen of proof of being licensed.

11. It shall not be lawful for any person, firm, or joint-stock company to export or import rough or uncut diamonds out of or into any of the districts of the Colony in which this Act shall be in force, unless such importer or exporter shall be licensed or authorized to deal in diamonds, or unless such person, firm, or joint-stock company shall be a banker or bankers within the Colony, and every person convicted of contravening this section shall be liable to the penalties provided by the third section of this Act.

Restrictions on exporting and importing rough or uncut diamonds.

12. It shall be lawful for the Chief of the Police of any district or the Chief of the Detective Department of Griqualand West as the case may be, whenever he shall have good cause to believe that any parcel or package is being dispatched through the Post Office by any person, and which parcel or package contains rough or uncut diamonds, which have not been entered according to the provisions of this Act in the register of the person so sending them as aforesaid, or of which he may at any time have become unlawfully possessed, to stop or cause to be stopped such parcel or package as aforesaid at any Post Office within the Colony, either during the transit of such parcel or package or otherwise, and thereupon he shall by a notice in writing served personally on the person who shall have dispatched such parcel or package as aforesaid call upon such person as aforesaid to attend either personally or by an agent duly authorized by him in writing, to appear at a time and place to be named in such notice, for the purpose of being present at the opening and examination of such parcel or package, and thereupon on the day and at the place appointed in such notice the Chief of the Police of the district as aforesaid, or the Chief of the Detective Department of Griqualand West, as the case may be, shall proceed to open and examine such parcel or package, and if there shall be discovered therein any rough or uncut diamonds which shall not have been duly entered in the register of such person as aforesaid in accordance with the provi-

Right of police to detain post packages supposed to contain diamonds sent illegally.

Proceedings thereon.

No. 48—1882.

sions of this Act, or for the possession of which he is not able satisfactorily to account, such person shall on conviction be liable to the penalties provided in the third section of this Act, and all diamonds contained in such parcel or package shall thereupon be forfeited and sold as hereinafter provided.

Duty of person finding by chance uncut diamond outside his claim.

13. Whenever any person shall find or pick up any rough or uncut diamond on any ground or place not being the claim or depositing floor of such person, or in any ground or place worked by him under a prospecting licence, he shall forthwith take and deliver such diamond to the Resident Magistrate of the district, who shall thereupon advertise the same in the local newspapers; and if within twenty-one days from date of such advertisement, the owner of such diamond shall not have been discovered or in case no person shall have been able to prove to the satisfaction of the Resident Magistrate his right to have such diamond delivered to him, the Resident Magistrate shall thereupon order the same to be sold and the proceeds thereof to be paid into the public treasury: Provided always that a sum calculated at the rate of ten per cent. on the amount realized by such sale shall in all cases be paid to the person finding such diamond as aforesaid; and provided always that any person so finding or picking up any rough or uncut diamond as aforesaid, who shall fail or neglect to deliver the same to the Resident Magistrate, as provided by this section shall, on conviction thereof, be liable to a fine of five hundred pounds sterling, or to imprisonment with or without hard labour for a period not exceeding five years.

Powers of entry into and search of premises, &c., where stones suspected to be concealed.

14. It shall be lawful for any detective officer, constable, or policeman when thereto authorized by warrant granted under the hand of any Resident Magistrate or of the Chief of the Detective Department in the Territory of Griqualand West, which warrant such Magistrate or Chief of the Detective Department is hereby authorized and required to grant, upon sufficient cause shown to his satisfaction to enter into and upon and search any stand, buildings, and premises where he may have good cause to suspect that any rough or uncut diamonds are unlawfully concealed and any person then being upon such stand, building or premises; and at any time in any highway, street, or public place, to arrest and search any person whom he may have good cause to suspect, of having on his person, or in his possession, any rough or uncut diamonds unlawfully obtained, or without having a proper permit for the same, and to stop and search any vehicle in or upon which he shall have good cause to suspect that any such diamonds are concealed or being carried away and to search any person then being in or upon such vehicle; and should there be found any rough or uncut diamonds in or upon such stand, buildings, or premises, or upon such person, or vehicle, to seize and detain such diamonds, and thereupon arrest any person then being in or upon such stand, building, premises, or vehicle, who may reasonably be

Power of arrest at any time of suspected person.

suspected of being the possessor of, or interested in such diamonds, and as soon as may be bring such person before any Resident Magistrate or Justice of the Peace; and if such person as aforesaid shall at the trial fail to produce a proper permit for such diamonds, or to account for the possession thereof to the satisfaction of the Court before which such person shall be tried such person shall on conviction be liable to the penalties provided by the third section of this Act; and on every conviction under this section any diamond found on such stand or in such building or premises or on such person, cart, or other conveyance as aforesaid may be forfeited, and the Court may order the same to be sold: Provided that if no conviction takes place, and such person be able to prove a *bonâ fide* right to the possession of such diamonds, or to produce a proper permit for the same, the said diamonds, or the value thereof, shall be restored or paid to such person.

No. 48—1882.

Arrest, trial, and conviction of any person in such cases.

15. No person who by the order in writing of any Court or Resident Magistrate, shall sell any rough or uncut diamonds seized, detained, or forfeited under any of the provisions of this Act, shall be liable in respect of such sale to any of the penalties provided for in this Act.

When seized diamonds ordered by Court to be sold.

16. All fines recovered, and the proceeds of all diamonds forfeited and sold under the provisions of this Act shall be paid into the public treasury.

Application of fines, &c.

17. Every person who shall, at the time of the taking effect of this Act, have in his possession any rough or uncut diamonds which shall not be registered under the provisions of the Ordinances No. 4 of 1877 and No. 8 of 1880 respectively, may within three months thereafter obtain from the Resident Magistrate of the district, a permit stating the number and weight of such diamonds, and after the expiration of such period of three months such permit shall upon any prosecution be the sole evidence of the lawful possession of such diamonds.

Persons having uncut diamonds in their possession not registered at the time of this Act taking effect.

## II.—LICENCES, PERMITS AND REGISTERS.

18. It shall not be lawful for any person to deal in rough or uncut diamonds either as buyer, seller, exporter, or importer, or to carry on the business or trade of a diamond broker or factor, or the business or trade of a diamond cutter, unless such person shall be duly licensed for such purposes as aforesaid, either as dealer, broker or factor, or diamond cutter as aforesaid, and any person contravening this section shall be liable to the penalties provided by the third section of this Act.

Persons requiring licences.

19. Every licence to deal in rough and uncut diamonds within the Colony shall be written upon or covered with stamps of the value of thirty pounds for a yearly licence, or ten pounds for a quarterly licence, and every such licence shall be in the form A set forth in the second schedule: provided that all such licences as are quarterly shall, no matter when taken out, terminate on the last

Stamps, &c., on licences of dealers.

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day of the current quarter, such quarters ending respectively on the 31st March, 30th June, 30th September, and 31st December in each year; and all such licences as are annual shall, no matter when taken out, expire on the 31st December then next.

Stampson brokers' licences.

20. Every licence to be a diamond broker or factor, shall be written upon or covered with stamps of the value of fifteen pounds for a yearly licence or five pounds for a quarterly licence, and shall be in the form C set forth in the second schedule: provided that all such licences shall terminate and expire as provided for and on the days set forth in the preceding section.

Persons applying for licences to deal to produce certificate of fitness.

21. It shall not be lawful for any distributor of stamps to issue any licence to deal in rough or uncut diamonds unless the person so applying for such licence shall, when applying for the same, produce and lodge with such distributor a certificate under the hand of the Resident Magistrate of the district in the form B set forth in the second schedule: provided that it shall not be lawful for any Resident Magistrate to sign or issue such certificate until the person applying for such certificate shall, together with two sufficient sureties, have entered into a recognizance in the form G set forth in the second schedule, and unless the office in respect of which the licence is sought shall be in localities or limits from time to time defined by notice in the *Government Gazette*, under the hand of the Commissioner of Crown Lands and Public Works:

Who prohibited from being licensed.

Provided, also, that it shall not be lawful for any such Resident Magistrate to grant to any person a certificate for a licence to deal in rough or uncut diamonds or to carry on the trade or business of a diamond broker or cutter of diamonds who shall, at the time of making application for such certificate, be the holder of or interested in any licence to deal in intoxicating liquors or in any licence to keep a Kafir store or Kafir eating-house, or who shall have been convicted of any of the offences set forth in the tenth section of proclamation 24 of the 5th July, 1873, of Griqualand West, or in this Act, or in any of the Ordinances or proclamations hereby repealed: Provided, however, that in the case of a licensed person who shall have been convicted and sentenced to forfeit his licence for any period, it shall be lawful for the Resident Magistrate to grant to such person a certificate as aforesaid after the period shall have elapsed for which the licence of such person has been suspended.

Broker applying to produce certificate of fitness.

22. It shall not be lawful for any distributor of stamps to issue any licence to trade as a diamond broker or factor, unless the person applying for such licence shall, when applying, produce and lodge with such distributor a certificate under the hand of the Resident Magistrate of this district in the form D set forth in the second schedule; and it shall not be lawful for any Resident Magistrate to grant such certificate to or for any person not of full age who shall not either produce authority from his parent or guardian to trade as a diamond broker or factor (in which case

And enter into recognizances.

such parent or guardian shall be a party to his recognizance hereinafter mentioned as assisting in such) or make a solemn declaration that he is not under tutelage. Nor in any case until the person applying for such certificate, together with two sureties, shall have entered into a recognizance in the form G set forth in the second schedule.

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23. Every licence to carry on the business or trade of a diamond cutter, shall be written upon or covered with stamps of the value of ten pounds for a yearly licence, or three pounds ten shillings for a quarterly licence, and every such licence shall be in form E set forth in the second schedule: provided that all such licences as are quarterly shall no matter when taken out, terminate on the last day of the current quarter, such quarters ending respectively on 31st March, 30th June, 30th September, and the 31st December of each year; and all such licences as are annual shall, no matter when taken out, expire on the 31st December then next ensuing.

Licences of diamond cutters, form and amount of.

24. It shall not be lawful for any distributor of stamps to issue any licence to carry on the trade or business of a diamond cutter unless the person or persons applying for such licence shall, when applying, produce and lodge with such distributor a certificate under the hand of the Resident Magistrate of the district, in the form F set forth in the second schedule, and it shall not be lawful for any Resident Magistrate to sign or issue such certificate until the person or persons applying for such certificate shall together with two sufficient sureties, have entered into a recognizance in the form G set forth in the second schedule, and unless the place of business in respect of which the licence is sought, shall be in localities or limits which shall from time to time be defined by notice in the *Government Gazette* under the hand of the Commissioner of Crown Lands and Public Works.

Diamond cutters to produce certificate of fitness before being licensed.

And enter into recognizances. G. in Schedule.

25. Any licence or permit which may be obtained by concealing or misrepresenting matters which, if known, would have prevented the issue of any certificates under this Act for any of the reasons aforesaid, shall, upon proof of such concealment or misrepresentation before any Resident Magistrate be forfeited, and the person who by such concealment or misrepresentation shall have obtained such licence, or permit, shall upon conviction be liable to a penalty not exceeding five hundred pounds or to be imprisoned with or without hard labour for any period not exceeding five years.

Licences obtained by concealment or misrepresentation.

26. Any licensed diamond cutter may without permit, as in the following section provided, receive for the purpose of his trade any rough or uncut diamond from any person not licensed or authorized as in the seventh section of this Act provided, on the production by such person of a written authority or permit from any Resident Magistrate as in the following section of this Act is provided, anything in this Act to the contrary notwithstanding.

Diamond cutter may receive stones from unlicensed persons under magistrate's permit.

27. It shall be lawful for any Resident Magistrate to give any person a permit, bearing a stamp of the value of one shilling, to

What permits may be given.



- No. 48—1882. buy, sell, deliver, or receive, any diamonds, such permit to set forth clearly the person from whom and to whom such diamond or diamonds is or are to be bought or received, sold, or delivered, and
- Form of such permits. to be in the form H set forth in the second schedule: Provided that no such permit shall be granted unless the applicant shall make a solemn declaration, that such purchase, sale, delivery, or receiving is not for the purpose of trade, and in the case of an applicant for a permit to sell or deliver, that such applicant is the lawful owner of such diamond, together with a statement showing the lawfulness of his or her ownership, which declaration shall be in the form I or J as the case may be, set forth in the second schedule: and provided further that the Magistrate shall keep a record of all such permits, and of all such declarations as aforesaid: and provided further that for the purposes of this section the word "trade" shall not be construed as including the trade or business of a diamond cutter.
- Washing permits. 28. It shall be lawful for the Resident Magistrate to issue to any person save as hereinafter excepted, a special permit bearing a stamp of the value of five shillings to sell or dispose of any diamonds that shall have been found by such person in ground or soil bought and washed by him, and such permit shall be called a washing permit, and shall be in the form K contained in the second schedule, and shall set forth clearly the name of the person from whom the ground or soil in which such diamonds shall have been found was bought or received, together with the date of such purchase, the number of loads of the said soil so bought or received, the price paid for the same, and the number of loads thereof washed, and such permit shall also show the total weight of the parcel of diamonds for which the permit is granted, and shall specify the number of diamonds of the weight of ten carats and upwards contained in such parcel, and further the weight of any single stone of the value of one hundred pounds and upwards: Provided that no such permit shall be granted unless the applicant shall make a solemn declaration that such diamonds were actually found by him in such ground or soil as aforesaid, and such declaration shall be made in the form L set forth in the second schedule: and provided also that the said Resident Magistrate shall keep a record of all such washing permits and of all such declarations as aforesaid: and provided also that no such washing permit shall be issued to any person to whom the Resident Magistrate would not have power to issue a certificate under the twenty-first section of this Act: and provided lastly that such permit shall only be available in the district over which the Resident Magistrate so issuing such permit shall have jurisdiction.
- Particulars to be stated. 29. It shall be lawful for any Resident Magistrate to grant to the Chief of the Police of the district, or Chief of the Detective Department, as the case may be, or a person duly authorized in writing by him to receive the same, a permit to buy or receive one
- Restrictions.
- Permits to police and detectives.

or more rough and uncut diamonds, such permit to be in the form H set forth in the second schedule, and every such Resident Magistrate as aforesaid shall keep a record of all such permits so granted as aforesaid.

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30. Every licensed buyer or cutter of diamonds shall have an office or place of business at some place to be described in his licence, and shall have affixed on some conspicuous place on the outside of and over, or by the side of, the outer door of the place in which he may have such office or place of business, his name at full length (or where there are partners, the name and style of the firm or partnership), and after such name or style the words "licensed diamond dealer (or dealers)" or "licensed diamond cutter (or cutters)," as the case may be, such name or style and such description to be publicly visible and legible in letters at least two inches in length, and every licensed diamond buyer, seller, or cutter contravening this section, shall incur a penalty not exceeding twenty pounds for the first offence, and for a subsequent offence, within two years, a penalty not exceeding fifty pounds, and shall in any case be liable to forfeit any licence held by him or any right of renewal of the same for such period as the Court may direct.

Buyers and cutters to have place of business mentioned in licence.

31. It shall not be lawful for any diamond buyer, seller, or cutter to buy, sell, deal in or receive by way of barter, pledge or otherwise, any rough or uncut diamond otherwise than in his said office or place of business, and any such licensed person as aforesaid convicted of contravening this section, shall be liable to the penalties provided in the preceding section of this Act.

Transactions to be confined to such place of business.

32. It shall not be lawful for any licensed diamond buyer, or cutter, to remove his office or place of business at which he is licensed to deal in or carry on his business as a cutter of diamonds to another place, unless the distributor of stamps shall endorse on the licence of such diamond dealer or cutter a certificate that such licence is transferred to the place to which such diamond dealer or cutter desires to remove his office or place of business; and it shall not be lawful for any distributor of stamps to give such certificate unless the Resident Magistrate shall have first endorsed on such licence that the place to which it is sought to be transferred, is a fit and proper place for the office or place of business of a licensed dealer or cutter, and any licensed diamond buyer, seller or cutter contravening this section, shall be liable to the penalties provided by the thirty-sixth section of this Act.

Licences of persons removing to be endorsed by distributor of stamps.

33. Every licensed broker or factor in every case in which he concludes a contract of purchase or sale of rough or uncut diamonds, for or on account of any person employing him as such broker or factor, shall deliver to the seller a proper and sufficient broker's bought note stamped as by law required, such broker's note to be in the form M set forth in the second schedule, and shall also deliver to the purchaser a proper and sufficient broker's

Broker's notes.

Forms of and particulars to be stated in.

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Buyer's and seller's notes.

sold note according to the said schedule, and every registered claimholder, authorized or registered agent of a registered claimholder or joint-stock company, holder of a washing permit or prospecting licence, shall, in every case in which a sale is effected by him personally pass a seller's note, and receive a buyer's note, or otherwise, as the case may be: and every such brokers', sellers', and buyers' note shall respectively set forth all the parties to the transaction in the form M set forth in the second schedule, and shall set forth the weight of the parcel sold, the number of diamonds of the weight of ten carats and upwards, and the price per carat and the amount for which such parcel was sold: Provided that every diamond above the value of one hundred pounds shall be separately described in every such brokers', sellers', and buyers', note: and provided also that every such brokers', sellers', and buyers' note shall be certified as correct by the licensed dealer disposing of the same; and every person convicted of any offence against this section shall be liable to a penalty not exceeding five hundred pounds, and, in default of payment, to be imprisoned with or without hard labour for any period not exceeding five years, and shall in addition be liable to forfeit any licence held by him, and any right of renewal of the same, for such period as the Court may direct.

All persons authorized to deal, &amp;c., to keep records of transactions.

34. Every banker, dealer, importer, exporter, broker, factor, cutter of diamonds, registered claimholder, accredited and registered agent of any registered claimholder, or joint-stock company, holder of a washing permit or prospecting licence or permit under the sixth section of the Act, shall keep a true and correct register in the English language of all their respective dealings in diamonds, and in which they shall enter, or cause to be entered within twenty-four hours of every transaction.—

Particulars of records.

- (a) The date of all purchases, sales, exports, imports or receipts.
- (b) The name of consignor, cutter, prospector, seller, buyer, and broker, or consignee, or owner.
- (c) Total weight of each parcel.
- (d) The number of stones of ten carats and upwards in each parcel.
- (e) The price received or paid, or duty on import.
- (f) The weight of any single stone found, received, bought, sold, cut, or consigned (separately or with others), the buyer's valuation of which exceeds one hundred pounds.

And every such register shall be in the form N set forth in the second schedule, and any person so required to keep a register who shall be convicted of neglecting or failing to keep a proper register, as required by this Act, shall be liable to a penalty not exceeding five hundred pounds, and in default of payment to be imprisoned, with or without hard labour, for any period not

exceeding five years, or to both such fine and imprisonment, and shall in addition forfeit any licence held by him, or any right of renewal of the same for such period as the Court may direct.

35. Every person so required to keep a register shall, within three days after the expiration of each month, forward to the Chief of the Police of the district, or in the Territory of Griqualand West to the Chief of the Detective Department of the territory, a true copy of such register for the previous month, together with a solemn declaration of the correctness thereof and shall also produce and exhibit such register whenever the same may be required in any competent Court on the written order of the Chief of the Police of the district, or of the Chief of the Detective Department as aforesaid; and if he shall refuse or fail to do so, he shall be liable to the penalties in the last preceding section mentioned.

36. The Civil Commissioner of every district in which this Act shall be in force, or such other officer as may be appointed by the Governor, shall keep a register, showing the weight, description, and value of all rough or uncut diamonds brought or imported into such district, the name of the person bringing or importing the same, and the place whence they are brought or imported, and shall, upon application made, grant to the person bringing or importing such diamonds, a certificate, of registration setting forth all the particulars above-mentioned in the form "N" in the schedule hereunto annexed, upon payment of a registration fee of one-half per cent. on the value of all such diamonds so brought in or imported; and any person who shall bring or import any rough or uncut diamond into such district without obtaining such certificate of registration, within twenty-four hours of his arrival with, or receipt of such diamonds, shall, upon conviction, be liable to a penalty not exceeding five hundred pounds and in default of payment, to imprisonment with or without hard labour for any term not exceeding five years, or to both such fine and such imprisonment, and shall, in addition, forfeit such diamonds.

37. No rough or uncut diamonds shall be exported from any district in which this Act shall be in force, until the weight and value of the same, and the name of the person exporting them, shall have been entered in a register, to be kept in the form "N" in the schedule hereunto annexed by the Civil Commissioner of such district, or such other officer as may be appointed by the Governor in that behalf, and a registration fee of one-half per cent. on the value of such diamond or diamonds shall have been paid. Any person contravening the provisions of this section, shall be liable to the penalties provided in the third section of this Act.

38. In the Territory of Griqualand West, the proceeds of such registration fee shall be applied in the following manner:—Three-fourths to be retained by the Government, and to be applied to the purposes mentioned in the sixty-fifth section of this Act, and one-fourth to be administered by a board constituted for the protection

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Records to be forwarded monthly to Chief of Police, &c., and produced when required.

Civil Commissioner or other officer to keep register of all uncut diamonds brought into district.

Certificate of such registration.

No rough diamonds to be exported before registered.

Application of registration fees.

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of mining interests in the manner set forth in the following section.

Constitution of Board for protecting mining interests.

39. The board mentioned in the last preceding section shall consist of eight members who shall be elected on the 1st day of September next, and thereafter annually in manner following:— Two to be elected by the mining board of the Kimberley Mine, two by the mining board of the De Beer's Mine, two by the mining board of the Du Toit's Pan Mine, and two by the mining board of the Bultfontein Mine.

In what cases Governor may appoint members of the Board.

40. In case at any time there shall not be a mining board as aforesaid controlling the affairs of any of the said mines, or in case of a failure to elect as aforesaid, it shall and may be lawful for the Governor to appoint such persons as he may think fit, to be members of the said board, in lieu and instead of such members as otherwise might have been elected by the said mining board or boards, as the case may be, and the Governor may from time to time revoke such appointments, and may appoint other persons in the place of those so removed.

Penalties for refusing to produce licence when called on by proper authority.

41. Every licensed diamond dealer, or cutter of diamonds, and every holder of a permit granted under the twenty-seventh and twenty-eighth sections of this Act, or the holder of a prospecting licence, shall be bound to exhibit his licence to any person authorized by the Chief of the Police of the district, or the Chief of the Detective Department in Griqualand West, as the case may be, in writing to demand it, and every such licensed person as aforesaid who shall refuse or neglect to produce and exhibit his licence or permit when called upon to do so, by any person exhibiting such authority as aforesaid to demand it shall, for the first offence incur a penalty not exceeding one hundred pounds, and for a subsequent offence a penalty not exceeding three hundred pounds, and shall in addition in any case be liable to forfeit any licence held by him or any renewal of the same, for such period as the Court shall order.

Counterfoils of broker's notes to be kept and produced when required.

42. Every licensed broker or factor shall keep copies or counterfoils of his bought and sold notes, as in the form M, contained in the second schedule, and shall produce and exhibit such copies or counterfoils to any person authorized by the Chief of the Police of the district, or the Chief of the Detective Department in Griqualand West, as the case may be, to demand them, and every licensed broker or factor refusing or neglecting to do so when called upon by any officer exhibiting his authority to demand them shall incur the penalties provided in the last preceding section.

Permits to buy stones at diamond fields situated 3 miles beyond town or village, &c.

43. It shall be lawful for any Resident Magistrate to grant to any licensed diamond dealer, not being a licensed broker or factor, a permit to buy rough or uncut diamonds at any place within his district at which there shall be any public diamond fields, at a distance of more than three miles from any town or village, or within three miles of which diamond field there shall not be three

licensed diamond dealers, not being licensed brokers or factors: provided always that every such permit shall not extend over a period of more than one month, and shall be covered by or written on a stamp of five shillings.

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### III.—SPECIAL COURTS FOR MINING OFFENCES.

44. For the purpose of trying offences under the Ordinances of Griqualand West respectively No. 4 of 1877, and No. 8 of 1880, committed before the taking effect of this Act, and offences under this Act respectively, the Governor may by proclamation constitute one or more Courts over any area, or for any districts to be defined or named in such proclamation, and every such Court shall be styled a "Special Court." <sup>(1)</sup>

Special Courts may be appointed by Governor.

45. Every Special Court shall consist of three persons of whom at least one shall be a judge of the Supreme Court, and a decision of a majority of the members of such Court shall be the judgment of the Court.

Constitution of Special Courts.

46. In case more than one judge shall sit in a Special Court the senior judge shall preside, and in case one judge only shall sit such judge shall preside.

Who to preside.

47. Judges of the Supreme Court shall *ex-officio* be members of the Special Courts, and it shall be lawful for the Governor by proclamation from time to time to appoint persons not being judges to be members of such Courts respectively. Such last mentioned persons shall sit and take part in the proceedings of such Special Courts when thereto required by any order issued as in the next succeeding section mentioned.

Judges of Supreme Court to be *ex-officio* members.

Other persons may be appointed by Governor.

48. A Special Court shall be assembled from time to time, and as often as may be necessary, for the trial of any person accused of any offence cognizable by a Special Court by any one of the judges, and every order convening a Special Court shall state the names of the members to constitute such Court, not exceeding three, and every such order may after the making thereof be altered by the judge making the same either as to the time when such Court shall assemble or by omitting one or more members and substituting another or others.

When and how Special Court to be convened.

49. Every Special Court when assembled may adjourn from time to time as to such Court may be deemed necessary.

Adjournments.

50. Until otherwise ordered by any rules to be made in pursuance of the provisions of this Act, the form and manner of procedure in every such 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.

Rules of Magistrate's Courts to apply.

51. The process of the said Court for compelling the appearance of the person accused to answer the charge and of any persons as

How process to be signed.

<sup>1</sup> Special Court constituted for Districts of Kimberley, Herbert, Hay and Barkly by Proclamation No. 144, 1882, dated 1st Sept., 1882.

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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 any Judge or of the Special Court.

Right of appeal to High Court or Supreme Court.

52. Any person who shall be convicted by the judgment of any such Special Court and sentenced to undergo any punishment may appeal against such conviction either to the Supreme Court or to the High Court of Griqualand, in case such conviction shall take place in any district over which the said High Court exercises jurisdiction as such person may elect: Provided that within four days next after such conviction notice in writing be given by or on behalf of the person convicted to the clerk of such Special Court, or of the Judge presiding at the trial of his intention to appeal, and of the Court to which he elects to appeal, and every such appeal shall be prosecuted within forty-two days after the giving of such notice (unless upon application to either of such Courts further time be given for the prosecution thereof), and if not so prosecuted such conviction and sentence shall be and become final:

To be prosecuted within 42 days of notice of appeal.

Sect. 47, Act 20 of 1856 to apply.

And when any such appeal is made as aforesaid, the provisions of the forty-seventh section of the Act No. 20 of 1856 in regard to the execution of any sentence of imprisonment exceeding one month, or to pay any fine exceeding five pounds, and the circumstances under which any such sentence may be suspended shall apply, *mutatis mutandis*, to any sentence so appealed against.

High Court may give leave to appeal to Court of Appeal.

53. As often as any appeal shall be made to the said High Court, and such Court shall affirm the conviction and sentence of the Special Court appealed from, the person convicted may, with the leave of the said High Court, but not otherwise, appeal to the Court of Appeal. And every appeal allowed as aforesaid to the Court of Appeal shall be prosecuted at the next sitting of such Court unless upon application duly made further time be allowed for the hearing or prosecution of such case or appeal.

Charges to be brought first before Magistrate.

54. All charges for offences cognizable by a Special Court shall, in the first instance, be brought before a Resident Magistrate having jurisdiction in the district in which the offence has been committed, and such Magistrate shall decide whether a preliminary examination shall be taken or the case be tried before a Special Court. In case a preliminary examination be taken, and the accused be committed for trial, the Attorney-General or Crown Prosecutor, as the case may be, if he determine to prosecute, may remit such case for trial before a Special Court, or may proceed in any other competent Court, as he may deem fit.

Governor to make rules for Special Courts.

55. The Governor may from time to time by proclamation to be issued by him establish general rules or orders for regulating the practice and form of procedure in cases pending before such Special Courts, in addition to or instead of the laws and rules regulating the practice and procedure in the Courts of Resident Magistrates.

## IV.—RECOVERY OF PENALTIES.

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56. All fines and penalties imposed under the provisions of this Act shall be levied by warrant under the hand of the judge presiding in the Special Court, directed to the messenger of the Court of the Resident Magistrate of the district upon all property of or belonging to the prisoner at the time of his arrest.

Recovery of fines and penalties.

57. It shall not be lawful for any person arrested for any offence against the provisions of this Act to sell, exchange, give, or otherwise alienate any property of which he may be possessed at the time of his arrest whether movable or immovable until he shall have been discharged from custody or acquitted of such offence, or if such person shall be convicted and sentenced to pay any fine, until such fine shall have been paid or recovered; and any such exchange gift or other alienation made contrary to the provisions of this section shall be void.

Accused persons forbidden to sell or alienate property till case disposed of.

## V.—MISCELLANEOUS.

58. Any servant who shall steal any diamond the property of or in the lawful possession of his master, or shall conceal or retain with intent to convert the same to his own use any rough or uncut diamond, or who shall attempt to commit any of the said offences, or who shall be an accessory or accomplice in the commission of any of the said offences, shall upon conviction be liable to the penalties provided in the third section of this Act: Provided always that all diamonds found in the possession of any servant then or lately employed by any master who is or was at the time of such employment a licensed dealer in or cutter of diamonds, or a registered claimholder, or a registered and accredited agent of a registered claimholder, or the holder of a washing permit; shall unless and until the contrary be proved by such servant be deemed and taken to be the property of such master if such servant be then in the employment of any master, and may be seized and taken possession of by the said master, or if the servant is not then in the employment of any master shall be deemed and taken to be the property of the last such master as aforesaid by whom such servant was employed within three months, and may be seized and taken possession of by such master.

Penalties on servants stealing diamonds, &c.

Accessories, &c.

Diamonds found on servant presumed to be master's.

59. Any person who shall be convicted of having induced or attempted to induce any servant to steal a diamond from his master, or conceal or retain with intent to appropriate to his own use any diamond which it was the duty of such servant to have delivered to his master shall be liable to the penalties provided in the third section of this Act.

Penalties for inducing servants to steal diamonds.

60. All crimes or offences punishable under any of the Ordinances which are repealed by this Act and committed before the passing of this Act shall be dealt with and punishable under the provisions of the said sections of the repealed Ordinances respectively; and a conviction under any of the provisions of Ordinance

Punishments may be inflicted under Sections of Repealed Ordinances.



- No. 48—1882. No. 21 of 1874, or of Ordinance No. 4 of 1877, or of Ordinance No. 8 of 1880, shall be taken as a previous conviction under the corresponding provisions respectively of Ordinance No. 4 of 1877, Ordinance No. 8 of 1880, or of this Act, in all cases where such previous convictions were obtained on charges which could respectively have been made under the corresponding provisions of Ordinance No. 4 of 1877, No. 8 of 1880, or of this Act.
- Previous convictions. 61. Any person who shall be an accessory either before or after the fact to the contravention of any of the provisions of this Act shall be liable to be charged and dealt with in all respects as the principal.
- Accessories may be charged as principals. 62. In the construction of this Act the following words and expressions shall have the meaning hereby assigned to them unless there be something in the context repugnant thereto, that is to say:—
- Interpretation clause. “Dealer” and “deal” shall include buyer, seller, broker, and factor, and any sort of dealing in diamonds.
- “Joint-stock company” shall mean a company established for mining purposes only.
- “Servant” shall mean any description of servant whether registered or not.
- “Public place” shall mean any place except a private residence.
- “Resident Magistrate” shall include the additional Magistrate for any district.
- “Diamonds” shall mean rough or uncut diamonds only.
- “Rough and uncut diamonds” shall in the case of diamond cutters be taken to include diamonds which have been cut, shaped, and polished by them out of the rough.
- “Cutter” shall include cleavers and polishers of diamonds.
- “The Territory of Griqualand West” shall mean the territory as defined by Sir Henry Barkly’s Proclamation, No. 67 of 1871.
- “Chief of the Police” shall mean any Commissioner or Inspector of Police, or the Chief Constable of any district.
- “Banker” shall mean any manager, cashier, or other officer of a Joint-stock Bank, acting in his capacity as such.
- When any form is directed or required to be used, such form shall be as nearly as material, according to the form set forth in second schedule.
- When and where Act to come into operation. 63. This Act shall come into operation in the districts forming the late Territory of Griqualand West, upon the promulgation thereof, and in such other districts as the Governor shall from time to time by proclamation declare to be subject thereto, and from a date to be in such proclamation stated.
- Governor may make rules for carrying out part 2 of this Act. 64. The Governor may from time to time make regulations for the better administration of part two of this Act, and by such regulations may alter any forms by this Act provided, or provide

additional forms: and such forms shall be deemed to be forms by this Act directed to be used.

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65. The fifth section of the "Prevention of Diamond Thefts Ordinance, 1880," shall be read and construed as if the words "The Diamond Trade Act, 1882," were therein inserted, instead of the Ordinances No. 4 of 1877 and No. 8 of 1880, and the fines in the said section referred to to be deducted from the expense of keeping up and maintaining the portion of the police and detective forces for the detection of the illicit traffic in diamonds, shall be deemed to be the fines or penalties recovered under the provisions of this Act.

Substitution of this Act for certain other Ordinances in reading "Prevention of Diamond Thefts Ordinance, 1880," Sec. 5.

66. It shall be lawful for the Governor to appoint such officer as he may deem necessary for the discharge of any of the duties by this Act imposed upon any Resident Magistrate, and as often as any such officer shall be appointed he shall be deemed for the purposes of this Act to be the Resident Magistrate, and the several sections of this Act shall be read and construed accordingly.

Officers may be appointed by Governor to discharge duties under this Act imposed on Magistrates.

67. This Act may be cited for all purposes as the "Diamond Trade Act, 1882."

Short title.

## SCHEDULE I.

Date of Ordinance or Proclamation.	Title of Act or Proclamation.	Extent of Repeal.
August 10, 1872, No. 14 ..	Sir Henry Barkly's Master and Servants Proclamation	Sections 14, 15, and 17.
No. 4 of 1877 .. ..	Diamond Trade Ordinance, 1877	The whole
No. 8 of 1880 .. ..	Diamond Trade Amendment Ordinance, 1880 .. ..	The whole

## SCHEDULE II.

## A.

## FORM OF DIAMOND DEALER'S LICENCE.

[DIAMOND TRADE ACT, 1882.]

I, \_\_\_\_\_, Distributor of Stamps in \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_ 188\_\_\_\_, do hereby authorize and empower \_\_\_\_\_, having his office at \_\_\_\_\_ (who has produced to me his Certificate required by Law), to deal in, export, and import rough or uncut Diamonds within \_\_\_\_\_, for \_\_\_\_\_ end- ing on the \_\_\_\_\_ 188\_\_\_\_, and no longer.

This Licence expires on the \_\_\_\_\_ day of 188\_\_\_\_

Distributor.

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## B.

## FORM OF DIAMOND DEALER'S CERTIFICATE.

[DIAMOND TRADE ACT, 1882.]

I, \_\_\_\_\_, Resident Magistrate of \_\_\_\_\_, do hereby certify that \_\_\_\_\_, whose office is situated at \_\_\_\_\_ is a fit and proper person to receive a Licence to deal in, export, and import rough or uncut Diamonds, and that he is not the holder of a Licence to sell intoxicating liquors, or of a Licence to keep a Kafir store or Kafir eating-house within \_\_\_\_\_ Resident Magistrate's Office, \_\_\_\_\_ day of \_\_\_\_\_ 188 .  
Resident Magistrate.

## C.

## FORM OF DIAMOND BROKER'S LICENCE.

[DIAMOND TRADE ACT, 1882.]

I, \_\_\_\_\_, Distributor of Stamps in \_\_\_\_\_, on this day of \_\_\_\_\_, 188 , do hereby authorize and empower \_\_\_\_\_ of \_\_\_\_\_ (who has produced to me the Certificate required by Law), to act as a Diamond Broker within \_\_\_\_\_ for \_\_\_\_\_ ending on the \_\_\_\_\_ day of 188 , and no longer.  
This Licence expires on the \_\_\_\_\_ day of \_\_\_\_\_ 188 .  
Distributor.

## D.

## FORM OF DIAMOND BROKER'S CERTIFICATE.

[DIAMOND TRADE ACT, 1882.]

I, \_\_\_\_\_, Resident Magistrate of \_\_\_\_\_, do hereby certify that \_\_\_\_\_, of \_\_\_\_\_, is a fit and proper person to receive a Licence to act as a Diamond Broker, or Factor, and that he is not the holder of a Licence to sell intoxicating liquors or of a Licence to keep a Kafir store or Kafir eating-house within \_\_\_\_\_ Resident Magistrate.  
Resident Magistrate's Office,  
day of \_\_\_\_\_ 188 .

## E.

## DIAMOND CUTTER'S LICENCE.

[DIAMOND TRADE ACT, 1882.]

I, \_\_\_\_\_, Distributor of Stamps for \_\_\_\_\_ on this day of \_\_\_\_\_, 188 , do hereby authorize and empower \_\_\_\_\_ having his place of business at \_\_\_\_\_ (who has produced to me the Certificate required by Law), to carry on the trade or business of cutting, cleaving, and polishing rough or uncut Diamonds within \_\_\_\_\_ for \_\_\_\_\_ from the \_\_\_\_\_ day of 188 , and no longer.  
This Licence expires on the \_\_\_\_\_ day of \_\_\_\_\_, 188 .  
Distributor.

## F.

No. 48—1882.

## DIAMOND CUTTER'S CERTIFICATE.

[DIAMOND TRADE ACT, 1882].

I, \_\_\_\_\_, Resident Magistrate of \_\_\_\_\_, do hereby certify that \_\_\_\_\_, of \_\_\_\_\_, whose place of business is situated at \_\_\_\_\_, is a fit and proper person to receive a Licence to carry on the trade or business of cutting, cleaving, and polishing rough or uncut Diamonds, and that he is not the holder of a Licence to sell intoxicating liquors, or of a Licence to keep a Kafir store, or a Kafir eating-house within

Resident Magistrate's Office, \_\_\_\_\_ Resident Magistrate.  
day of \_\_\_\_\_ 188 .

## G.

## RECOGNIZANCE UNDER DIAMOND TRADE ACT, 1882.

On the \_\_\_\_\_ Day of \_\_\_\_\_, in the year of Our Lord One Thousand Eight Hundred and Eighty \_\_\_\_\_, appeared before me, \_\_\_\_\_ Esq., Resident Magistrate for the District of \_\_\_\_\_, and acknowledged ourselves to owe Our Lady the Queen, to wit, the said \_\_\_\_\_ the sum of Five Hundred Pounds Sterling and the said \_\_\_\_\_ the sum of Five Hundred Pounds Sterling of good and lawful money to be respectively made and levied of our several goods and chattels, lands, and tenements to the use of our said Lady the Queen, her heirs and successors, if the said \_\_\_\_\_ shall fail in performing the conditions underwritten.

The condition of this recognizance is that if the said \_\_\_\_\_ shall strictly conform to and abide by all and singular the provisions of the said Diamond Trade Act, 1882, during the time the Licence to be by him obtained under this Act shall be in force, then this Recognizance shall be null and void or else shall remain in full force and effect.

The said \_\_\_\_\_ and the said \_\_\_\_\_ and the said \_\_\_\_\_ and the said \_\_\_\_\_ do hereby further jointly and severally agree that in the event of the said \_\_\_\_\_ being convicted of contravening any provision of the said Act, this Recognizance shall *ipso facto* become at once executable without the necessity of further process, just as if judgment had been obtained upon it.

Taken and acknowledged this day and year above written before me aforesaid.

Resident Magistrate.

No. 49—1882.

## H.

No.

## FORM OF PERMIT.

[Permit granted under Section 27 of Diamond Trade Act, 1882.]

Resident Magistrate's Office, 188 .  
 Permission is hereby granted unto , of  
 to purchase (or receive, sell, or deliver)  
 Diamonds from (or to) of the approximate  
 weight of

Dated at this day of  
 188 .  
 Resident Magistrate of

## I.

## FORM OF DECLARATION OF PURCHASER OR RECEIVER.

I, , of do solemnly and sincerely  
 declare that I am desirous of purchasing (or receiving) from A.B.

Diamonds of the approximate weight of carats  
 which I require for my own use, and not for the purposes of trade  
 here or elsewhere, and I make this solemn Declaration conscientiously  
 believing the same to be true, and by virtue of the provisions of the  
 Ordinance No. 6 of 1845, intituled "An Ordinance for substituting  
 Declarations in the place of certain Oaths, and for the suppression of  
 Voluntary and Extra-judicial Oaths and Affidavits."

Declared before me, at this day of  
 188 .

Resident Magistrate of

## J.

## FORM OF DECLARATION OF OWNER.

I, , of , do solemnly and  
 sincerely declare that I am desirous of selling (or delivering) to A.B.

Diamonds of the approximate weight of  
 carats of which I am the lawful and *bond fide* owner (here state how  
 he or she became owner), and that such sale (or delivering) is not  
 for the purposes of trade, and I make this solemn declaration,  
 conscientiously believing the same to be true, and by virtue of the  
 provisions of the Ordinance No. 6 of 1845, intituled "An Ordinance  
 for substituting Declarations in the place of certain Oaths, and for  
 the suppression of Voluntary and Extra-judicial Oaths and Affidavits."

Declared before me, at this day of  
 188 .

Resident Magistrate of

K.

No. WASHING PERMIT.

[Permit granted under Section 28 of The Diamond Trade Act, 1882.]

Permission is hereby granted unto \_\_\_\_\_, of \_\_\_\_\_, to sell, export, or dispose of the diamonds herein specified and found in the ground herein described.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 188 .

Resident Magistrate of \_\_\_\_\_

From whom Ground bought.	Date of Purchase.	Number of Loads.	Price Paid for Ground.	Loads Washed.	No. of Diamonds of Ten Carats and upwards.	Weight of any single Stone valued above £100.	Total Weight of Parcel.

L.

FORM OF DECLARATION FOR WASHING PERMIT.

I, \_\_\_\_\_ of \_\_\_\_\_, do solemnly and sincerely declare that the rough and uncut Diamonds, hereinafter specified, were found by me in \_\_\_\_\_ loads of Diamondiferous Ground purchased by me on the \_\_\_\_\_ day of \_\_\_\_\_ 188 , from \_\_\_\_\_, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6 of 1845, intituled "An Ordinance for substituting declarations in the place of certain Oaths, and for the suppression of Voluntary and Extra-judicial Oaths and Affidavits."

Declared before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 188 .

Resident Magistrate of \_\_\_\_\_

SPECIFICATION OF DIAMONDS MENTIONED IN THE FOREGOING DECLARATION.

No. of Stones of Ten Carats and upwards.	Weight of any single Stone above the value of £100.	Total Weight of Parcel.

No. 14—1885.]

[July 28, 1885.

## ACT

For the Regulation of the Trade in Diamonds within the Colony, and to provide for the punishment of certain offences therein.

Preamble.

WHEREAS it is expedient to regulate the trade in diamonds, and to provide for the punishment of certain offences within the districts of the Colony other than Griqualand West: 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:—

Who authorized to buy, deal in, &c., or sell, offer, &c., any diamonds or to be an accessory thereto.

1. It shall not be lawful for any person, firm, or joint-stock company, except as in this Act is excepted, to have in his or its possession, or to buy, deal in, or receive by way of barter, pledge or otherwise, either as principal or agent, or to sell, offer, or expose for sale, barter, pledge, or in any way, either as principal or agent, to dispose of or deliver any diamonds, or to be an accessory to such buying, dealing in, receiving, selling, offering, exposing, disposing, or delivering as aforesaid, unless such person, firm, or joint-stock company so buying, dealing in, receiving, selling, offering, exposing, disposing or delivering, as aforesaid, shall be duly licensed, or authorized to deal in diamonds, either as buyer, seller, broker, factor, or otherwise as the case may be, or shall be duly licensed to carry on the business or trade of a diamond cutter or unless such person, firm, or joint-stock company buying, dealing in, receiving, selling, offering, exposing, disposing, or delivering as aforesaid shall be a banker or registered claimholder

And then only if the diamonds are the property or in lawful possession of the authorized person.

within this Colony: Provided that it shall not be lawful for such banker, licensed diamond dealer, registered claimholder, or duly authorized person, firm, or joint-stock company to deal in diamonds otherwise than in the manner specially authorized by his or their licences or authority, or to sell, offer, or expose for sale, barter or pledge, either as principal or agent, or in any way to dispose of, or deliver any diamonds, unless such diamonds shall be actually the property or in the lawful possession of such banker, licensed diamond dealer, registered claimholder, duly authorized person, firm, or joint-stock company: Provided also that the onus of proof of the *bonâ fide* possession of or authority to deal in any such diamonds as aforesaid within the meaning of this section shall in all cases rest on such banker, licensed diamond dealer, registered claimholder, duly authorized person, firm, or joint-stock company as aforesaid. And provided further that any person who shall be unable to account satisfactorily for, or to prove his right to the possession of any diamonds found in his possession, or to produce his proper permit for the same in accordance with the provisions

Onus of proof of *bonâ fide* possession of diamonds rests on authorized person.

of this Act, shall be liable on conviction to the penalties of the following section.

No. 14—1885.

2. Any person convicted of contravening the above section shall be liable to a penalty not exceeding one thousand pounds, or to imprisonment with or without hard labour, for a period not exceeding fifteen years, or to both such penalty and imprisonment, and all diamonds the subject of any transaction in contravention of this Act may be confiscated to the Crown by the Court before which the proceedings relating thereto shall be taken, or by any other competent Court, and such diamonds shall be sold and disposed of as hereinafter provided; provided, however, that when any person shall have been sentenced under the provisions of this Act to any greater term of imprisonment than five years, it shall be lawful for the Governor to remit any portion of such term in excess of such five years, on condition of such person so sentenced leaving and not returning to any part of this Colony, including Griqualand West, during the remainder of his sentence; and if any person, a portion of whose sentence shall have been so remitted, shall notwithstanding return within the time aforesaid, such person shall be liable to be re-arrested and imprisoned for a term equal to the portion of the sentence unexpired at the time of his release from custody: Provided also, that nothing herein contained shall in any manner affect Her Majesty's prerogative of mercy.

Penalty for contravening Section I.

3. Any banker, licensed diamond dealer, registered claimholder, joint-stock company, licensed cutter of diamonds, or duly authorized person buying or receiving by way of barter, pledge, or otherwise, either as principal or agent, any diamonds from any person, or in any way dealing with the same with any person not being a banker, licensed diamond dealer, registered claimholder, joint-stock company, licensed cutter of diamonds, or duly authorized person, shall be liable upon conviction to the penalties in the second section in this Act provided, and shall in addition forfeit any licence which such person may hold, and any right of renewal of the same for such period as the Court may direct, and no such person shall thereafter be registered as the agent of any claimholder or joint-stock company.

Penalty on authorized person for buying, dealing in, &c., any diamonds from, with, &c., person not authorized.

Forfeiture of licence

4. Any licensed or authorized diamond dealer or diamond cutter in any way dealing in diamonds otherwise than in the manner specially authorized by the licence or authority held by or vested in him, shall on conviction thereof be liable to the penalties in the second section in this Act provided, and shall in addition forfeit his licence, and any right of renewal of the same for such time as the Court may think fit to direct.

Penalty under Section 2 extended to any dealing not specially authorized by the licence held by an authorized person.

Forfeiture of licence.

5. If in any proceeding under this Act the Court has to be satisfied either that the prisoner or any witness or any other person, is not authorized or licensed to deal in diamonds within the meaning of the section under which such accused person is being tried, such prisoner, witness, or other person shall be deemed to

Onus of proof of authorization rests on the person whose authority to deal in diamonds is in question.



[ M. ]										[ M. ]										[ M. ]									
BROKERS', COMPANIES', & OTHER LICENSED SELLERS' NOTES OF SALE.										BROKERS' COMPANIES', & OTHER LICENSED SELLERS' NOTES OF SALE.										BROKERS', COMPANIES', & OTHER LICENSED SELLERS' NOTES OF SALE.									
A.										B.										C.									
COUNTERFOIL TO BE KEPT BY SELLER OR BROKER AS REGISTERED.										NOTE TO BE HANDED BY BROKER TO SELLER.										NOTE TO BE HANDED BY BROKER, DEALER, ETC., TO BUYER.									
No.....										No.....										No.....									
..... 188										..... 188										..... 188									
Sold for.....										Sold to.....										Bought of.....									
Sold to.....																													
DETAILS OF PARCEL, SINGLE STONES OF A VALUE ABOVE £100 TO BE SPECIFIED.							TOTAL OF PARCEL.			DETAILS OF PARCEL, SINGLE STONES OF A VALUE ABOVE £100 TO BE SPECIFIED.							TOTAL OF PARCEL.			DETAILS OF PARCEL, SINGLE STONES OF A VALUE ABOVE £100 TO BE SPECIFIED.							TOTAL OF PARCEL.		
No. of Stones 10 cts. each or over.	Carats.	Price.	AMOUNT.			Carats.	AMOUNT.	No. of Stones 10 cts. each or over.	Carats.	Price.	AMOUNT.			Carats.	AMOUNT.	No. of Stones 10 cts. each or over.	Carats.	Price.	AMOUNT.			Carats.	AMOUNT.						
			£	s.	d.						£	s.	d.						£	s.	d.			£	s.	d.	£	s.	d.
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IMPORTS, PURCHASES, AND OR FINDS.											SALES AND EXPORTS.										
DATE.	OWNER OR CON-SIGNEE.	BROKER OR OWN FINDS.	Details of Parcel—Single Stones of a Value above £100 to be specified.				TOTAL OF PARCEL.			DATE.	BUYER OR CON-SIGNEE.	BROKER.	Details of Parcel—Single Stones of a Value above £100 to be specified.				TOTAL OF PARCEL.				
			No. of Stones 10 carats & over each.	Carats.	Price.	AMOUNT.	No. of Stones 10 carats & over each.	Carats.	AMOUNT.				No. of Stones 10 carats & over each.	Carats.	Price.	AMOUNT.	No. of Stones 10 carats & over each.	Carats.	AMOUNT.		
				£	s.	d.		£	s.	d.					£	s.	d.		£	s.	d.
	Balance on hand...											Balance on hand...	...	...	...	...	...				

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No. 14—1885.

be unlicensed or unauthorized, unless such prisoner, witness, or other person shall prove to the satisfaction of the Court that he is duly authorized or licensed as aforesaid.

Registration of diamonds to be imported into this Colony.

6. All diamonds imported into this Colony or intended for transit from any outside country or state through this Colony, shall, before importation or introduction, be first registered with the Chief of the Detective Department of Griqualand West or such other person as may be appointed by him in that behalf, who shall have authority and power to require the importer or introducer to account satisfactorily to him for the possession of such diamonds, and to give such proof as may be demanded by the said Chief of the Detective Department, or other person so appointed as aforesaid regarding the mine or mines wherein such diamonds were produced, and thereupon to grant a certificate of registration to such importer or introducer, and any person importing diamonds into, or sending diamonds through this Colony without such registration, or, when required to do so as aforesaid, failing to account satisfactorily for the possession of such diamonds, shall upon conviction be liable to the penalties in the second section of this Act provided, and all such diamonds so imported or introduced without such registration shall be liable to be confiscated and sold, and the proceeds of such sale shall be disposed of as in this Act provided: Provided, however, that it shall be lawful for His Excellency the Governor to make such arrangements with the authorities of the Free State, for the transmission of diamonds through this Colony for export, as may to him appear not to endanger the efficient working of this Act, or of the Diamond Trade Act of the Free State.

Penalty on importation without registration.

Governor may arrange for export of diamonds from Free State through Colony

Certain persons authorized to search letters, &c., passing through the post, or good cause to suspect that unregistered diamonds are therein contained.

7. It shall be lawful for the Resident Magistrate, or any Commissioner, Inspector, or other Chief Officer of the Police of any district, or any officer duly authorized by the Governor in that behalf, whenever he shall have good cause to believe that any letter parcel or package is being dispatched through the Post Office by any person, which letter, parcel, or package contains diamonds which have not been registered according to the provisions of the sixth and twenty-fifth sections of this Act in the register of the person so sending them as aforesaid, or of which he may at any time have become unlawfully possessed, to stop or cause to be stopped such letter, parcel, or package as aforesaid at any Post Office within the Colony, either during the transit of such letter, parcel or package, or otherwise, and thereupon the said Resident Magistrate, Commissioner, Inspector or Chief Officer of the Police of the district as aforesaid, or officer duly authorized by the Governor in that behalf as aforesaid, may proceed to open and examine such letter, parcel or package, in the presence of the Postmaster of such Post Office as aforesaid, and if there shall be discovered therein any diamonds which shall not have been duly entered in the register of such person as aforesaid in accordance

Penalty on person despatching such letters, &c., containing unregistered dia-

with the provisions of this Act, or for the possession of which the person who has dispatched such letter, parcel or package is not able satisfactorily to account, such person shall be liable to the penalties provided in the second section of this Act, and all diamonds contained in such letter, parcel or package shall be forfeited and sold as hereinafter provided: Provided that if any person shall within six months after such discovery be able to prove a *bonâ fide* right to the possession of such diamonds, the said diamonds or the value thereof shall be restored or paid to such person.

8. It shall be lawful for any detective officer, constable, or policeman of any district when thereto authorized by a warrant granted under the hand of any Resident Magistrate of such district, or any officer duly authorized by the Governor in that behalf, to enter into and upon, and search any buildings, premises, vehicles, ships or boats, where he may have good cause to suspect that any diamonds are unlawfully concealed, and to arrest and search any person then being upon such building, premises, vehicle, ship, or boat, whom he may have good cause to suspect of having upon his person, or in his possession any diamonds unlawfully obtained, or without having a proper permit for the same, and should there be found any diamonds in or upon such building, premises, vehicle, ship or boat, or upon such person, to seize and detain such person then being in or upon such building, premises, vehicle, ship, or boat, who may reasonably be suspected of being the possessor of, or interested in such diamonds, and as soon as possible bring such person before any Magistrate or Justice of the Peace; and if such person shall then fail to produce a proper permit or licence for such diamonds, or to account for the possession thereof to the satisfaction of the Magistrate or Justice of the Peace before whom such person shall be brought, such person shall be liable to the penalties provided for by the second section of this Act; and all such diamonds found in such building, premises, vehicle, ship, or boat, or on such person as aforesaid, shall be forfeited, and sold as hereinafter provided: Provided that if any person be able to prove a *bonâ fide* right to the possession of such diamonds, or to produce a proper permit for the same, the said diamonds, or the value thereof, shall be restored or paid to such person.

9. No person who by the order in writing of any Court or Resident Magistrate shall sell any diamonds seized, detained, or forfeited under this Act, shall be liable in respect of such sale to any of the penalties provided for in this Act.

10. All fines recovered, and the proceeds of all diamonds forfeited and sold under the provisions of this Act, shall be paid into the public treasury: Provided, however, the Governor shall allow any person upon whose information any diamonds are captured and confiscated, such sum out of the proceeds of such diamonds as he may deem just and reasonable, such reward being not less than

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monds, on failure to account for possession of such diamonds.

Search warrant to issue upon good cause to suspect concealment of diamonds in any buildings, &c., arrest of persons there found and reasonably suspected of being in possession of diamonds found in such building, &c.

Penalty on person convicted under this section.

Order of Court sufficient warrant for the sale of diamonds seized, &c., under this Act.

Fines and proceeds of diamonds sold under this Act paid into Public Treasury.

Rewards to informers.

- No. 14—1885. twenty-five and not more than fifty per cent. of the value of the same.
- Permit for the possession of diamonds in possession at the passing of this Act. 11. Every person who shall at the time of the taking effect of this Act have in his possession any diamonds which shall not be registered, shall within thirty days thereafter obtain from an officer duly authorized thereto, a permit stating the number and weight of such diamonds, and after the expiration of such period of thirty days, such permit shall upon any prosecution be the sole evidence of the lawful possession of such diamonds.
- Dealing in diamonds as buyer, seller, &c., unlawful except by licence to buy, sell, &c. 12. It shall not be lawful for any person to deal in diamonds, either as buyer, seller, exporter, or importer, or to carry on the business or trade of a diamond cutter, or the business or trade of a diamond broker or factor, unless such person shall be duly licensed for such purposes as aforesaid, either as dealer, broker, or factor, or diamond cutter as aforesaid, and any person contravening this section shall be liable to the penalties provided in the second section of this Act: Provided that registered claimholders can sell or<sup>r</sup> deliver to, and licensed bankers receive but not purchase from, authorized persons, diamonds, without any licence first obtained.
- Penalty for contravention of this section. 13. Every licence to deal in diamonds within the Colony shall be written upon or covered with stamps to the value of thirty pounds sterling for a yearly licence, or ten pounds sterling for a quarterly licence, and every such licence shall be in the form A set forth in the schedule to this Act.
- Licences to deal, how to be stamped. 14. Every licence to be a diamond broker or factor shall be written upon or covered with stamps of the value of fifteen pounds sterling for a yearly licence, or five pounds sterling for a quarterly licence, and shall be in the form B set forth in the schedule to this Act.
- Broker's or factor's licences how to be stamped. 15. It shall not be lawful for any distributor of stamps to issue any licence to deal in diamonds, or to be a diamond broker, factor, or cutter, unless the person so applying for the same produce and lodge with the distributor of stamps a certificate under the hand of the Resident Magistrate of the district in the form C set forth in the schedule to this Act; and it shall not be lawful for any such Resident Magistrate to sign or issue such certificate until the person applying for the same shall have satisfied such Resident Magistrate or other duly authorized officer that he is a fit and proper person to hold such licence: Provided that it shall not be lawful for any Resident Magistrate of any district, or any person duly authorized thereto by the Governor, to grant such certificate as aforesaid to any person holding a retail or bottle licence for the sale of intoxicating liquors, and any such person convicted of any contravention of this Act shall, upon conviction, in addition to the penalties provided for in this Act, forfeit such licence.
- Certificate of magistrate required that applicant is fit and proper person, before licence is issued. 16. Every licence to carry on the business of or trade of a diamond cutter shall be written upon or covered with stamps to the
- No certificate to be granted to certain persons.
- Diamond cutter's licences, how to be stamped.

value of ten pounds sterling for a yearly licence, or three pounds ten shillings sterling for a quarterly licence, and every such licence shall be in the form D set forth in the schedule to this Act.

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17. All such licences as are quarterly shall, no matter when taken out, terminate upon the last day of the current quarter, such quarters ending respectively on the 31st March, 30th June, 30th September, and 31st December in each year, and all such licences as are annual, no matter when taken out, shall expire upon the 31st December then next.

Termination of licences.

18. Any licence or permit which may be obtained by concealing or misrepresenting matters which, if known, would have prevented the issue of any certificates under this Act for any of the reasons aforesaid, shall upon proof of such concealment or misrepresentation before any Resident Magistrate be forfeited, and the person who by such concealment or misrepresentation shall have obtained or have attempted to obtain such licence or permit shall, upon conviction, be liable to a penalty not exceeding five hundred pounds sterling, or be imprisoned with or without hard labour for any period not exceeding five years, or to both such fine and imprisonment.

Forfeiture for licence for concealment or misrepresentation. Further penalty.

19. Any licensed diamond cutter may, without permit, as in the following section provided, receive for the purpose of his trade, any diamond from any person not otherwise licensed or authorized as in this Act provided, on the production by such person of a written authority or permit from any Resident Magistrate or other officer duly authorized in that behalf, as in the following section of this Act provided.

Diamond cutter may receive diamond from a person producing permit.

20. It shall be lawful for any Resident Magistrate or other officer duly authorized to give any person a permit, bearing a stamp of the value of one shilling, to buy, sell, deliver, or receive any diamonds, such permit to set forth clearly the person from whom and to whom such diamonds are to be bought or received, sold or delivered, and to be in the form E, as set forth in the schedule to this Act: Provided that no such permit shall be granted unless the applicant shall make a solemn declaration that the person from whom he is to receive such diamonds is duly authorized under the provisions of this Act to be in possession of the same, and that the intended purchase, sale, delivery, or receiving is not for the purpose of trade, and in the case of an applicant for a permit to sell or deliver, that such applicant is the lawful owner of such diamonds; provided, further, that the Magistrate or other duly authorized officer shall keep a record of all such permits, and of all such declarations as aforesaid.

Stamped permit to buy, sell, &c., diamonds upon solemn declaration by applicant.

Purchase, sale, &c., not to be for purposes of trade.

Record of permits to be kept.

21. Every licensed dealer in or cutter of diamonds shall have an office or place of business at some place to be described in his licence, and shall have affixed on some conspicuous place on the outside of or over, or by the side of the outer door of such place of business his name at full length (or where there are partners the

Office of buyer or cutter to be described in licence; name to be affixed on or near outer door of office.

No. 14—1885.

name or style of the firm or partnership), and after such name or style the words "licensed diamond dealer (or dealers)," or "licensed diamond cutter (or cutters)," as the case may be, such name or style and such description to be publicly visible and legible in letters at least two inches in length, and every licensed diamond buyer, seller, or cutter contravening this section shall incur a penalty not exceeding twenty pounds, and shall be liable to forfeit any licence held by him, or any right of renewal of the same, for such period as the Court may direct.

Penalty for carrying on business of buyer, &c., away from office.

22. It shall not be lawful for any licensed diamond buyer, seller, or cutter, to carry on his business as such otherwise than in his said office or place of business, and any such licensed person as aforesaid convicted of contravening this section shall be liable to the penalties provided in the preceding section of this Act.

Penalty for removal of office without endorsement on licence.

23. It shall not be lawful for any licensed diamond dealer or cutter, to remove his office or place of business, at which he is licensed to deal in or carry on his business to another place, unless the distributor of stamps shall endorse on the licence of such diamond buyer, seller, or cutter, a certificate that such licence is transferred to the place to which such diamond buyer, seller, or cutter, desires to remove his office or place of business. Any licensed diamond buyer, seller, or cutter contravening this section shall be liable to the penalties provided by the twenty-first section of this Act.

Broker's notes to be delivered to purchaser and seller by licensed broker or factor.

24. Every licensed broker or factor in every case in which he concludes a contract of purchase or sale of diamonds, for or on account of any person employing him as such broker or factor, shall deliver to the seller a proper and sufficient broker's bought note, stamped as by law required, such broker's note to be in the form F set forth in the schedule to this Act, and shall also deliver to the purchaser a proper and sufficient broker's sold note according to the said schedule, and every registered claimholder, authorized or registered agent of a registered claimholder or joint-stock company, shall in every case in which a sale is effected by him personally, pass a seller's note, and receive a buyer's note, or otherwise as the case may be; and every such broker's, seller's, and buyer's note shall respectively set forth all the parties to the transaction in the form F set forth in the schedule to this Act, and shall set forth the weight of the parcel sold, the number of diamonds of the weight of ten carats and upwards, and the price per carat, and the amount for which such diamonds were sold: Provided that every diamond above the value of one hundred pounds sterling, shall be separately described in every such broker's, seller's, and buyer's note; and provided also that every such broker's, seller's, and buyer's note shall be certified as correct by the licensed dealer disposing of the same; and any person convicted of any offence against this section shall be liable to a penalty not exceeding five

Particulars of brokers' notes.

Penalty for contravening this section.

hundred pounds, and in default of payment to be imprisoned with or without hard labour for any period not exceeding five years, and shall in addition be liable to forfeit any licence held by him, and any right of renewal of the same for such period as the Court may direct.

No. 14—1885.

25. Every banker, dealer, importer, exporter, broker, factor, cutter of diamonds, registered claimholder, accredited and registered agent of any registered claimholder, or joint stock company, holder of a washing permit or prospecting licence, shall keep a true and correct register in the English language of all their respective dealings in diamonds, in which they shall enter, or cause to be entered immediately

Register to be kept of dealings in diamonds by authorized persons.

Particulars of register.

- (a.) The date of all purchases, sales, exports, imports, or receipts.
- (b.) The name of consignor, cutter, prospector, seller, buyer, and broker, or consignee, or owner.
- (c.) Total weight of each parcel.
- (d.) The number of stones of ten carats and upwards in each parcel.
- (e.) The price received or paid, or duty on import.
- (f.) The weight of any single stone found, received, bought, sold, cut, or consigned (separately or with others), the buyer's valuation of which exceeds one hundred pounds.

And every such register shall be in the form G set forth in the schedule to this Act, and any person so required to keep a register as required by this Act, who shall be convicted of neglecting or failing to keep a proper register shall be liable to a penalty not exceeding five hundred pounds, and in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding five years, or to both such fine and imprisonment, and shall in addition forfeit any licence held by him, or any right of renewal of the same for such period as the Court may decide.

Penalty for contravening this section.

26. Every person so required to keep a register shall, within three days after the expiration of each month, forward to the Resident Magistrate of the district a true copy of such register for the previous month, together with a solemn declaration of the correctness thereof, and shall also produce and exhibit such register whenever the same may be required in any competent Court on the written order of the Resident Magistrate of the district as aforesaid; and if he shall refuse or fail to do so, he shall be liable to the penalties in the last preceding section of this Act mentioned.

Copy of register to be forwarded monthly to Resident Magistrate, together with solemn declaration.

Register to be produced on order of magistrate.  
Penalty.

27. The Resident Magistrate of every district wherein this Act may be in force, or such other officer as may be appointed by the Governor in that behalf, shall keep a register in the form H in the schedule to this Act, showing the weight, description and value of all diamonds brought or imported into such district, the

Official register of imported diamonds kept in every district.

UU



No. 14—1885.

Penalty on person failing to obtain official certificate of registration within forty-eight hours.

name of the person bringing or importing the same, and the place whence they are brought or imported, and shall upon application made and upon production of a certificate as provided in clause six of this Act, grant to the person bringing or importing such diamonds a certificate of registration, setting forth all the particulars above mentioned in the form I in the schedule to this Act, and any person who shall neglect to obtain such certificate as aforesaid within forty-eight hours of his arrival in any district, shall be liable upon conviction to a penalty not exceeding five hundred pounds, and in default of payment to imprisonment with or without hard labour for any term not exceeding five years, or to both such fine and imprisonment, and shall in addition forfeit such diamonds.

Official register of exported diamonds kept in every district.

28. No diamonds shall be exported from any district in which this Act shall be in force, until the weight and value of the same, and the name of the person exporting them, shall have been entered in a register, to be kept in such form as the Governor may direct, by the Resident Magistrate of such district, or such other officer as may be appointed by the Governor in that behalf, and a registration fee of one-half per cent. on the value of such diamonds shall have been paid. Any person contravening the provisions of this section shall be liable to the penalties provided in the second section of this Act.

Penalty for contravening this section.

Registration fees paid into public Treasury.

29. The proceeds of such registration fees as are provided for in this Act shall be paid by the Resident Magistrate into the Public Treasury.

Penalty for failure to produce licence when called on by writing under hand of Resident Magistrate.

30. Every licensed diamond dealer or cutter of diamonds, and every holder of a permit granted under the twentieth section of this Act shall be bound to exhibit his licence or permit to any person authorized by the Resident Magistrate of the district in writing to demand it, and every such person as aforesaid who shall refuse or neglect to produce and exhibit his licence or permit when called upon to do so by any person exhibiting such authority as aforesaid to demand it, shall incur a penalty not exceeding one hundred pounds, and shall in addition be liable to forfeit any licence held by him or any renewal of the same for any such period as the Court may direct.

Counterfoils of broker's notes to be kept by broker or factor.

31. Every licensed broker or factor shall keep copies or counterfoils of his bought and sold notes as in the form F contained in the schedule to this Act, and shall produce and exhibit such copies or counterfoils to any person authorized by the Resident Magistrate of the district to demand them, and every licensed broker or factor refusing or neglecting to do so when called upon by any officer exhibiting his authority to demand them, shall incur the penalties provided in the last preceding section of this Act.

Jurisdiction of Resident Magistrate only over cases permitted for trial for offences under this Act.

32. No Court of a Resident Magistrate shall have jurisdiction in any case in which any person shall be charged with an offence against the provisions of this Act unless such case, after a pre-

paratory examination has been duly taken therein, shall have been remitted for trial to such Court by the Attorney-General, or the Solicitor-General, respectively, under the provisions of the statutes in that behalf made and provided.

No. 14—1885.

33. Any person who shall be an accessory either before or after the fact to the contravention of any of the provisions of this Act shall be liable to be charged and dealt with in all respects as the principal.

Accessories dealt with as principals.

34. Whenever any person shall find or pick up any diamond not being his property, he shall forthwith take and deliver such diamond to the Resident Magistrate of the district, who shall thereupon advertise the same in a local newspaper: and if within twenty-one days from date of such advertisement the owner of such diamond shall not have been discovered, or in case no person shall have been able to prove to the satisfaction of the Resident Magistrate his right to have such diamond delivered to him, the Resident Magistrate shall thereupon order the same to be sold and the proceeds thereof to be paid into the public treasury: Provided always that a sum calculated at the rate of ten per cent. on the amount realised by such sale shall in all cases be paid to the person finding such diamond as aforesaid; and provided always that any person so finding or picking up any diamond as aforesaid, who shall fail or neglect to deliver the same to the Resident Magistrate, as provided by this section shall, on conviction thereof, be liable to a fine of five hundred pounds sterling, or to imprisonment with or without hard labour for a period not exceeding five years.

Advertisement of diamonds found or picked up. No claim being proved, diamond sold and proceeds paid into public Treasury.

Ten per cent. paid to finder.

Penalty on finder not delivering diamond to Resident Magistrate.

35. In the construction of this Act the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the context repugnant thereto, that is to say:—

Meaning of certain words and expressions.

“Dealer” and “deal” shall include buyer, seller, broker and factor, and any sort of dealing in diamonds.

“Public place” shall mean any place except a private residence.

“Resident Magistrate” shall include the additional magistrate for any district.

“Diamonds” shall mean rough or uncut diamonds only.

“Rough and uncut diamonds” shall in the case of diamond cutters be taken to include diamonds which have been cut, shaped, and polished by them out of the rough.

“Cutter” shall include cleavers and polishers of diamonds.

“Chief of the Police” shall mean any Commissioner or Inspector of Police, or the Resident Magistrate of any district.

“Banker” shall mean any manager, cashier, or other officer of a joint-stock bank, acting in his capacity as such.

“Registered Claimholders” shall include the registered or accredited agents of claimholders.”

No. 14--:885.

“ ‘Import,’ ‘Importer,’ ‘Importing,’ ‘Importation,’ ‘Brought,’ ‘Bringing,’ ‘Introduction,’ ‘Introducer,’ shall not include such diamonds as have been duly registered in terms of clause 36 of Act 48 of 1882, and are in course of transit.”

When any form is directed or required to be used, such form shall be as nearly as material, according to the form set forth in the schedule to this Act.

Persons arrested for offences under this Act prohibited from alienating property.

36. It shall not be lawful for any person arrested for any offence against the provisions of this Act to sell, exchange, give, or otherwise alienate any property of which he may be possessed at the time of his arrest, whether movable or immovable, until he shall have been discharged from custody or acquitted of such offence, or if such person shall be convicted and sentenced to pay any fine, until such fine shall have been paid or recovered; and any such sale, exchange, gift, or other alienation made contrary to the provisions of this section shall be void.

Expenses of carrying out this Act to be recoverable from Mining Boards of Griqualand West, who shall be furnished with accounts of expenditure.

37. The funds necessary to defray the expenditure of the Detective Department in connection with carrying out the provisions of this Act, after giving credit for the proceeds of all diamonds confiscated and all fines, if any, recovered under this Act, shall be recoverable quarterly, commencing on the first day of October next, from the mining boards of Griqualand West respectively in such proportions as the Governor shall determine: Provided that before such quarterly payments as aforesaid any of the said mining boards shall be entitled to require that accounts of such expenditure and the receipts from confiscations and fines shall be furnished to such board.

Limitation of Act.

38. This Act shall not be in force, except so far as regards the last preceding section, in any district of the Colony in which the Act No. 48 of 1882 is now or may hereafter be put in operation.

Schedule.

Form A.

## SCHEDULE.

### A.

#### DIAMOND DEALER'S LICENCE.

(Under Act , of )

I, \_\_\_\_\_ distributor of stamps in  
 on this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_,  
 do hereby authorize and empower \_\_\_\_\_ having  
 his office at \_\_\_\_\_ (who has produced to me  
 his certificate required by law), to deal in, export and import, rough  
 or uncut diamonds, within \_\_\_\_\_ for  
 ending on the \_\_\_\_\_ 18 \_\_\_\_\_, and no longer.  
 This Licence expires on the \_\_\_\_\_ day of  
 18 \_\_\_\_\_

Distributor.

B.

DIAMOND BROKER'S LICENCE.

No. 14-1885.  
Form B.

(Under Act , of )

I, \_\_\_\_\_ distributor of stamps in  
on this \_\_\_\_\_ day of \_\_\_\_\_  
18 \_\_\_\_\_, do hereby authorize and empower  
of \_\_\_\_\_ (who has produced to me the certificate required  
by law), to act as a Diamond Broker within \_\_\_\_\_ for \_\_\_\_\_  
ending on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, and  
no longer.

This Licence expires on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
Distributor.

C.

DIAMOND BROKER'S AND CUTTER'S CERTIFICATE.

Form C.

(Under Act , of )

I, \_\_\_\_\_ Resident Magistrate of \_\_\_\_\_  
do hereby certify that \_\_\_\_\_  
of \_\_\_\_\_ is a fit and proper person to receive a  
licence to act as a Diamond Dealer, Broker, Factor (or Cutter).

R. M. Office, \_\_\_\_\_ R. M.  
day of \_\_\_\_\_ 18 \_\_\_\_\_

D.

DIAMOND CUTTER'S LICENCE.

Form D.

(Under Act of )

I, \_\_\_\_\_ Resident Magistrate of \_\_\_\_\_  
do hereby certify that \_\_\_\_\_ of \_\_\_\_\_, whose place  
of business is situated at \_\_\_\_\_, is a fit and proper  
person to receive a Licence to carry on the trade or business of  
cutting, cleaving, and polishing rough or uncut Diamonds.

Resident Magistrate's Office, \_\_\_\_\_ Resident Magistrate.  
day of \_\_\_\_\_ 18 \_\_\_\_\_

E.

FORM OF PERMIT.

Form E

(Granted under Section 20, Act of )

Resident Magistrate's Office, \_\_\_\_\_ 18 \_\_\_\_\_  
Permission is hereby granted unto \_\_\_\_\_, of \_\_\_\_\_  
to purchase (or receive, sell, or deliver)  
Diamonds from (or to) \_\_\_\_\_ of the  
approximate weight of \_\_\_\_\_  
Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
Resident Magistrate of \_\_\_\_\_

[ F. ]																							
BROKERS', COMPANIES', AND OTHER LICENSED SELLERS' NOTES OF SALE.																							
A.				B.				C.															
COUNTERFOIL TO BE KEPT BY SELLER OR BROKER AS REGISTERED.				NOTE TO BE HANDED BY BROKER TO SELLER.				NOTE TO BE HANDED BY BROKER, DEALER, ETC., TO BUYER.															
No.....				No.....				No.....															
Sold for				Sold to				Bought of															
_____18				_____18				_____18															
DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.			DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.								
Stones under 10 Carats each in Lump.	Stones, 10 Carats each, or over.	Stones of a Value of £100 or over.	CARATS. PRICE.	£	s.	d.	CARATS.	AMOUNT.	£	s.	d.	Stones under 10 Carats each in Lump.	Stones, 10 Carats each, or over.	Stones of a Value of £100 or over.	CARATS. PRICE.	£	s.	d.	CARATS.	AMOUNT.	£	s.	d.
Certified correct.																							
_____								_____								_____							
Licensed Seller or Broker.								Licensed Seller or Broker.								Licensed Seller or Broker.							

G.

G.

## IMPORTS, PURCHASES, AND FINDS.

## SALES AND EXPORTS.

DATE.	Owner or Con- signee.	Broker or own finds.	DETAILS OF PARCEL.					TOTAL OF PARCEL.			DATE.	Buyer or Con- signee.	Broker.	DETAILS OF PARCEL.					TOTAL OF PARCEL.				
			Stones under 10 cts. each in lump.	Stones of 10 cts. each or over.	Stones of Value of £100 or over.	Carats.	Price.	Amount.	Carats.	Amount.				Stones under 10 cts. each in lump.	Stones of 10 cts. each or over.	Value of Stones of £100 or over.	Carats.	Price.	Amount.	Carats.	Amount.		
						£	s.	d.	£	s.	d.							£	s.	d.	£	s.	d.
	Balance on hand												Balance on hand										

DIAMOND TRADE.

679

No. 14-1885.

**H.**

DATE.	OWNER OR IMPORTER.	WHENCE IMPORTED.	CONSIGNEE	DETAILS OF PARCEL.			CARATS.	PRICE.	AMOUNT.	TOTAL OF PARCEL.		
				Stones under 10 carats each in lump.	Stones of 10 carats each or over.	Stones of a value of £100 or over.				Carats.	Amount	
							£	s.	d.	£	s.	d.

Total...   ...£  
 Reg. Fee   ...£

**I.**

I,                      Resident Magistrate of  
do hereby certify that                      of                      has this day  
registered with me, according to Section 27 of Act of                      ,  
a diamond or parcel of diamonds containing:—

DETAILS OF PARCEL.			AMOUNT.		
Stones under 10 carats each in Lump.	Stones of 10 carats each or over.	Stones of Value of £100 or over.	Carats.	Price.	£ s. d.

and imported from the District of

Dated this                      day of                      18                     

Resident Magistrate of

No. 68.—Sd. G. Lowry Cole.] [January 13, 1830.

## Ordinance for the Relief of His Majesty's Roman Catholic Subjects in this Colony.

WHEREAS an Act was passed in the tenth year of his present Majesty's Reign, entituled an Act for the relief of His Majesty's Roman Catholic subjects; and whereas it is expedient that such enactments and provisions of the said Act as are or may be applicable to this Colony shall be extended thereto, so altered and modified as to meet the circumstances of the case: Be it therefore enacted by His Excellency the Governor in Council, that after the commencement of this Ordinance it shall and may be lawful for any of His Majesty's subjects professing the Roman Catholic religion to hold, exercise, and enjoy all civil and military offices, and places of trust or profit, under His Majesty, his heirs or successors; and to exercise any other franchise or civil right, upon taking and subscribing, at the times and in the manner hereinafter mentioned, the following oath, instead of the oaths of allegiance, supremacy, and abjuration, and instead of such other oath or oaths as are or may be now by law required to be taken for the purpose aforesaid by any of His Majesty's subjects professing the Roman Catholic religion:

Preamble.

Roman Catholic subjects entitled to hold civil and military offices and exercise all civil rights on taking and subscribing oath.

I, A B, do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King George the Fourth, and will defend him to the utmost of my power against all conspiracies and attempts whatever which shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to His Majesty, his heirs and successors, all treasons and traitorous conspiracies which may be formed against him or them; and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the Crown, which succession, by an Act entituled "An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject," is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person, claiming or pretending a right to the Crown of the Realm of England: And I do further declare that it is not an article of my faith, and that I do renounce, reject, and adjure the opinion, that Princes excommunicated or deprived by the Pope, or any other authority of the See of Rome, may be deposed or murdered by their subjects, or by any person whatsoever: And I do declare that I do not believe that the

Oath of allegiance to King George IV.



Ord. 68—1830.

Pope of Rome, or any other Foreign Prince, Prelate, Person, State, or Potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within the Realm of England. I do swear that I will defend, to the utmost of my power, the settlement of property within the Realm of England, as established by the laws: And I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present church establishment, as settled by law within the Realm of England: And I do solemnly swear that I never will exercise any privilege to which I am or may become entitled, to disturb or weaken the Protestant religion or Protestant Government in the United Kingdom, or any of the territories thereunto belonging; and I do solemnly, in the presence of God, profess, testify, and declare that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever. So help me God!

Name of sovereign of England for the time being, by virtue of the act of limitation, to be substituted on oath.

2. And it is further enacted that wherever in the oath hereby appointed and set forth, the name of his present Majesty is expressed or referred to, the name of the Sovereign of the Realm of England for the time being, by virtue of the Act for the further limitation of the Crown and better securing the rights and liberties of the subject, shall be substituted from time to time, with proper words of reference thereto.

3—14 repealed by Act 11 of 1868.

No. 11—1868.]

[Sept. 2, 1868.

### ACT

To Declare void certain Laws imposing Disabilities on certain Persons and Bodies on account of their Religious Persuasions, and to amend Ordinance No. 68.

Preamble.

WHEREAS certain restrictions, disabilities, and penalties have in times past been imposed by certain laws formerly in force in the Dutch Republic and in this Colony, upon certain religious communities and orders, and upon certain persons, by reason of such communities, orders, and persons holding and professing certain religious opinions, which laws have become obsolete in this Colony, but have never formally been repealed: And whereas it is expedient that such laws, so far as the same impose any such restrictions, disabilities, and penalties as aforesaid, should be for-

mally declared to be null and void, in order by such declaration to place on an equal footing before the law all religious denominations: And whereas certain restrictions, disabilities, and penalties are by certain provisions of Ordinance No. 68, entitled "An Ordinance for the relief of His Majesty's Roman Catholic Subjects in this Colony," imposed on certain persons of the Roman Catholic persuasion in respect of such persuasion, which provisions have fallen into disuse, and it is expedient for the reasons above mentioned that the same provisions 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:—

No. 11—1868.

1. The several sections of the said Ordinance No. 68, following the second section thereof shall be and the same are hereby repealed.

Provisions of Ordinance No. 68 from Section 3, repealed.

2. All other laws heretofore in force in this Colony, if any, whereby any religious community or order, or any person whatsoever is or was deprived of any rights or privileges in law, or whereby any penalties or disabilities are or were imposed upon such communities, orders, or persons by reason only of their religious belief or profession, are, so far as any such restrictions, penalties, and disabilities are or were imposed by the same, hereby declared to be null and void and of no effect.

All laws affecting rights, &amp;c., or imposing penalties on account of religious belief, to be null and void.

3. No will or deed or other instrument executed by any person in favour of any religious community or order, or of any person, before the passing of this Act, shall be held to have been invalid by reason only of any such law as is hereby declared to be null and void; but such deed, will, or other instrument shall not be saved by this enactment from any invalidity or legal cause of defeasance other than an invalidity or cause of defeasance arising by reason of some law hereby declared null and void.

Existing wills or deeds not affected by this Act.

4. No person shall after the passing of this Act be brought in question for or in respect of any penalty already incurred under any law hereby declared null and void or hereby repealed.

No action to be taken in respect of penalties already incurred.

5. This Act may be cited as the "Disabilities Removal Act, 1868."

Short title.

No. 6—1869.]

[Oct. 18, 1869.

## ACT

## For Limiting the Operation of the Disabilities Removal Act, 1868.

WHEREAS doubts have been entertained as to the effect of the Act 11 of 1868, called "The Disabilities Removal Act, 1868," and it is expedient that the same should be put at rest: Be it therefore enacted by the Governor of the Cape of Good Hope, with

Preamble.

No. 6—1869.

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

Rights existing, or contingent, at the time of passing of Act No. 11 of 1868 not affected.

The said Act 11 of 1868 shall not be deemed to defeat or take away any rights vested in any person at the time of the passing of the same, nor any contingent right limited to any person or class of persons, by virtue of any deed, will, contract, or other instrument of settlement actually executed and become binding on the person or persons executing the same before the passing of the same Act, anything therein appearing to be enacted notwithstanding: Provided that any such right be claimed within due time from the passing of this Act.

### DIVISIONAL COUNCILS.

1. Act 4—1865, (Consolidation Act).	8. Act 21—1885, (Oudtshoorn).
2. " 15—1869, ( do. ).	9. " 32—1877, (Port Elizabeth).
3. " 3—1870, (Crown Lands Lessees under Act 19—1864).	10. " 13—1881, (Prince Albert).
	11. " 20—1874, (Swellendam).
	12. " 8—1885, (Tarka).
	13. " 18—1875, (Tulbagh).
	14. " 37—1877, ( do. ).
	15. " 13—1875, (Victoria East).
	16. " 31—1868, (Worcester).
	17. " 19—1875, ( do. ).

#### LOAN ACTS.

4. " 11—1878, (Aliwal North).
5. " 11—1885, (Calvinia).
6. " 12—1875, (Cradock).
7. " 21—1863, (Mosse Bay).

No. 4—1865.]

*repealed by  
Act 40 of 1889*  
ACT

[Oct. 10, 1865.]

### To Consolidate and Amend the several Acts relating to Divisional Councils (<sup>1</sup>).

Preamble.

WHEREAS it is expedient to consolidate and amend the several Acts relating to 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:—

Previous Acts repealed.

1. The following Acts are hereby repealed, that is to say, the Act No. 5, 1855, entitled, "An Act for creating Divisional Councils in this Colony," the Act No. 4, 1856, amending the said Act No. 5, 1855, the Act No. 14, 1856, amending the said Act No. 5, 1855, the Act No. 4, 1859, amending the said Act No. 5, 1855, the Act No. 9, 1861, amending the said Act No. 5, 1855, and the Act No. 11, 1864, entitled "An Act for amending the Law relative to the Constitution of Divisional Councils, and for other purposes."

Such repeal not to affect existing coun-

2. Nothing in the repeal aforesaid shall be deemed or taken to destroy or affect the constitution, powers, acts, or functions of any

<sup>1</sup> See also under Roads.

Divisional Council in existence at the time of the taking effect of this Act, which Council shall be in the same state and condition as if it had been elected under this Act; and every person whose name shall have been published in the *Government Gazette* by the Civil Commissioner of any division as a member of any such Divisional Council, shall be deemed and taken to have been duly elected as such member, nor shall any evidence of irregularity or alleged irregularity in his election be admissible to prove the contrary.

No. 4—1865.

cils or election of members whose names have been published.

3. Every division of this Colony, except the division of the Cape, shall, for the purpose of this Act, be divided into six subdivisions, to be called districts.

Divisions (Cape excepted) subdivided into districts.

4. It shall be lawful for the Governor, by proclamation or by proclamations to be by him issued, to fix and prescribe the limits of each of the six districts of every such division, in such manner as shall, after investigation, be found most convenient and advantageous: Provided that every such district shall (except as hereinafter excepted) be formed of one Field-cornetcy, or of more than one, and that no Field-cornetcy shall be divided for the purpose of forming any such district: And provided that the said Governor shall distinguish the districts of every division (except the division of the Cape) by numbering the same respectively, beginning at number one and proceeding to number six: Provided, also, that as often as any division shall contain fewer Field-cornetcies than six, then it shall be lawful for the Governor to divide such last-mentioned division into six districts, in whatever way shall appear to be most convenient; and every such district shall be as legal as if it consisted of an undivided Field-cornetcy.

Districts by whom and how to be fixed.

Field - cornetcies not to be divided.

Districts to be numbered.

Exception as to division of Field-cornetcies.

5. It shall be competent for the Governor to alter, by any such proclamation as aforesaid, the limits which may have been fixed for any district by any previous proclamation: Provided that all and singular the districts of every division as existing at the time of the taking effect of this Act shall subsist until altered by some such proclamation as aforesaid.

District limits may be altered.

Existing districts to remain as at present until altered.

6. Every Divisional Council in the Colony (except the Divisional Council of the Cape division) shall consist of eight members, of whom three members shall be elected by the district in which the office of the Civil Commissioner of the division shall be situated, and one member by each of the five other districts contained in such division.

Divisional Council (Cape excepted) to consist of eight members. How to be elected.

7. For the purpose of this Act, the division of the Cape shall include the municipalities of Cape Town and Green Point, according to their respective limits for the time being.

Cape division to include Cape Town and Green Point.

8. The division of the Cape shall, for the purpose of this Act, be subdivided into seven districts, instead of six, and the Divisional Council of the said division shall consist of ten members, instead of eight.

Cape division subdivided.

Council to consist of ten members.

9. The division of the Cape, exclusive of the municipalities of

Mode of subdivision.

- No. 4--1865. Cape Town and Green Point, shall be divided into six districts, numbered from one to six, and the said municipalities conjointly shall form the seventh district of the said division, and shall be styled "The Cape Town and Green Point District."
- Members how to be elected. 10. Of the ten members constituting the Divisional Council of the Cape division, four members shall be elected by the Cape Town and Green Point district, and one member by each of the six other districts contained in the said division.
- Sections 7, 8, 9, and 10 to remain in abeyance until next general election in 1867. 11. The seventh, eighth, ninth, and tenth sections of this Act shall remain in abeyance, and be of no force until the next general election for the members of the several Divisional Councils of this Colony, which will be in the year 1867, shall be at hand, it being the true intent and meaning of this section that when, and as soon as it shall become necessary to take any of the steps by this Act prescribed preparatory to such general election in the year 1867, the said sections shall be deemed and taken to be in force, but not sooner; and that until then the Divisional Council of the Cape division, as at present constituted, shall (except as hereinafter excepted) remain unchanged: Provided only that from and after the taking effect of this Act, the four persons elected by the municipalities of Cape Town and Green Point under the Act No. 9, 1858, shall be deemed to be members of the Divisional Council to all intents and purposes, and shall be entitled to exercise all and singular the same rights, privileges, and powers as any other members of the said Council, anything in any former law to the contrary notwithstanding: Provided, also, that when and as soon as the said seventh, eighth, ninth, and tenth sections of this Act shall become and be in force, then the several sections of the Act No. 9, 1858, from the twenty-ninth to the thirty-third (both inclusive), and the first, second, third, and fourth sections of the Act No. 11, 1859, shall stand repealed.
- Members for Cape Town and Green Point invested with full rights. 12. All persons in any district registered as voters under the Ordinance for constituting a Parliament in this Colony, and commonly called the Constitution Ordinance, and no other persons, shall be entitled to vote for the member or members of the Divisional Council to be elected by such district: Provided that every person entitled to vote in any district which is, by this Act, empowered to elect three members shall be entitled to give one vote, and no more, for each of any number of candidates at such election, not exceeding three: Provided, also, that every person entitled to vote in the Cape Town and Green Point district of the Cape division shall be entitled to give one vote and no more, for each of any number of candidates, not exceeding four.
- On sections 7, 8, 9, and 10 coming in force, sections 29 to 33 of Act 9, 1858, and 1, 2, 3, and 4 of Act 11, 1859, repealed. 13. (1) Every person registered as a voter in any division under this Act, by virtue of the Ordinance aforesaid for constituting a
- Who shall be deemed voters.
- Distribution of votes.
- Who capable of being elected.

<sup>1</sup> Lessees of Crown Land under Act 19, 1864, are also eligible for election—Act 3, 1870, *infra*.

Parliament, and who shall be registered in the land registers of this Colony as the owner of immovable property situated in such division, which shall, at the time of any election, under this Act, be valued for assessment for road purposes at an amount not less than £500 sterling, shall (except as in the next succeeding section is excepted) be eligible to be elected by any district into which such division shall be subdivided as aforesaid, to be a member for such district of the Divisional Council of such division: Provided that as often as any such immovable property so valued as aforesaid shall be jointly owned by more owners than one, every such joint owner shall be eligible to be elected as aforesaid in case the value of such property, when divided by the number of the joint owners thereof, shall yield for every joint owner the sum of £500 sterling: Provided, however, that in case such joint owners shall, by the land registers aforesaid, appear to own the said property in unequal shares, no such joint owner shall be eligible to be elected unless his share shall, regard being had to the total value of the said property, yield a sum not less than £500 sterling.

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When joint owners may be elected.

14. No person who shall hold any office of profit under Her Majesty the Queen, no insolvent who shall not have obtained his rehabilitation, and no person whose estate shall, at the time of any election, be under assignment for the benefit of his creditors, shall be eligible to be elected as a member of any Divisional Council; and no person who is a contractor, under any subsisting contract with any Divisional Council, shall be eligible to be elected a member of such Council (1).

Who disqualified to be elected.

15. Every Divisional Council which shall be in office at the time of the taking effect of this Act shall remain in office till the 1st day of November, 1867, and shall then go out of office.

Duration of office of existing Councils.

16. The Civil Commissioner of every division shall, not later than the 31st day of August, 1867, by a notice in the *Government Gazette*, in the English and Dutch languages, call upon the voters in the respective districts composing such division to nominate a candidate or candidates for every such district respectively, and such notice shall be in substance as follows:—

Nomination of candidates to be called for by notice.

DIVISIONAL COUNCIL FOR THE DIVISION OF \_\_\_\_\_.

The voters in the several districts of the division of \_\_\_\_\_ are hereby invited to nominate, in writing, candidates for the representation of such districts respectively in the Divisional Council at the ensuing election. Every candidate must be nominated by not fewer than five persons entitled to vote for the district, or otherwise his nomination will be null and void, and in District No. ———\* (which

Form of notice.

\* In the notice to be given by the Civil Commissioner of the Cape, instead of "in District No. ———," say "in the Cape Town and Green Point district."

<sup>1</sup> Persons found guilty of corrupt practices at Parliamentary elections are also disqualified for a period of 5 years. See §§ 38, 39, Act 9 of 1883 (Constitution).

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is entitled to return ——— members) each candidate must be nominated separately, by not fewer than five voters. No voter can sign more nominations than one, on pain of having his name erased from all the nominations in which it appears, and considered as if never placed there. All nominations must be received by the undersigned not later than the ——— day of ———, 1867, and any nomination received later than that day will be taken no notice of. Every voter signing any such nomination must state his place of residence.

Dated this ——— day of ———, 1867.

(Signed) A. B., Civil Commissioner  
for the Division of ———.

Date of nomination.

17. The day to be inserted in any such notice as aforesaid as that on or before which all nominations must be received, shall be a day not later than thirty-one days next before the 1st day of November, 1867.

Directions for publishing and posting notice.

18. Besides publishing such notice as aforesaid in the *Government Gazette*, the Civil Commissioner shall publish the same in some newspaper, if any, published in his division; or should there be no such newspaper, then in the newspaper which shall be published nearest to such division, and shall post a copy of such notice inside and outside of every Court of Resident Magistrate in such division; and shall, by such other means as the Divisional Council shall determine, make known such notice, or the substance of it: Provided that no failure to comply with the provisions of this section, or any of them, shall vitiate or in any way affect any election or other proceeding under the provisions of this Act.

Election not vitiated by failure.

Form of nomination.

19. The nomination of a candidate for any district may be written in English or Dutch, and shall be in substance as follows:—

We, the undersigned, voters for District No. ———, do hereby nominate A. B., of ———, in this division, to become a member of the Divisional Council of this division for the said District No. ———. Dated this ——— day ———, 1867.

(Signed) C. D. ——— (name place of residence).

E. F. ———

G. H. ———

I. J. ———

K. L. ———

&c., &c., &c.

Certain omissions and informalities, &c., not to affect nomination.

Provided that as often as any person signing any such nomination shall be a registered voter residing in the district to which such nomination relates, his omission to state his place of residence shall not vitiate or affect the validity of his signature: Provided also

that the fact of the Civil Commissioner deeming a candidate to be ineligible shall not affect the nomination of such candidate: <sup>(1)</sup> Provided, further, that no informality in any such nomination shall vitiate the same so long as the requisite number of competent voters shall have signed the same, and so long as the names of the candidate or candidates, and the district for which they are nominated, shall be discoverable from the terms of the nomination.

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20. No person not nominated as aforesaid by five voters or upwards shall be eligible as a member of the Divisional Council for any district of any division, and no person duly nominated shall have any power to withdraw his name: Provided, that if the same person shall be nominated for more districts than one, he shall be deemed to be a candidate for each district for which he shall have been so nominated.

Nomination by less than five voters of no effect. Person duly nominated cannot withdraw his name. If same person is nominated for more than one district.

21. The poll for the first general election of Divisional Councils under this Act shall take place on the second Wednesday in the month of October next preceding the 1st day of November, 1867.

First poll, when to be taken.

22. The poll for each district in any division (except the Cape Town and Green Point district in the division of the Cape) shall (except as hereinafter in this and in the next succeeding section is excepted) be taken by the Field-cornet, at his residence, in case such district shall be constituted by a single Field-cornetcy; and as often as any district shall comprise more Field-cornetcies than one, the poll shall be taken by the respective Field-cornets of such Field-cornetcies, each at his own residence, in his own ward: Provided that the poll for every Field-cornetcy in which there shall be a Court of Resident Magistrate shall be taken by the Resident Magistrate at his Court-room: And provided that as often as any Resident Magistrate shall not be himself the Civil Commissioner of the division in which such Court-room shall be situated, the Civil Commissioner shall proceed, in regard to such Resident Magistrate and the poll to be taken by him, precisely as if such Resident Magistrate had been a Field-cornet, whose duty it was to take such poll: Provided, also, that as often as the Civil Commissioner shall be himself the Resident Magistrate to take the poll in any Field-cornetcy, he shall fix up the notice in the third sub-division of the twenty-sixth section of this Act described, and conform (as shall also such Resident Magistrates as are not Civil Commissioners) to the provisions of the Act regulating the taking of the poll by Field-cornets.

Poll, where and by whom to be taken (Cape Town and Green Point excepted).

23. The Civil Commissioner of each division shall, previous to any election of members of any Divisional Council, and after communicating with the Field-cornet of each ward in his division, appoint, in writing, some fit and proper person in each ward to

Provision in case of illness, absence, &c., of Field-cornet.

<sup>1</sup> See § 49.



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Poll may be taken at a place other than Field-cornet's residence.

Voter to vote in Field-cornetcy where registered.

Poll for Cape Town and Green Point where and by whom to be taken.

Names of candidates and place and time of poll to be published.

When number of candidates shall not exceed number of vacancies, no poll to be taken.

Where no poll is taken, names of districts and candidates to be published.

Mode of publishing notice.

Forms, lists, &c., to be furnished to Field-cornets.

act in place and stead of such Field-cornet, in case, by reason of illness, absence, or other sufficient cause, such Field-cornet should not in person take the poll for a Divisional Councillor or Divisional Councillors in such ward; and the poll taken by any such person shall be as legal, valid, and effectual as if the same had been taken by such Field-cornet: Provided, also, that as often as the residence of the Field-cornet of any ward shall be so situated as to be remote from, or difficult of access by, the greater number of the voters in such ward, the Civil Commissioner may appoint some more convenient place for the taking of the poll in such ward: Provided, further, that no voter shall vote except in the Field-cornetcy in which such voter stands registered.

24. The poll for the Cape Town and Green Point district in the Cape division shall be taken at the Town-house, in Cape Town, by the Civil Commissioner of the Cape division, or by such other person as the Governor shall by Government notice nominate and appoint.

25. As soon as may be after the day fixed by the notice in the sixteenth section of this Act mentioned as the latest day upon which nominations can be received, the Civil Commissioner shall, by notice in the *Government Gazette*, announce the names of the candidates nominated for each district respectively, and the place, day and hour at or upon which the poll is to take place: Provided that if, in any case, no greater number of candidates shall have been nominated for any district than the number to be then elected, no poll in or for such district shall take place, and the candidate or candidates so nominated shall be deemed to be duly elected: Provided, also, that the notice in this section mentioned shall name the districts, if any, for which no poll is to be taken, and the candidate or candidates elected for the same: And provided, further, that besides publishing such notice in the *Government Gazette*, the Civil Commissioner shall make it known by such other means as are in the eighteenth section of this Act set forth, which section shall apply to the notice in this section mentioned as fully as if the same were herein again repeated.

26. The Civil Commissioner shall, not less than seven days before the day named by him in the notice in the last preceding section mentioned for the taking of the poll in any particular Field-cornetcy, deliver or cause to be delivered to the Field-cornet of such Field-cornetcy the documents or papers following, that is to say:

1. A paper writing containing the names of the candidates nominated in manner aforesaid for the district in regard to which the poll is to be taken.
2. A list, written or printed, of the voters registered in such Field-cornetcy for the purpose of the Constitution Ordinance,—the said list to be certified under the hand of the Civil Commissioner to be correct.

3. A notice, legibly written, ready to be signed by the Field-cornet, and posted at his residence, which notice shall be, in substance, as follows:—

DIVISION OF ————. DISTRICT NO. ————

Notice is hereby given that a poll for the (member or members, as the case may be) of the Divisional Council for the above district will be held at this house (or at ————) on the — day of ———— next, opening at eight o'clock in the morning, and closing at five o'clock in the afternoon. The candidates nominated for this district are the following:—

A. B.  
C. D.  
E. F.  
&c., &c.

All votes given for any person except one of the above-named persons will be thrown away.

Dated this ———— day ————, 1867.

4. A number of pages of ruled paper calculated to be sufficient to contain the names of the voters signing one after another on each successive line. Each page to have at the top, legibly written, the name of one candidate, and but one, and every candidate to have a number of pages reckoned to prove sufficient for the names of those who will vote for him.
5. A printed paper containing the several sections of this Act, from the twenty-sixth to the thirty-sixth, both inclusive, in the English and Dutch languages.
6. A printed paper containing the form of solemn declaration to be made by the Field-cornet, as such form is hereinafter in the thirty-fourth section set forth.

27. The Field-cornet shall, forthwith upon the receipt of the documents or papers in the last preceding section mentioned, fill in at the foot of the notice in the third subdivision of the said section set forth, the date when he received the same, and then sign such notice, and then fix up such notice for general information at some conspicuous place upon his premises: Provided that no neglect or failure to comply with any of the provisions of this section shall render void the poll to which such notice relates.

Field-cornet to note day of receipt, sign and post notice of poll.

Failure not to vitiate poll.

28. The poll at every polling place in any district shall open at eight o'clock a.m., and close at five p.m., before or after which hours respectively no votes shall be received.

Duration of poll.

29. The manner of voting shall in substance be this: The Field-cornet shall ascertain that the person coming to vote is a registered voter entered upon the list of voters received by such Field-cornet, and having ascertained that such person is so entered,

Manner of voting.

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the Field-cornet shall ask for whom he votes. When the voter has named the candidate for whom he intends to vote, the Field-cornet shall lay before the voter one of the ruled pages received by him, 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 the Field-cornet, his name upon the upmost vacant line. Should the voter be unable or unwilling to write his name, he may, in the presence of the Field-cornet, make his mark, in which case the Field-cornet, or some other person in the Field-cornet's presence, shall write the christian name and surname of the voter, and the voter shall touch the top of the pen whilst the person who writes his name makes a cross (x) between the christian name and the surname. The words "his mark," above, below, or in connection with this cross shall not be necessary, nor the signature of any person as a witness to the making of such mark.

Manner of voting where election is for more than one member.

30. As often as the district for which any poll is taken under this Act shall be entitled to elect more than one member the manner of voting shall be the same as that in the last preceding section described, except that there shall be laid before the voter for his signature ruled papers, as aforesaid, bearing the names of such candidates not exceeding the number of members to be then elected, as the voter shall have named as the candidates for whom he votes.

How where a vote is given or taken in error.

31. If the Field-cornet shall, by mistake, lay before any voter a paper headed by another name than the name of the candidate named by such voter, and such voter's name shall be fixed to such paper before the mistake shall have been discovered, then the name of such voter, in case, before leaving the polling-room, he shall so desire, shall be struck out of that paper, and he shall be at liberty to sign another paper headed by the name of the candidate originally named by such voter; but no voter who shall have once affixed his name to a paper headed by the name of the candidate originally named by him shall be competent afterwards, upon an allegation of mistake or for any other reason, to withdraw his vote: Provided, however, that a voter may after naming a candidate as the candidate for whom he votes, but before he has finished signing his name or making his mark to a paper headed by the name of that candidate, correct his error or change his purpose, and vote, as aforesaid, for another candidate.

None but registered voters to vote.

32. When any person comes to vote, the Field-cornet shall, as aforesaid, see that such person is a voter named upon the list of voters received from the Civil Commissioner, and unless his name shall be found upon such list, shall refuse to receive his vote: Provided that when and as often as the identity of any voter shall be established, and it shall be made to appear to the Field-cornet that he is really and truly the person meant by the name upon the said list, no omission in the name upon the list of one or more of the christian names of such voter, and no error in the spelling of

Omission of christian name or error in spelling names not to deprive voter of vote.

any christian name or surname of such voter, whether the error be in the spelling of the name upon the list or in the spelling of the name by the voter, shall destroy or affect the validity of any vote, so long as the surname as written by or for the voter shall be of the same sound with the surname upon the list, or so long as the surname as written by or for the voter, although not of the same sound with the surname upon the list, shall be a known corruption of that surname, or the name upon the list shall be a known corruption of the surname as written by or for the voter.

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33. As soon as may be after the close of the poll at any polling-place, the Field-cornet shall sign his name at the foot or on some other part of every separate leaf or sheet containing the names of voters who have voted, and shall cast up the number of votes given for each candidate for whom votes shall have been given, and shall put down in writing, one after another, upon a separate paper, the names of the candidates, and opposite to each name the number of votes given for that candidate, and should any candidate have received no vote, shall write opposite his name the word "none;" and the paper containing the statement of such numbers, signed in attestation of its correctness by the Field-cornet and by one other person, being an owner of fixed property in the division, who shall also cast up the votes, shall be carefully preserved by such Field-cornet until he shall know that the parcel mentioned in section thirty-five has been received by the Civil Commissioner.

At close of poll, Field-cornet to sign polling lists, ascertain and carefully preserve result of poll.

34. The Field-cornet shall at the same time in the presence of the person who shall have signed the paper in the last preceding section mentioned, sign a solemn declaration, under the Ordinance No. 6, 1845, being the solemn declaration mentioned in the sixth sub-division of the twenty-sixth section, and which solemn declaration shall be in substance as follows:—

Declaration to be made by Field-cornet.

SOLEMN DECLARATION.

I, A. B., do solemnly and sincerely declare that I have taken the poll referred to in the accompanying polling papers, to the best of my ability, fairly and impartially, and without favour or prejudice in regard to any candidate, and that the accompanying polling papers contain a true statement, to the best of my knowledge, of the votes given at the said poll. 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."

Form of declaration.

Declared this — day of ———, 186—.

A. B.

Witness: C. D.

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Provided that every solemn declaration, when so signed and witnessed as aforesaid, shall be of the same force and effect as if it had been declared before a Resident Magistrate or Justice of the Peace.

Polling papers and declaration to be forwarded to Civil Commissioner.

35. As soon as the solemn declaration aforesaid shall have been signed and witnessed, the Field-cornet shall carefully and securely make up into a parcel all the polling papers relating to the poll just taken, together with the said solemn declaration, and shall address the said parcel to the Civil Commissioner of the division, and shall safely deliver or cause to be delivered the said parcel to such Civil Commissioner; but the Field-cornet shall not enclose in the said parcel the paper in the thirty-third section mentioned, but shall himself keep that paper, as in the said section is enjoined.

Field-cornet may correct certain irregularities.

36. The Civil Commissioner receiving any such parcel as aforesaid shall forthwith examine the papers therein contained, and in case he shall find that any separate leaf or sheet containing the names of voters who had voted has been omitted to be signed by the Field-cornet, or find that the solemn declaration aforesaid has been omitted to be enclosed, or, being enclosed, has been enclosed unsigned or unwitnessed, or find any other irregularity of a like nature, then such Civil Commissioner shall, without delay, inform the Field-cornet of the irregularity committed, and it shall be competent for the said Field-cornet to correct the same, and upon his correcting the same, the several papers relating to the said poll shall be in the same plight and condition as if no such irregularity had been committed: Provided that the Field-cornet by whom such irregularity was committed shall be liable for the expenses, if any, attendant upon the correction of the same.

But is liable for expenses incurred in consequence.

Complaints with regard to poll, how to be made.

37. It shall be competent for any voter registered or alleging himself to be registered as such in any Field-cornetcy, who shall complain that his vote, duly tendered at the poll taken in such Field-cornetcy, was rejected by the Field-cornet, or shall complain that at such poll a person not registered as a voter in such Field-cornetcy was admitted to vote, or who shall complain of any other irregularity fallen into at any such poll, to lodge with the Civil Commissioner his complaint, in writing, stating the name of the person so rejected or admitted, or the particulars of any other alleged irregularity, and requesting that the grounds of such complaint may be investigated: Provided that if such complaint shall not be lodged within seven days after the day of the poll, no notice shall be taken of it, nor shall the poll as taken be capable of being afterwards impeached by such complainant in any action or proceeding at law.

Period within which complaints must be lodged.

Who to investigate complaints, and how to be investigated.

38. As often as the Civil Commissioner shall receive any such complaint as aforesaid he shall, in the most speedy and inexpensive manner practicable, cause the Field-cornet and the party complaining, and the party, if any, whose vote is questioned, or the

persons concerned in any other alleged irregularity, to attend before him, and shall, in their presence, inquire into the grounds of such complaint, and if he shall find that the vote of any person so complaining was improperly rejected, shall enter such vote for the candidate for whom it was tendered; and if he shall find that any person not entitled to vote was admitted to vote, shall strike out such vote from the polling paper or polling papers in which it appears; and if he shall find that any other irregularity was fallen into, shall correct such irregularity: Provided that every person complaining and every person complained against shall be entitled to be assisted by an agent: Provided, also, that the Civil Commissioner may, should the circumstances of the case require it, take evidence on oath, and may summon witnesses to appear before him to give evidence, and the form of summoning witnesses, and the consequences of attendance or non-attendance shall, *mutatis mutandis*, be in substance the same as are set forth in the sixteenth, seventeenth and eighteenth of the rules, orders and regulations of the Courts of Resident Magistrates contained in the Schedule marked B to the Act No. 20 of 1856: Provided, further, that the Civil Commissioner may, if he shall so think fit, award his reasonable costs to any person concerned in such investigation, to be paid by any other person concerned therein, and shall tax and ascertain such costs, and shall certify in writing to the Clerk of the Court of Resident Magistrate for the district in which the person liable to pay such costs shall reside, the amount of such costs, and the process of such Court may issue for the levy of such costs, precisely as if such costs had been costs recovered in a civil suit by the person to whom they shall have been awarded by the Civil Commissioner.

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Parties may be assisted by an agent.

Civil Commissioner may take evidence and summon witnesses.

Costs may be awarded.

Recovery thereof.

39. If the nature of any such case as aforesaid shall be such that the Civil Commissioner shall be uncertain regarding the decision proper to be given upon it, it shall be competent for him to draw up a statement of the facts, and such statement shall be signed by such Civil Commissioner, in attestation of its correctness, and such Civil Commissioner shall transmit the same to the Registrar of the Supreme Court, to be by him submitted to a Judge in Chambers for his consideration and determination: Provided that every Civil Commissioner within the Eastern Districts, as the same are described in the Administration of Justice Act, 1864, shall transmit all such cases as aforesaid to the Registrar of the Court of the Eastern Districts for the consideration and determination of a judge of the said Court.

Complaint may be referred to a judge of the Supreme Court for decision.

Or to a judge of the Eastern Districts Court.

40. The Judge before whom any such statement as aforesaid shall be laid may, should the same appear to him to be defective, call for further information from the Civil Commissioner who transmitted it, and shall give such a decision as shall appear to him to be right and proper, and such decision shall, for the purpose of the poll to which it relates, be final and conclusive.

Judge may call for further information.

Decision final.

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- Reservation of right of appeal to competent court.
- Period for appealing limited.
- Civil Commissioner to be no party to suit.
- Costs of suit.
- Civil Commissioner to ascertain result of poll.
- No vote to be struck out unless objected to.
- Candidate may inspect polling papers and electoral lists.
- How, in case of loss or destruction of polling papers.
41. Nothing in this Act contained shall prevent any person who had within the <sup>(1)</sup> seven days aforesaid complained that his vote was, at any such poll as aforesaid, improperly rejected, and whose complaint the Civil Commissioner shall have decided not to be well founded, or any person whose vote given at any such poll shall, by the Civil Commissioner, have been struck off upon some other person's complaint, or any person whomsoever having an interest in the subject-matter of any such decision by the Civil Commissioner, from seeking redress in any competent Court: Provided that no such person shall commence any suit or proceeding in any such Court, for the purpose of obtaining such redress, later than forty-two days next after the pronouncing by the Civil Commissioner of the decision complained of: Provided, that no Civil Commissioner shall be made a party to such a proceeding unless it be alleged that his decision was wilfully wrong: And if the Court before which any such suit or proceeding shall be instituted shall find that the decision complained of was not wilfully wrong, it shall award the Civil Commissioner his reasonable costs against the party by whom the same shall have been alleged should it be consonant with justice so to do; and should it not be so consonant such costs shall be paid from and out of any moneys at the disposal or under the administration of the Divisional Council.
42. If the Civil Commissioner shall find, upon examining the papers received from each polling place in any district, that the same are regular and formal, he shall cast up the votes given for the respective candidates for such district, and shall ascertain for whom the greatest number of votes in such district shall have been given, and such candidate shall be the member of the Divisional Council for such district: Provided that, in regard to any district entitled to elect more members than one, the Civil Commissioner shall ascertain what candidates, equal in number to the number of members to be then elected, shall have received more votes than any other candidate, and such candidates shall be the members for such district: Provided, also, that the Civil Commissioner shall not of his own motion and without a complaint lodged, strike out any vote upon the polling paper upon the ground that, in his opinion, the voter's name was not a name upon the list sent to the Field-cornet: Provided, further, that during the seven days aforesaid any candidate or person appointed in writing by any candidate shall be at liberty to inspect the several polling papers, and to compare them with the lists of voters with which such polling papers ought to correspond.
43. If, by any accident or mischance, the parcel in the thirty-fifth section mentioned containing the polling papers of any polling place should be lost or destroyed on its way from the Field-cornet to the Civil Commissioner, then the paper writing by the thirty-third section directed to be made and signed shall be received and

<sup>1</sup> § 37.

acted upon by the Civil Commissioner, in place and stead of the polling papers so lost or destroyed.

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44. If any person shall wilfully occasion the loss or destruction of any such parcel as in the thirty-fifth section mentioned, or of any of the contents of any such parcel, such person shall, upon conviction, be liable to a fine not exceeding forty pounds, and in default of payment thereof to imprisonment, with or without hard labour, for any period not exceeding three months.

Penalty for wilfully occasioning such loss or destruction.

45. When the Civil Commissioner of any division, except the division of the Cape, shall have ascertained, in manner aforesaid, the names of the eight members respectively who shall have been elected by the six districts respectively composing his division, the said Civil Commissioner shall forthwith cause to be published in the *Government Gazette*, and in some such newspaper as is in the eighteenth section mentioned, if any, the names of such eight members, placing opposite to or in connection with every such name the number of the district by which such member was, or such members were, elected: Provided that if, in any district, 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 determined by lot, to be drawn in presence of the Civil Commissioner and not fewer than seven witnesses: Provided, also, that the name of no member for any district in which a poll was taken shall be published until the expiration of seven days from the day on which such poll was taken: Provided, further, that the provisions of this section shall apply to the Cape division, and to the Civil Commissioner of such division, save only that such Civil Commissioner shall publish the names of ten members instead of eight, and shall describe the several districts of the said division in the manner in which such districts are in the ninth section of this Act mentioned and described.

Publication of names of members elected.

Equality of votes to be decided by lot.

Date for publishing names.

Publication of names as regards Cape division.

46. The Civil Commissioner shall, in the same *Gazette* and newspaper in which he shall cause to be published the names of the members elected to form the Divisional Council, apprise such members, by public notice, of the day, the hour, and the place at which the first meeting of the Council will be held: Provided that such first meeting shall not take place sooner than twenty-one days from the day of the publication of such notice: And provided that the Civil Commissioner shall, over and above such notice, inform each of the said members respectively, in writing, and in reasonable time, of the day, hour, and place appointed for such first meeting.

Date and place of first meeting of Council to be notified to members.

Meeting not to take place within twenty-one days of notice.

47. The lodging of any complaint such as is in the thirty-seventh section described shall not prevent or delay the publication of the names of any candidate who would, even if every complaint so lodged were adjudged to be legal or well-founded, still be the member for, or a member for, the district to which such complaint

Publication of names of members, how affected by lodgment of complaints.



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relates. But if the decision upon such complaint or complaints might alter or affect the result of the poll, then no candidate for such district whose election might be so affected shall be published as the member for, or as a member for, such district, until such complaint shall have been investigated and decided.

Non-election or staying of publication of names of members elected; one district not to affect publication of names of members in other districts.

48. The non-attendance of all the voters of any district for the purpose of electing a member or members for the Divisional Council, or the existence in regard to any district of any complaint or complaints of such a nature as to stay the publication of the name of any candidate as the member or a member for any district, shall not prevent or delay the publication, as aforesaid, of the names of the members for the other districts of the division to which such district belongs.

Complaints regarding ineligibility of members elected by whom and manner in which to be made.

49. If any person ineligible under the fourteenth section of this Act to be elected a member of the Divisional Council shall, nevertheless, have been nominated as in the nineteenth section mentioned, and shall have been elected, it shall be competent for any voter for the district for which such candidate shall have been elected to lodge within seven days next after the day on which the poll in and for such district was taken, but not later, with the Civil Commissioner a complaint stating the ground of such ineligibility, and thereupon the like proceedings, *mutatis mutandis*, as are in the thirty-seventh, thirty-eighth, thirty-ninth, fortieth, and forty-first sections mentioned, shall apply to such complaint and the decision thereupon: Provided that, in regard to any complaint grounded upon the alleged ineligibility of any candidate, the attendance of the Field-cornet who took the poll shall not be necessary.

Existing Council to retain office until publication of names of sufficient number of new members to form a quorum.

50. If, by reason of the failure in one or more districts to nominate or to elect candidates, or of the existence of irregularities or of errors in the taking of any polls, not yet corrected, or of complaints not yet decided, it shall so happen that there shall not be published in manner aforesaid, in any division, before the time fixed for the existing Divisional Council to go out of office, the names of members of the new Divisional Council sufficient to form a quorum, as in the sixty-first section mentioned, the Divisional Council then in existence shall remain in office until a number of members of the new Council sufficient to form a quorum shall have been published: Provided that as soon as a number of members of the new Council sufficient to form a quorum shall have been published, then such member shall, for the time being, form such Council, and such Council shall be, to all intents and purposes, competent to perform all functions and duties belonging to it, in case such functions or duties shall not, by some particular Act or Acts, require the presence of a greater number of members than the number so published.

Sections 25 to 35 to apply to elections

51. For the purpose of the election of members of the Divisional Council of the Cape by the Cape Town and Green Point District

of the said division, the provisions of the several sections of this Act from the twenty-fifth to the thirty-fifth, both inclusive, shall, *mutatis mutandis*, apply to such election, precisely as if the said Cape Town and Green Point District were a Field-cornetcy, and as if the Civil Commissioner or other person nominated as aforesaid, to take a poll for such district, were a Field-cornet.

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for Cape Town and  
Green Point.

52. If it shall happen that, by reason of any accident or other cause, the Civil Commissioner of any division shall not, in regard to the election of a new Divisional Council for such division in the year 1867, give, within the time by the sixteenth section of this Act, in that behalf provided, the notice in the said section mentioned, or shall not give any other notice, or do any other act, by any previous section of this Act required, whereby it shall happen that the names of at least a quorum of members of any new Divisional Council cannot be published before the day on which the old Divisional Council ought regularly to go out of office, it shall be lawful for the Governor, upon the application of such Civil Commissioner, to authorize such Civil Commissioner to publish, or cause to be published, such a notice as aforesaid, fixing such day or days for the receiving of nominations for candidates for the representation of the several districts of such division, and such day or days for publishing any other notice or doing any other act, as may be most convenient, and the members of the old or expiring Divisional Council shall remain in office until the publication, in manner and form as in the forty-fifth section of this said Act directed, of the names of the members elected.

Date for nomination of candidates fixed by section 16 may in certain cases be altered.

53. If any district of any division shall, from accident or other cause, not being the neglect of the voters to attend, as hereinafter mentioned, fail, at any poll appointed for such district, to elect a member of the Divisional Council for such district, it shall be lawful for the Governor aforesaid, upon the application of the Civil Commissioner of such division, to authorize the taking, in such district, upon such day as may seem convenient, of another poll, and such other poll shall be deemed to be as legal, valid, and effectual as if it were the poll first appointed for such district: Provided that as often as it shall be certified to the Governor by the Civil Commissioner of any division, that at the poll duly appointed for any district, no member of the Divisional Council was elected, by reason that no voter for such district attended to give his vote, and that the said Civil Commissioner, after inquiry, has not ascertained the existence of any sufficient impediment preventing the attendance of one or more of the voters of such district at the said poll, then the said Governor shall direct the Civil Commissioner to call, by a notice in the form in the next succeeding section set forth, to be published in manner and form, and for the same time, as the notice in the sixteenth section of this Act mentioned, for a new nomination of candidates to fill the seat or seats in the Council remaining vacant by reason that the district afore-

As to failure of election from any cause excepting non-attendance of voters.

How, if from non-attendance of voters.

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Future electoral  
rights not thereby  
affected.

Distribution of  
votes.

Provisions of sec-  
tion to apply in case  
of a partial election.

Form of notice of  
nomination where  
election has failed  
through non-attend-  
ance of voters.

said so failed to elect; and shall, as soon as may be after the day fixed by such notice as the latest day for receiving such nominations, by another notice, published in manner and form as the notice in the twenty-fifth section of this Act mentioned, announce the names of the candidates nominated, and the day on which and the place at which a poll will be taken for the member or members whom the district which so failed to elect was entitled to elect, and such poll shall be taken by the Civil Commissioner in the Court-room of the Resident Magistrate nearest to his office, and shall be kept open during the hours in the twenty-eighth section specified; and at such poll every voter entitled to vote in any district of the division for members of the Divisional Council shall be entitled to vote for the member or members to be then elected, and the person or persons elected at such poll shall be deemed to be the member or the members (as the case may be) for the district which shall have so, as aforesaid, failed to elect: Provided, also, that when the member or members so elected as aforesaid shall vacate office, the district for which he or they sat shall be again entitled to elect its member or its members (as the case may be), precisely as if this section had never been passed: Provided, further, that as often as the district which so failed to elect shall be a district entitled to have elected more members than one, then each voter at the said poll shall be entitled to give one vote, and no more, for each of any number of candidates, not exceeding the number of members to be then elected: Provided, lastly, that if any district entitled to have elected more members than one shall have elected one or more, but not all of the members who should have been elected at such poll, then the provisions of this section regarding an election by the whole of the voters in the division shall apply to the election of the member or members who shall not have been elected at such poll, in like manner as if no member had been elected at such poll; and the notice in the next succeeding section mentioned shall be modified accordingly.

54. The notice in the last preceding section mentioned, calling for the nomination of candidates, shall be, in substance, as follows:—

DIVISIONAL COUNCIL FOR THE DIVISION OF —————.

Whereas the District No. — failed to elect its member (or members as the case may be) at the last election, by reason that no voter of such district attended at the poll to give his vote, I hereby invite the voters entitled to vote for members of Divisional Council in the several districts of this division to nominate, in writing, candidates for the representation of the said District No. —. Every candidate must be nominated by not fewer than five voters, or otherwise his nomination will be null and void. No voter can sign more nominations than one, on pain of having his name struck out of all the nomi-

nations in which it appears, and considered as if never placed there. All nominations must be received by the undersigned not later than the — day of —, 1867, and any nomination received later than that day will be taken no notice of. Every voter signing any such nomination must state his place of residence.

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Dated this — day of —, 1867.

(Signed) A. P., Civil Commissioner for the Division of —.

55. The form for nominating candidates in reference to the notice in the last preceding section mentioned shall, in substance, be the form in the nineteenth section of this Act set forth, except that the word "said" in the said form shall be struck out: Provided that the provisions of the twentieth section of this Act, except the last proviso thereof, shall apply to all nominations made under this section.

Provisions of sections 19 and 20 to apply to such nominations.

56. If the voters of any district shall, without some reasonable and sufficient cause, to be judged of by the Governor, fail to nominate any candidate for such district, in case such district shall be entitled to elect one member, or the necessary number of candidates, in case such district shall be entitled to elect more members than one, then the right to elect the member or members for such district for whom no nomination shall have been received shall devolve upon the voters throughout the several districts of the division, and thereupon the provisions of the fifty-third, fifty-fourth, and fifty-fifth sections of this Act shall, *mutatis mutandis*, apply to the election of such member or members: Provided that as often as the Governor shall be of opinion that a reasonable and sufficient cause existed for the failure to nominate as aforesaid, then the Governor may authorize the Civil Commissioner to issue a fresh notice, such as is in the sixteenth section of this Act mentioned, calling for nominations of candidates, in like manner as if the seat or seats for the district in question had become casually vacant: Provided, also, that the provisions of the thirty-seventh, thirty-eighth, thirty-ninth, fortieth, and forty-first sections of this Act shall apply to all elections held under the provisions of the fifty-third section, and of this section.

How on failure of nomination without reasonable cause.

57. The members of the Divisional Councils throughout the Colony who shall be elected in manner aforesaid shall come into office on the 1st day of November, 1867, and shall go out of office on the 1st day of November, 1870, and a fresh election shall be held on the second Wednesday in October in the said last mentioned year, and so on with triennial vacancies and triennial elections for ever; and all and singular the several provisions of this Act regulating the first general election, after this Act shall take effect, shall, *mutatis mutandis*, extend and apply to all successive general elections: Provided that nothing in this section contained shall prevent a member going out of office from being re-elected.

And how, where reasonable cause exists.

Members to vacate office triennially.

But may be re-elected.

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Vacancies, how  
created.

58. If any elective member of any Divisional Council shall die, or resign, or in writing refuse to act for any district for which he shall have been elected, or become insolvent, or assign his estate for the benefit of his creditors, or accept any office of profit under Her Majesty the Queen, or become a contractor with the Council of which he is a member, as in the seventy-fifth section described, or for three months from the time of his last attendance at a meeting of the Divisional Council, absent himself, without the leave of the Council first had and obtained, from the meetings, whether ordinary or special, which may have been held within that period, unless he shall have been prevented by sickness or some other lawful and sufficient cause, to be judged of by the Council, then the office of such member shall, *ipso facto*, become vacant:

Members prevented from attending to give notice to Council.

Provided that every member prevented from attending at such meetings as aforesaid by sickness or other cause, shall be bound to report, or cause to be reported, to such Council, not later than twenty-eight days next after the day on which the last of the said meetings shall have been held, the cause of his non-attendance; and if no such report shall have been received, or, being received, shall be resolved by the Council not to be lawful and sufficient, then the seat of such member shall, as aforesaid, become vacant:

As regards attendance at special meetings.

And provided that, in regard to special meetings of the Council, absence from the same shall not be reckoned or regarded for the purposes of this section unless notice of the same shall have been given to the member who shall have absented himself in reasonable and customary time: Provided, also, that as often as any person shall have been elected as a member of Council by more districts than one, he shall be bound to declare, within fourteen days next after the publication of his name as the member or as a member for such districts respectively as in the forty-fifth section directed, for which one of the said districts he elects to sit as member, and upon such election by him the seat or seats of such person for the other district or districts by which he was elected shall become vacant: Provided, further, that in case such person shall not within the fourteen days aforesaid, make his election as aforesaid, then all the seats in the Council for which seats such person was elected shall become vacant.

When elected for more than one district member to declare district for which he elects to sit.

Failing to do so, all seats for which he was elected to become vacant.

Elections for casual vacancies.

59. As often as any casual vacancy shall occur in any Divisional Council, upon any of the grounds in the last preceding section mentioned, or upon any other ground mentioned in this Act, in any Divisional Council, then all and singular the provisions of the several sections of this Act from the sixteenth to the forty-first, both inclusive, shall, *mutatis mutandis*, apply to the election of a member to supply such vacancy: Provided that the dates to be fixed for receiving the nomination of candidates, and for the taking of the poll (if any), shall be, as regards the filling up of casual vacancies, in the discretion of the Civil Commissioner.

Dates of nomination and poll in discretion of Civil Commissioner.

60. The Civil Commissioner of the division shall, *ex officio*, be a member of the Divisional Council of his division, and shall, when present, preside at all the meetings thereof: Provided that if, in any case, the person acting as Civil Commissioner shall be the secretary of the Council, then such person shall not be a member of the said Council, or preside at any of its meetings.

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Civil Commissioner a member *ex officio*, and to preside.  
Exception.

61. [Repealed by Act 15 of 1869, § 1, *infra*.]

62. Every meeting of any Divisional Council at which the Civil Commissioner shall not be present shall, before proceeding to business, elect some member present to be the chairman of such meeting.

Who to preside in absence of Civil Commissioner.

63. The Civil Commissioner or other member presiding at any meeting of the Divisional Council shall in regard to all questions that may come before such meeting have his original or deliberative vote, but not a casting vote.

Chairman not to have casting vote.

64. Every Divisional Council shall have a secretary, and such other officers (if any) as shall be deemed necessary by such Council, and such officers shall be appointed by such Council, and shall hold office during the pleasure of the Council: Provided that the secretary and other officers appointed by any such Council shall remain in office, notwithstanding the occurrence of any number of general elections of members of such Council, unless removed by such Council: Provided also that every such Council shall take from every officer employed by it, who shall be charged with the receipt or disbursement of any of the funds of such Council, such security as the Council shall deem sufficient for the due performance of his duty.

Appointment of officers.

Tenure of office.

Security may be required.

65. Nothing in this Act contained shall prevent any Divisional Council from appointing, with the consent of the Governor, any Civil Commissioner's clerk to be the secretary to such Council.

Civil Commissioner's Clerk eligible for office of Secretary.

66. It shall be lawful for every Divisional Council to assign to its secretary such salary as it shall deem adequate and proper.

Salary of Secretary.

67. [Repealed by Act 24 of 1869, which is repealed by Act 10 of 1874, but such repeal does not revive this section.]

68. So far as the percentage aforesaid shall be insufficient to provide for the salary of the secretary aforesaid, such salary shall be paid from and out of the road rates levied by such Council, and any other funds at its disposal.

Other funds available for payment of Secretary's salary.

69. Every Divisional Council is hereby authorized to frame such standing rules and orders as shall be necessary for the orderly and efficient conduct of its business: Provided that no such rules shall have any force or effect until the same shall have been submitted to and approved of by the Governor of the Colony.

Rules to be framed and approved by Governor.

70. The Divisional Council of any division may sue or be sued by the name or style of "The Divisional Council of ———," and may in all legal proceedings be referred to by that name or style.

Style under which to sue and be sued.

71. In all suits and proceedings in any Court of Resident Magistrate by or against any Divisional Council, it shall be lawful for

Secretary may represent Council in suits and actions.

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- But Council may appoint another agent.
- Warrant to sue or defend, how to be signed. 72. In all suits and proceedings in any Court other than the Court of the Resident Magistrate, the warrant to sue or defend shall be signed by the Civil Commissioner thus: "By order of the Divisional Council, C. D., Civil Commissioner."
- No proof of authority to sign warrant required. 73. No proof need be given in any Court that the Civil Commissioner or the secretary of the Council (as the case may be), in signing any such warrant or power as aforesaid, acted under the authority of the Council, but evidence shall be admissible to prove the contrary.
- No salary, fees, &c., not provided for this Act, payable to members. 74. [Repealed by Act 15 of 1869, *infra*.]
- Nor sh they become contractors to Council. 75. No member of any Divisional Council shall have or receive any salary or allowance, or exact, accept, or receive any fee or reward whatsoever, not granted or allowed by this or some other Act, for, on account, or by reason of his office as such Divisional Councillor; nor shall any Divisional Councillor become a contractor with the Council of which he shall be a member for the doing of any work or the supplying of any materials, articles, or things required by such Council; nor shall such member be directly or indirectly interested in any such contract as last aforesaid. Any person contravening this section of this Act shall incur and be liable to a penalty not exceeding one hundred pounds: Provided that nothing in this section contained shall prevent any Divisional Councillor from receiving any fee or allowance which the Governor shall authorize for or on account of any service performed by such Councillor under and in pursuance of the Crown Lands Act or any other Act.
- Penalty.
- Exception. 76. The fiftieth section of the Act No. 9, 1858, entitled "An Act to provide for the Maintenance of the Public Roads of the Colony," is hereby repealed.
- Section 50 of Act 9 of 1858 repealed.
- Existing contracts to remain binding. 77. All contracts entered into by any Divisional Council for the doing of any work or the supplying of any materials, articles, or things required by such Council, shall be binding upon their successors in office: Provided that no such contract shall be made to endure for a longer period than three years from the day of its date.
- Contracts not to extend over more than three years.
- Interpretation of terms. 78. Whenever the term "division" is mentioned in this Act it shall mean a Fiscal Division, not an Electoral Division, and whenever the term "Field-cornet" is mentioned in connection with any election for members of Divisional Council, it shall mean such a

person as is in the twenty-third section of this Act mentioned, as well as a Field-cornet, and, also, the Resident Magistrate and the Civil Commissioner or other person in the cases provided for by the twenty-second and twenty-fourth sections.

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79. (1) Two auditors of the accounts of the Divisional Council shall be elected by the persons entitled to vote for members of the Divisional Council at a public meeting of such persons, to be convened by the Civil Commissioner of the division, and to be held, except in regard to the division of the Cape, in the Court-room of the district of which such Civil Commissioner is the Resident Magistrate, on the second Wednesday of the month of January succeeding every general election of members of the Divisional Council of such division: Provided that the Civil Commissioner shall convene such meeting by a notice posted for not less than fourteen days next before the day of meeting at or near his public office, and published in any newspaper issued in the town or village in which such meeting is to be held, or, if there be no such newspaper, then in whatever newspaper shall be issued nearest to such town or village: Provided, also, that if such Civil Commissioner shall fail or neglect to post or publish such notice, the said meeting shall, nevertheless, be held at ten o'clock a.m. on the day and at the place aforesaid: Provided, further, that such meeting may be adjourned till a future day should the persons present thereat and entitled to vote so determine: Provided, lastly, that the public meeting for the division of the Cape shall be held on the day aforesaid, in the Town House, Cape Town.

Election of auditors.

Notice of meeting for such election to be posted.

In case of failure to post, election to proceed notwithstanding.

Meeting may be adjourned.

Meeting for Cape Division, when and where to be held.

80. It shall not be competent to elect as an auditor any member of the Divisional Council of which the accounts are to be audited by such auditor, nor any person related to any member of such Council in or within the third degree of consanguinity or affinity: Provided that no auditor who was at the time of his election duly qualified to be elected shall cease to hold such office by reason that some person related to him in or within such third degree shall, after the election of such auditor, become a member of the Divisional Council to supply some casual vacancy, or by reason that such auditor and some person who was, when such auditor was elected, already a member of the Divisional Council, shall after such election become related to each other in or within the third degree of affinity: Provided, also, that if any auditor shall after his appointment as such be elected a member of the Divisional Council, his office of auditor shall, *ipso facto*, become vacant.

Who not eligible for election as auditors.

Exceptions.

Auditor to vacate office on being elected a member of Council.

81 and 82. [Repealed by Act 15 of 1869, *infra*.]

83. It shall be the duty of the auditors to examine, half-yearly the accounts of receipts and payments of the Divisional Council, to ascertain that they are supported by proper vouchers, that the expenditure is in accordance with votes, or resolutions, or contracts

Duties of auditors.

<sup>1</sup> See §§ 4-6, Act 15 of 1869, *infra*.



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Accounts furnished to Government to bear auditors' signatures.

of the Council, and that such votes, and resolutions, and contracts are authorized by law; and also to ascertain and certify the amount of the cash balance in the hands of the Council or of its treasurer, and where such cash is deposited; to publish an abstract of the accounts, with a certificate of the auditors as to their correctness or otherwise, in some such newspaper as in the eighteenth section mentioned: Provided, also, that all accounts which, under and by virtue of any Act in force for the time being, relative to the public roads of the Colony, shall be furnished to the Governor by any Divisional Council shall, when so furnished, be certified as correct by the auditors aforesaid.

Remuneration to auditors.

84. The remuneration to be paid to such auditors as aforesaid shall be such amount as shall have been previously fixed by the Divisional Council, and such remuneration, together with the cost of publishing every such notice of meeting and abstract of accounts, shall be paid from and out of the funds of the Divisional Council.

Books, accounts, &amp;c., to be open to inspection.

85. All books, accounts, and papers belonging to the Divisional Council in the hands of the secretary, or otherwise in the possession or under the control of the Council, shall, during reasonable hours on every Wednesday, be open to inspection and examination at the office of the Divisional Council, as well by any elector of the division as by the auditors to be appointed under this Act.

Election expenses, how to be defrayed.

86. The expenses arising out of the election of Divisional Councils,—that is to say, the cost of publishing notices under this Act in any newspaper other than the *Government Gazette*, the cost of all printed papers hereinbefore directed to be provided in regard to the taking of any poll, and the cost of remunerating Field-cornets or others for their services in and about the taking of any poll,—shall, except as next hereinafter is excepted, be defrayed from and out of any moneys at the disposal or under the administration of the Divisional Council: Provided that the notices relating to such election, to wit, the notices mentioned in the sixteenth, twenty-fifth, forty-fifth, forty-sixth, fifty-second, and fifty-third sections of this Act, shall be inserted in the *Government Gazette*, through the Colonial Government, free of charge to the Divisional Council. And provided that so much of the Act No. 9, 1858, and of the Act No. 10, 1864, and of any other Act, as shall be repugnant to or inconsistent with this section, or with any other section of this Act authorizing or directing payments to be made by the Divisional Council from and out of any road-rates or other funds at its disposal, shall be and the same is hereby repealed.

Certain notices to be inserted in *Gazette* free of charge.

Repugnant portions of Acts 9 of 1858, and 10 of 1864, repealed.

Short title.

87. This Act may be cited for all purposes as “The Divisional Councils Act, 1865.”

No. 15—1869.]

*Repealed by  
Act of 1869*  
ACT

[October 18, 1869.

To repeal Act No. 14 of 1860, intituled "An Act for amending the Act No. 5, 1855, intituled 'An Act for creating Divisional Councils in this Colony,' and to amend the Act No. 4 of 1865, intituled 'An Act to consolidate and amend the several Acts relating to Divisional Councils.'"

WHEREAS in the enumeration in clause 1 of the Act No. 4 of 1865 of the Acts to be repealed by the said Act, the Act No. 14 of 1860 was omitted, and some of the provisions thereof are inconsistent with the provisions of the said Act No. 4 of 1865, and it is expedient that the said Act No. 14 of 1860, and the Sections 61, 74, 81, and 82 of the said Act No. 4, 1865, 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.

1. The Act No. 14 of 1860, together with the Sections 61, 74, 81, and 82 of the Act No. 4 of 1865, shall be and the same are hereby repealed.

Act No. 14, 1860, and portion of Act No. 4, 1865 repealed.

2. At every meeting of any Divisional Council five elected members, with or without the Civil Commissioner, shall form a quorum.

Quorum, how formed.

3. It shall be lawful for each Divisional Council, out of any funds at its disposal or under its administration, to pay to each member attending any meeting of such Council travelling expenses at a rate, in regard to each member, to be fixed by such Council, not exceeding in the whole ten shillings per day, for every day necessary for journeying to, remaining at, and returning from the place of meeting: Provided that no member whose ordinary place of residence shall not be distant more than fifteen miles from the place in which any meeting of such Divisional Council shall be held shall be entitled to receive any payment for or in regard to his attendance at such meeting, either by way of travelling expenses or otherwise.

Travelling allowance to members.

Who not entitled.

4. At every meeting held for the election of auditors, every person proposed to be elected an auditor shall be nominated by one person entitled to vote, and such nomination shall be seconded by some other such person: Provided that no person shall be elected an auditor unless, being personally present, he shall accept the office, or some one of the electors present shall produce his acceptance of the office by a writing under his hand; and, failing such acceptance, verbal or written, then an election of a person in stead of the person in respect of whom such acceptance shall not be given shall at such meeting take place, until some two persons shall be chosen who shall, at such meeting, agree to act.

Auditors, how to be elected.

Acceptance of office to be signified by person elected, either verbally or in writing.

Failing which new election to be had.

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Vacancy in office of auditor, how created.

5. Should any auditor die or resign, or refuse to act, or become incapable of acting from mental or bodily disease, or cease to reside in the division for which he was elected, or become insolvent, or assign his estate for the benefit of his creditors, or become a contractor with the Divisional Council of which he is to audit the accounts, or be elected a member of the Divisional Council, his office shall become vacant, and the remaining auditor shall act alone until the next election of auditors, or of one auditor, as the case may be, as hereinafter provided.

On vacancy, remaining auditor to act alone.

How if election fail, or both auditors vacate office.

6. If the election of auditors provided by the seventy-ninth section of the said Act No. 4 of 1865 should fail to take place, or should become void for any reason, or if such election having taken place, both or either of the auditors shall, upon any of the grounds in the immediately preceding section mentioned, vacate office, then the Civil Commissioner shall, upon such notice as is in the said seventy-ninth section mentioned, convene a public meeting for some convenient day, not being less than fourteen days after the day on which such notice shall be posted, as is in the said section mentioned, and such meeting shall proceed to elect two auditors or one auditor as the case may be, in manner and form provided by the said section.

Short title.

7. This Act may be cited for all purposes as the "Divisional Councils Acts Amendment Act, 1869."

No. 3—1870.] *Repealed by Act 40 of 1889* ACT [May 5, 1870.

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.

Preamble.

WHEREAS it is expedient that the lessees of crown lands leased under the provisions of Act 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:—

Repugnant laws repealed.

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.

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.

No. 3—1870.

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 an annual rent of not less than thirty pounds sterling per annum, shall, unless disqualified under the provisions 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.

Lessee qualified to be elected member of Divisional Council.

No. 11—1878.]

[August 2, 1878.

ACT

To Authorize the Divisional Council of Aliwal North to Borrow Money upon Security of Road Rates and Tolls for the Erection of a Bridge over the Kraai River.

Preamble.

WHEREAS it is desirable that a bridge should be erected over the Kraai River at the "Poort," in the division of Aliwal North:

No. 11--1878.

And whereas the Colonial Government has agreed to contribute the sum of five thousand pounds towards the construction of the said bridge: And whereas the Divisional Council of Aliwal North are desirous of obtaining certain powers to enable them to take up on loan the further amount required to be expended on the erection of the said bridge:

And whereas it is expedient that the said Council should be authorized to borrow money upon security of the road rates, tolls, and other revenues of the said division: 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, as follows:—

Power to borrow  
£5,000.

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 five thousand pounds in the whole, as may be required in addition to the amount to be contributed by the Colonial Government for the purpose of erecting a bridge over the Kraai River at the "Poort," in the division of Aliwal North.

Chargeable  
on rates.

2. For the due payment of the money to be raised by the Divisional Council as aforesaid, and the interest thereof, the rates, tolls, and other revenues of the said Council are hereby charged and hypothecated.

Written acknow-  
ledgment to lenders.

3. The Council shall grant written acknowledgments of or for such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in the form annexed to this Act, and shall be signed on behalf of the said Council by one or more of its elected members thereto duly authorized by resolution of the said Council.

Provision for pay-  
ing interest and for  
gradual extinction of  
loans.

4. 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 Council 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 sum shall be annually charged upon and payable out of the revenues of the said Council, so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

Separate account  
of fund to be kept.

5. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section, as shall not be required for payment of the interest for the time being due upon the loans raised under the authority of this Act, shall be paid to a separate account, to be kept in a bank to be chosen for that purpose by the Council, and shall be applied in redeeming and cancelling the obligations or acknowledgments of the said Council for money borrowed under the authority of this Act, in such manner and form as shall be provided by terms and conditions whereon such obligations or acknowledgments shall respectively have been granted; and all moneys so paid into a

bank for the purpose aforesaid shall be drawn out by cheques, to be signed by some member or members thereto specially authorized by resolution of the said Council.

No. 11—1878.

6. 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 preceding.

Separate account of moneys received and expended.

7. 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 extend and apply to all accounts, books, and papers connected with the said loan.

Accounts to be audited.

8. Every debt, liability, and obligation created by virtue of this Act, shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Debt subject to "Public Bodies Debts Act."

9. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act and carrying the provisions thereof into effect, out of the money to be raised under the provisions hereof.

Costs of Act may be paid out of borrowed money.

10. The said bridge shall be constructed either by the Colonial Government or by contract, or otherwise, whenever the said Council shall signify its preparedness to raise money as aforesaid, and upon receipt of notice to that effect the Government are authorized to draw against the funds to be raised by the said Council under the provisions of this Act, from time to time, *pari passu*, with such sums as the said Government may expend from time to time upon or in connection with the said bridge.

When and how bridge to be constructed.

11. The said Council shall be authorized to employ the services of an engineer to superintend the works on the said bridge, who shall at all times have access to all books, plans, papers, and estimates connected with the same, and shall report to the said Council, from time to time, on the progress and condition of the said works. The salary of such engineer shall be a charge on the money to be raised as aforesaid by the said Council.

Authority to employ engineer.

12. 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.

Municipal Council to keep bridge in repair.

13. 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.

Toll to be established.

14. The provisions of the fifty-sixth and fifty-seventh sections of the aforesaid Act No. 9, 1858, shall extend and apply to the said

Protection of bridge against injuries.

No. 11—1885.

bridge in regard to its protection against injuries, whether malicious or through carelessness.

Short title.

15. This Act may be cited for all purposes as the "Aliwal North Divisional Council Loan Act, 1878."

SCHEDULE, ALIWAL NORTH DIVISIONAL COUNCIL LOAN ACT, 1878.

Acknowledgment for loan £.....

We, the undersigned, members of the Divisional Council of Aliwal North, duly authorized thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Aliwal North is indebted to ..... in the sum of.....for so much money borrowed for the purposes mentioned in the "Aliwal North Divisional Council Loan Act, 1878," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council 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 Aliwal North, this..... day of....., 187...

( Members of the Divisional Council, Aliwal North.

Entered

Secretary.

No. 11—1885.]

[July 31, 1885.

ACT

To Legalize certain Unauthorized Loan raised by the Divisional Council of Calvinia.

Preamble.

WHEREAS great expenses have heretofore been of necessity incurred by the Divisional Council of Calvinia in and about the making or maintenance of certain pass called the "Boterkloof Pass" and of certain other roads in the said division: and whereas such expenses were incurred for the advancement of the said division, and for the benefit of its inhabitants: and whereas an unauthorized loan of the capital sum of £1,700 was raised by the said Council and expended in meeting the great expenses aforesaid: and whereas it is expedient to legalize the said loan, and to constitute it a just debt of, and legal liability and obligation

against the said Council, and to make legal provision for the proper repayment of the said sum, with interest: 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. 11—1885.

1. The loan of the capital sum of £1,700, heretofore raised without legal authority by the Divisional Council of Calvinia to meet the necessary costs and expenses incurred in and about the making, alteration, or maintenance of a certain pass called the “Boterkloof Pass” and of roads within the division of Calvinia, together with the interest now due upon the said capital sum, shall be deemed, and is hereby declared to have been, at and from the date of the raising of the said loan, a just debt, liability and obligation of the said Council, within the meaning of the preamble and provisions of the Act No. 11 of 1867, commonly called the “Public Bodies Debts Act, 1867:”—Provided, however, that no legal proceedings, under the said Act or otherwise, shall be taken for the recovery of the capital sum aforesaid or any portion thereof or of any sum of interest due thereon, until after the expiration of six months from the passing of this Act.

Provisions of Public Bodies Debts Act, 1867, to apply to unauthorized loan.

Stay of proceedings.

2. Notwithstanding anything to the contrary contained in the Act No. 9 of 1858, entitled “An Act to Provide for the Management of the Public Roads of the Colony,” or in any Ordinance or Act having the force of law in this Colony, it shall be lawful for the said Divisional Council, and it is hereby empowered, at any time after the passing of this Act, out of any rates at that time in its possession, to make payment to any person entitled thereto under the first section of this Act of the whole or any portion of the aforesaid capital sum, together with interest to the date of payment; or it shall be lawful for the said Council, in order to secure the repayment of the said capital sum, together with interest, to issue to any such person debentures for the amount due at the date of issue, and such debentures shall bear interest at a rate not exceeding six per cent. per annum, and shall, subject to any then existing preferential claim, charge, or hypothecation, bind, pledge, and hypothecate the rates and revenues of, and the immovable property vested in, the said Council for the due payment of the amount of such debentures and of such interest.

Authority to repay loan or pass debentures for security

3. The said capital sum, together with all interest thereon due at the date of the passing of this Act, shall be deemed and taken to be a loan legally heretofore raised by the said Council within the meaning of the eleventh sub-section of the second section of Act No. 11 of 1882, commonly called the “Local Loans Act, 1882,” for the purposes specified in the first sub-section of that section.

“Local Loans Act, 1882,” to apply.

4. All necessary costs, charges and expenses incurred in obtaining the passing of this Act shall be paid by the said Council out of the revenue derived from rates.

Cost of obtaining Act to be paid out of rates.



No. 12—1875.]

[June 30, 1875.

## ACT

To Authorize the Divisional Council of Cradock to borrow Moneys, upon the security of Road Rates and Tolls, for Public Works.

Preamble.

WHEREAS the Divisional Council of Cradock is desirous of improving the means of communication in the said division by the construction of substantial roads and the erection of bridges: And whereas, from the nature of the country and the extent of work to be done, such works to be properly carried out will involve a larger outlay of money than could be met by immediate taxation under the powers by law vested in the said Council:

And whereas it is expedient that the said Council should be authorized to borrow moneys upon the security of road rates and tolls of the said division for the improvement and construction of the roads therein, and that provision should be made for the gradual extinction of the debt incurred for the cost of such works: 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:—

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," so much of "The Road Act (No. 10), 1864," and so much of "The Road Act (No. 22), 1873," as is repugnant to or inconsistent with the provisions of this Act, shall in so far as relates to this Act, but not otherwise, be and the same is hereby repealed.

Loan of £10,000 authorized.

2. 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 ten thousand pounds sterling in the whole, as may be required for the purposes of this Act.

Conditions precedent to raising any part of loan.

3. No loan under this Act shall be capable of being raised except in pursuance of a resolution passed at an ordinary meeting of the said Council, of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be capable of being raised in any year in which the rates assessed by the said Council shall be less than one penny in the pound sterling upon the value of the property liable to be rated in the said division.

Security for repayment of loan and interest.

4. For the due payment of the moneys to be raised as aforesaid, and the interest thereof; the rates, tolls, and other revenues of the said Council are hereby charged and hypothecated: Provided, however, that the moneys raised under the provisions of the Act No. 6, 1867, (1) and the interest payable thereupon, shall be a first

<sup>1</sup> The Fish River Bridge Act printed under "Roads and Bridges."

preferent charge upon all and singular the revenues which are by the said Act made liable to the payment thereof, and the moneys to be borrowed under this Act, and the interest thereof, shall be a second preferent charge upon the said revenues.

No. 12—1875.

5. The said Council shall grant written acknowledgments of, or for, such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in the form annexed to this Act, and shall be signed on behalf of the said Council by three of its elected members thereto duly authorized by resolution of the said Council.

Acknowledgment for loans to be given in form provided in schedule.

6. As a fund for the payment of the interest upon and the 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 Council 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 sum shall be annually charged upon and payable out of the revenues of the said Council so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

Fund for payment of interest and extinction of loans created.

7. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section as shall not be required for the payment of the interest for the time being due upon the loans raised under the authority of this Act shall be paid to a separate account to be kept in a bank to be chosen for that purpose by the Council, and shall be applied in redeeming and cancelling the obligations or acknowledgments of the said Council for moneys raised under the authority of this Act in such manner and form as shall be provided by the terms and conditions whereon such obligations or acknowledgments shall respectively have been granted; and all moneys so paid into a bank for the purpose aforesaid shall be drawn out by cheques to be signed by some member or members thereto specially authorized by resolution of the said Council.

Fund to be applied to no other purpose and to be kept separate.

8. 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 preceding.

Separate account to be kept and abstract rendered half-yearly to Colonial Secretary.

9. 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 extend and apply to all accounts, books, and papers connected with the said loan.

Accounts to be audited.

10. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the "Public Bodies' Debts Act, 1867."

Public Bodies' Debts Act, 1867, to apply.

No. 12—1875.

Provision for payment of cost of Act.

11. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act, and carrying the provisions thereof into effect, out of the moneys to be raised under the provisions hereof.

And whereas the bridge erected by the said Council across the Fish River at Cradock, under the provisions of the Act No. 6, 1867, was partially destroyed by flood in the month of December, one thousand eight hundred and seventy-four: And whereas it is expedient that the said Council should be empowered and enabled to cause the same to be reconstructed and restored: Be it enacted as follows:

Repugnant parts of Act 6, 1867, repealed.

12. So much of the Act aforesaid, No. 6, 1867, as is repugnant to or inconsistent with the provisions of this Act, shall be and the same is hereby repealed.

Fish River Bridge may be reconstructed out of moneys raised under this Act.

13. It shall be lawful for the said Council from and out of the moneys to be raised under the authority of this Act to advance and pay such sums as may be necessary for the reconstruction and restoration of the said bridge.

Provision for payment of interest on money advanced for Fish River Bridge.

14. The interest upon the moneys paid and advanced under the last preceding section shall be payable out of the surplus, if any, of the tolls levied and raised at the said bridge under the provisions of the Act aforesaid, after payment of the interest accruing upon the existing debt contracted for the erection thereof, and any deficiency of such interest and the capital sum shall be refunded and repaid to the General Loan Account for the purposes in the preamble to this Act first abovementioned out of the fund to be provided under section thirteen of the Act aforesaid, No. 6, 1867.

Short title.

15. This Act may be cited for all purposes as the "Cradock Divisional Council Loan Act, 1875."

#### SCHEDULE, CRADOCK DIVISIONAL COUNCIL LOAN ACT, 1875.

##### Acknowledgment for Loan of £

We, the undersigned, members of the Divisional Council of Cradock, duly authorized thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Cradock is indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_ for so much money borrowed for the purposes mentioned in the "Cradock Divisional Council Loan Act, 1875," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say (here insert

the rate of interest, times of payment, and other conditions agreed upon). No 21—1863.

Given under our hands at Cradock, this            day of            187

} Members of the  
Divisional Council of  
Cradock.

Entered

Secretary.

No. 21—1863.]

[July 28, 1863.

AN ACT

For Enabling the Divisional Council of Mossel Bay to borrow Moneys upon the Security of Road-rates and Tolls, for the Opening of Mountain Passes, the Construction of Bridges and Works of like nature.

WHEREAS it is expedient that the Divisional Council of Mossel Bay should be empowered to borrow moneys upon the security of the road-rates of the said division, for the purpose of opening any mountain pass, or constructing any bridge, or making or improving any public road, by which the inhabitants would be benefited; and whereas it is highly necessary and expedient that several of the roads in this division should be opened and made available for communication with the fertile back country; 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 those 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:—

1. So much of the Act No. 9, 1858, entitled "An Act to provide for the management of the Public Roads of the Colony," as is repugnant to or inconsistent with any of the provisions of this Act shall be and the same is hereby repealed. Portions of Act 9, 1858, repugnant to this Act, repealed.

2. Besides the objects and purposes set forth in the forty-third section of the Act aforesaid, No. 9, 1858, to which objects and purposes the moneys received by said Divisional Council for the purposes of the said Act shall be applicable, it shall be lawful for said Council, if it shall so think fit, to apply any such moneys to the opening of any mountain pass within the division, or to the construction of any bridge, or to the making of any new road within the division, or for the payment of any loan for the said purposes to be raised as hereinafter determined, and for the interest becoming due upon such loan; it being the true intent and meaning of this section of this Act to confer upon the said Divi- Purposes for which money may be borrowed and how to be applied.

No. 21--1863.

sional Council full power and authority to determine, in regard to the objects and purposes in this section and in the forty-third section of the Act aforesaid specified, the order of priority in which they or any of them shall be undertaken and proceeded with; and provided that whenever the funds of the said Divisional Council shall require to be contributed to the making or improving of any road adjoining this division, the desirableness of such contribution shall be decided by the said Divisional Council.

Power to raise loan on security of tolls.

3. It shall be lawful for the said Divisional Council to raise, 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 aforesaid, No. 9, 1858, any such sum or sums of money as may at any time be required by the said Divisional Council, for the purpose of carrying into effect any of the objects or purposes hereinbefore and in the Act aforesaid mentioned: Provided that no such loan as aforesaid shall be capable of being effected, except under and by virtue of a resolution of the Divisional Council, at a meeting at which there shall be present not fewer than four 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 twenty-one days next before the day appointed for such meeting, a notice in writing 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 any member of the said Council; and provided, also, 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.

No loan to be raised without a resolution of Divisional Council, after proper notice.

Extent of loan.

Mode of procedure in raising loan.

4. In every case in which it shall be resolved by the said Council to raise any such loan as aforesaid, the said Council shall by a notice in the *Government Gazette*, or in some newspaper published in or near the said division of Mossel Bay, 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 to be pledged for securing the repayment of the sum or sums borrowed by such Council shall be signed on behalf of that Council by three members thereof, of whom one shall be the Civil Commissioner of the division.

Execution of bond.

Repayment of loan.

5. Any sum or sums of money borrowed as aforesaid by the said Divisional Council shall be paid off from or out of the tolls or rates hypothecated with all convenient speed.

Proceedings upon return of *nulla bona* upon writ of execution obtained by any creditor of Divisional Council.

6. In case it should at any time appear by the return of the Sheriff to any writ of execution sued by any judgment creditor of the said Divisional Council that the Sheriff had not found any goods or chattels of the said Council wherewith to satisfy the said judgment or any part thereof, or that he had not found such goods or chattels sufficient to satisfy the said judgment, it shall be lawful

for the said creditor to apply by petition to the Supreme Court, annexing copies of the judgment and of the writ and return, and praying for such relief in the premises as the said Court shall under this Act be empowered to afford.

No. 21—1863.

7. The creditor who shall have filed any such petition as aforesaid may apply to the Supreme Court, by motion founded upon such petition and its annexures, for an order that it be referred to the Master of the said Court, to inquire and report whether any, and if so, what other debts are due by the said Council, to the end that all such debts may be liquidated: Provided that notice of such motion shall be given to the said Council through their secretary or otherwise, if the Court shall so direct.

Application may be made to Supreme Court for purpose of obtaining list of Divisional Council's debts.

8. Upon the hearing of such motion, then, unless the said Council shall satisfy the said Court that the said Council will be prepared within a reasonable time, to be approved of by the said Court, to satisfy from the rates assessed, or to be assessed, or other assets, the debt of the creditor who shall have petitioned as aforesaid, together with costs and all interests accrued due thereupon, the said Court shall make an order referring it to the Master to inquire and report what other debts, if any, are due by the said Council.

Supreme Court have power to make an order for obtaining such list.

9. The Master in acting upon any such order shall, by a notice of not less than twenty-one days in the *Government Gazette*, and one or more newspapers published in or near the said division, call a meeting of all persons claiming to be creditors of the said Council for proof of debts, and such debts if not admitted by the said Council, or not evidenced by their books and accounts, shall be proved by affidavit.

Master of Supreme Court to call meeting of creditors.

10. When by the report of the Master, the Supreme Court shall be informed of the whole amount of the debts due and owing by such Council, 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 division, as shall appear to be sufficient to satisfy from and out of the net proceeds of such rate all debts due as aforesaid by the said Council, 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 debts, then the net proceeds of the first rate shall, after paying to the petitioning creditor his costs of suit, and of his said petition, be divided *pro rata* amongst the creditors, and a second rate, not exceeding one penny per pound shall be assessed; and so on and until the debts of the said Council and all interest legally chargeable thereupon shall have been finally discharged: Provided that not less than twelve months shall elapse between the day upon which any preceding rate became due and payable and the day upon which any succeeding rate shall become due and payable, so that the ratepayers may not in any case be assessed under the

Supreme Court empowered to assess rate for liquidating council's debts.

When single rate is found to be insufficient, a second rate to be imposed.

Twelve months to expire before levy of second rate.

No. 21—1863.

Supreme Court to settle priority of claims.

provisions of the aforesaid Act No. 9, 1858, or of this Act, in a larger sum than one penny per pound per annum; and provided that it shall be competent for the said Supreme Court to settle, if necessary, the priorities of the several creditors according to their respective rights.

Supreme Court to appoint officer to receive such rate.

11. As often as the Supreme Court shall assess any rate for the purpose of paying creditors, 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 one or more newspapers published as aforesaid, of every rate assessed as aforesaid, and of the day on which such rate will become due and payable, and such notice shall be in substance as follows:—

Notice of assessment of rate to be given in *Government Gazette*.

## DIVISION OF MOSSSEL BAY.—RATE UPON IMMOVABLE PROPERTY.

Notice is hereby given that the Honourable the Supreme Court has this day assessed, under the provisions of the "Mossel Bay Divisional Council Loan Act, 1863," for payment of debts, a rate of — per pound upon the value of every rateable tenement within the Division of Mossel Bay, which rate will become due and payable on the — day of —, 18—, and of which rate A. B., of —, has been appointed the receiver.

Dated at Cape Town, this — day of —, 18—.

X. S. L.,  
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.

Receiver of rate may recover.

12. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent Court.

Surplus to be paid to divisional council

13. Any surplus of the amount of any such rate as aforesaid which may happen to exist after the discharge of all the debts which it was assessed to liquidate shall be paid to the said Divisional Council.

Effect of order of court on all debentures, &amp;c.

14. Any such order of Court as aforesaid, referring it to the Master to report upon the debts of the said Council, shall have the effect of making all debentures, securities, and engagement granted by the said Council due and payable forthwith, notwithstanding that the same might not, but for such order, have been payable till some future date.

Short title.

15. This Act may be cited for all purposes as "The Mossel Bay Divisional Council Loan Act, 1863."

No. 21—1885.]

[August 11, 1885.

ACT

To Authorize the Divisional Council of Oudtshoorn to borrow Moneys on the security of the Road Rates of the Division for the purpose of meeting certain Expenditure.

WHEREAS the Divisional Council of Oudtshoorn have contracted debts and incurred liabilities in the construction of the Schoeman's Poort and Zwartberg Pass, in altering the road between Oudtshoorn and Robinson's Pass and in repairing the roads throughout the division damaged by the late rains: and whereas it is expedient that the said Council should be authorized to borrow moneys upon the security of the rates of the said division, for the purpose of paying off the debts and liabilities abovementioned: 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. So much of any Act of Parliament, Ordinance, or other statutory enactment having the force of law as is inconsistent with or repugnant to the provisions of this Act, is hereby repealed so far as such inconsistency or repugnance may exist but not otherwise.

Repugnant laws repealed.

2. It shall be lawful for the said Council from time to time to borrow and take up at interest such sum or sums of money, not exceeding in the whole the sum of ten thousand pounds sterling, as may be required for the purpose of this Act.

Loan of £10,000.

3. No loan under this Act shall be raised except in pursuance of a resolution passed at an ordinary meeting of the said Council of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be raised in any year in which the rates assessed by the said Council shall be less than one half-penny ( $\frac{1}{2}$ ) in the pound sterling upon the value of the rateable property in the said division.

Conditions precedent to raising of loan.

4. For the due payment of the moneys to be raised as aforesaid, and the interest thereof, the road rates of the said Council are hereby charged and hypothecated, and it shall be lawful for the said Council to apply to the payment of the interest or principal of the money raised under this Act any such revenues.

Security for repayment of loans.

5. The said Council shall grant and issue debenture certificates in acknowledgment of such sum or sums of money borrowed as aforesaid, which certificates shall be as nearly as may be in the form annexed to this Act, and shall be signed on behalf of the said Council by the chairman for the time being, and two elected members duly authorized thereto by resolution of the said Council.

Acknowledgment for loans to be given in form provided in schedule.

6. The Council shall keep a full and complete register of all debenture certificates granted under this Act, and it shall be

Register of debenture certificates to be kept.

YY



No. 21—1885.

incumbent on the holder or cessionary of every debenture certificate to have such certificate duly registered in his name in the Council's register, and no money shall be paid under the provisions of this Act in reduction or extinction of any debt or interest due upon any such debenture certificate except to the person whose name shall be so registered, and only upon production of such certificate or of satisfactory proof that the same has been lost or destroyed.

Money raised to be kept separate.

7. All moneys raised under this Act shall, on receipt thereof, be deposited in a bank to be chosen by the said Council, and all sums required shall be drawn by cheques signed by the secretary and countersigned by the chairman of the Council.

Fund for repayment of loan.

8. As a fund for the payment of the interest upon and the gradual extinction of the loans to be raised under this Act, there shall be charged and chargeable upon and set apart out of the annual revenues of the said Council, an annual sum equal to the interest on the whole amount of such loans, or the balance thereof remaining due and unpaid, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans, and such sum shall annually be charged upon and paid out of the revenues of the said Council so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished: Provided, however, that in the event of there being any balance of the ordinary revenue available after payment of the ordinary annual expenditure of the said Council, such balance not being less than two hundred and fifty pounds, it shall be competent for the said Council to apply such balance or surplus, together with any money or moneys set apart to constitute the sinking fund aforesaid, to the reduction of the said debt of ten thousand pounds or such portion as shall at any time be due, and the said Council shall be and is hereby authorized to give the person or persons or body who shall have lent and advanced the money to be borrowed by virtue of this Act, or whose names shall appear on the register provided in the sixth section of this Act as holders of the Council's debenture certificates, three months' notice in writing of the intention to hold a public drawing specifying time and place, in order to decide to the reduction or extinction of whose debt the said surplus shall be applied, and thereafter at the time and place specified in the said notice the said Council shall hold a public drawing in manner following, that is to say, the name of every person appearing on the register as being the holder or cessionary of any debenture certificate under this Act shall be written on a slip of paper and the said slip shall be folded and placed in a covered box, and the secretary for the time being of the said Council or any member thereto authorized by a vote of the majority of the said Council shall in the presence of all persons assembled at the said time and place proceed to draw one of the slips of paper out of the said box, and the creditor whose name shall appear on the slip of paper thus drawn shall receive the said

Surplus revenue may be applied to reduction of debt.

Debenture holders to receive notice of drawing.

Proceedings at drawing.

surplus in reduction or extinction of his debt on all debenture certificates held by him and, in the event of the said surplus being more than sufficient to cover such creditor's debt then a second or further drawing in manner aforesaid may in the discretion of the person drawing the said slips take place, and the balance of such surplus shall in manner aforesaid be applied to the reduction or extinction of the debt or debts of the creditor or creditors whose name shall appear on the second or further slips then drawn.

No. 21—1885.

9. 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, shewing 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 accounts to be kept.

10. The accounts in the last preceding section mentioned shall be audited and examined by the auditors of the Divisional Council appointed under the provisions of the Divisional Council 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 this loan.

Accounts to be audited.

11. All the necessary costs and expenses attending the passing and working of this Act and carrying the provisions thereof into effect shall be paid out of the general revenue of the said Council.

Expenses of Act how to be paid.

12. This Act may be cited for all purposes as the "Oudtshoorn Divisional Council Loan Act, 1885."

Short title.

SCHEDULE No. I.

DIVISIONAL COUNCIL OF OUDTSHOORN.

DEBENTURE CERTIFICATE.

No. .... £.....

This is to certify that the Divisional Council of Oudtshoorn is indebted to.....in the sum of.....for so much money borrowed for the purpose of (here state object for which loan has been raised), under and by virtue of the provisions of the Oudtshoorn Divisional Council Loan Act, 1885, and that the said money is secured by mortgage on the road rates of the division, and further that the said debt will be payable and paid by the said Divisional Council to the said.....Order or Assigns in the manner following (state rate of interest, time of payment, and other conditions that may be agreed upon).

In witness whereof we, the Chairman of the said Council and two directors appointed under resolution of the said Council, bearing date the...day of...have hereunto set our hands at.....on the...day of.....188..

Chairman.

Secretary.

} Directors.

YY 2

No. 32—1877.]

[August 8, 1877.

## ACT

To Authorize the Divisional Council of Port Elizabeth to borrow Moneys upon the security of Road Rates and Tolls within the Division of Port Elizabeth.

Preamble.

WHEREAS the bridge known as the Rawson Bridge, situate within the division of Port Elizabeth, crossing the Zwartkop's River, dividing the divisions of Port Elizabeth and Uitenhage, and connecting the main road from Port Elizabeth with the eastern and north-eastern frontier towns, was on the 22nd day of February, 1876, carried away: and whereas it is expedient that a bridge should be constructed in the place of the one so destroyed: and whereas the Colonial Government, upon a representation of the necessities of the case, has agreed to bear one moiety of the total cost of the construction of the said bridge: and whereas it is expedient that the said Council should be authorized to borrow moneys upon the security of road rates and tolls of the said division for the payment of one moiety of the cost of the construction of the said bridge, and that provision should be made for the gradual extinction of the debt incurred for the cost of such construction: 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," so much of the Road Act No. 10, 1864, and so much of the Road Act No. 22, 1873, as is repugnant to or inconsistent with the provisions of this Act shall in so far as relates to this Act but not otherwise be repealed.

Borrowing powers conferred.

2. It shall be lawful for the said Council from time to time to borrow and take up at interest such sum or sums of money as may from time to time be required by the said Divisional Council for the purposes hereinbefore mentioned, not exceeding in the whole a sum of five thousand pounds sterling.

Mode of raising loan.

3. It shall not be competent for the said Divisional Council to raise any loan under this Act except in pursuance of a resolution passed at an ordinary meeting of the said Council, of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be raised in any year in which the rates assessed by the said Council shall be less than one penny in the pound sterling upon the value of the property liable to be rated in the division.

Security for loan.

4. For the due payment of the moneys to be paid as aforesaid, and the interest thereof the rates, tolls, and other revenues of the said Council are hereby charged and hypothecated.

5. The said Council shall grant written acknowledgments of or for such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in the form annexed to this Act, and shall be signed on behalf of the said Council by three of its elected members duly authorized by resolution of the said Council.

No. 32—1877.  
Acknowledgments to be given for sums borrowed.

6. In order to provide a fund for the payment of the interest upon and for the 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 Council as aforesaid an annual sum equal to the interest on the whole amount of such loans, and a further sum equal to twenty-five per cent. 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 Council so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

Fund for payment of interest and extinction of loan.

7. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section as shall not be required for the payment of the interest for the time being due upon the loans raised under the authority of this Act shall be paid to a separate account in a bank to be chosen for that purpose by the Council, and shall be applied in liquidation of the obligations or acknowledgments of the said Council for moneys raised under the authority of this Act in such manner and form as shall be provided by the terms and conditions whereon such obligations or acknowledgments shall respectively have been granted; and all moneys so paid into a bank for the purpose aforesaid shall be drawn out by cheques to be signed by some member or members specially authorized by resolution of the said Council.

Application of the said fund.

8. 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 preceding.

Accounts to be kept.

9. 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 extend and apply to all accounts, books, and papers connected with the said loans.

Account to be audited.

10. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the "Public Bodies' Debts Act, 1867."

11. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act, and carrying the provisions thereof into effect out of the moneys to be raised under the provisions thereof.

Costs of this Act.

726 DIVISIONAL COUNCIL LOANS (PRINCE ALBERT).

No. 13—1881.  
Short title.

12. This Act may be cited for all purposes as the "Port Elizabeth Divisional Council Loan Act, 1877."

Schedule.

SCHEDULE.

PORT ELIZABETH DIVISIONAL COUNCIL LOAN ACT, 1877.

Acknowledgment for Loan of £————

We, the undersigned, members of the Divisional Council, duly authorized by a resolution of the said Council, do hereby acknowledge that the Divisional Council of Port Elizabeth is indebted to ——— in the sum of ——— for so much money, borrowed for the purposes mentioned in the "Port Elizabeth Divisional Council Loan Act, 1877," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say—(Here insert the conditions).

Given under our hands at Port Elizabeth this——day of ——18—

————— )  
————— ) Members of the  
————— ) Divisional Council  
                  ) of Port Elizabeth.

Entered :  
—————Secretary.

No. 13—1881.]

[June 25, 1881.

ACT

To Authorize the Divisional Council of Prince Albert to borrow Money upon security of Road Rates and Tolls for the Construction of a Road over the Zwarteberg between the Village of Prince Albert and the Congo.

Preamble.

WHEREAS on the 29th day of July, 1880, the House of Assembly resolved that "The Government should be authorized to proceed with the construction of a road over the Zwarteberg, between the village of Prince Albert and the Congo, on the pound for pound principle, the amount to be expended by the Government not to exceed £12,000 : " And whereas it is expedient to authorize the Divisional Council of Prince Albert to borrow money upon the security of the road rates, tolls, and other revenues of the said division, for the purpose of contributing towards the cost of constructing the said road :

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 :—

DIVISIONAL COUNCIL LOANS (PRINCE ALBERT). 727

1. It shall be lawful for the said Council from time to time to borrow and take up at interest such sum of money not exceeding eight thousand pounds in the whole as may be required in addition to the amount to be contributed by the Colonial Government and the Divisional Council of Oudtshoorn, for the construction of the said road over the Zwarteberg, between the village of Prince Albert and the Congo.

No. 13—1881.  
Power to council to borrow £8,000.

2. For the due payment of the money to be raised by the Divisional Council as aforesaid and the interest thereof, the rates, tolls and other revenues of the said Council are hereby charged and hypothecated.

Rates and tolls to be security.

3. The Council shall grant written acknowledgments of or for such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in form annexed to this Act, and shall be signed on behalf of the said Council by one or more of its elected members thereto duly authorized by resolution of the said Council.

Council to grant such acknowledgments as in schedule.

4. 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 Council 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 sum shall be annually charged upon and payable out of the revenues of the said Council, so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

Sinking fund provided for.

5. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section, as shall not be required for payment of the interest for the time being due upon the loans raised under the authority of this Act, shall be paid to a separate account, to be kept in a bank to be chosen for that purpose by the Council, and shall be applied in redeeming and cancelling the obligations or acknowledgments of the said Council for money borrowed under the authority of this Act, in such manner and form as shall be provided by the terms and conditions whereon such obligations or acknowledgments shall respectively have been granted, and all moneys so paid into the bank for the purpose aforesaid shall be drawn out by cheques to be signed by some member or members thereto specially authorized by resolution of the said Council.

After paying interest, fund to be applied in paying off capital sum.

6. 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, shewing all moneys received and expended up to the 30th June and 31st December preceding.

Separate accounts to be kept of borrowed money.

7. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time

To be audited under the "Divisional Councils Act, 1865."

728 DIVISIONAL COUNCIL LOANS (PRINCE ALBERT).

No. 13—1881.

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 loan.

Subject to "Public Bodies Debts Act 1867."

8. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Expenses to be paid out of loan.

9. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act and carrying the provisions thereof into effect, out of the money to be raised under the provisions hereof.

In case of Willowmore being created a fiscal division.

10. When and as soon as the District of Willowmore shall, by any proclamation, to be issued under the provisions of the second section of the "Fiscal Divisions Extension Act, 1879," become and be a division for fiscal purposes, so much of the present division of Prince Albert, as shall be included in and form part of the division of Willowmore shall cease to be liable for any charge by this Act created upon or in respect of the said division of Prince Albert.

Short title.

11. This Act may be cited for all purposes as the "Prince Albert Divisional Council Loan Act, 1881."

SCHEDULE.

PRINCE ALBERT DIVISIONAL COUNCIL LOAN ACT, 1881.

Acknowledgment for loan of £ . . . .

We, the undersigned members of the Divisional Council of Prince Albert, duly authorized thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Prince Albert is indebted to . . . . in the sum of . . . . for so much money borrowed for the purposes mentioned in the "Prince Albert Divisional Council Loan Act, 1881," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council 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 Prince Albert, this . . . . day of . . . . . 188 . . .

Entered

} Members of the Divisional Council of Prince Albert.

Secretary.

No. 20—1874.]

[July 31, 1874.

ACT

To enable the Divisional Council of Swellendam to borrow Moneys, upon the security of Road Rates and Tolls, for the payment of its Debt, and for the Improvement and Construction of certain Roads in connection with Southey's Pass.

WHEREAS it is expedient that the Divisional Council of Swellendam should be empowered to borrow moneys, upon the security of road rates and tolls of the said division, for the purpose of paying off the balance of the contribution due by the said Council to the general revenue on account of the expense of constructing the road over Southey's Pass, and for improving and constructing the roads by which the said Pass is approached from Heidelberg and Port Beaufort on the one side, and from the Karoo on the other, by which the inhabitants would be benefited: 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:—

Preamble.

1. So much of the Act No. 9 of 1858, entitled an "Act to provide for the management of the Public Roads of this Colony," No. 10 of 1864, entitled an "Act to provide for the Construction and Maintenance of the Main Roads of this Colony," and No. 22 of 1873, entitled an "Act to amend the Laws relating to the Construction and Maintenance of the Main Roads of the 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.

Repugnant laws repealed.

2. It shall be lawful for the said Divisional Council to raise from time to time by way of loan, on the credit of any tolls to be levied or rates to be assessed under the Acts in the first section of this Act cited, any sum or sums that may at any time be required by the said Divisional Council for the purposes 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 Council, at a meeting at which there shall be present not fewer than six elected members; provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had due notice (as required by the "Rules of Order" of the said Divisional Council) of the intention to hold such meeting; and provided that no loan or loans or debts contracted by the said Council under this Act shall at any time exceed the sum of two thousand pounds sterling; and provided that, except as hereinafter, in section 5 is mentioned, no such loan shall be applied for the payment of any previous loan or debt that may have been raised or may be due by the said Council.

Divisional Council may raise loan not exceeding £2,000 on credit of tolls or rates



No. 20—1874.

3. The sums aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues of the said Divisional Council, and it shall be lawful for the said Divisional Council to apply to the payment of interest or principal, or interest and principal, of the moneys aforesaid, any such rates or revenues not specially appropriated or required for any other object.

Acknowledgment loan to be in form given in schedule.

4. The said Divisional Council 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 so borrowed by such Council for the purposes aforesaid, which acknowledgment shall in substance be in the form given in the schedule to this Act, and shall be signed on behalf of the said Divisional Council by three of its elected members appointed for that purpose by a resolution of the said Council.

Balance £437 10s. 0d. due to general revenue to be paid out of money raised under this Act.

5. And whereas the said Divisional Council is indebted to the general revenue of the Colony in the sum of four hundred and thirty-seven pounds and ten shillings sterling, being the balance of its contribution towards the expense of constructing the road over Southey's Pass: Be it enacted that it shall and may be lawful for the said Council to pay the aforesaid sum of four hundred and thirty-seven pounds and ten shillings sterling, out of the said sum of two thousand pounds sterling, authorized to be raised under this Act.

Debts incurred to be subject to Act No. 11 of 1867.

6. All debts lawfully incurred by the said Divisional Council for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Moneys raised to be deposited in bank to separate account, &c.

7. All moneys raised as aforesaid under this Act 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 by cheques signed by the secretary to the said Divisional Council, and countersigned by such one of its elected members as shall be appointed so to do by the said Council.

Separate account to be submitted to Government half-yearly.

8. 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 next preceding, and all liabilities and assets on the same days.

Accounts to be audited.

9. The accounts in the 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 83rd and 85th sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said loan.

Expenses of Act to be paid out of loan raised.

10. All the necessary costs, charges, and expenses attending the procuring of this Act and the carrying the provisions thereof into effect shall be paid out of the money to be received under the provisions of this Act.

11. This Act may be cited for all purposes as the “ Swellendam Divisional Council Loan Act, 1874.”

SCHEDULE.

We, the undersigned, members of the Divisional Council of Swellendam, duly authorized thereto by the said Council, do hereby acknowledge that the said Divisional Council of Swellendam is indebted to ..... in the sum of ....., for so much money borrowed by the said Council for the purposes set forth in the Swellendam Divisional Council Loan Act, 1874, 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 .....

.....	} Members of the Divisional Council of Swellendam.
.....	
.....	

Witnesses :

No. 8—1885.]

[July 31, 1885.

ACT

To Authorize the Divisional Council of Tarka to borrow Moneys upon the Security of Road Rates for the purpose of paying off certain debts.

WHEREAS the Divisional Council of Tarka has been ordered by the Honourable the Court of the Eastern Districts of the Colony of the Cape or Good Hope to pay to the Divisional Council of Cradock, certain sums of money which were due to the said Divisional Council of Cradock, under and by virtue of the provisions of Section II of Act 24 of 1858; and whereas the payment of the sum so ordered to be paid will involve a larger outlay of money than could be met by immediate taxation under the powers by law vested in the said Council: and whereas it is expedient that the said Council should be authorized to borrow moneys upon the security of the road rates of the said division, for the purpose of paying off the debt abovementioned, and that provision should be made for the gradual extinction of the debt to be incurred for the purpose of paying off the aforementioned debt: 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:—

Preamble.

- No. 8—1885.  
Repugnant Laws repealed.
1. So much of Act No. 9 of 1858, entitled "An Act to provide for the management of the Public Roads," and so much of the "Road Act No. 10 of 1864," as is repugnant to or inconsistent with the provisions of this Act, shall in so far as it relates to this Act, but not otherwise, be and the same is hereby repealed.
- Loan of £2,000.
2. 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 two thousand pounds sterling in the whole, as may be required for the purpose of this Act, upon such terms and conditions as shall be most favourable to the said Council.
- Conditions precedent to raising any part of loan.
3. No loan under this Act shall be capable of being raised except in pursuance of a resolution passed at an ordinary meeting of the said Council, of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be capable of being raised in any year in which the rates assessed by the said Council shall be less than one half-penny ( $\frac{1}{2}$ ) in the pound sterling upon the value of the property to be rated in the said division.
- Security for repayment of loans and interest.
4. For the due payment of moneys to be raised as aforesaid and the interest thereof, the road rates of the said Council are hereby charged and hypothecated, and it shall be lawful for the said Divisional Council to apply to the payment of interest or principal of the money raised under this Act any such revenues.
- Acknowledgment for loans to be given in form provided in Schedule.
5. The said Council shall grant written acknowledgments of or for such sums of money borrowed as aforesaid, which acknowledgments shall be as nearly as may be in the form annexed to this Act and shall be signed on behalf of the said Council, by three of its elected members thereto duly authorized by resolution of the said Council.
- Moneys raised to be kept separate.
6. All moneys raised under this Act shall on receipt thereof be deposited in a bank to be chosen by the said Council, and all sums required shall be drawn by cheques signed by the Secretary and countersigned by the chairman of the Divisional Council.
- Fund for repayment of loan.
7. As a fund for the payment of the interest upon and the gradual extinction of the loans to be raised under this Act, there shall be charged and chargeable upon, and set apart out of the annual revenues of the said Council, an annual sum equal to the interest on the whole amount of such loans, or the balance thereof remaining due and unpaid, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans or the balance thereof remaining due and unpaid, and such sum shall annually be charged upon and be paid out of the revenues of the said Council so long as any portion of the loans to be raised as aforesaid shall remain unpaid and unextinguished: Provided, however, that in the event of there being any balance of the ordinary revenue available after payment of the ordinary annual expenditure of the said Council, such balance being not less than
- Provision for reduction of loan.

two hundred and fifty pounds, it shall be competent to the said Council to apply such balance or surplus to the reduction of the said debt of two thousand pounds, or such portion as shall at any time be due, and the said Council shall be and is hereby authorized to give the person or persons or body who shall have lent and advanced the money to be borrowed by virtue of this Act, three months notice in writing of their intention so to reduce the existing debt as aforesaid, and thereupon after the expiration of the three months to pay over the said balance or surplus as aforesaid.

No. 8—1885.

8. 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, shewing 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 accounts to be kept.

9. The accounts in the last preceding section mentioned shall be audited and examined by the auditors of the Divisional Council appointed under the provisions of the Divisional Council 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 this loan.

Accounts audited by Divisional Council's Auditors.

10. All the necessary costs and expenses attending the providing of this Act, and carrying the provisions thereof into effect, shall be paid out of the general revenue of the said Council.

Expenses of Act, how to be paid.

11. This Act may be cited for all purposes as the "Tarka Divisional Council Loan Act, 1885."

Short title.

SCHEDULE.

Schedule.

TARKA DIVISIONAL COUNCIL LOAN ACT, 1885.

Acknowledgment of Loan £

We, the undersigned members of the Divisional Council of Tarka, duly authorized thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Tarka is indebted to

in the sum of

being so much money borrowed for the purposes mentioned in the Tarka Divisional Council Loan Act, 1885, and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided. And we further covenant and agree in our said capacity that the capital and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say :—

Given under our hand at this day of

Entered Secretary. Members of the Divisional Council of Tarka

No. 18—1875.]

[June 30, 1875.

## ACT

For enabling the Divisional Council of Tulbagh to borrow Moneys, upon the security of Road Rates and Tolls, for the Construction of a Road through the Karroo in the direction of Fraserburg. (1)

Preamble.

WHEREAS it is expedient that the Divisional Council of Tulbagh 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 through the Tulbagh Karroo to the boundary of the said division, and in connection with a new line of road in course of construction by the Divisional Council of Fraserburg through the Verlaten Kloof, 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:—

Repugnant laws repealed.

1. So much of Act No. 9, 1858, entitled “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.

Conditions under which loan may be raised.

2. It shall be lawful for the said Divisional Council from time to time, to raise 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, entitled “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, inclusive 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 one thousand pounds sterling: and provided

<sup>1</sup> Amended by Act, 37, 1877 *infra*.

that no such loan as aforesaid shall be capable of being effected in any year in which the roads 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 Tulbagh; 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.

No. 18—1875.

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.

Tenders to be invited in *Government Gazette* for sums required.

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 counter-signed by the chairman.

Moneys raised to be kept separate.

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.

Separate account to be kept and abstract rendered half-yearly to Colonial Secretary.

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.

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 to be provided for repayment of loans.

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.

Provisions for payment of cost of Act.

9. This Act may be cited for all purposes as the "Tulbagh Divisional Council Loan Act, 1875."

Short title.

No. 37—1877.]

[August 8, 1877.

## ACT

To Legalize the Loan of One Thousand Pounds, borrowed by the Divisional Council of Tulbagh, and for enabling the said Divisional Council to borrow a further sum of Six Hundred Pounds for the Construction of the Verlaten Kloof Road, and to Amend the Act No. 18, 1875.

Preamble.

WHEREAS by the Act No. 18 of 1875, intituled "An Act for enabling the Divisional Council of Tulbagh to borrow Moneys upon the security of Road Rates and Tolls for the Construction of a Road through the Karroo in the Division of Fraserberg," the Divisional Council of Tulbagh was empowered to borrow moneys upon the security of road rates and tolls of the said division for the purpose of constructing a public road through the Tulbagh Karroo to the boundary of the said division, and in connection with a new line of road in course of construction by the Divisional Council of Fraserberg through the Verlaten Kloof, by which the inhabitants would be benefited :

And whereas the costs of making and completing the said road having proved to be far greater than was contemplated, and the annual amount of road rates to be levied under the Act No. 9, 1858, and Act No. 10, 1864, not having sufficed to meet the additional outlay, the said Divisional Council borrowed on credit the further sum of one thousand pounds required to complete the said road, and expended the same in completing said road :

And whereas it is expedient that the said Divisional Council should be empowered to borrow upon the security of the road rates and tolls of the said division a further sum of six hundred pounds for the purpose of constructing a second section of the above mentioned road through the Karroo to the Verlaten Kloof lying within the boundaries of the division of Worcester, but it has not been deemed just that any portion of the cost of the said section should be required to be defrayed by the Divisional Council of Worcester :

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 :—

Borrowing powers.

1. It shall be lawful for the Divisional Council of Tulbagh aforesaid to raise by way of loan on credit of any tolls to be levied or rates to be assessed under the Act No. 9, 1858, or under the Act No. 10, 1864, a further sum not exceeding one thousand six hundred pounds, to be appropriated as follows : the sum of one thousand pounds to meet certain expenditure already incurred in completing the section of the said road described in the Act No. 18 of 1875, and the sum of six hundred pounds to meet the costs

of construction of the said section of the road aforesaid, lying within the limits of the division of Worcester. No. 13—1875.

2. All and singular the provisions contained in the sections, from No. 2 to No. 8, inclusive, of the said Act No. 18, 1875, shall be and are hereby made applicable to the said sum of one thousand six hundred pounds, to all intents and purposes as if the same were inserted herein. Certain sections of Act 18 of 1875 applied.

3. This Act may be cited for all purposes as the “Tulbagh Divisional Council Loan Act, 1877.” Short title.

No. 13—1875.]

[June 30, 1875.]

ACT

To enable the Divisional Council of Victoria East to borrow Moneys for the purpose of Constructing a Road over the Hogsback, Division of Victoria East, upon the security of Road Rates and Tolls.

WHEREAS it is expedient that the Divisional Council of Victoria East, should be empowered to borrow moneys, upon the security of road rates and tolls of the said division, for the purpose of constructing a road over the Hogsback, in the divisions of Victoria East and King William’s Town, by which the inhabitants would be benefited: 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 Act No. 9 of 1858, entitled an “Act to provide for the Management of the Public Roads of this Colony,” of the Act No. 10 of 1864, entitled an “Act to provide for the Construction and Maintenance of the Main Roads of this Colony,” and of the Act No. 22 of 1873, entitled an “Act to amend the Laws relating to the Construction and Maintenance of the Main Roads of the Colony,” as is repugnant to or inconsistent with any of the provisions of this Act, shall be and the same is hereby repealed. Repugnant laws repealed.

2. It shall be lawful for the Divisional Council of Victoria East to raise from time to time by way of loan, on the credit of any tolls to be levied, or rates to be assessed under the Acts in the first section of this Act cited, any sum or sums that may at any time be required by the said Divisional Council for the purposes 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 Council, at a meeting at which there shall be present not fewer than six elected members; provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had due notice (as required by the “Rules of Order” Loan of not exceeding £2,000 authorized

ZZ



No. 13—1875.

of the said Divisional Council) of the intention to hold such meeting, and of the purpose for which the same is called, and provided that no loan or loans or debts contracted by the said Council under this Act shall at any time exceed the sum of two thousand pounds sterling.

Security for repayment of loan and interest.

3. The sums aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues of the said Divisional Council, and it shall be lawful for the said Divisional Council to apply to the payment of interest or principal, or interest and principal of the moneys aforesaid, any such rates or revenues.

Acknowledgment for moneys borrowed to be given in form provided in schedule.

4. The said Divisional Council 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 so borrowed by such Council for the purposes aforesaid, which acknowledgment shall in substance be in the form given in the schedule to this Act, and shall be signed on behalf of the said Divisional Council by three of its elected members appointed for that purpose by a resolution of the said Council.

Public Bodies' Debts Act, 1867, to apply.

5. All debts lawfully incurred by the said Divisional Council for the purposes of this Act shall be subject to the provisions of the "Public Bodies' Debts Acts, 1867."

Moneys borrowed under this Act to be kept separate.

6. All moneys raised as aforesaid under this Act 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 by cheques signed by the secretary to the said Divisional Council, and countersigned by such one of its elected members as shall be appointed so to do by the said Council.

Separate account to be kept and abstract rendered half-yearly to Colonial Secretary.

7. The said Council shall keep a separate and distinct account of all moneys received and expended as aforesaid 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 next preceding, and all liabilities and assets on the same days.

Accounts to be audited.

8. The accounts in the preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of "The Divisional Council 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 loan.

Toll may be erected on road constructed under this Act.

9. It shall be lawful for the said Council to erect and establish a toll upon the said road subject to and in accordance with the provisions of the twenty-second, twenty-third and twenty-fourth sections of the Act No. 9 of 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 on the said road.

10. All the necessary costs, charges, and expenses attending the procuring of this Act and the carrying the provisions thereof into effect shall be paid out of the money to be received under the provisions of this Act. No. 31—1868.  
Provision for pay-  
ment of cost of this  
Act.

11. This Act may be cited for all purposes as the "Victoria East Divisional Council Loan Act, 1875." Short title.

SCHEDULE.

We, the undersigned, members of the Divisional Council of Victoria East, duly authorized thereto by the said Council, do hereby acknowledge that the said Divisional Council of Victoria East is indebted to ———, in the sum of ———, for so much money borrowed by the said Council for the purposes set forth in the Victoria East Divisional Council Loan Act, 1875, 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 Alice, this ——— day of ———.

\_\_\_\_\_ }  
 \_\_\_\_\_ } Members of the Divi-  
 \_\_\_\_\_ } sional Council of  
                   } Victoria East.

Witnesses :

No. 31—1868.]

[September 2, 1868.

ACT

For Enabling the Divisional Council of Worcester to borrow Moneys upon the security of Road Rates and Tolls, for the Improvement and Construction of the Road through Hex River Kloof.

WHEREAS it is expedient that the Divisional Council of Worcester should be empowered to borrow moneys upon the security of the road rates and tolls of the said division, for the purpose of improving the public road passing through what is commonly called "the Hex River Kloof," commencing at the Hex River Bridge and ending a certain distance on the Karoo side of the Hex River Mountain, by which the inhabitants would be benefited : And whereas the annual amount of road rates to be levied under Act No. 9 of 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.

No. 31—1868.  
 Repugnant portions of Act No. 9 of 1858 repealed.

1. So much of Act No. 9 of 1858, entitled "An Act to provide for the Management of the Public Roads of the 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.

Council may raise loan.

2. It shall be lawful for the said Divisional Council to raise 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, entitled "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 herein before mentioned:

Loan to be raised only under resolution of council after notice given.

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 six 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 twenty-one 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 any member 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 six (<sup>1</sup>) 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 of 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 Worcester; 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.

Extent of loan limited.

And certain restrictions imposed.

Loan not available for paying off previous loan, except as hereinafter provided.

Mode of raising loan.

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*, and in some newspaper published in or near the said division of Worcester, 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.

Bond by whom to be signed.

Moneys previously borrowed for carry-

4. And whereas the said Divisional Council has already

<sup>1</sup> Printed as amended by Act No. 19, 1875,

borrowed a sum of one thousand pounds sterling upon the personal security of the different members of the said Council, in order that the aforesaid work may not be delayed, and which sum has been and is in the course of being expended upon the aforesaid road, be it enacted that it shall and may be lawful for the said Council to repay the aforesaid sum of one thousand pounds sterling out of the said sum of six <sup>(1)</sup> thousand pounds sterling authorized to be raised under this Act.

No. 31—1868.  
ing on work may be repaid from loan.

5. All moneys raised as aforesaid under this Act 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 by cheques signed by the secretary and countersigned by such one of its members, not being the Civil Commissioner, as shall be appointed so to do by the said Council.

Moneys raised on loan how to be administered.

6. 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 of June and 31st December then preceding, and all liabilities and assets on the same days.

Separate account to be kept and half-yearly abstract forwarded to Colonial Secretary.

7. 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 extend and apply to all accounts, books, and papers connected with the said road.

Audit of accounts.

8. 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 said road, 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.

Repayment of loan provided for.

9. All the necessary costs and charges 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.

Expenses of procuring Act to be charged to loan.

10. This Act may be cited for all purposes as the "Worcester Divisional Council Loan Act, 1868."

Short title.

<sup>1</sup> Printed as amended by Act No. 19, 1875.

No. 19—1875.]

[June 30, 1875.

## ACT

To Legalize the Loan of £1,000 borrowed by the Divisional Council of Worcester, expended in the Construction of the Road through the Hex River, and to amend Act No. 31, 1868.

Preamble.

WHEREAS by Act No. 31 of 1868, intituled "An Act for enabling the Divisional Council of the Division of Worcester to borrow Moneys upon the security of Road Rates and Tolls, for the Improvement and Construction of the Road through Hex River Kloof," the Divisional Council of Worcester was empowered to borrow moneys upon the security of the road rates and tolls of the division of Worcester for the purpose of improving the public road passing through Hex River Kloof, commencing at Hex River Bridge and ending at a certain distance on the Karroo side of the Hex River Mountain, by which the inhabitants would be benefited: And whereas the said Divisional Council was in and by said Act authorized and empowered to raise by way of loan on the credit of any tolls to be levied or rates to be assessed, under so much as was not thereby repealed of the Act No. 9 of 1858, intituled "An Act to provide for the Management of the Public Roads of the Colony," 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 might at any time be required by the said Divisional Council for the purpose of carrying into effect the object and purpose of the said Act, provided (amongst other things not necessary to be re-stated) that the amount of such loan, or any debt contracted by the said Council under the said Act, should not exceed the sum of £5,000 sterling: And whereas the cost of making and completing the said road having proved to be far greater than the said sum of £5,000, the said Divisional Council borrowed on credit the further sum of £1,000, necessary to complete the said road, and expended the same in so completing it: And whereas it is just and right that this sum of £1,000 so borrowed and expended on the said road in excess of the sum of £5,000 mentioned in said Act No. 31 of 1868 should be repaid by the said district of Worcester, by means of a further rate to be levied in terms of the said section of said Act, for a further sum of £1,000 in addition to the sum of £5,000 in said section mentioned:

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:—

Act 31 of 1868  
amended by substituting  
£6,000 for  
£5,000.

The said Act No. 31 of 1868 shall be and hereby is amended, by substituting in the second and fourth sections thereof the sum

of £6,000 in lieu and stead of the sum of £5,000 in said sections mentioned, to be raised under said Act; provided always that any loan contracted under the terms and provisions of the said section of said Act No. 31 of 1868 and under this present Act shall not at any time exceed the said sum of £6,000, inclusive of any loan already contracted under said Act.

No. 33—1885.

DIVISIONS.

- |                                                |                                               |
|------------------------------------------------|-----------------------------------------------|
| 1. Act 33—1885, (Alteration of Boundaries).    | 7. Act 5—1886, (Prieska created).             |
| 2. „ 12—1857, (Certain,—created).              | 8. „ 33—1886, (Simon's Town (abolished).      |
| 3. „ 25—1858, ( do. ).                         | 9. „ 13—1856, (Tulbagh created).              |
| 4. „ 36—1879, ( do. ).                         | 10. „ 6—1871, (Wodehouse do ).                |
| 5. „ 17—1865, (Humansdorp Boundaries altered). | 11. „ 3—1872, (Wodehouse Boundaries altered). |
| 6. „ 27—1856, (Namaqualand created).           |                                               |

No. 33—1885.]

[August 11, 1885.

ACT

To Provide for the Alteration and better Definition of Boundaries between adjoining Divisions.

*Repeated by Act 40 of 1889*

WHEREAS it is expedient to provide for the alteration and better definition of boundaries between adjoining divisions of 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:—

Preamble.

1. The Act No. 33 of 1868, intituled "An Act to make provision for better defining the boundaries of such divisions of the Colony in which it may be necessary," is hereby repealed.

Act 33 of 1868 repealed.

2. Whenever any two or more Divisional Councils shall represent to the Governor that the boundaries of their respective divisions, where the same adjoin each other, are inconvenient or are not sufficiently defined, and require to be altered and duly defined, and shall agree upon and properly describe the proposed new boundaries, the Governor may, if he see fit, declare such new boundaries to be the future boundaries of the said divisions; and thenceforth such boundaries shall be the boundaries of such divisions for all purposes.

When Divisional Councils mutually agree as to new boundaries the Governor may declare such boundaries to be the future boundaries of the divisions.

3. Whenever any dispute or difference shall arise or exist between any two Divisional Councils of adjoining divisions as to the actual position of the boundary or any portion of the boundary between the said divisions, or in any case where the boundaries between adjoining divisions are inconvenient, and one of the Divisional Councils of such divisions shall claim that such boundaries shall be altered, such dispute or difference or claim, as

Arbitration for alteration or definition of boundary between adjoining divisions.

No. 33—1885.

the case may be, shall if either Council so desire be submitted for decision to arbitration, and thereupon an arbitrator or arbitrators shall be appointed and shall make such survey, search, or inquiry as shall be proper and necessary to enable him or them to decide such dispute, difference or claim.

Act No. 6 of 1882  
to apply to such arbitration.

4. Whenever possible the provisions of "The Lands and Arbitrations Clauses Act, 1882," and especially of the second and third sections of the said Act, shall apply to arbitrations instituted and carried on under the provisions of this Act, save and except that when two arbitrators are appointed by the respective Divisional Councils, a third arbitrator shall be appointed by the Commissioner of Crown Lands and Public Works.

Arbitrators to report to Governor who may proclaim definition or alteration of boundary.

5. The arbitrator or arbitrators appointed under the provisions of this Act shall determine in detail the definition of the boundary or portion of boundary with regard to which the dispute or difference has arisen or exists, or a claim has been made as aforesaid, and shall draw up a report embodying the decision arrived at, defining or altering such boundary or portion of boundary, and thereupon the Governor, upon consideration of such report, may, if he see fit, declare such boundary or portion of boundary in accordance with such decision; and thenceforth the boundary or portion of boundary so declared shall for all purposes be deemed and taken to form the boundary between the said divisions.

After the separation of a portion of division certain provisions shall apply.

6. When any portion of a division shall, under the operation of this Act, be separated from that division and added to any other division, the following provisions shall apply:—

- (1) In case any rates lawfully levied by the Divisional Council of the division to which the separated portion belonged shall be due or unpaid at the date of such separation, such rates shall be recoverable by the Divisional Council of the division to which such portion has been added, as if the same had been assessed by such lastmentioned Council; and a certificate of the chairman of such firstmentioned Council shall be *prima facie* evidence of the amount of rate due and of the assessment thereof in any action for the recovery of any such rate.
- (2) In case the Divisional Council of the division to which the separated portion belonged shall, before the date of separation, have lawfully raised any sum of money on loan upon the credit of any rates assessed or to be assessed by such Council, or shall have incurred any lawful debt upon the faith of such rates then the Divisional Council of the division to which such portion has been added shall be liable to pay to the Divisional Council of the other division an equitable portion of such loan or debt to be agreed upon between the respective Divisional

Councils, or, failing agreement, to be determined by arbitration.

No. 12—1857.

- (3) The Civil Commissioner of the division to which the separated portion belonged shall make out and transmit to the Civil Commissioner of the division to which such portion has been added a list of any registered voters resident in such portion, and the list so transmitted shall be added to the list of registered voters for any Field-cornetcy in which such separated portion shall be incorporated, or shall be added to the list of such voters of that Field-cornetcy if the separated portion shall be constituted a separate Field-cornetcy; and the lists of registered voters for such firstmentioned division as reduced, and of such lastmentioned division as increased shall respectively form the lists of registered voters for such divisions.

7. This Act may be cited as the “Adjoining Divisions Boundaries Act, 1885.”

Short title.

No. 12—1857.]

[June 29, 1857.]

## AN ACT

For constituting certain Districts of this Colony,  
Divisions.

WHEREAS it is expedient that the several districts of this Colony should (unless where local circumstances render such a change unnecessary) be constituted divisions, in order that the inhabitants may have the advantage of transacting their fiscal business at the same place to which they resort for the administration of justice, instead of being compelled, as at present, to transact such business at another, and, in general, far more distant place: And whereas, whilst it is expedient to constitute the said districts, divisions for all fiscal purposes, as well as for the purpose of enabling every such division to have and possess its own Divisional Council, it is at the same time expedient that the several Electoral Divisions of the Colony, as described in the Constitution Ordinance, should not be altered or affected by this 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:—

Preamble.

1. So much of the Ordinance for constituting a Parliament in this Colony, and commonly called the “Constitution Ordinance,” as is repugnant to, or inconsistent with this Act, is hereby repealed.

Repugnant parts of the Constitution Ordinance repealed.



No. 12—1857.

Certain districts to be fiscal divisions.

2. Each of the several districts named in the schedule to this Act, shall, from and after the first day of January, one thousand eight hundred and fifty-eight, become and be a division, for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or for any purpose other than the election of members of Parliament, to belong to any division to which the said district, or any part of the said district, belonged, down to, and next before, the day and year aforesaid.

Divisional councils in existing divisions dissolved, and to be reconstituted in each of the new divisions.

3. From and after the day in the last preceding section mentioned, the Divisional Council, for the time being, of every division to which any district named in the schedule to this Act, or any part of any such district, previously belonged, shall stand dissolved; and the provisions of the Act No. 5, of 1855, entitled "An Act for creating Divisional Councils in this Colony," shall apply to the divisions constituted by this Act, and to the divisions to which the districts hereby constituted divisions, or any part of any such districts, previously belonged, as such new divisions, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for any of such divisions had ever been elected: Provided that the registered voters for any and every Electoral Division, which, down to, and next before, the day aforesaid, comprised any such new division as aforesaid, or any part of any such new division, and which voters shall be resident in such new division, shall be entitled to vote at any election of members of the Divisional Council of such new division.

Subdivisions for the purposes of this Act not to affect electoral boundaries.

4. Notwithstanding the creation of such new divisions as aforesaid, for fiscal and other purposes, every such new division, and every part thereof, shall continue, for electoral purposes, to belong to, and form part of, whatever Electoral Division such new division, or any part thereof, formerly belonged to, precisely as if this Act had not been passed.

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#### SCHEDULE.

##### DISTRICTS BY THIS ACT CONSTITUTED DIVISIONS.

Alexandria	Middelburg
Aliwal (North)	Mossel Bay
Bathurst	Oudtshoorn
Bedford	Piquetberg
Bredasdorp	Prince Albert
Calvinia	Richmond
Fort Peddie	Riversdale
Hope Town	Stockenstrom
Knysna	Victoria.

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No. 25—1858.]

[June 5, 1858.

## AN ACT

For Constituting the Districts of Frazerburg, Murraysburg, Humansdorp, and Robertson, Divisions.

WHEREAS it is intended to create, as soon as may be, districts of Resident Magistrate at and for Frazerburg, Murraysburg, Humansdorp (1) and Robertson: And whereas, whilst it is expedient that the said districts, when defined and established, should become and be divisions for all fiscal purposes, as well as for the purpose of enabling every such division to have and possess its own Divisional Council, it is at the same time expedient that the several Electoral Divisions of the Colony, as described in the Constitution Ordinance, should not be altered or affected by this 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:—

Preamble.

1. So much of the Ordinance for constituting a Parliament in this Colony, and commonly called the Constitution Ordinance, as is repugnant to or inconsistent with this Act, is hereby repealed.

Repugnant portions of Constitution Ordinance repealed.

2. When and as soon as districts of Resident Magistrates shall have been by proclamation of the Governor aforesaid created, constituted, and established at any of the four places aforesaid, to wit, Frazerburg, Murraysburg, Humansdorp, and Robertson, then every such district shall, from and after the day of the publication of the proclamation creating such division, become and be a division for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or for any purpose other than the election of members of Parliament, to belong to any division to which the said district, or any part of the said district, belonged down to and next before the day of publication of such proclamation.

As soon as the districts aforesaid are proclaimed as magistracies, they shall be fiscal divisions.

3. The provisions of the Act No. 5, of 1855, entitled "An Act for creating Divisional Councils in this Colony," shall apply to each of the four divisions aforesaid, and to the divisions to which the said four divisions, or any part of the said four divisions, previously belonged, as such new divisions, and such former divisions shall then be limited, and bounded precisely as if no Divisional Councils in and for any of such divisions had ever been elected: Provided that the registered voters for any and every Electoral Division which, down to and next before the day aforesaid, comprised any such new division as aforesaid, or any part of any such new division, and which voters shall be resident in such new division, shall be entitled to vote at any election of members of the Divisional Council of such new division.

Divisional Councils Act to apply separately to the new divisions, and to those out of which they are constituted.

4. It shall be lawful for the Divisional Council of every division

Council of older divisions to continue

<sup>1</sup> For boundaries of Humansdorp division see Act 17 of 1865, *infra*.

No 25—1858.  
in operation over its original area until council for new division is formed.

How, if new councils are not all elected at the same time.

Until all the new councils are elected, the old council shall continue in operation over the remaining portion of the division.

Members of old council may be elected to new council, and continue in both capacities.

Creation of new division not to interfere with constitution of electoral division.

to which the entire or any part of any one of the four divisions aforesaid belonged down to and next before the day of the publication of the proclamation aforesaid, to continue in existence and operation in and for the whole area or territory which formed the division by which such Council was elected, until the new Divisional Councils contemplated by the last preceding section shall have been elected, but no longer: Provided that in case the new Divisional Councils for the several divisions for or in regard to which the creation of any of the four divisions aforesaid shall render necessary the election of new Divisional Councils shall not all be elected at the same time, then each new Divisional Council shall, upon the election thereof, become the Divisional Council for the division by which it was elected, and no former or other Divisional Council shall have any authority or power in or over the division by which such new Divisional Council was elected: Provided, however, that until new Divisional Councils shall have been elected for all the divisions, for or in regard to which the creation of any of the four divisions aforesaid shall render necessary the election of new Divisional Councils, the Divisional Council aforesaid, continued in existence and operation as aforesaid, shall, notwithstanding the election of a new Divisional Council for one or more of the said divisions, remain in existence and operation in and over the residue or remainder of area or territory which formed the division by which such Council was elected, precisely as if such residue or remainder had been the division by which such Council had been elected.

5. No member of any Divisional Council continued in existence and operation as aforesaid over any such area or territory as aforesaid shall be, upon that account, ineligible to be elected as a member of any such new Divisional Council as aforesaid: and in case any such member shall be elected a member of any such new Divisional Council as aforesaid, it shall be lawful for him to act as a member of both the Councils of which he shall be a member until the Divisional Council continued in existence and operation as aforesaid shall, upon the election of all the new Divisional Councils necessary to be elected, stand dissolved.

6. Notwithstanding the creation of the four new divisions as aforesaid for fiscal and other purposes, every such new division, and every part thereof, shall continue, for electoral purposes, to belong to, and form part of, whatever Electoral Division such new division or any part thereof formerly belonged to, precisely as if this Act had not been passed.

No. 36—1879.]

[Sept. 11, 1879.

## ACT

For Constituting certain Districts of this Colony Divisions.

WHEREAS it is expedient that several of the districts of this Colony should be constituted divisions for fiscal purposes: And whereas it is expedient to enable the said districts whenever the Governor may deem it necessary to have and possess its own Divisional Council: And whereas it is at the same time expedient that the several Electoral Divisions of the Colony, as they are at present constituted and by law exist, should not be altered or affected by this 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:—

Preamble.

1. So much of the Ordinance for constituting a Parliament in this Colony, and commonly called the "Constitution Ordinance," and so much of any other Ordinance, Act of Parliament, or other statutory enactment as may be repugnant to or inconsistent with this Act, are hereby repealed.

Repeal of repugnant laws.

2. Each of the several districts named in the schedule to this Act shall, from and after the date of any proclamation to be issued for that purpose by the Governor and published in the *Government Gazette*, become and be a division for fiscal purposes.

Districts named in Schedule may be proclaimed divisions.

3. Every proclamation in the last preceding section provided for, shall define the several boundaries of the division or divisions thereby constituted, and the boundaries so proclaimed shall be boundaries of such division or divisions respectively.

Boundaries to be defined.

4. From and after the date of any proclamation issued by the Governor in that behalf and published in the *Government Gazette*, the Divisional Council for the time being of every division to which any of the said districts so constituted divisions for fiscal purposes only and named in such proclamation belonged, shall stand dissolved, and the provisions of Act No. 4 of 1865, entitled "An Act to consolidate and amend the several Acts relating to Divisional Councils," and of every other Act relating to Divisional Councils, shall apply to such district, bounded as aforesaid and to the divisions to which such district, by any such proclamation constituted divisions or any part of such district previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for any such divisions had ever been elected: Provided that the registered voters for any and every Electoral Division, which down to and next before the issuing of any such proclamation comprised any such division as aforesaid, or any part of any such new division, and which voters shall be resident within such new division, shall be entitled to vote at any election of members of the Divisional Council of such new division.

Divisional councils of divisions affected by any such proclamation.

No. 17—1865  
Provisions of Act  
24 of 1858 to apply to  
new divisions.

5. The several provisions of the Act No. 24 of 1858, entitled “An Act to regulate the respective rights of certain divisions in regard to certain Road Rates,” shall *mutatis mutandis*, as soon as the proclamation in the fourth section mentioned shall have been issued, apply to the new division or divisions named in such proclamation and to the several divisions to which such newly constituted division or divisions, before the issuing of any such proclamation, belonged.

No change of elec-  
toral divisions.

6. Notwithstanding the creation of such new divisions by virtue of any such proclamation as in this Act provided for fiscal and other purposes, every such new division and every part thereof shall continue, for electoral purposes, to belong to and form part of whatever Electoral Division such new division or any part thereof belonged to, precisely as if this Act had not been passed and no such proclamation had been issued.

Short title.

7. This Act may be cited as the “Fiscal Divisions Extension Act, 1879.”

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SCHEDULE.

1. Barkly	9. Komgha
2. Carnarvon	10. Simon's Town <sup>(1)</sup>
3. Cathcart	11. Stutterheim
4. Glen Grey	12. Uniondale
5. Hanover	13. Willowmore
6. Herschel	14. Aberdeen
7. Jansenville	15. Tarka
8. Ladysmith	16. Port Nolloth.

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No. 17—1865.]

[October 10, 1865.

ACT

To alter in certain respects the Limits of the Division of Humansdorp.

Preamble.

WHEREAS the Fiscal Division of Humansdorp forms part of the Electoral Division of Uitenhage: and whereas it is expedient to alter the existing limits of the Fiscal Division of Humansdorp, and to include therein a portion of the Fiscal Division of the Knysna, which last-mentioned division forms part of the Electoral Division of George: and whereas it is necessary that such alteration should be made 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:—

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<sup>1</sup> The fiscal division of Simon's Town is abolished by Act 33 of 1886.

1. The boundaries of the Fiscal Division of Humansdorp, which Fiscal Division forms part of the Electoral Division of Uitenhage, shall, as well for all electoral purposes as for all fiscal purposes, be the boundaries in the schedule to this Act set forth, and the territory included within the said boundaries shall constitute, for judicial purposes, the district of the Resident Magistrate of Humansdorp.

No. 17—1865.  
Boundaries of fiscal division of Humansdorp.

2. As soon as may be, after the taking effect of this Act, the Civil Commissioner of the division of George shall transmit to the Civil Commissioner of the division of Uitenhage the names of all persons who, next before the taking effect of this Act, were registered voters for the Electoral Division of George, and who, by being included within the boundaries in the last preceding section mentioned, will, upon the taking effect of this Act, become resident within the Electoral Division of Uitenhage; and such persons shall become registered voters for the Electoral Division of Uitenhage, and be added to the list of registered voters, for the time being, for such last-mentioned Electoral Division, and shall cease to be registered voters for the Electoral Division of George.

Certain registered voters hitherto included in electoral division of George to be transferred to electoral division of Uitenhage.

3. Nothing in this Act contained shall be construed so as to prevent the Governor from making, from time to time, by proclamation, such alterations as the public convenience may seem to him to demand in the boundaries of Field-cornetries all comprised within the same Fiscal Division, or in the boundaries of Fiscal Divisions all comprised within the same Electoral Division, or to deprive the said Governor of the power now by law vested in him of fixing, from time to time, by proclamation, the limits of districts of Resident Magistrate.

Power of Governor to alter boundaries of field-cornetries or fiscal divisions and fix limits of magistracies, not affected.

4. The limits of the districts into which the Fiscal Division of Humansdorp is now divided for the purpose of electing members of the Divisional Council for such division, or the limits of so many of the said districts as may be found necessary, shall, as soon as may be after the taking effect of this Act, be altered, so that the whole of the territory comprised within the boundaries fixed by this Act shall belong to or form a part of some district electing members or a member of the Divisional Council; but no such alteration in the limits of any district shall vacate or affect the seat in the Divisional Council of the member or members now representing such district: Provided that from and after the happening of the first vacancy in the representation of any district of which the limits shall have been altered as aforesaid, then, and from thenceforth, the member or members for such district shall be elected by the district according to its altered limits.

Provision regarding election of members of divisional council.

#### SCHEDULE.

##### BOUNDARIES OF THE DIVISION OF HUMANSDORP.

From the summit of the Coxcomb Mountain to the junction of the Kruis and Kouga Rivers, thence along the watershed and

No. 27—1856.

summits of the Kouga River heights, which separate from each other the valleys of the Kruis and Kouga Rivers, and the Kromme River, from the Lange Kloof, to the source of the Blue Krantz River; thence along that River to its mouth; thence along the Sea-coast in an Easterly direction to the Mouth of the Gamtoos River, following that River to its junction with the Loeries River; thence along that River to its source in the Van Stadensberg; and thence along the summit of the Van Stadensberg to the Coxcomb.

No. 27—1856.]

[June 4, 1856.

## AN ACT

## For Constituting the District of Namaqualand a Division.

Preamble.

WHEREAS a portion of the district of Namaqualand now forms part of the Electoral Division of Clanwilliam, and a portion thereof part of the Electoral Division of Victoria: and whereas it is expedient that the district of Namaqualand should be constituted a separate division for fiscal purposes, but that the same should belong to the Electoral Division of Clanwilliam for electoral 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:—

7th section of Constitution Ordinance repealed.

1. So much of the 7th section of the Ordinance for constituting a Parliament for this Colony as is repugnant to or inconsistent with this Act is hereby repealed.

Namaqualand to be a separate fiscal division.

2. From and after the commencement and taking effect of this Act, the district of Namaqualand according to its existing limits, shall become and be a division for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or any purpose other than that in the next succeeding section mentioned, to belong to the divisions of Clanwilliam and Victoria respectively; and from and after the date aforesaid the Divisional Council, for the time being, of the now existing division of Clanwilliam shall stand dissolved, and the provisions of the Act No. 5, 1855, entitled "An Act for creating Divisional Councils in this Colony," shall apply to the Fiscal Divisions of Clanwilliam and Namaqualand respectively, as then limited and bounded, precisely as if no Divisional Council in the existing division of Clanwilliam had ever been elected: Provided also, that the registered voters for the Electoral Division of Clanwilliam for the time being, resident within the Fiscal Division of Namaqualand, and none other, shall be entitled to vote at any election of members of the Divisional Council for the division of Namaqualand.

Divisional council of Clanwilliam dissolved.

Separate council for Namaqualand and Clanwilliam.

Registered voters resident in Namaqualand to vote for its divisional council.

For electoral purposes, Namaqualand to form part of Clanwilliam.

3. Notwithstanding the erection of the said district into a division, as aforesaid, the said district and division of Namaqualand shall for electoral purposes, form part of the Electoral Division of

Clanwilliam, precisely as if the said division of Namaqualand had formed part of the division of Clanwilliam at the time when the Ordinance for constituting a Parliament commenced and took effect.

No. 5—1886.

4. This Act shall commence and take effect from and after such date as shall be fixed for that purpose by the Governor of this Colony, by any proclamation to be by him issued and published in the *Government Gazette*.

Act when to commence.

No. 5—1886.]

[June 11, 1886.

## ACT

## To constitute the District of Prieska a Fiscal Division.

WHEREAS it is expedient to constitute the district of Prieska a Fiscal Division, and to enable such division to have and possess its own Divisional Council without altering or affecting the Electoral Division of which the said district now forms part: 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. So much of the Ordinance for constituting a Parliament in this Colony and commonly called "The Constitution Ordinance," and so much of any other Ordinance or Act as may be repugnant to or inconsistent with this Act, are hereby repealed.

Repeal of repugnant laws.

2. The District of Prieska shall from and after the date of any proclamation to be issued for that purpose by the Governor, become and be a division of the Colony for fiscal purposes.

District of Prieska may be proclaimed fiscal division.

3. The proclamation in the last section mentioned shall define and proclaim the boundaries of the said division, and the boundaries so defined and proclaimed shall become and be the boundaries of the said division.

Boundaries to be defined.

4. Upon the issue of the said proclamation the Divisional Council for the time being of every division to which any portion of the said newly constituted and defined division of Prieska belonged shall stand dissolved, and the provisions of Act No. 4 of 1865, entitled "An Act to consolidate and amend the several Acts relating to Divisional Councils," and of every other Act relating to Divisional Councils, shall apply to the said new division defined and bounded as aforesaid, and to the division or divisions whereof portions shall have constituted or partly constituted the said new division of Prieska, which portion shall for all fiscal and other purposes thenceforth form part of the new division of Prieska: And the registered voters for members of Parliament for any of the said divisions respectively who shall be resident within the

Divisional councils or divisions affected by any such proclamation.

A A A



No. 33--1886.

limits of the new division of Prieska, shall be entitled to vote at any election for members of the Divisional Council of the said new division of Prieska.

Provisions of Act 24 of 1858 to apply to division of Prieska.

5. The several provisions of the Act No. 24 of 1858, entitled "An Act to regulate the respective rights of certain Divisions in regard to certain Road Rates," shall, *mutatis mutandis*, as soon as the said proclamation shall have been issued, apply to the new division of Prieska, and to the division or divisions to which such newly constituted division belonged before the issue of such proclamation.

No change of electoral divisions.

6. Notwithstanding the creation of such new division for fiscal and other purposes, such new division and every part thereof shall continue, for electoral purposes, to belong to and form part of whatever Electoral Division the said new division or any part thereof theretofore belonged to, precisely as if this Act had not been passed and no such proclamation as aforesaid had been issued.

Short title.

7. This Act may be cited as "The Prieska Fiscal Division Act, 1866."

No. 33—1886.]

[July 6, 1886.

### ACT

To Abolish the Fiscal Division of Simon's Town and to include that Division within the Fiscal Division of the Cape.

Preamble.

WHEREAS it is expedient that the division of Simon's Town shall cease to be a Fiscal Division and shall be included in the Fiscal Division of the Cape: 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:—

Fiscal Division of Simon's Town abolished, and to become part of the Cape Division.

1. Upon the issue of a proclamation to that effect by the Governor to be published in the *Gazette*, the division of Simon's Town shall cease to be a division for fiscal purposes, and shall become and be part of the Fiscal Division of the Cape.

Main and Divisional roads to be repaired to satisfaction of Government Road Inspector.

2. The proclamation in the last section mentioned shall not be issued until the main and divisional roads in the division of Simon's Town shall be placed in a reasonable state of repair, to the satisfaction of the Government Road Inspector.

After such general election, district of Simon's Town to be entitled to return members to Divisional Council of the Cape.

3. During the period intervening between the issue of such proclamation as aforesaid and the time for holding the next general election of members of the Divisional Council of the Cape, the districts constituting the said division of Simon's Town shall not be entitled to return members to the Divisional Council of the Cape; but at such general election they shall be so entitled, and

then and thenceforth the districts of the Cape division shall be and shall continue to be until otherwise altered, those existing before the passing of the Act No. 36 of 1879.

No. 13—1856.

4. From and after the issue of the said proclamation the toll-gate with the buildings and appurtenances belonging thereto; and the revenue to arise from the tolls levied thereat, which were transferred by the Act No. 8 of 1882 to the Divisional Council of Simon's Town, shall be re-vested in the Divisional Council of the Cape, and such revenue shall be carried to and form part of the general revenue of such last-mentioned Divisional Council, anything contained in the third section of Act No. 3 of 1857 to the contrary notwithstanding.

Toll-gates and toll revenues to be transferred to Divisional Council of the Cape.

5. No such proclamation as aforesaid shall be issued until all debts incurred by the Divisional Council of Simon's Town shall have been duly paid and satisfied.

No debts of Simon's Town Council to be chargeable to the Divisional Council of the Cape.

6. All arrear rates which shall be payable to the Divisional Council of Simon's Town at the date of the proclamation aforesaid shall be payable to the Divisional Council of the Cape.

Arrear rates.

7. So much of the Act No. 36 of 1879, as relates to the said division of Simon's Town, and the Act No. 8 of 1882, are hereby repealed.

Repeal of part of Act 36 of 1879 and Act 8 of 1882.

8. This Act may be cited as the "Fiscal Division of Simon's Town Abolition Act, 1886."

Short title.

No. 13—1856.]

[June 4, 1856.

AN ACT

For Constituting the District of Tulbagh a Division.

WHEREAS the district of Tulbagh now forms part of the Electoral Division of Worcester, and whereas it is expedient that the District of Tulbagh should be constituted a separate division for fiscal purposes, but continue, nevertheless, to belong to the Electoral Division of Worcester for electoral 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 :—

Preamble.

1. So much of the 7th section of the Ordinance for constituting a Parliament for this Colony as is repugnant to or inconsistent with this Act is hereby repealed.

Repugnant section of Constitution Ordinance repealed.

2. From and after the first day of January, one thousand eight hundred and fifty-seven, the district of Tulbagh, according to its existing limits, shall become and be a division for fiscal purposes, as well as a district, and shall cease, for fiscal purposes, or any purpose other than that in the next succeeding section mentioned, to belong to the division of Worcester; and from and after the

Tulbagh a fiscal division.

Divisional council of Worcester dissolved.

- No. 6-1871. date aforesaid, the Divisional Council for the time being of the now existing division of Worcester shall stand dissolved, and the provisions of the Act No. 5, 1855, entitled "An Act for creating Divisional Councils in this Colony," shall apply to the divisions of Worcester and Tulbagh respectively, as then limited and bounded, precisely as if no Divisional Council in the existing division of Worcester had ever been elected: Provided also that the registered voters for the Electoral Division of Worcester resident within the Fiscal Division of Tulbagh, and none other, shall be entitled to vote at any election of members of the Divisional Council for the division of Tulbagh.
- Separate councils for Worcester and Tulbagh.
- Tulbagh to remain part of electoral division of Worcester.
3. Notwithstanding the erection of the said district into a division as aforesaid, the said district and division of Tulbagh shall continue for electoral purposes, to form part of the Electoral Division of Worcester, precisely as if this Act had not been passed, and as if the said district had not been erected into a division.
- Act when to commence.
4. This Act shall commence and take effect from and after the promulgation thereof.

No. 6—1871.]

[August 11, 1871.

## ACT

## To Erect the District of Wodehouse into a Fiscal Division. (1)

Preamble.

WHEREAS it is expedient that the lately proclaimed district of Wodehouse should be constituted a Fiscal Division: 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:—

District of Wodehouse created a fiscal division.

1. From and after the first day of January, 1872, the District of Wodehouse, as defined by the Governor, by proclamation in the *Government Gazette*, dated the fifth day of January, 1871, shall become and be a division for fiscal purposes, and for every purpose other than the election of members of Parliament.

Constitution of existing electoral divisions not affected

2. The persons now entitled or hereafter becoming entitled to vote for members of Parliament to represent the now existing divisions, respectively, parts whereof constitute, or partly constitute, the said district of Wodehouse, shall not be in anywise disfranchised as to voting for members of Parliament to represent such divisions respectively, but the said parts of the said divisions respectively, shall, for the purpose of the election of members of Parliament, and as far as may be necessary for that purpose only, be deemed to be, and to remain, respectively, parts of the several

(1) Constituted an Electoral Division by Act 7, 1872. (See Constitution.)

divisions whereof they now form parts respectively, notwithstanding the passing of this Act.

3. From and after the said first day of January, 1872, the several Divisional Councils of the said now existing divisions, parts whereof constitute, or partly constitute, the said district of Wodehouse, shall stand dissolved, and the provisions of the "Divisional Councils Act, 1865," and of the several Acts amending the same, shall apply to the said new division of Wodehouse, and to the several divisions whereof parts now constitute or partly constitute, the said district of Wodehouse, excluding, however, from the limits of those divisions respectively, the parts now included in the district of Wodehouse, which parts shall cease to form parts of the said divisions respectively, for all purposes save as aforesaid, and shall, for all fiscal and other purposes, save only as aforesaid, form parts of the new division of Wodehouse; but all persons for the time being registered as voters for members of Parliament for any of the said divisions respectively, who shall be resident within such parts thereof respectively as shall form part of the said new division of Wodehouse, shall be entitled to vote at any election for members of the Divisional Council of the said division of Wodehouse.

No. 3—1872

Divisional councils in existing divisions dissolved, and Act 4 of 1865 to apply to both new and existing divisions.

No. 3—1872.]

[July 31, 1872.

## ACT

## To Alter the Limits of the Division of Wodehouse.

WHEREAS it is expedient to alter and amend the limits of the Fiscal Division of Wodehouse, and to make them correspond with the boundaries of the judicial district of Wodehouse: 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. So much of the provisions of the first section of Act No. 6 of 1871 as is repugnant to the provisions of this Act is hereby repealed.

Repugnant provisions of section 1 of Act No. 6 of 1871 repealed.

2. From and after the promulgation of this Act the boundaries of the Fiscal Division of Wodehouse shall be the boundaries in the schedule to this Act set forth.

Boundaries of division of Wodehouse.

## SCHEDULE.

*Boundaries of the Division of Wodehouse.*

A line from the highest point of Salpetre Berg along the western boundary of the Farms Penhoek, Nooitgedacht, Crown land between Nooitgedacht and Klipplaat, Klipplaat, Strydfontein, and Leeuwe

Schedule.

No. 14—1884.

Kraal, the north-western boundary of the farms Wolfefontein, Spitskop, Uitikijk, Klipfontein, Rietfontein, and Vaalbank, the north-eastern boundary of Pretorius Kraal, the northern boundary of Driefontein to the Holle Spruit, thence along the Holle Spruit to its junction with the Kraai River, along the Kraai River to the Farm Upper Drumbo (Police Reserve), along the western boundary of the Field-cornetcy Highlands, including the farms Glencoe and Reed's Dell, to the Colonial boundary, thence along the eastern boundary of the Colony to the eastern boundary of the farm Geli or Nageli, thence along the top of the range of mountains forming the eastern boundaries of the farms granted to Sam Sezeni and Malgas Songa; thence continuing along the summit of the same range westwards to the Cacado Poort; thence straight to the Shaba Intjeko range; thence along the top of that range, and crossing the Intjeko Neck, to the nearest beacon of the farm granted to Jantje Umleba; thence passing along the western boundary of that farm to the nearest summit of the Mount Arthur range; thence along the top of that range to the summit of Mount Arthur; thence along the top of the watershed leading to the Kabousie mountain, to the highest point of that mountain; thence direct to the highest point of the Gonyana mountain; thence passing along the Vaalbank Ridge to the Tjneni Mountain; thence along the top of the Tjneni range to the easternmost beacon of the farm Weltevreden; thence along the north-eastern boundary of and excluding that farm; thence along the boundaries of and excluding the farms Dwaalfontein, Vaalkrantz, Wenfontein, Naudesfontein, Kloppersfontein, Rietkuil, and Gretna, to the highest point of Salt-petre Berg.

No. 14—1884.]

[July 25, 1884.]

## ACT

## To Impose a Duty on Dogs.

Preamble.

WHEREAS it is expedient that a duty should be imposed upon dogs, and that, in places other than those within the jurisdiction of Municipalities or Village Boards of Management which may have already imposed such a duty, such duty shall be collected by means of licences granted by Divisional Councils: 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 divisional council to impose dog tax.

1. Every Divisional Council in the Colony shall have the right to impose a duty or tax upon dogs within its jurisdiction, which tax shall be collected by means of licences to be granted by such Divisional Councils, or in such other manner as such Council shall determine, subject, however, to the proviso in the next succeeding section contained.

Also to frame rules as to dog licences.

2. Divisional Councils shall have the power to frame rules and regulations in regard to the form of licences for keeping dogs, the

*Repealed by Act 40 of 1889*

manner of taking the same out, or in regard to any other mode of collecting the duty or tax hereby authorized to be imposed: Provided, however, that all such rules and regulations shall be subject to the approval of the Governor, and such rules and regulations, if so approved of, shall be published in the *Gazette*, and some one or more newspapers, if any, published within the jurisdiction of the Divisional Council framing the same.

No. 14—1884.

3. The funds collected by Divisional Councils as the proceeds of the said duty or tax shall be applied by them for their general purposes.

Application of proceeds of tax.

4. The amount of the duty or tax authorized to be levied under this Act shall not be more than five shillings, nor less than two shillings and sixpence for each dog: Provided always that no duty shall be payable for or in respect of any dog under the age of three months or thereabouts.

Limit of tax.

5. Every person keeping a dog within the jurisdiction of any Divisional Council which shall have imposed the duty in this Act provided for, without having paid such duty shall be subject, on conviction, to a fine not exceeding the sum of one pound sterling, or, in case of non-payment, to imprisonment with or without hard labour for any term not exceeding fourteen days, unless such fine be sooner paid.

Penalty for keeping a dog unlicensed.

6. If any Justice of the Peace, Field-cornet, Constable, or other officer of the Peace, or any proprietor or occupier of land, shall request any person travelling with a dog in his custody, charge, or possession, to produce his licence for keeping such dog, or to afford other sufficient proof that he has paid a duty for the same under the provisions of this Act, or has a licence to keep the same from some Municipality or Village Board of Management, and shall, after failure of such production, have no reason to believe that such person either has a fixed abode or is licensed to keep such dog, then and in such case it shall be the duty of such officer, proprietor, or occupier to demand from such person the particulars of his name and abode, and the place whither he is travelling, and thereupon it shall be the duty of such officer, proprietor, or occupier, with all convenient speed, to send to the Divisional Council of his division, a report stating such particulars as he shall have obtained, and describing the person in whose custody, charge, or possession, such dog shall have been found or seen; and upon receiving such report such Council shall, with all convenient speed proceed in accordance with the provisions of this Act: (1) Provided that if any person travelling as aforesaid, from whom such particulars as aforesaid shall have been demanded, shall refuse to give answers thereto, or shall wilfully give false answers thereto, he shall be deemed to be guilty of the offence of contravening this section of this Act, and shall, upon conviction, be liable to a fine

Power of Justices of the Peace and others to demand licence or proof of its existence.

To report cases to divisional council.

Proceedings thereon.

<sup>1</sup> Printed as amended by Act 15, 1885, *infra*.

No. 15—1885.

not exceeding one pound, or in case of non-payment to imprisonment, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid.

No tax under this Act where one is already imposed by a Municipality, &c.

7. No duty or tax shall be imposed or levied under this Act by any Divisional Council within any area which shall be within the jurisdiction of any Municipality or Village Board of Management which shall already have imposed a duty or tax upon dogs.

Where no Municipal dog tax it may be imposed by divisional council.

8. In case any Municipality or Village Board of Management shall not have imposed a tax on dogs kept within the area under its jurisdiction, it shall be lawful for the Divisional Council to impose and levy within such area the duty or tax authorized by this Act: And thereupon no such Municipality or Village Board of Management shall have the power to impose any such tax within the same area.

Sporting dogs exempted.

9. Packs of fox or other hounds kept *bonâ fide* for sporting purposes may at the discretion of the Divisional Council of the division within which such pack is kept be exempted from the provisions of this Act.

Short title.

10. This Act may be cited as the "Dog Tax Act, 1884."

No. 15—1885.]

[August 7, 1885.

ACT

To Amend in certain respects the Law with relation to the Imposition of Duty on Dogs.

Preamble.

WHEREAS it is expedient in certain respects to amend the provisions of the law with regard to the imposition of a duty on dogs, and especially of the Act No. 14 of 1884, entitled "An Act to Impose a Duty on Dogs," and to make provision for the destruction under certain circumstances by certain persons of dogs upon which no duty or tax has been paid: 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:—

Amendment of Section 6 of Act 14 of 1884

1. From and after the passing of this Act, the sixth section of the "Dog Tax Act, 1884," shall be read and construed as if the words "if such person travelling as aforesaid shall have described himself as living in a district other than that from which such Council has jurisdiction send such report to the Divisional Council of such other district," were omitted from the said section, and as if the words "with all convenient speed proceed in accordance with the provisions of this Act" were as they are hereby inserted in the said section in the place and stead of the aforesaid words.

Certain persons may destroy dogs in certain places.

2. After the promulgation of this Act, and notwithstanding anything to the contrary contained in the sixth section of the

*Repealed by Act 46 of 1884*

“Dog Tax Act, 1884,” it shall be lawful for any Justice of the Peace, Field-cornet, Constable, or other officer of the Peace, or for any collector of the duty or tax on dogs lawfully appointed by any Divisional Council for that purpose, to destroy any dog found by him at any place within the limits of the division or district within which such Justice of the Peace, Field-cornet, Constable, or other officer of the Peace has authority, or such collector is appointed to collect the duty or tax on dogs, and it shall be lawful for any proprietor or occupier of land to destroy any dog found trespassing upon the land owned or occupied by such proprietor or occupier.

3. Nothing in the last preceding section contained shall render it lawful for any of the persons therein mentioned to destroy any dog at any time when such dog shall be in the custody, charge, or possession of some person if such person shall either

Limitation of power to destroy dogs

- (1) Upon request under the sixth section of the “Dog Tax Act, 1884,” produce a licence to keep such dog, or
- (2) Satisfy any such Justice of the Peace, Field-cornet, Constable, or other officer of the Peace, that the person in whose custody, charge, or possession such dog shall be found has a fixed abode, or that a duty or tax has been at that time duly paid in any division in respect of such dog.

4. Nothing in the second section of this Act contained shall render it lawful for any collector of the duty or tax on dogs to destroy any dog found in the custody, charge, or possession of any person unless such person shall after demand on failure to produce a licence for such dog have refused or neglected to pay the amount of the duty or tax on such dog levied in the division within which the said collector is lawfully appointed as aforesaid, in accordance with rules and regulations framed in pursuance of the provisions of the second section of the “Dog Tax Act, 1884.”

Limitation on collector's power to destroy dogs.

5. Nothing in this Act contained shall be deemed to authorize the destruction by any person of any hound belonging to a pack kept *bonà fide* for sporting purposes and exempted from the provisions of the “Dog Tax Act, 1884.”

Exemption of hounds maintained.

6. Any person who shall in any way hinder, prevent, obstruct, or interfere with any person duly authorized to exercise and while lawfully exercising the powers conferred by the provisions of this Act shall upon conviction be liable to the penalties prescribed in the sixth section of the “Dog Tax Act, 1884.”

Penalty for interference with person authorized to destroy dogs.

7. Every duty or tax authorized by the aforesaid Act to be levied upon dogs shall be payable annually, and every licence to keep a dog shall expire upon the 31st day of the month of December next after the issue of such licence.

Tax to be payable annually.

8. It shall be lawful for Divisional Councils to apply the funds collected as the proceeds of the said duty or tax to the destruction of wild carnivorous animals, anything contained in Act 14 of 1884 to the contrary notwithstanding.

Funds collected may be applied to destruction of wild animals.



- No. 21—1884. 9. All fines and penalties imposed under the provisions of the “Dog Tax Act, 1884,” or of this Act, shall when recovered, be paid over to the Divisional Council; and all costs incurred in prosecuting offences under the said Acts shall be borne by such Council.
- Short title. 10. This Act may be cited for all purposes as the “Dog Tax Act Amendment Act, 1885.”

No. 21—1884.]

[July 25, 1884.]

## ACT

To Sanction the use of the Dutch Language equally with the English in Courts of Justice. <sup>(1)</sup>

- Preamble. WHEREAS it is expedient to afford facilities for the use of the Dutch language equally with the English in Courts of Justice and in legal proceedings: 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:—
- Charter of justice and previous enactments not to affect this Act. 1. Notwithstanding anything contained in the Charter of Justice or in the Act No. 20 of 1856, or in any other statutory enactment having the force of law in the Colony, the judges of the superior Courts of Justice may, and Resident Magistrates, Special Justices of the Peace and Field-cornets shall allow the use of the Dutch language equally with the English language at the hearing of any suits, cases, or enquiries, civil or criminal, in their respective Courts when requested so to do by any of the parties to such suits or other proceedings; and upon such allowance it shall be lawful for either of the parties to such suits, cases, or other proceedings, or their respective counsel, attorneys, or agents, to use either the English or Dutch language in the conduct of their cases before such Courts.
- Judges may, and judicial officers shall, allow use of either Dutch or English in Courts of Justice. 2. Whenever any Divisional Council shall by a majority of its members, resolve at a meeting duly convened for that purpose; or whenever no fewer than one-third of the voters registered for parliamentary elections in any division shall in writing, by petition, apply to the Governor to order the issuing of summonses, notices, and documents referred to in any summons, in all suits brought in any of the Courts within such division, in the Dutch as well as in the English language, it shall be lawful for the Governor in either of the cases before-mentioned by proclamation in the *Gazette* to grant such order. <sup>(2)</sup> Provided, however, that if it shall appear to the officer issuing any such process as aforesaid, either
- Divisional Councils or number of voters may apply for summonses and notices, to be in Dutch.
- Power of Governor by Proclamation to authorize the same.

<sup>1</sup> Dutch language may be used in Parliament see Act 1, 1882 (Printed under *Constitution*).

<sup>2</sup> Printed as amended by § 14, Act No. 17, 1886. (Printed under *Administration of Justice*).

from his personal knowledge or otherwise, that the person upon whom the same is intended to be served is sufficiently acquainted with the English language to understand the purport of such process, or is not sufficiently acquainted with the Dutch language to understand the purport of such process if it be drawn in the Dutch language then it shall not be necessary to issue such process in the Dutch language as well as the English language.

No. 16—1868.

3. This Act may be cited as "The Dutch Language Judicial Use Act, 1884."

Short title.

ECCLESIASTICAL.

- |                                                |                                                         |
|------------------------------------------------|---------------------------------------------------------|
| 1. Act 16—1868, (Adelaide Church).             | 10. Ord. 2—1839, (Graham's Town Church).                |
| 2. Ord. 5—1832, (Bathurst do.).                | 11. Act 9—1856, ("Paddock" Grant cancelled).            |
| 3. ,, 4—1829, (Cape Town do.).                 | 12. Ord. 1—1842, (Port Elizabeth Church).               |
| 4. Act 30—1860, (Diocese Property Alienation). | 13. ,, 5—1845, (Rondebosch do.).                        |
| 5. Ord. 7—1843, (Dutch Reformed Church).       | 14. ,, 2—1842, (Sidbury do.).                           |
| 6. ,, 16—1845, ( do. ).                        | 15. Act 5—1873, (Voluntary Act Abolition of State Aid). |
| 7. ,, 2—1851, ( do. ).                         | 16. Ord. 6—1833, (Wynberg Church).                      |
| 8. ,, 7—1845, (Fort Beaufort Church).          |                                                         |
| 9. ,, 8—1846, (Graaff-Reinet do.).             |                                                         |

No. 16—1868.]

[Sept. 2, 1868.

ACT

For Enabling the Consistory of the Dutch Reformed Church at Adelaide to transfer to the Commissioners of the Municipality of Adelaide certain Immovable Property, and for other purposes connected with such transfer.

WHEREAS His Honour Colonel John Hare, C.B. and K.H., the then Lieut-Governor of the Eastern Districts of the Colony, did, by grant bearing date the 31st of May, 1842, grant in freehold, to the officiating minister, elders and deacons of the Dutch Reformed Church at the Koonap River, a piece of land containing nine hundred and eighteen morgen and four hundred and five square roods, upon condition that the said land should be used exclusively for church purposes: And whereas His Excellency Sir George Grey, K.C.B., the then Governor of this Colony, did, by grant bearing date the 7th of June, 1856, grant in freehold to the churchwardens of the Dutch Reformed Church at Glen Lynden, three pieces of land, measuring together three thousand three hundred and eighty-six morgen and three hundred square roods, subject to a certain right of commonage, in the said last-

Preamble.

No. 16—1868.

mentioned grant set forth, in favour of the two congregations or worshipping societies in the said grant described: And whereas the grantees in the aforesaid grants mentioned, though therein differently designated, were and are the same body, which body is now called and known as the Consistory of the Dutch Reformed Church in Adelaide: And whereas the village of Adelaide, from which the Dutch Reformed Church formerly known as that at the Koonap River, and more recently as that at Glen Lynden, takes its name, was established upon part of the lands aforesaid, and in the year 1861 created a municipality: And whereas, on the 8th of February, 1862, the consistory aforesaid, by the name of the minister, elders, and deacons of the Dutch Reformed Church in Adelaide, entered into an agreement with the commissioners of the municipality of Adelaide, whereby the said consistory agreed to transfer to the said municipality the rest, residue, or remainder of the church lands vested in the said consistory by the respective grants aforesaid upon certain conditions and stipulations in the said agreement mentioned, as by the said agreement, of which a copy is set forth in the schedule to this Act, reference being thereunto had, will appear: And whereas doubts exist whether the said agreement can be carried out without the authority of Parliament: And whereas it is expedient to grant such authority, and also to provide that the transfer to be passed by the consistory aforesaid to the municipal commissioners aforesaid, not being a transfer in pursuance of a sale or exchange, but merely a transfer from one set of trustees for public purposes to another set of trustees for public purposes, should not be chargeable with transfer 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:—

Consistory to transfer certain lands to commissioners of municipality.

And commissioners to re-transfer to consistory.

Unless otherwise agreed upon.

Who to execute

1. It shall and may be lawful for the consistory for the time being of the Dutch Reformed Church in Adelaide, and it is hereby empowered and required, to make transfer to the commissioners for the time being of the municipality of Adelaide of all and singular the erven and lands which, under and by virtue of the agreement in the schedule to this Act set forth, the said consistory is to transfer to the said commissioners, and lawful, also, for the commissioners for the time being of the said municipality, and they are hereby required, to re-transfer to the consistory aforesaid for the time being all such lands as, under and by virtue of the said agreement, the said commissioners are to re-transfer to the said consistory: Provided that it shall be lawful for the said consistory, in case the said consistory and the said commissioners shall so agree, to reserve from and out of the transfer to be passed by the said consistory the lands lastmentioned in the said agreement, or any of them, instead of first transferring the same and afterwards obtaining re-transfer thereof.

2. Any power of attorney or other instrument required for the

passing of transfer from the consistory aforesaid to the commissioners aforesaid shall be signed on behalf of the consistory by the officiating minister for the time being of the church aforesaid, together with two other members for the time being of the said consistory; and any power of attorney or other instrument required for the passing of transfer from the commissioners aforesaid to the consistory aforesaid shall be signed on behalf of such commissioners by two of the commissioners for the time being, certified by the Resident Magistrate of the district of Fort Beaufort to be such commissioners.

No. 16 -1868.  
power of attorney to effect transfer.

3. The consistory for the time being of the Dutch Reformed Church in Adelaide shall be competent, by that name, to transfer the land hereby authorized to be transferred, notwithstanding that the grants aforesaid were made to such consistory by other names or designations.

Consistory competent to give transfer.

4. No transfer made under the authority of this Act by the consistory of the Dutch Reformed Church of Adelaide to the commissioners of the municipality of Adelaide shall be subject to the payment of transfer duty.

Transfer duty not chargeable.

5. Nothing in this Act, or in any transfer effected under this Act, shall extend to destroy or affect any condition or stipulation, whether by way of servitude or otherwise, to which any land comprised in any such transfer would have been liable in case this Act had not been passed, or such transfer had not been made, save and except only the condition that such land should be used exclusively for church purposes.

Servitudes not affected.

#### SCHEDULE.

*Agreement between the undersigned Minister, Elders, and Deacons of the Dutch Reformed Church in Adelaide and the Commissioners of the same.*

1. Churchwardens will cause to be sold such a number of the erven now surveyed as they may need in aid of their funds to complete their new church.

2. Churchwardens will immediately after the sale, with consent of Government, transfer to the municipality of Adelaide the rest of the ground granted to them for church purposes.

3. Churchwardens will transfer all such erven as they may not need for church purposes to the municipality, in order, by the proceeds of the sale of said erven, to enable them to improve and repair the water furrow.

4. The commissioners of the municipality, on their part engage to carry out the original agreement between the Rev. Mr. Welsh and the originators of the town of Adelaide, viz.:—that a portion of the grazing ground adjoining the property of Mr. F. W. Pohl, equal in extent to the original glebe ground now to be ceded to the municipi-

Ord. 5—1832.

pality, be transferred to the church as glebe ground, the church bearing all expense of survey.

(Signed) G. W. STEGMANN, Minister,

on behalf of the Elders and Deacons of the Dutch Reformed Church at Adelaide.

(Signed) H. SPARKS, Chairman of Adelaide

Municipality.

Adelaide, 8th February, 1862.

No. 5. (Local).—Sd. G. Lowry Cole.] [June 13, 1832.

For Authorizing a Sum of Money to be raised in Shares for Building a Church at Bathurst.

Preamble.

WHEREAS several persons being desirous of erecting a church at Bathurst for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, and being ready and willing to raise and provide by way of loan for that purpose a certain sum of money as hereinafter mentioned, at a public meeting of the said persons, holden at Bathurst on the 27th day of April in the year of our Lord 1829, a committee of management was appointed for carrying their intention into effect: And whereas His Excellency the Governor hath agreed to grant from the treasury of this Colony as a donation towards the building and completing the said church, to the persons who shall undertake and become bound for completing the same, the sum of two hundred and fifty pounds in manner following, that is to say: the sum of two hundred pounds when and as soon as the sum of five hundred pounds of the said loan so to be raised and provided by the said persons as aforesaid shall have been paid by them, and the remainder of the said sum of two hundred and fifty pounds when the whole building shall be taken over from the contractors in a complete state: And whereas the venerable Society in England for the promoting of Christian Knowledge hath agreed to grant and place at the disposal of His Excellency the Governor a certain sum of money for furthering the religious interests of this Colony, according to a mode of appropriation to be recommended by His Excellency and subject to the approval of the said Society: And whereas His Excellency the Governor hath recommended to the said Society that a sum of two hundred and fifty pounds or three hundred pounds of their said grant, according as the said Society shall think fit, shall be appropriated as a donation towards the building of the said church at Bathurst, and His Excellency hath also accordingly agreed to pay to the persons who shall undertake and become bound for completing the

said church the said sum of two hundred and fifty pounds or three hundred pounds, or such other sum as shall be approved of and granted by the said Society for this purpose, when and as the said money shall be received by him from the said Society: And whereas several other persons have agreed to subscribe certain sums of money by way of donations for furthering the building and completing of the said church: And whereas at a public meeting of the persons interested in the said church, holden pursuant to notice thereof on the 14th day of September in the year of our Lord 1831, it was agreed and resolved by the said persons, that in order to raise a sum of money amounting together with the said sum of money agreed to be granted by His Excellency the Governor from the Colonial Treasury as aforesaid and the said sum of money agreed to be granted by the Society for Promoting Christian Knowledge as aforesaid, and the said other donations to the sum of one thousand pounds being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say, one hundred and four shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid,—that is to say, the Reverend William Wright, Walter Currie, the Reverend William Carlisle, and the Honourable Captain Andrew Stockenstrom, four shares each; John Smith, three shares; James Corbould Wilmot, Thomas Hartley, George Anderson, William John Earle, Henry Augustus Crause, William Burnet Biddulph, Joseph Weakley, Alexander Bisset, Thomas Frederik Cowderoy, William Gilfillan, Robert Wood Bagot, William Austin, Donald Moodie, William Waddel, John Carlisle, Benjamin Norden, Thomas Hewson, Jonathan Wainwright, John Norton, and Richard Peacock, two shares each; Samuel Harper Bradshaw, Richard Bradshaw, John Centlivres Chase, John Morris, Edward Hunt Dell, William Lyall, George Mugglestone, William Roberts, William Rowland Thompson, Robert Godlonton, George Gilbert, William Edward Crout, James Boardman, Isaac Dyason, John Henry Dixon, John Mandy, Peter Campbell, George Fredrik Stokes, Leopold Schmidt, Ralph Goddard, William Edward Smith, Charles Stone, Richard Stone, George Edward Joseph, John Rafferty, John M'Kenny, Mynhardus Johannes van Nuldt Onkruydt, the Reverend George Morgan, Philip Richard Marillier, Robert O'Connor, the Reverend John Philip, D.D., the Reverend George Shepheard Porter, William Ayton, Charles Maynard, Henry Maynard, George Palmer, William Lucas, George Dyason, John Pratt, William Thomas Allen, William Forward, John Crause, William Turkington, Thomas Phillips, and John Holt, one share each: And whereas the said persons have made application that an Ordinance may be passed to sanction and confirm the plan adopted at the last-mentioned meeting and to provide for carrying the same into

Capital to be raised  
by shares and loan

Ord. 5—1882.

effect: Now, therefore, be it enacted by His Excellency the Governor in Council that from and after the passing of this Ordinance it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree to take shares in the said loan to raise and provide in manner and for the purpose aforesaid such a sum of money as, together with the said sum so to be granted from the Colonial Treasury and the said sum so to be granted by the Society for Promoting Christian Knowledge and the said donations, shall amount to the requisite sum for building and completing the said church; and it shall and may be lawful for such persons to become shareholders in the said loan, and to take such shares therein (not exceeding by any one person the number of ten shares), as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of one hundred and four shares shall have been disposed of.

Shares saleable and transferable.

2. And be it enacted that no share shall be transferable by any holder thereof, or any right or interest therein, until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only; and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Interest upon capital paid up.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the first Wednesday in October next after the said church shall be erected and completed and opened for divine service therein, and not sooner.

Shareholders' rights of voting.

4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof, until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares; that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes; the holder of four or five shares to three votes; the holder of six or seven shares to four votes; and the holder of eight, nine, or ten shares to five votes.

Free sittings.

5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free

sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

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6. And be it enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the churchwardens and public aforesaid, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares; and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice, and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six, to permit and allow such shareholder to choose two adjoining pews.

Sittings for shareholders.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof; and no second choice shall be afterwards made by any holder of the same shares or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Records of sittings.

8. And be it enacted that upon any shareholder having duly made choice of a pew the said shareholder, his heirs and assigns, shall and may for ever afterwards possess and occupy the same without the hindrance or disturbance of any person whatever so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustees by virtue of any of the provisions of this Ordinance.

Rights of shareholders in pews.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of October in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony twenty-one days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors to be elected as hereinafter mentioned, at any time to call a general meeting of the shareholders upon giving the like notice thereof.

General meetings of shareholders.

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10. And be it enacted that as soon as conveniently may be after the passing of this Ordinance a general meeting of the shareholders shall be holden at Bathurst, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this Colony twenty-one days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons, not exceeding nine, to be trustees and two other persons to be auditors of the accounts of the said trustees.
11. And be it enacted that the trustees so elected by the shareholders, and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter mentioned, shall continue in office until the first Wednesday in October next after the said church shall be erected and completed; and that upon the said first Wednesday in October, and yearly afterwards on the same day, three of the said trustees shall go out of office and three other trustees shall be elected instead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.
12. And be it enacted that two persons, not being trustees, shall be elected by and out of the shareholders, yearly on the first Wednesday in October, to be auditors of the accounts of the said trustees.
13. And be it enacted that the said committee of management shall upon the election of trustees as aforesaid and upon their acceptance of the said office deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power, and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid, or securities for the same, in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.
14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this Ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions, and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury as aforesaid or from the Society for Promoting Christian Knowledge, or shall arise from payments made by the shareholders in respect of their said shares, or otherwise and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the
- First election of trustees and auditors
- Time of first trustees holding office.
- Annual election of trustees.
- Election of auditors.
- Custody of books, papers, and funds, &c.
- Application of the church funds.

letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto, or for digging vaults in the said burial-ground, or otherwise, upon trust, in the first place and until the said church shall be erected and completed, to cause the said church to be erected and completed according to such plan and specification thereof as shall be approved of and adopted by them, and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say,—in the *first* place, to pay thereout the cost of all necessary repairs and expenses in and about the said church for repairing, keeping up, and maintaining the same; *secondly*, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and, *lastly*, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan, at a rate of not less than five shillings sterling upon each share until the whole of the said loan shall be paid off and discharged.

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15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power of trustees to compel payment of church funds and to make contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever: and all such suits and actions shall and may be brought by them in the name of “the trustees of Bathurst Church,” or “the trustees of Church at Bathurst” (describing the same by its name after it shall have been named), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Actions by trustees.

17. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever, from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed, by the said trustees in the execution of the said trust or which shall arise or accrue to

Actions against trustees or shareholders.

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any person whatsoever against the said shareholders jointly shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders.

Power of the trustees to make calls upon shares.

18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sums of money to be granted from the Colonial Treasury and by the Society for Promoting Christian Knowledge as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid: Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares, and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.

Advertisement of calls.

19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this Colony, together with the time and place appointed by them for payment thereof, twenty-one days at least before the said time.

Shares upon which calls not paid may be forfeited and disposed of.

20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

Consequences of non-payment of calls

Accounts of trustees.

21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account, together with any report of the auditors or either of them thereon, shall be laid before the shareholders for their inspection at their general annual meetings.

Receipts by trustees exceeding £10.

22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open and keep an account with any person or persons not being trustees who shall be appointed by the shareholders for that purpose at

any general meeting; and every other sum of money exceeding ten pounds so received by the said trustees shall be forthwith paid into the hands of the person or persons so to be appointed by the shareholders for that purpose, to be placed to the credit of such account; and all cheques or orders for payment of any such money thus deposited shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by two of them for themselves and co-trustees.

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Drafts by trustees.

23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding ten pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid to the person or persons appointed as aforesaid, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay, for the benefit of the church fund, double the amount of the fund so retained or employed, and which shall and may be recovered by the other trustees by action in any competent Court.

Penalty for retaining or employing funds.

24. And be it enacted that so soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

Final accounts of trustees.

25. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid; and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

Death, resignation, or removal of trustees.

26. And be it enacted that as soon as the said church shall be erected and completed the trustees shall take over and enter upon the possession of the same; and the care and government of the said church shall thenceforward, and until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them;

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and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

Duty of the trustees' vestry.

27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Churchwardens' election and duties of.

28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday in October by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things, necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the said pews and sittings.

Free pews.

29. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold six persons for the minister and another sufficient to hold four persons for the churchwardens; and there shall also be set apart in some convenient part of the said church the due proportion of free seats for the use of poor persons.

Choice of pews by shareholders, and rent thereof.

30. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares, for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of sittings therein.

Notice of vacant pews.

31. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose, the trustees shall give notice of all the pews and seats which are then vacant, by affixing the same in writing upon the door of the said church and otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.

Renting of unappropriated pews.

32. And be it enacted that all the pews and seats in the said church, except the pews set apart for the minister and churchwardens and the said free seats and the pews chosen by shareholders, shall and may be let by the trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term; provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

33. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew: Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent Court.

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Remedy for non-payment of pew rent

34. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which hereafter may be consecrated and allotted to the said church for that purpose.

No burials within the church.

35. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground upon the payment to the fund of the said church for such permission by the person or persons desiring to erect or place any monument in the said church or enclosed ground about the same or in the said burial-ground or to dig and make any vault in the said burial-ground, of such a reasonable fee as shall be affixed by the said vestry for such permission, according to the terms and extent thereof.

Erection of monuments and vaults.

36. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same or digging and making any vault in the said burial-ground, by and with such permission as aforesaid, to have, maintain, and keep up such monument or vault according to the terms of such permission, to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Rights in monuments or vaults.

37. And be it enacted that on the first Wednesday in the month of October next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in October, and yearly afterwards on the same day, by and out of the resident inhabitants of Bathurst and of the parochial limits thereof, being members of and holding

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communion with the United Church of England and Ireland as by law established, a like number of persons who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall, upon the lastmentioned vestry entering upon their said office, surrender and give up to the said lastmentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and to the administration of the funds thereof, and all sums of money in their custody, possession, or control, arising from and belonging to the church fund.

Powers and duties of shareholders' vestry.

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant house-holders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them constituted and elected by such shareholders as aforesaid, under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Public ordinance.

39. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance, and shall be judicially taken notice of as such by all Judges, Magistrates, and others, without being specially pleaded.

No. 4 (Local).—Sd. G. Lowry Cole.] [Sept 1, 1829.

### ORDINANCE

For authorizing a Sum of Money to be raised in Shares for Erecting an English Church at Cape Town.

Preamble.

WHEREAS several persons have subscribed certain sums of money for the purpose of erecting a church at Cape Town for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, on the site consecrated for that purpose by the late Lord Bishop of Calcutta, upon the principle that such subscribers should have a right of property in the pews of the said church, and in or about the month of October, in the year of our Lord 1827, a committee of management was appointed for carrying their intention into effect, which committee hath received part of the said subscriptions together with several sums of money from various persons by way of donations for furthering the building of the said church: And whereas His

Excellency the Governor hath agreed to grant from the treasury of this Colony towards the building and completing the said church, to the persons who shall undertake and become bound for completing the same, a sum not exceeding the sum of five thousand pounds sterling, in manner following,—that is to say, the sum of five hundred pounds when the foundations are up to the surface and completed; five hundred pounds when the walls are as high as the bottom of the windows; five hundred pounds when the walls are as high as the tops of the windows; one thousand pounds when the walls are roof high, the wall-plates on, and the roof in frame; one thousand pounds when the mason's and bricklayer's work is completed, including the tower; five hundred pounds when the plastering inside and outside is completed; five hundred pounds when the joiner's work is completed; and the remainder of the said sum of five thousand pounds to be paid when the whole building is taken over from the contractors in a complete state: And whereas the said committee have received and approved of a plan and specification for building the said church, together with tenders for the building thereof according to the said plan and specification, but the several sums before mentioned have been found to be insufficient for completing the said building; whereupon at a public meeting of the said subscribers and committee of management, holden pursuant to advertisement and notice thereof in the *Commercial Advertiser* newspaper on the twenty-seventh day of August now last, it was agreed and resolved by the said subscribers and committee of management (amongst other things) that the said scheme should be peremptorily relinquished, and that in order to raise a sum of money amounting together with the said sum to be granted by His Excellency the Governor as aforesaid and the said donations to the sum of twelve thousand and seventy pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of,—that is to say, the number of two hundred and fifty shares at twenty-five pounds each: And whereas several of the said subscribers and other persons have agreed to take shares in the said loan as aforesaid,—that is to say, the Honourable Sir John Wylde, Knight (Chief Justice of this Colony), the Honourable Lieutenant-Colonel John Bell, C.B., and the Reverend George Hough, M.A., ten shares each; Lieutenant-Colonel William Hopper, eight shares; Rice Jones Jones and Hamilton Ross, six shares each; George Thompson and John Bardwell Ebdon, five shares each; William Hayward (Assistant Commissary-General), the Reverend Edward Judge, M.A., William Scott, Laurence Twentyman, Hudson, Donaldson, and Dixon, and William Hawkins, (agent to the Honourable the East India Company), four shares each; Ewan Christian and Samuel Olivier, three shares each; Thomas Kift Deane, William Hutchons, George Greig, John Deane, Francis Collison, James Horne, George Wilson



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Prince, John Blore, John Robert Thomson, William Heyward, Edward Durham & Co., Charles Baron de Lorentz, William Wilberforce Bird, Henry Buckton, John Barker, Joseph Simpson, John Thomas Buck, the Honourable William Westbrooke Burton (one of the Judges of the Supreme Court), Antonio Chiappini, Edward Smith, William Hunt, Benjamin Phillips, Charles Mackenzie, Isaac Manuel, Carel Ferdinand Heinrich von Ludwig, Robert Waters, Edward George, Lieutenant James Bance (of the Royal Navy), Robert Reeves, Major George Jackman Rogers, the Honourable Joachim Willem Stoll, Anthony Oliphant (His Majesty's Attorney-General for this Colony), Charles Dixon, Daniel Jacob Cloete, Henry Hewitt, James Smith, William Billingsley, Thomas Fairclough, Clerke Burton (Master of the Supreme Court), the Honourable George Kekewich (one of the Judges of the Supreme Court), Hendrik Cloete, L.'s son, Herman Schutte, Major Charles Cornwallis Michell, Thomas and John Sinclair, Lieutenant-Colonel William Cuthbert Elphinstone Holloway (of the Royal Engineers), James Carfrae & Company, and James Carey, two shares each; William John Mackrill, Frederick Dickinson, William Lawson, John Hartfield Tredgold, George William Silberbauer, George Herbert, Frederik Stephanus Watermeyer, Hercules Tennant, Captain William Ronald, James Duff Watt (Deputy Assistant Commissary-General), William Benson, Pieter Gerhard Brink (Auditor-General), Joseph Dixie, John Brown, Mrs. Johanna Adriana Hardman, Samuel Capon, William Gadney, Thomas Elliot, Thomas Hall, Andries Thomas Stadler, Willem Anthon Joseph Liesching, Edwin Oldham, Andrew Steedman, Richard Stone, Joseph Sturgis, John Syme, Thomas Heyward, John William Lolley, Thomas Ansdell, Daniel Mills, jun., Robert Crozier, Pieter Donald Hohne, Joseph Trueman, William Bridekirk, Egbert Andries Buyskes, John Marshall, Jacob Davies Gregory, Adriaan Christian Deneys, Edward Eagar, Joseph Day, Thomas Henry Bowles (Registrar of the Supreme Court), Petrus Borchardus Borchards (Judge of Police), Thomas Tennant, Harrison Watson, Alexander Thomson, John Fairbairn, Michiel Christian Wolff, James Molton, Frederick Venables, Richard Huntley, Michiel de Kock, Johannes Henoch Neethling, the Honourable Sir Johannes Andreas Truter, Knight, Major Abraham Josias Cloete, John Skirrow, Abraham de Smidt, William McDonald Mackay, Edwin Maude, Frederick Wilhelm Heideman, Ker Bailie Hamilton, Lancelot Cooke, John Chisholm, senior, Ralph Rogerson, Carel Gerhard Blanckenberg, John Samuel Merrington, and Howson Edward Rutherford, one share each: And whereas the said persons have made application that an Ordinance may be passed to sanction and confirm the plan adopted at the said meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by His Excellency the Governor in Council that from and after the passing of this

Ordinance the said first-mentioned scheme shall and may be abandoned and relinquished; and that it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree to take shares in the said loan to raise amongst themselves, in manner and for the purpose aforesaid, such a sum of money as, together with the said sum so to be granted from the Colonial Treasury and the said donations shall amount to the sum of twelve thousand and seventy pounds; and it shall and may be lawful for such persons to become shareholders in the said loan and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan, until the whole number of two hundred and fifty shares shall have been disposed of.

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Authority to raise money on loan by shares.

2. And be it enacted that no share shall be transferable by any holder thereof, nor any right nor interest therein, until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by public auction, but shall be by private contract only; and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Power to transfer shares.

Sale by private contract only.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the day on which the said church shall be opened for divine service therein, and not sooner.

Interest.

4. And be it enacted that all persons who have subscribed to the original plan for building the said church and have already paid the first instalment of their subscription shall until and upon the fourth day of September next be entitled to become shareholders in the said loan, in preference to all others who have not so subscribed and paid as aforesaid; and all those subscribers who shall decline to take shares in the said loan shall be entitled to demand and receive back from the committee of management during the time of their continuance in office, and afterwards from the trustees, all such sums of money as they shall have paid as aforesaid.

Preference in allotment of shares to subscribers to original plan for building the church.

5. And be it enacted that if it should happen that the whole number of two hundred and fifty shares shall be taken before the fourth day of September next, and there should then be other persons desirous of taking shares, those who have agreed to take more than five shares shall relinquish each one share, beginning with the holder of the greatest number of shares, until the required number of shares shall be provided; and the order in

Diminution of number of shares of individual holders under certain circumstances.

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which such shares shall be relinquished by the holders of an equal number of shares shall, if need be, be determined by ballot amongst them: Provided, however, that the original holder of a greater number of shares who shall in manner before mentioned have been reduced to be the holder of a smaller number shall not be again obliged to relinquish or give up a share, nor be included in any such ballot as aforesaid, until all the original holders of such smaller number shall each have relinquished and given up a share.

Rights of shareholders to vote in election of trustees, &c.

6. And be it enacted that all the shareholders in the said loan shall have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares,—that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares shall be entitled to two votes; the holder of four or five shares, to three votes; the holder of six or seven shares, to four votes; and the holder of eight, nine, or ten shares, to five votes.

Preference of shareholders in renting pews.

7. And be it enacted that on the completion of the said church and after the proper number of pews shall have been set apart and allotted for the use of the Governor, minister, and churchwardens as hereinafter mentioned, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares; and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice; and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six, to permit and allow such shareholder to choose two adjoining pews, such two pews containing not more than ten sittings.

Pew-book.

8. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number or description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof; and no second choice shall be afterwards made by any holder of the same shares or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Second choice of pew.

Right of shareholder, his heirs and assigns in pew.

9. And be it enacted that upon any shareholder having duly made choice of a pew, the said shareholder, his heirs and assigns shall and may for ever afterwards possess and occupy the same

without the hindrance or disturbance of any person whatsoever, so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustee by virtue of any of the provisions of this Ordinance.

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10. And be it enacted that a general meeting of the shareholders shall be holden on the first Monday of October in every year, at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony fourteen days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors, to be elected as hereinafter mentioned at any time to call a general meeting of the shareholders upon giving the like notice thereof.

General meetings of shareholders.

11. And be it enacted that on the ninth day of September now next a general meeting of the shareholders shall be holden at some convenient place in Cape Town, notice whereof shall be given by the said committee of management by advertisement in one of the public papers of this Colony six days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders, or the greater part assembled at such meeting, to elect out of the said shareholders any number of persons not exceeding nine to be trustees, and two other persons to be auditors of the accounts of the said trustees.

First general meeting for election of trustees and auditors.

12. And be it enacted that the trustees so elected by the shareholders, and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter-mentioned, shall continue in office until the first Monday in October next after the said church shall be erected and completed; and that upon the said first Monday in October, and yearly afterwards on the same day, three of the said trustees shall go out of office, and three other trustees shall be elected instead of them, by and out of the shareholders in manner aforesaid, until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.

Duration of office of trustees.

13. And be it enacted that two persons not being trustees, shall be elected by and out of the shareholders yearly on the first Monday in October, to be auditors of the accounts of the said trustees.

Annual election of auditors.

14. And be it enacted that the said committee of management shall, upon the election of trustees as aforesaid and upon their acceptance of the said office, deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed for the purpose

Delivery of books, papers, &c., by committee of management to trustees.

Ord. 4—1829.

aforesaid in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Powers and duties of trustees in the possession and application of church funds.

15. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this Ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions (except such part thereof as shall be liable to be returned to subscribers demanding the same as aforesaid), and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury as aforesaid or shall arise from payments made by the shareholders in respect of their said shares or otherwise; and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid, or in aid of the fund of the said church; and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the enclosed ground about the same, or in the burial-ground belonging to the said church as hereinafter-mentioned, and for digging vaults in the said burial-ground, upon trust in the first place, and until the said church shall be erected and completed, to cause the said church to be erected and completed according to the said plan and specification thereof; and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say,—in the first place, to pay thereout the cost of all necessary repairs and expenses in and about the said church for repairing, keeping up, and maintaining the same; secondly, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and, lastly, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan at a rate of not less than one pound sterling upon each share, until the whole of the said loan shall be paid off and discharged.

Power of trustees to compel payment, enter into contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance; and in their own names to make and enter into, perform and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power to bring actions.

17. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see

fit to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary, in performance of the trust reposed in them, against any shareholder or other person whatsoever; and all such suits and actions shall and may be brought by them in the names of "the trustees of the English Church at Cape Town," or "the trustees of Church at Cape Town" (describing the same by its name, after it shall have been named), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

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18. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or which shall arise or accrue to any person whatsoever against the said shareholders jointly, shall be brought by such person against the said trustees in manner and in the names aforesaid, and not against any individual shareholder or shareholders.

Mode of bringing actions against trustees.

19. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sum of money to be granted from the Colonial Treasury as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid: Provided, however, that no such call shall at any one time exceed one-fifth part of the amount of the said shares, and that the whole of such calls shall not, except in the case hereinafter provided for, exceed the amount of twenty-five pounds in respect of each share: Provided, always, and be it further enacted that if the expense of building and completing the church according to the said plan and specification should exceed the sum of twelve thousand and seventy pounds, then it shall and may be lawful for the trustees to make a further call on each shareholder for a proportional part of the said deficiency; such last-mentioned call, however, in no case to exceed the sum of five pounds sterling in respect of each share.

Calls upon shares.

In case of deficiency

20. And be it enacted that the trustees shall cause all calls made by them to be advertised in the public newspapers of this Colony, together with the time and place appointed by them for payment thereof, fourteen days at least before the said time.

Advertisement of calls.

21. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder

Forfeiture of shares on neglect of payment of calls.

Ord. 4—1829.

to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of declaring and pronouncing his share or shares to be forfeited as aforesaid.

Mode of keeping accounts.

22. And be it enacted that the trustees shall keep an account, wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account, together with any report of the auditors or either of them thereon, shall be laid before the shareholders for their inspection at their general annual meetings, and the said accounts shall be thereupon published in one of the public newspapers of this Colony.

Bank account.

23. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding twenty pounds open an account with the Government Discount Bank <sup>(1)</sup> in this Colony in the names of the trustees; and such sum and every other sum exceeding twenty pounds so received by them shall be forthwith paid into the said bank, to be placed to the credit of such account; and all cheques or orders for payment of any such money out of the said bank shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees, or by two of them for themselves and co-trustees.

Penalty on improper retention of money by trustees.

24. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding twenty pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid into the said bank, or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay, for the benefit of the church fund, double the amount of the sum so retained or employed, and which shall and may be recovered by the other trustees by action in any competent Court.

Winding up of accounts on completion of church.

25. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

<sup>1</sup> See Ord. 5, 1842, § 6 (Banks).

26. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one so dying or desiring to resign or being removed as aforesaid; and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any times received by him.

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Death, resignation, or removal of trustee.

27. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the trustees shall take over and enter upon the same; and the care and government of the said church shall thenceforward, and until the said loan shall have been wholly paid off in manner hereinbefore provided together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and in case of an equality of votes at any meeting of such vestry, the president shall have a casting vote.

Formation of vestry.

28. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Duty of vestry.

29. And be it enacted that there shall be two churchwardens chosen yearly, on the first Monday in October, by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the said pews and sittings.

Election of churchwardens out of vestry.

30. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold ten persons at least for the use of His Excellency the Governor of this Colony, another pew sufficient to hold six persons for the minister, and a third sufficient to hold four persons for the churchwardens; and there shall be also set apart in some convenient part of the said church three hundred free seats at the least for the use of poor persons.

Pews, for governor minister, and churchwardens.

Free seats.

31. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares, for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed according to the number of sittings at which such

Selection of pews.

Rent.



Ord. 4—1820.

pews respectively shall be rated at fifteen shillings yearly for each sitting, and no more.

Notice of vacant pews.

32. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant, by affixing the same in writing upon the door of the said church and otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are vacant or will become vacant at the commencement of the next year.

Letting of pews.

33. And be it enacted that all the pews and seats in the said church except the pews set apart for His Excellency the Governor, the minister, and churchwardens, and the said free seats and the pews chosen by shareholders shall and may be let by the said trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns, without any hindrance or disturbance by any person whatsoever until the end of the said term; provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Proceedings in case of arrear pew rent.

34. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up the possession thereof; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever, and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew: Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent Court.

Burials.

35. And be it enacted that no burial shall take place within or under the said church, or any part of the enclosed ground about the same; but the burials of all persons according to the rights and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted, or which may hereafter be consecrated and allotted, to the said church for that purpose.

Monuments, vaults, &amp;c.

36. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church, or of the enclosed ground about the same,

or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon the payment to the fund of the said church for such permission by the person or persons desiring to erect and place any monument in the said church or enclosed ground about the same, or in the said burial-ground, or to dig and make any vault in the said burial-ground of such a reasonable fee as shall be affixed by the said vestry for such permission, according to the terms and extent thereof.

Ord. 4-1829.

37. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same, or in the said burial-ground, or digging and making any vault in the said burial-ground by and with such permission as aforesaid, to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Rights of owner of monument, vault, &c.

38. And be it enacted that on the first Monday in the month of October next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid, the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Monday in October, and yearly afterwards on the same day, by and out of the resident inhabitants of Cape Town, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and a like number of other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall upon the last-mentioned vestry entering upon their said office surrender and give up to the said last-mentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and the administration of the funds thereof, and all sums of money in their custody, possession, or control arising from and belonging to the church fund.

Determination of office of trustees, auditors, &c.

Election of vestry.

39. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church, and the care and government thereof, and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Powers and duties of vestry.

40. And be it enacted that this Ordinance shall be deemed and

Public ordinance.

788 ECCLESIASTICAL (DIOCESE PROPERTY ALIENATION).

No. 30—1860.

taken to be a public Ordinance, and shall be judicially taken notice of as such by all Judges, Magistrates, and others, without being specially pleaded.

No. 30—1860.]

[July 17, 1860.

ACT

To enable the Bishops of Cape Town and Graham's Town, respectively, to alienate, under certain conditions and restrictions, Property vested in their respective Sees.

Preamble.

WHEREAS, before the separation of the diocese of Graham's Town from the diocese of Cape Town, certain immovable property lying and being within what is now the diocese of Graham's Town became vested in the Bishop of Cape Town and his successors: And whereas it is fitting that the Bishop of Cape Town should be enabled to transfer such property to the Bishop of Graham's Town and his successors, and that both and each of the said Bishops should be enabled to alienate, under certain conditions and restrictions, properties vested in their respective sees: And whereas doubts exist whether any such alienations as aforesaid can legally be made by the Bishops of Cape Town and Graham's Town for the time being, and it is expedient to remove such doubts by empowering the said Bishops for the time being to effect such alienations: 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 of the said Colony as follows:—

Bishop of Cape Town may transfer to Bishop of Graham's Town, lands within the diocese of the latter.

1. It shall be lawful for the Bishop of Cape Town for the time being to transfer to the Bishop of Graham's Town for the time being, and his successors, all or any of the lands or other immovable property now vested in the Bishop of Cape Town and his successors, but situate, lying, and being within the diocese of Graham's Town: Provided that every such property so transferred shall be subject to the same trusts in all respects after such transfer as it was subject to at the time of such transfer.

Bishops of Cape Town and Graham's Town may alienate lands belonging to their respective sees.

2. The said Bishops of Cape Town and Graham's Town respectively, and their respective successors, shall be and they are hereby authorized to sell, exchange, or otherwise alienate and transfer lands, buildings, tenements, and premises for the time being vested in their respective sees: Provided that no such sale, exchange, or other alienation or transfer shall be made without the consent, in writing, of the following persons first had and obtained; that is to say, of the minister and churchwardens of the parish which has the use or benefit of or is interested in the property

With consent of minister and churchwardens of parish interested; and of the majority of the clergy and parishioners.

proposed to be alienated, of the greater part in number of the clergy of the deanery or archdeaconry wherein such parish shall be situated, of the archdeacons of the diocese, and of the chancellor of the diocese, should there be one, as also the consent of the majority of parishioners in vestry meeting duly convened of the parish which has the use or benefit of, or is interested, in the property aforesaid, or if the property aforesaid was at any time subject to the use or benefit of the parishioners of a district which has been subdivided into two or more parishes, then the parishioners of the whole of such district shall meet in manner aforesaid, and the majority of such meeting shall consent as aforesaid; the resolutions adopted by the majority at such meetings being duly signed by the chairman thereof: And provided, also, that as often as the property proposed to be alienated, or any part of it, shall have been obtained by grant from the Crown, consent of the Governor of this Colony to such alienation shall be necessary, together with the consent of the certain other persons aforesaid: Provided, further, that the Governor shall, before giving such consent as aforesaid, publish, by notice in the *Government Gazette*, for a period of not less than one month, the particulars of the application made to him for such consent: And provided, lastly, that nothing in this Act contained shall extend to any property in regard to which the title-deed or deeds shall contain any express clause or condition prohibiting or limiting the power of alienation by either of the Bishops aforesaid.

If a Crown grant, consent of Governor necessary.

3. All lands, moneys, or other proceeds, obtained for or in consideration of any property so alienated as aforesaid, shall be applied for the benefit of the same parish or subdivided parishes which had the use or benefit of, or was interested in, the alienated property, in such manner and form as the Bishop, together with the minister or ministers and the majority of the parishioners in vestry meeting duly convened by the churchwardens of the said parish or subdivided parishes, shall agree upon and determine.

Proceeds, how to be applied.

4. As often as any transfer of any immovable property shall be about to be made by either of the two Bishops aforesaid or by the successors of either of them, a certificate under the hand of such Bishop, addressed to the Registrar of Deeds, and certifying that all the persons whose consent was by this Act required to such transfer, have consented to the same, shall be sufficient proof of such consent for the purpose of the deeds registry, and thereupon the proposed transfer shall be passed.

Registrar of deeds to require certificate consent before transfer can be passed.

5. In the interpretation of this Act the term "parish" shall mean any defined district of town or country placed by the Bishop of the diocese, acting in accordance with the laws and usages of the Church of England, as received and accepted in this Colony under the pastoral charge of a particular minister; and the Bishop and clergy mentioned in this Act shall mean the Bishops and clergy of the said church, and the term "vestry meeting"

Interpretation of terms.

Ord. 7--1843.

shall mean a meeting of persons resident in the parish, or otherwise entitled to vote at parish meetings, and the term "duly convened" shall mean any such meeting of which one month's notice has been given, by the churchwardens affixing a public notice of the same on the doors and entrances of the said church.

No. 7.—Sd. George Napier.]

[Nov. 8, 1843.]

Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead.\*

WHEREAS the church regulations made and published by the Commissioner-General of the then Batavian Government of the Cape of Good Hope, J. A. de Mist, LL.D., bearing date the 25th of July, 1804, have in many respects ceased to be suitable either to the Dutch Reformed Church or to the ecclesiastical condition of this Colony in general: And whereas it is expedient in order that other and more suitable provisions should be substituted for such portions of the regulations aforesaid as have become obsolete or inapplicable that the said regulations should be wholly repealed and the substance of such of them as it is desirable to preserve expressly re-enacted: 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 thereof, that the said church regulations of the 25th of July, 1804, and all other laws or customs heretofore in force in this Colony so far as the same are repugnant to or inconsistent with any of the provisions of this Ordinance shall be and the same are hereby repealed.

Previous laws repealed.

No government church contributions to be demandable as of right.

2. And be it enacted and declared that no religious community or denomination within this Colony is or shall be entitled to claim as matter of right from or out of Her Majesty's revenue in this Colony any pecuniary contribution or allowance for or towards the support of the ministry of any such community or denomination or any other object whatsoever, and that all such sums as shall from time to time be granted from and out of the said revenue to or in behalf of any such community or denomination shall be deemed to be merely voluntary and gratuitous, and as such to be at all times and exclusively under the absolute disposition and control of Government, and revocable at Her Majesty's will and pleasure.

Previous regulations of Dutch church repealed.

3. And whereas it is expedient that the religious community or denomination commonly called the Dutch Reformed Church in South Africa should be invested with the power of regulating its own internal affairs: And whereas the general assembly or synod

\* Revived by Ord. No. 2, 1851, *infra*.

of the said church is the natural and proper ecclesiastical authority by which rules and regulations for the government of the said church in its own internal affairs may rightfully be made: And whereas the last general assembly or synod of the said church which was held in Cape Town in the month of November, 1842, did agree upon and desire to have duly authorized and established a number of rules and regulations having for their object the proper direction and management of the said church in its own internal affairs: And whereas it is expedient in order to prevent delay and inconvenience that the said lastmentioned rules and regulations should with some exceptions be forthwith established and declared to form and be the rules and regulations for the time being of the said church: Be it enacted that all former rules and regulations for the government of the said church whensoever and by whomsoever made shall be and the same are hereby declared to be repealed, and that the several rules and regulations in the schedule to this Ordinance contained shall be, and the same are hereby declared to be the rules and regulations for the time being of the said church and shall be duly observed as such.

Ord. 7--1843.

4. And be it enacted that it shall be lawful for the general assembly or synod of the said church from time to time duly assembled, and proceeding in conformity with the rules or regulations for the time being in regard to the manner and form of altering, enlarging, or improving church laws and ordinances to add to, annul, alter, enlarge, or improve the rules and regulations contained in the said schedule and any further or other rules and regulations which may from time to time be successively established: Provided, always, that any rule or regulation of the said general assembly or synod repugnant to or inconsistent with any of the provisions of this Ordinance shall be null and void.

General assembly or synod may alter or improve rules, &c.

5. [Repealed by Ord. 16, 1845].

6. And be it enacted that the said Dutch Reformed Church shall be and remain a church exercising its discipline and government by consistories, presbyteries, and a general assembly or synod and acknowledging, receiving, and professing in regard to the doctrine thereof the doctrines contained in the confession of the synod of Dort and in the Heidelberg catechism; and if any questions or divisions respecting church government discipline, or doctrine should hereafter arise between any members or reputed members of the said church or of any congregation, consistory, presbytery, or general assembly of the same then those persons adhering to and professing respectively the said discipline and government and the doctrines of the said confession and catechism shall be deemed and taken as against all persons who shall adhere to and profess any different discipline, government, or doctrines to be the true congregation, consistory, presbytery, or general assembly as the case may be of the said church, and as such of right entitled to the possession and enjoyment of any funds,

Doctrine and government of the church.

Ord. 7--1843.

endowments, or other property or rights by law belonging to the said church or to the congregation, consistory, presbytery, or general assembly in which any such questions or divisions shall have arisen.

Constitution of  
general assembly.

7. And be it enacted that the general assembly or synod of the said church shall at all times be composed of all acting ministers of the said church and an acting or retired elder to be nominated by each consistory, but the consistory of Cape Town may at all times nominate two elders.

Force of rules and  
regulations.

8. And be it enacted that no rule or regulations of the said church whether contained in the schedule to this Ordinance or to be afterwards framed shall have or possess any direct or inherent power whatever to affect in any way the persons or properties of any persons whomsoever; but all such rules and regulations shall be regarded in law in like manner as the rules and regulations of a merely voluntary association, and shall be capable of affecting the persons or properties of such persons only as shall be found in the course of any action or suit before any competent Court to have subscribed, agreed to, adopted or recognized, the said rules and regulations or some of them in such manner as to be bound thereby in virtue of the ordinary legal principles applicable to cases of express or implied contract.

Protection against  
legal proceedings for  
things done in church  
proceedings.

9. And be it enacted that no person or persons composing, complaining to, or giving testimony before any duly constituted judicatory of the said church shall be liable to any action, suit, or proceeding at law, civil or criminal, at the instance of any member of the said church for or on account of any matter or thing written or spoken by any such person or persons *bonâ fide* and without malice in reference to or upon the occasion of any scandal, offence, or other matter, real or alleged, which by the rules and regulations of the said church for the time being should be reported to any such judicatory and which any such judicatory is empowered to investigate, nor shall any action, suit, or proceeding at law be instituted for the purpose of preventing any such judicatory from pronouncing in the case of any scandal or offence which shall be brought before it and proved to its satisfaction such spiritual censure as may in that behalf be appointed by the said church or for the purpose of claiming any damages or relief in regard to such censures if the same shall have been pronounced.

Actions by and  
against persons in  
whom church pro-  
perty vested.

10. And be it enacted that it shall be lawful for the person or persons in whom by the rules and regulations of the said church for the time being the possession or administration of any buildings, lands, funds, moneys, goods, or effects belonging to any congregation or presbytery, or to the general assembly shall respectively be vested to sue and be sued in all actions and suits relating to any matter or thing by any such officer or officers respectively possessed or administered as if the same were his or their private property, and in any criminal proceeding the property

of any of the matters or things aforesaid may be laid in the person or persons who in any civil action or suit might sue or be sued in respect thereof.

Ord. 16--1845.

SCHEDULE.

*Laws and Regulations for the Direction of the Dutch Reformed Church in South Africa.*

[As the synod has the power from time to time to annul, or alter rules, the regulations in this Schedule are omitted. See § 4 *supra*.]

No. 16—1845.—Sd. P. Maitland.] [December 1, 1845.

Ordinance to amend the Ordinance No. 7, 1843, entitled  
 “Ordinance for repealing the Church Regulations of  
 the 25th July, 1804, and enacting others in their  
 room and stead.”

WHEREAS by the fifth section of the Ordinance No. 7, 1843, entitled “Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their room and stead,” it is provided that the Governor of this Colony for the time being should have the right of filling up vacancies in the office of minister in congregations belonging to the Dutch Reformed Church in South Africa of which congregations the minister for the time being receives a salary from the Colonial Government: And whereas it is expedient that the said right should be vested in Her Most Gracious Majesty the Queen, her heirs and successors: 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 fifth section of the said Ordinance shall be repealed and the same is hereby repealed accordingly.

Preamble.

2. And be it enacted that in every case in which a vacancy shall occur in the office of minister of any congregation belonging to the said Dutch Reformed Church of which congregation the minister for the time being receives a salary from the Colonial Government, Her Majesty the Queen, her heirs and successors shall have and possess and shall exercise in whatever manner she or they shall deem the best for the vacant congregation the sole and unrestricted right of filling up such vacancy by the appointment of whatever individual she or they may select from amongst the number of such ministers as shall by the rules and regulations of the said church for the time being be competent to be appointed to supply vacancies in the ministry thereof.

Repeal of Section 5 of Ordinance No. 7, 1843.

Appointment by the Queen of minister receiving salary from Government.

3. 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. 2.—Sd. H. G. Smith.] [Nov. 11, 1851.

Ordinance for Reviving the Ordinance No. 7, 1843, entitled “ Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead.”

Preamble.

WHEREAS a certain Ordinance was made and passed in this Colony the 8th day of November, 1843, numbered 7, 1843, entitled “ Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead :” And whereas a certain other Ordinance was made and passed in this Colony on the 1st day of December, 1845, numbered 16, 1845, entitled “ Ordinance to amend the Ordinance No. 7, 1843, entitled ‘ Ordinance for repealing the Church Regulations of the 25th July, 1804, and enacting others in their stead :’ ” And whereas owing to accidental circumstances it has happened that the confirmation by Her Majesty the Queen of the Ordinance aforesaid No. 7, 1843, has not hitherto been communicated, whereby owing to lapse of time the said Ordinance has or may be supposed to have now ceased to be law : And whereas it is expedient to revive the said Ordinance : 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 Ordinance No. 7, 1843, as amended by the said Ordinance No. 16, 1845, shall be and the same is hereby revived, re-enacted, and declared to be law to all intents and purposes as fully and effectually as if the several clauses and provisions thereof as amended in manner aforesaid were herein set forth and word for word repeated.

Revival of Ordinance No. 7, 1843 and Ordinance No. 16, 1845.

Confirmation of acts under Ordinance No. 7, 1843.

2. And be it enacted that every matter and thing done and transacted or intended to be done and transacted before the promulgation of this Ordinance in conformity with or according to the provisions of the said Ordinance or supposed Ordinance No. 7, 1843, shall be taken and judged of in all respects precisely as if Her Majesty’s gracious confirmation of the said Ordinance had been duly communicated within the time fixed by her royal instructions for the communication of the same.

Time of taking effect.

3. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 7—1845.—Sd. P. Maitland] [March 25, 1845.

Ordinance for Authorizing a Sum of Money to be Raised in Shares for Building a Church at Fort Beaufort.

Preamble.

WHEREAS several persons being desirous of erecting a church at Fort Beaufort for the celebration of divine service according to

the rites of the United Church of England and Ireland as by law established, and being ready and willing to raise and provide by way of loan for that purpose a certain sum of money as hereinafter mentioned, at a public meeting of the said persons holden at Fort Beaufort on the 15th day of November, 1843, a committee of management was appointed for carrying their intention into effect: And whereas His Excellency the Governor has agreed to grant from the treasury of this Colony as a donation towards the building and completing the said church to the persons who shall undertake and become bound for completing the same the sum of one hundred pounds: And whereas the Society for Promoting Christian Knowledge hath agreed to grant the sum of one hundred pounds and the Society for the Propagation of the Gospel in Foreign Parts hath agreed to grant the sum of one hundred pounds as donations toward the building of the said church: And whereas several other persons have agreed to subscribe certain sums of money by way of donation for furthering the building and completing the said church: And whereas at a public meeting of the persons interested in the said church holden pursuant to notice thereof on the 17th December, 1844, it was agreed and resolved by the said persons that in order to raise a sum of money amounting together with the said sum of money agreed to be granted by His Excellency the Governor from the Colonial Treasury as aforesaid and the said sums of money agreed to be granted by the Society for Promoting Christian Knowledge and by the Society for the Propagation of the Gospel in Foreign Parts and the said other donations to the sum of eight hundred pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say one hundred shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid, that is to say: Charles Holliday and John Vaughan, four shares each; Robert Bovey, John Blakeway, William Ayton, Wm Gilbert, and George Gilbert, three shares each; John Holliday and Bradshaw Daniel Bell, two shares each; William Parrot, Meent John Henry Borchers, George McKay, the Rev. Herbert Beaver, Philip Norton, William Andrews, William Nelson, Charles Blakeway, David Mills, Stephen Humphreys, the Rev. James Barrow, the Rev. John Heavyside, Charles Burton, Richard Ralph, Thomas Foden, John North Annan, George Broster, and Ezekiel Hams, one share each:

1. And whereas the said persons have made application that an Ordinance may be passed to sanction and confirm the plan adopted at the last-mentioned meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be

Authority to raise money on loan by shares.

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lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree to take shares in the said loan to raise and provide in manner and for the purpose aforesaid such a sum of money as together with the said sum so to be granted from the Colonial Treasury and the said sums so to be granted by the Societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts and the said donations shall amount to the requisite sum for building and completing the said church, and it shall and may be lawful for such persons to become shareholders in the said loan, and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of one hundred shares shall have been disposed of.

Sale and transfer  
of shares.

2. And be it enacted that no share shall be transferable by any holder thereof or any right or interest therein until all the calls thereon shall have been paid as hereinafter mentioned, but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: Provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only, and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Interest on shares.

3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the first day to be fixed by the trustees after the said church shall be erected and completed and open for divine service therein, and not sooner.

Right of shareholders to vote.

4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustee and in all matters relating to the erection of the said church, and the management of the funds thereof until the said loan shall have been wholly repaid and discharged according to the number of their respective shares, that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes, the holder of four or five shares to three votes, the holder of six or seven shares to four votes, and the holder of eight, nine, or ten shares to five votes.

Free sittings.

5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

6. And be it enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the churchwardens and public aforesaid, all shareholders shall have a right to become each the renter of one pew in preference to any other persons who possess no shares, and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six according to the number of their shares, the holder of the greater number of shares to have the prior choice, and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees at their discretion upon the application of any shareholder whose family may require a greater number of seats in the said church than six to permit and allow such shareholder to choose two adjoining pews.

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Preference of shareholders in renting pews.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof, and no second choice shall be afterwards made by any holder of the same share or any of them except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Subscription by shareholders to selection of pews.

8. And be it enacted that upon any shareholder having duly made choice of a pew the said shareholder, his heirs and assigns shall and may for ever afterwards possess and occupy the same without the hindrance or disturbance of any person whatever, so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable and shall continue to hold the share or shares in respect of which the said pew was chosen or the same shall have been paid off by the trustees by virtue of any of the provisions of this Ordinance.

Rights of shareholders in pews.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of May in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony twenty-one days at least before the same is to be holden, and it shall and may be lawful for the trustees or the auditors or either of the auditors to be elected as hereinafter mentioned at any time to call a general meeting of the shareholders upon giving the like notice thereof.

General annual meeting.

10. And be it enacted that as soon as conveniently may be after the passing of this Ordinance a general meeting of the shareholders shall be holden at Fort Beaufort, notice whereof shall be given by the said committee of management by advertisement in one of the

Election of first trustees and auditors.

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public papers of this Colony twenty-one days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors, and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons not exceeding nine to be trustees and two other persons to be auditors of the accounts of the said trustees.

Continuance in office of trustees.

11. And be it enacted that the trustees so elected by the shareholders and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter mentioned shall continue in office until the first Wednesday of May next after the said church shall be erected and completed, and that upon the said first Wednesday of May and yearly afterwards on the same day three of the said trustees shall go out of office and three other trustees shall be elected instead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall if necessary be determined by ballot amongst them.

Auditors of accounts.

12. And be it enacted that two persons not being trustees shall be elected by and out of the shareholders yearly on the first Wednesday of May to be auditors of the accounts of the said trustees.

Delivery of books, papers, &c., by committee of management to trustees.

13. And be it enacted that the said committee of management shall upon the election of trustees as aforesaid and upon their acceptance of the said office deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid or securities for the same in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Powers and duties of trustees as to trust funds.

14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this Ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury as aforesaid or from the Societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts or shall arise from payments made by the shareholders in respect of their said shares or otherwise, and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto or for digging vaults in the said burial-ground or otherwise, upon trust in the first place

and until the said church shall be erected and completed; to cause the said church to be erected and completed according to such plan and specification thereof as shall be approved of and adopted by them, and from and after the erection and completion of the said church upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say: in the first place, to pay thereout the cost of all necessary repairs and expenses in and about the said church, for repairing, keeping up, and maintaining the same; secondly, in payment of the interest together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares in an equal rate, when and as the funds at their disposal shall enable them so to do; and lastly, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan at a rate of not less than five shillings sterling upon each share until the whole of the said loan shall be paid off and discharged.

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15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power of trustees to compel payments, make contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever, and all such suits and actions shall and may be brought by them in the name of "The Trustees of Saint John's Church at Beaufort" (being the name given to it by His Excellency the Governor), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal or going out of office of any trustee.

Power of trustees to sue and defend suits, &c.

17. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or which shall arise or accrue to any person whatsoever against the said shareholders jointly, shall be brought by such person against the said trustees in manner and in the name aforesaid and not against any individual trustee or trustees, shareholder or shareholders.

Actions against trustees in execution of their trust not competent against individual trustees.

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Calls on shareholders.
18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as together with the donations and sums of money to be granted from the Colonial Treasury, and by the Societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts as aforesaid they may deem necessary for carrying on the building and completing the said church as aforesaid: Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.
- Advertisement of calls.
19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this Colony together with the time and place appointed by them for payment thereof twenty-one days at least before the said time.
- Forfeiture of share on non-payment.
20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees if they shall think fit to declare and pronounce the share or shares of such shareholder to be forfeited and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.
- Account and audit.
21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the shareholders for their inspection at their general annual meetings.
- Lodgment of moneys in bank.
22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open and keep an account with any person or persons not being trustees who shall be appointed by the shareholders for that purpose at any general meeting or in any bank; and every other sum of money exceeding ten pounds so received by the said trustees shall be forthwith paid into the hands of the person or persons or bank so to be appointed by the shareholders for that purpose, to be placed to the credit of such account; and all cheques or orders for payment of any such money thus deposited shall truly express the cause of

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such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by two of them for themselves and co-trustees.

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23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding ten pounds part of the church fund longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid to the person or persons or bank appointed as aforesaid or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money part of the church fund shall and may be removable by the said shareholders from his said office, and shall moreover forfeit and pay for the benefit of the church fund double the amount of the fund so retained and employed, and which shall and may be recovered by the other trustees by action in any competent Court.

Penalty on improper retention of money.

24. And be it enacted that as soon as the said church shall be erected and completed as aforesaid the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection, and no further call shall be afterwards made upon the shareholders in respect of their shares.

Final account.

25. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid, and the same notice shall be given of the time and place of the said meeting and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

Death, resignation, or removal of trustee.

26. And be it enacted that as soon as the said church shall be erected and completed the care and government of the said church shall be thenceforward and until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders without any new election in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent then one of the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

Constitution of vestry.

27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiat-

Duty of vestry.

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- Ord. 7---1845. ing minister therein, and to keep the same clean and in proper repair.
- Election of church-wardens. 28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday of May by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof and for preserving to all persons their rights in the said pews and sittings.
- Minister and churchwardens' pews. 29. And be it enacted that before any choice of pews by the shareholders shall take place there shall be set apart and allotted by the vestry a pew sufficient to hold six persons for the minister and another sufficient to hold four persons for the churchwardens; and there shall also be set apart in some convenient part of the said church the due proportion of free seats for the use of poor persons.
- Free seats. 30. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall call together the shareholders of each class according to their number of shares for the purpose of exercising their right in the choice of pews, and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of sittings therein.
- Choice and rent of pews. 31. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant by affixing the same in writing upon the door of the said church and otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.
- Vacant pews. 32. And be it enacted that all the pews and seats in the said church except the pews set apart for the minister and churchwardens and the said free seats and the pews chosen by shareholders shall and may be let by the trustees by the year or for any shorter period to any person desiring to take the same, at a rent to be affixed to the same respectively by the vestry and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.
- Letting of pews. 33. And be it enacted that it shall and may be lawful for the trustees whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession
- Proceedings on non-payment of pew-rent.

thereof, and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew: Provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent Court.

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34. And be it enacted that no burial shall take place within or under the said church; but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which hereafter may be consecrated and allotted to the said church for that purpose.

Burials.

35. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monuments to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground upon the payment to the fund of the said church for such permission by the person or persons desiring to erect or place any monument in the said church or enclosed ground about the same or in the said burial-ground or to dig and make any vault in the said burial-ground of such a reasonable fee as shall be affixed by the said vestry for such permission according to the terms and extent thereof.

Monuments and vaults.

36. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or enclosed ground about the same or digging and making any vault in the said burial-ground by and with such permission aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Property in do.

37. And be it enacted that on the first Wednesday in the month of May next after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in May and yearly afterwards on the same day by and out of the resident inhabitants of Fort Beaufort and of the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and two other persons to be auditors of the accounts of the said vestry;

Election of new vestry.

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and the trustees last in office aforesaid shall upon the lastmentioned vestry entering upon their said office surrender and give up to the said lastmentioned vestry all documents, books, plans, papers, and vouchers relating to the said church and to the administration of the funds thereof and all sums of money in their custody, possession, or control arising from and belonging to the church fund.

Powers of new vestry.

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof, and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry or either of them, constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said church.

Public ordinance.

39. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of as such by all Judges, Magistrates, and others without being specially pleaded.

Time of taking effect.

40. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

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No. 8—1846.—Sd. P. Maitland.]

[Feb. 16, 1846.

Ordinance for authorizing the appointment of a Vestry and Churchwardens for the Episcopal Church about to be erected at Graaff-Reinet.

Preamble.

WHEREAS it is expedient that the inhabitants of Graaff-Reinet and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the Episcopal Church about to be erected at Graaff-Reinet, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the committee and secretary at present constituted should cease and determine: Be it enacted by the

Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Wednesday in the month next but one ensuing after the promulgation of this Ordinance, and annually afterwards on the same day, a general meeting of the male inhabitants of Graaff-Reinet aforesaid and of the parochial limits thereof being of the age of twenty-one years or upwards and members of and holding communion with the United Church of England and Ireland as there by law established shall be holden at Graaff-Reinet, fourteen days' notice whereof, shall be given by the minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in one of the public papers of this Colony for the purpose of electing a vestry, and it shall and may be lawful for the inhabitants as aforesaid or a greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Ord. 8--1846.  
Annual election of vestry.

2. And be it enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of said vestry.

Auditors.

3. And be it enacted that every male inhabitant householder being of the age of twenty-one years or upwards and a member of and holding communion with the church aforesaid and residing at Graaff-Reinet or within the parochial limits thereof shall be eligible to be a member of the said vestry: Provided, always that no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

Qualification of members of vestry.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided, then by the minister and churchwardens conjointly, and shall be open for inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

List of eligible persons.

5. And be it enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors.

Manner of election.

6. And be it enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other

Chairman.

Ord. 8--1846.

members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Quorum.

7. And be it enacted that five members of the said vestry or four members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.

Power to make, alter, &c., rules.

8. And be it enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as shall to them seem expedient; provided that the same rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established.

Cessation of committee.

9. And be it enacted that the said committee shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control; and the office and duties of the said committee shall thereupon cease and determine.

Powers of vestry as to administration, &c.

10. And be it enacted that the said vestry as from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise the whole power and rights and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same.

As to payment of money, contracts, &c.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute, or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Manner of bringing actions by vestry.

12. And be it enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of "The Vestry of St. James' Church," without specifying the christian

or surnames of the members of the vestry and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Ord. S--1846.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid and not against any individual member of the said vestry.

Actions against vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid, and published if requisite for general information.

Accounts of vestry

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts, and matters, and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this Colony.

Churchwardens.

16. And be it enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation, and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Charitable collections, &c.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed when they shall deliver up to

Continuance in office of churchwardens.

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Ord. 8--1846.

the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office, and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Vacancy in vestry.

18. And be it enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid, the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Free sittings.

19. And be it enacted that there shall be set apart in the said church two free pews, one to be allotted to the use of the minister and the other to that of the churchwardens, and such other pews as the vestry for the time being may deem necessary as free sittings for strangers and poor persons.

Letting of pews by vestry.

20. And be it enacted that all the pews and sittings in the said church with the exception of those allotted and reserved as aforesaid shall and may be let by the vestry by the year or for any other shorter period to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.

Proceedings in case of arrear pew-rents.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear by action in any competent Court.

22. And be it enacted that the said churchwardens acting as aforesaid shall keep a book to be called the "Pew-book," wherein they shall enter or cause to be entered the name of every person applying for either a pew, sitting, or sittings in the said church together with the date of such application; and that on any pew, sitting, or sittings becoming vacant, either by death, resignation, removal, or in any other way, or in case of the erection of any new pew or pews or seats in any part of the said church, the churchwardens for the time being shall forthwith apprise the applicant whose name shall stand first on the pew-book of the vacancy so caused or of the new pew, pews, or seat so erected, and shall offer the said pew, seat or seats to such applicant on condition that he or she shall covenant and engage to pay the rent of the same affixed and made payable as hereinbefore mentioned; and that the said pew, sitting, or sittings so becoming vacant, or the said pew or pews, seat or seats so newly erected shall not be offered to any person whatsoever whose application for the same or any portion of the same shall bear a later date until it shall have been declined by every applicant preceding such person on the pew-book.

Ord. 8--1846.  
Pew-book.

23. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

Burials.

24. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the term thereof.

Monuments and vaults.

25. And be it enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vaults in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Ownership in vaults and monuments.

26. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken

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notice of by all the Judges, Magistrates, and others without being specially pleaded, and shall be of full force and effect after the promulgation thereof.

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No. 2—1839. Sd. George Napier.] [January 23, 1839.

Ordinance for authorizing the appointment of a Vestry and Churchwardens for St. George's Church, Graham's Town.

Preamble.

WHEREAS it is expedient that the inhabitants of Graham's Town and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the church of Graham's Town commonly called St. George's Church, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of church committee as at present constituted should cease and determine:

Vestry, appointment of.

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Tuesday in March after the passing of this Ordinance and annually afterwards on the same day a general meeting of the male inhabitants of Graham's Town aforesaid and of the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as by law established shall be holden in Graham's Town, notice whereof shall be given by the minister of the said church for the time being by advertisement in one of the public papers of this Colony at least fourteen days before the said meeting is to be holden, for the purpose of electing a vestry; and it shall and may be lawful for the inhabitants as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Auditors.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected to be auditors of the accounts of the said vestry.

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3. And be it further enacted that every male inhabitant householder being a member of and holding communion with the church aforesaid and resident in Graham's Town or within the parochial limits thereof shall be eligible to be a member of the said vestry.

Ord. 2--1839.  
Qualification of vestrymen.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

List of persons qualified.

5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors.

Voting, mode of.

6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Chairman of vestry.

7. And be it enacted that five members of the said vestry or four members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.

Quorum of vestry.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties, and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as shall to them seem expedient, provided that the said rules, orders, or by-laws contain nothing repugnant to law or the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as by law established.

Powers of vestry as to rules, &c.

9. And be it enacted that the said church committee shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control, and the said church committee and the office and duties thereof shall thereupon cease and determine.

Custody of papers, &c.

10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the same powers,

Powers of vestry as to church.

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and rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as are now possessed and exercised by the church committee together with such other laws and rights and duties as are hereinafter specified.

Powers of vestry as to money and contracts.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order, and by virtue of any of the provisions of this Ordinance and in their own names to make and enter into, perform and execute, or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Actions by vestry.

12. And be it enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court in this Colouy as they shall deem necessary in performance of the trust reposed in them against any person whatsoever, and all such suits and actions shall and may be brought by them in the name of the vestry of St. George's Church at Graham's Town, without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Actions against vestry.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said vestry, shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Accounts of vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid and published if requisite for general information.

Churchwardens, appointment and duties of.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon after as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and for providing the said church (by order and at the charges of the said vestry)

with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this Colony.

Ord. 2--1835.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church and congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Accounts of churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be re-eligible in case they are continued as members of the vestry.

Tenure of office by churchwardens.

18. And be it further enacted that in case any member of the vestry shall die, or desire to resign, or shall be removed, or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying, or desiring to resign, or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Vacancies in vestry.

19. And be it enacted that there shall be set apart in the said church and allotted to the chief civil and military authorities resident at Graham's Town and to the minister of the said church respectively a pew sufficient to contain eight persons, and likewise for the use of the officers of the garrison pews sufficient for sixteen persons; and there shall likewise be reserved in some convenient

Free sittings.

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Ord. 2--1839.

Sittings to let.

part of the church an adequate number of free sittings for the use of the troops and the accommodation of poor people.

20. And be it further enacted that all the pews and sittings in the said church, with the exception of those allotted and reserved as aforesaid, shall and may be let by the vestry by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with any persons at present holding free sittings on the ground of office.

Non-payment of rent.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance, without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive from recovering the amount of such rent in arrear by action in any competent Court.

Burial-places.

22. And be it further enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground unconsecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

Monuments and vaults, erection of.

23. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same, or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments and vaults, maintenance of.

24. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain and keep up such monument or vault according to the terms of such permission, to and for the sole and separate use of the said

person or persons and his or their heirs for ever : Provided, always, that in case any such monument as aforesaid is suffered to fall into decay, and the person or persons to whom the said monument appertains neglects to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

No. 9—1856.

25. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of by all Judges, Magistrates, and others without being specially pleaded.

Public ordinance

No. 9—1856.]

[June 4, 1856.

## AN ACT

To Cancel a Grant of certain Piece of Land situate in the Government Gardens, Cape Town (commonly called "the Paddock,") made in favour of the See of Cape Town, under date the 11th day of April, 1848.

WHEREAS His Excellency Sir Henry George Wakelyn Smith, K.C.B., the then Governor of this Colony, granted, on the 11th day of April, 1848, unto the Right Reverend Robert Gray, D.D., Bishop of Cape Town, and his successors in the said see, a certain piece of land (commonly called "the Paddock,") containing 501 square roods and 136 square feet, situate in Cape Town, bounded north-east by the Government gardens, south-east by private property, south-west by municipal property, and north-west by the walk of the said Government gardens; together with a right of carriage-road to, into, and from the said piece of land, over and along so much of the said Government walk or avenue leading from Orange-street, in Cape Town aforesaid, to the said piece of land, as is necessary for ingress and egress to the same by the present gateway, and also together with the right of foot-road, to, into and from the said land, over all and any part of the roads or walks adjoining the north-western and north-eastern boundaries thereof, through proper doors or wickets: And whereas such grant was improperly made, and without any prior public notice thereof to those interested in the non-alienation of the said land, and has, further, been found to be injudicious, unnecessary, and in violation of the prescriptive right of the public to safe and unimpeded access to and through the said Government gardens: And whereas the said grant is in other respects detrimental to the interests and adverse to the wishes of the public, and ought by reason thereof to be cancelled:

Preamble.

1. 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, that the said grant of the

Grant to the see of Cape Town annulled

Ord. 1--1842.

piece of land, together with the grant of right of carriage and foot-road aforesaid, shall be and the same hereby accordingly are cancelled, rescinded, set aside, and made null, void, and of no force or effect, to all intents and purposes whatsoever.

Compensation not barred.

2. Be it further enacted, that nothing herein contained shall debar the said Right Reverend Robert Gray, D.D., or the Bishop of Cape Town for the time being, from being reimbursed, from out of the Colonial Treasury, all sums of money expended by him in and upon the said piece of land.

No. 1—1842.—Sd. George Napier.] [March 3, 1842.

Ordinance for authorizing the appointment of a Vestry and Churchwardens for St. Mary's Church at Port Elizabeth.

Preamble.

WHEREAS it appears expedient that the inhabitants of Port Elizabeth and the parochial limits thereof being members of the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the church at Port Elizabeth commonly called St. Mary's Church, and that the said vestry and churchwardens should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it appears expedient that the control over the affairs of the said church which has been hitherto exercised by the original church committee and since the dissolution of that body by the officiating minister and churchwardens or warden should cease and determine:

First election of a vestry.

1. Now therefore be it enacted by the Governor of the Cape of Good Hope, by the advice and consent of the Legislative Council thereof, that on the Easter Monday ensuing next after the passing of this Ordinance and on each succeeding Easter Monday a general meeting of the male inhabitants of Port Elizabeth and the parochial limits thereof being of the age of twenty years or upwards who shall be holders of sittings in St. Mary's Church aforesaid or who shall be entitled *ex officio* to occupy seats in the pews already set apart for the accommodation of the churchwardens and strangers, the officers of the garrison, and the Chief Civil Magistrate of the district, such *ex officio* holders of seats being members of the aforesaid United Church of England and Ireland, shall be holden in the vestry of St. Mary's Church in Port

Elizabeth, fourteen days' notice whereof shall be given during divine service by the minister for the time being and by notice posted on the church-doors for the purpose of electing a vestry; and it shall and may be lawful for the inhabitants aforesaid or a majority of them at such meeting assembled to elect from among themselves any number of persons not exceeding eight in the manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereafter specified.

Ord. 1--1842.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid as auditors of the accounts of the said vestry.

Auditors of accounts.

3. And be it enacted that no male inhabitant shall be competent to vote at any such meeting for the election of a vestry who shall have allowed the rent of his pew or sitting to continue in arrear and unpaid for twenty-eight days after the same shall have become due and payable and shall have been legally demanded; nor shall any male inhabitant be qualified to be elected as a member of the vestry unless he be a resident householder in the town of Port Elizabeth or within the parochial limits thereof and unless he be a member of the United Church of England and Ireland.

Qualification of voters and of vestrymen.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing sections shall be prepared by the officiating minister so long as there are no churchwardens appointed under the provisions of this Ordinance, and when churchwardens shall have been so appointed as is hereinafter provided then by the minister and churchwardens conjointly, which list shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.

List of voters.

5. And be it enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen or as auditors.

Election of vestry by lists.

6. And be it enacted that the officiating minister for the time being shall preside as chairman at all meetings of the said vestry, provided that in case of his being absent from any such meeting one of the other members shall be elected to act as chairman, and in case of the votes of the said vestry being equally divided the chairman or acting chairman shall have a casting vote in addition to his own.

Chairman of vestry.

7. And be it enacted that five members of the said vestry or four members in addition to the chairman or acting chairman shall form a quorum which shall be competent to perform all matters

Quorum of vestry.



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Rules, &c., for vestry.

and things which may be done by the entire vestry under and by virtue of any of the provisions of this Ordinance.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, amend, alter, or rescind any rules, orders, or by-laws which may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as they shall deem expedient: Provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established.

Deeds, &c., to be handed over to vestry.

9. And be it enacted that the officiating minister and churchwardens or warden officiating at the time of the election of the first vestry under this Ordinance shall upon the appointment of the said vestry deliver or cause to be delivered over to the said vestry all deeds, accounts, documents, and papers relating to the church which shall be at the time in their custody or power, or authentic copies of the same, and all sums of money in their possession or subject to their control, and that their management of the affairs of the said church which since the dissolution of the church committee devolved upon them shall thereupon cease and determine.

Vestry to take up powers of church committee.

10. And be it enacted that the said vestry so from time to time constituted and appointed by such competent electors as hereinbefore specified shall and may have and exercise all the same powers, privileges, rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as were originally possessed by the church committee, and are at present possessed by the officiating minister and churchwardens or warden, together with such other powers, privileges, rights, and duties as are hereinafter specified.

Election and powers, &c., of churchwardens.

11. And be it enacted that the said vestry shall forthwith on their appointment choose out of their own number two persons as churchwardens who shall perform and execute or cause to be performed and executed all lawful acts, matters, and things for the good order and decency of behaviour to be observed in the said church by the congregation thereof, and for providing the said church (by order and at the charge of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for furnishing the officiating minister with robes suited to his rank or degree in any university or college of the United Kingdom, and for preserving to all persons their rights in the pews and sittings in the said church, and for keeping the burial-ground appertaining to the said church in decent order, and for discharging all other

duties which usually devolve on churchwardens of the United Church of England and Ireland so far as the same may be applicable to this Colony.

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12. And be it enacted that the said churchwardens shall keep an account wherein they shall enter or cause to be entered all sums of money received or paid by them for and on account of the aforesaid church and under and by virtue of the provisions of this Ordinance, which account shall be opened for the inspection of one or both of the auditors at all reasonable times between the hours of nine o'clock in the fore and five o'clock in the afternoon, and the said account or a copy thereof together with any report of the auditor or auditors thereupon shall be laid before the annual meeting which shall be holden in conformity with the provisions specified in the first clause of this Ordinance, and published for general information in case of such publicity being deemed requisite by the persons assembled at such meeting or a majority of them.

Accounts of churchwardens.

13. And be it enacted that it shall and may be lawful for the said churchwardens for the time being to call in and compel or enforce payment of all sums of money which are or shall be at any time hereafter due and payable on account of the said church and by virtue of any of the provisions of this Ordinance, and in their own names for and on behalf of the said vestry to make and enter into, perform and execute or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem beneficial to the Church aforesaid.

Churchwardens to collect money and make contracts.

14. And be it enacted that it shall and may be lawful for the said churchwardens for the time being acting as such to commence and maintain from time to time any suit or action which they may deem necessary in conformity with the trust reposed in them against any person or persons whatsoever; and all such suits or actions shall and may be brought by them in the name of the churchwardens acting for and on behalf of the vestry of St. Mary's Church at Port Elizabeth, and no action shall abate by reason of the death, removal, retirement, or resignation of any individual churchwarden or vestryman.

Churchwardens to sue actions.

15. And be it further enacted that all suits or actions which shall arise or accrue to any person or persons whatsoever from or by reason of any contract or other matter or thing made or entered into by the said churchwardens in execution of the trust reposed in them shall be brought by such person or persons in manner and in name aforesaid and not against any individual churchwarden or member of the said vestry: Provided, always, that no such suit or action shall hold or be maintainable against the said churchwardens as such for or on account of any thing done or of any debt contracted by the original church committee and since the dissolution of that body by the officiating minister and churchwardens or warden acting as such previously to the taking effect of this Ordinance.

Actions against churchwardens.

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Accounts of charitable collections.

16. And be it enacted that the said churchwardens shall keep or cause to be kept an exact account of all collections of money made from time to time in the said church for or on account of any charitable or religious purposes connected with the said church and congregation thereof, and of all disbursements made from the same; and the said churchwardens together with the officiating minister for the time being shall faithfully administer and appropriate in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations and opened for like inspection as the accounts of the general church fund.

Tenure of office by churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until the next general annual election of the vestry shall be completed, when they shall deliver up or cause to be delivered up to the said vestry all accounts relating to the general church fund and to such charities as aforesaid together with all vouchers, sums of money, or securities held by them in virtue of their office, and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they shall be continued as members of the said vestry.

Occasional vacancies in vestry.

18. And be it enacted that in case any member or members of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his or their office a special general meeting of the surviving or other members of the said vestry shall be called for the purpose of filling up any and all such vacancies as may arise from death, resignation, or removal.

Occasional vacancies in churchwardenship.

19. And be it enacted that if either of the said churchwardens shall die or resign or be removed by the said vestry or shall from any other lawful cause vacate his office the meeting of vestry in the last preceding section mentioned which shall be called for the purpose of filling up the vacancy thereby created in the said vestry shall also proceed to choose out of the number of the said vestry in the room of the churchwarden who shall have ceased to hold the office a new churchwarden, who shall continue in office until the time herein fixed for the annual election, and shall in the meantime possess all the powers and perform all the duties appertaining to the said office.

Free sittings.

20. And be it enacted that the four pews already set apart and appropriated to the use of the officers of the garrison, the chief civil authority of the district, the minister and the churchwardens all for the time being shall still continue so set apart and appropriated; and that there shall likewise be reserved in some con-

venient part of the church an adequate number of free sittings for the accommodation of the troops and of poor people; and further that strangers visiting Port Elizabeth shall be considered as entitled to reasonable accommodation in the pew set apart and appropriated to the churchwardens.

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21. And be it enacted that all the pews and sittings in the said church excepting those appropriated and reserved as aforesaid shall and may be let by the said churchwardens by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of such pew or sitting so rented shall and may possess and occupy the same by himself, herself, or by his or her assigns without hindrance or disturbance by any person whatsoever until the end of the said term: Provided that the holder of such pew or sitting shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable; and provided, always, that nothing in this section shall be construed to interfere with any persons who do at present or who may hereafter hold free pews or sittings on the ground of office.

Sittings to be let.

22. And be it enacted that it shall and may be lawful for the churchwardens whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same shall have become due and payable, and shall have been legally demanded, to give notice to the possessor of such pew or sitting forthwith to quit and give up possession of the same; and thereupon it shall and may be lawful for the said churchwardens acting as aforesaid to re-enter into possession of the said pew or sitting for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said churchwardens of the right to recover the amount of such rent so in arrear by action as aforesaid in any competent Court.

Remedy where pews-rents in arrear.

23. And be it enacted that the said churchwardens acting as aforesaid shall keep a book to be called the "Pew-book," wherein they shall enter or cause to be entered the name of every person applying for either a pew, sitting, or sittings in the said church together with the date of such application, and that on any pew, sitting, or sittings becoming vacant either by death, resignation, removal, or in any other way or in case of the erection of any new pew or pews or seats in any part of the said church the churchwardens for the time being shall forthwith apprise the applicant whose name shall stand first on the pew-book of the vacancy so caused or of the new pew, pews, or seats so erected, and shall offer the said pew, seat, or seats to such applicant on condition that he or she shall covenant and engage to pay the rent of the same affixed and made payable as hereinbefore mentioned, and that the said pew, sitting, or sittings so becoming vacant, or the said pew or

Order in which pews to be let.

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pews, seat or seats so newly erected shall not be offered to any person whatsoever whose application for the same or any portion of the same shall bear a later date, until it shall have been declined by every applicant preceding such person on the pew-book.

Burials to be after rites of Church of England.

24. And be it further enacted that no burial shall take place in the burial-ground at present unconsecrated and allotted or which may hereafter be consecrated and allotted as burying-ground to the said church unless the said burial be performed after the rites and ceremonies of the United Church of England and Ireland, and that no burial shall take place in or under the said church.

Monuments and vaults, erection of.

25. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument or inscription to be erected or placed in such convenient parts of the said church or of the ground which may be enclosed about the same or in the burial-ground belonging thereunto or vaults to be dug and made in the said burial-ground upon payment to the funds of the said church for such permission such a sum as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments and vaults, maintenance of.

26. And be it enacted that it shall and may be lawful for any person or persons erecting or placing any monument or inscription in the said church or within the ground which may be inclosed about the same or in the burial-ground belonging thereunto, or digging or making any vault in the said burial-ground by and by virtue of such permission as aforesaid, to have, maintain, and keep up such monument, inscription, or vault according to the terms of such permission to and for the sole and separate use of the said person or persons, and his or their heirs for ever: Provided, always, that in case any such monument, inscription, or vault as aforesaid be suffered to fall into decay or to become effaced or neglected, and the person or persons at whose cost and charges the said monument, inscription, or vault was erected, placed, or constructed shall decline to repair and keep the same in proper order, it shall and may be lawful for the officiating minister and churchwardens for the time being after a general notice of their intention to remove and efface the same.

Public ordinance.

27. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance, and as such shall be judicially taken notice of by all Judges, Magistrates, and others without being specially pleaded.

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No. 5, 1845.—Sd. P. Maitland.] [February 27, 1845.

Ordinance for authorizing the appointment of a Vestry and Churchwardens for St. Paul's Church, Rondebosch.

Preamble.

WHEREAS it is expedient that the inhabitants of Rondebosch in the Cape district and the parochial limits thereof, and holding

communion with the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with St. Paul's Church at Rondebosch, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of trustees as at present instituted should cease and determine:

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1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that on and after the promulgation of this Ordinance, and annually afterwards on the same day a general meeting of the inhabitant householders of Rondebosch aforesaid and of the parochial limits thereof holding communion with the United Church of England and Ireland as there by law established shall be holden at Rondebosch, fourteen days' notice whereof shall be given by the officiating minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in the *Government Gazette*, for the purpose of electing a vestry, and it shall and may be lawful for the inhabitant householders as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons not exceeding eight in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Annual election of vestry.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid to be auditors of the accounts of the said vestry.

Auditors of accounts.

3. And be it further enacted that every inhabitant householder being a member of and holding communion with the church aforesaid and within the parochial limits thereof shall be eligible to be a member of the said vestry: Provided, always, that no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of the accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

Qualification of members of vestry.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens

Preparation and inspection of lists of persons eligible.

- Ord. 5—1846. appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the officiating minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place.
- Mode of election. 5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitant householders aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and auditors.
- Appointment of chairman. 6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman, and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own.
- Quorum of vestry. 7. And be it further enacted that four members of the said vestry or three members besides the chairman shall form a quorum and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.
- Power to make rules, orders, and by-laws. 8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance and also to take such order for the management of the said church as shall to them seem expedient, provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established.
- Delivery of deeds, papers, &c., by trustees to vestry. 9. And be it enacted that the trustees of the church aforesaid shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control, and the office and duties of the said trustees shall thereupon cease and determine.
- Transfer of powers of trustees to vestry. 10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the same powers and rights and duties respecting the said church and the care and government thereof, and the administration of the grounds, funds, rents, and revenues thereof and all other matters and things relating to the same as are now possessed and exercised by the trustees together with such other laws and rights and duties as are hereinafter specified.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform, and execute or compel performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

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Power to compel payments, enter into contracts, &c.

12. And be it further enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court of this Colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of the vestry of St. Paul's Church at Rondebosch, without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or the going out of office of any individual member thereof.

Power to sue and defend suits.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid and not against any individual member of the said vestry.

Actions against vestry not competent against individual members.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter all moneys received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding communion with the said church at the general annual meeting aforesaid and published if requisite for general information.

Accounts, with report of auditors at annual meeting.

15. And be it enacted that the said vestry shall forthwith on their appointment or so soon as conveniently may be choose out of their own number two persons to be churchwardens who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging

Appointment and duties of churchwardens.



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all other duties which usually devolve on churchwardens in the United Church of England and Ireland, so far as the same may be applicable to this Colony.

Account and appropriation of collections.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Continuance in office of churchwardens.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided always that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Proceedings in case of vacancies.

18. And be it further enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Letting of pews and sittings.

19. And be it enacted that all the pews and sittings in the said church with the exception of a reasonable proportion of free sittings reserved for the poor shall and may be let by the vestry by the year or for any shorter period to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatso-

ever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with the claims of any person at present holding sittings in the church.

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20. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew, forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear by action in any competent Court.

Proceedings in case of arrear in payment of pew-rents.

21. And be it further enacted that no burial shall take place within or under the said church; but the burials of all persons according to the rights and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose; and the vestry shall have the right to demand and receive reasonable fees for the permission to bury in the burial-ground of the said church.

Burials.

22. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground upon payment to the fund of the said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

Monuments and vaults in burial ground.

23. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons or his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Ownership in vaults and monuments.

24. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice

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of by all Judges, Magistrates, and others without being specially pleaded, and shall commence and come into operation as law from and after the promulgation thereof.

No. 2—1842.—Sd. George Napier.] [March 3, 1842.

Ordinance for authorizing the appointment of a Vestry and Churchwardens for Sidbury Church.

Preamble.

WHEREAS it is expedient that the inhabitants of Sidbury and the parochial limits thereof being members of and holding communion with the United Church of England and Ireland as there by law established should be invested with the right and privilege of choosing and appointing under certain regulations a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the Episcopal Church at Sidbury recently erected; and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland: And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of trustees as at present constituted should cease and determine:

Election of vestry.

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Tuesday in Easter week after the passing of this Ordinance, and annually afterwards on the same day, a general meeting of the male inhabitants of Sidbury aforesaid and of the parochial limits thereof being of the age of twenty-one years or upwards and members of and holding communion with the United Church of England and Ireland as there by law established shall be holden at Sidbury, fourteen days' notice whereof shall be given by the minister of the said church for the time being by promulgation during divine service and by notice posted on the doors of the church or by advertisement in one of the public papers of this Colony, for the purpose of electing a vestry; and it shall and may be lawful for the inhabitants as aforesaid or the greater part assembled at such meeting to elect from among themselves any number of persons, not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who together with the officiating minister for the time being shall form a vestry charged with the duties and invested with the powers hereinafter mentioned.

Auditors of vestry accounts.

2. And be it further enacted that two other persons not being members of the said vestry shall likewise be elected at such

meeting as aforesaid to be auditors of the accounts of the said vestry. Ord. 2—1842.

3. And be it further enacted that every male inhabitant householder being of the age of twenty-one years or upwards and a member of and holding communion with the church aforesaid and residing at Sidbury or within the parochial limits thereof shall be eligible to be a member of the said vestry. Qualification for vestryship. Provided always, that no person shall be entitled to vote at such election or be eligible to be chosen a member of the vestry or an auditor of accounts thereof so long as (legal demand having previously been made) any just claim had upon him by the said vestry as such shall remain unsatisfied.

4. And be it enacted that a list of all persons eligible according to the provisions of the foregoing section shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided then by the minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote at the election of the said vestry and auditors at least fourteen days before any election is to take place. Lists of vestrymen

5. And be it further enacted that at every such general meeting as aforesaid the election shall be carried on by lists duly signed by such inhabitants as aforesaid respectively and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors. Election to be by lists.

6. And be it further enacted that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry, provided that in his absence from any such meeting one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided the chairman or acting chairman shall have a casting vote in addition to his own. Chairman of vestry.

7. And be it further enacted that five members of the said vestry or four members besides the chairman shall form a quorum, and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance. Quorum of vestry.

8. And be it further enacted that it shall and may be lawful for the said vestry so from time to time constituted and appointed to frame, adopt, alter, or rescind such rules, orders, and by-laws as may to them appear expedient for their guidance in the discharge of their duties and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as shall to them seem expedient: Provided that the said rules, orders, or by-laws contain nothing repugnant to law or to the tenor of this Ordinance or to the customs and usages of the United Church of England and Ireland as there by law established. Rules, &c., for vestry.

Ord. 2—1842.  
Trustees to deliver deeds, &c., to vestry.

9. And be it enacted that the said trustees shall upon the appointment of the said vestry deliver over to the said vestry all deeds, books, and papers relating to the church in their custody or power and all sums of money in their possession or control; and the office and duties of the said trustees shall thereupon cease and determine.

Powers, &c., of vestry.

10. And be it enacted that the said vestry so from time to time constituted and elected by such members of the said church as aforesaid shall and may have and exercise all the same powers, and rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same as are now possessed and exercised by the trustees, together with such other laws, and rights, and duties as are hereinafter specified.

Power of vestry to call in money and make contracts.

11. And be it enacted that it shall and may be lawful for the said vestry for the time being to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute or compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for the good of the church aforesaid.

Power of vestry to sue.

12. And be it further enacted that it shall and may be lawful for the said vestry as such from time to time to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of the vestry of the Episcopal Church Sidbury without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal or going out of office of any individual members thereof.

Actions against vestry.

13. And be it enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or other matter or thing made or entered into or performed by the said vestry in the execution of the said trust or shall arise or accrue to any person whatsoever against the said vestry shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Accounts by vestry.

14. And be it enacted that the said vestry shall keep an account wherein they shall enter money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times. And the said account together with any report of the auditors or either of them thereon shall be laid before the members holding

communion with the said church at the general annual meeting aforesaid, and published if requisite for general information.

Ord. 2—1842.

15. And be it enacted that the said vestry shall forthwith on their appointment or as soon as conveniently may be choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial-ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland so far as the same may be applicable to this Colony.

Election of churchwardens and their powers, &c.

16. And be it further enacted that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church for any charitable or religious purposes connected with the said church or congregation; and the said churchwardens together with the officiating minister for the time being shall faithfully administer the same or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them in virtue of their office shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Accounts of charity collections.

17. And be it enacted that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid duly audited, together with all vouchers, sums of money, or securities held by them in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year: Provided, always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Tenure of office by churchwardens.

18. And be it further enacted that in case any member of the vestry shall die or desire to resign or shall be removed or for any other lawful cause shall vacate his office it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying or desiring to resign or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden

Occasional vacancies in vestryship.

Ord. 2—1842.

as aforesaid: Provided, always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid the same notice shall be given thereof and the same proceedings shall be observed thereat as in case of the general annual meeting is provided.

Free sittings.

19. And be it enacted that there shall be set apart in the said church two free pews, one to be allotted to the use of the minister and the other to that of the churchwardens, and that a proportion namely one-third of the remaining accommodation in the church, be reserved as free sittings for the poor.

Pews to be let.

20. And be it further enacted that all the pews and sittings in the said church with the exception of those allotted and reserved as aforesaid shall and may be let by the vestry by the year or for any other shorter period to any person desiring to take the same at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without hindrance or disturbance by any person whatsoever until the end of the said term, provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable: Provided, always, that nothing in this section shall be construed to interfere with the claims of any person at present holding sittings in the church.

Remedy when pew-rent in arrear.

21. And be it enacted that it shall and may be lawful for the vestry whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever: Provided, however, that nothing herein contained shall extend or be construed to deprive from recovering the amount of such rent in arrear by action in any competent Court.

Rites of burial

22. And be it further enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted or which may hereafter be consecrated and allotted to the said church for that purpose.

Monuments and vaults, erection of.

23. And be it enacted that it shall and may be lawful for the officiating minister and churchwardens for the time being to permit any monument to be erected or placed in such convenient parts of the said church or of the enclosed ground about the same or in the burial-ground belonging thereto, or vaults to be dug and made in the said burial-ground, upon payment to the fund of the

said church for such permission of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

No. 5—1875.

24. And be it further enacted that it shall and may be lawful for any person or persons erecting or placing any monument in the said church or digging or making any vault in the said burial-ground by and with such permission as aforesaid to have, maintain, and keep up such monument or vault according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever: Provided, always, that in case any such monument as aforesaid is suffered to fall into decay and the person or persons to whom the said monument appertains neglect to repair the same it shall and may be lawful after a general notice of such intention to remove the same.

Monuments and vaults, maintenance of.

25. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance and shall be judicially taken notice of by all Judges, Magistrates, and others without being specially pleaded.

Public ordinance.

No. 5—1875.]

[June 30, 1875.

## ACT

To Amend Ordinance No. 3, 1852, "For Regulating in certain respects the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof."

WHEREAS by Ordinance No. 3, 1852, forming the schedule to the Order in Council passed at the Court of Buckingham Palace on the eleventh of March, 1853, it is enacted that, until Parliament shall otherwise direct, there shall be payable every year to Her Majesty, her heirs and successors, out of the revenue of the Colony, certain sums of money for defraying the expenses of the several services and purposes in the schedule to the said Ordinance annexed set forth: And whereas amongst the said services it is provided, under schedule C, annexed to the said Ordinance, that there shall be payable as aforesaid, for public worship, the sum of £16,060: And whereas it is desirable that the different religious communities of the Colony should be left to their own efforts and resources for securing the means of religious worship and instruction, and that, the interests of existing incumbents being duly protected, the support now given to Christian ministers from the public revenue should be withdrawn: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assmby thereof, as follows:—

Preamble.

FFF



No. 5—1875.

Schedule C of Ordinance 3 of 1852, repealed.

Present incumbent to continue to receive salary until he dies or ceases to hold office.

But if he dies or ceases to hold office within five years, his successor to receive salary till the expiration of that period.

And if he vacates office to take another office to which a salary is attached, he may draw such salary until he dies or ceases to hold office.

1. Schedule C of the said Ordinance No. 3, 1852, shall be and is hereby repealed.

2. Notwithstanding the repeal of the schedule C aforesaid, there shall continue to be paid from and out of the public revenue, to every minister of religion who shall, at the time of the taking effect of this Act, be in the receipt of any salary or payment, under or by virtue of the said schedule, from or out of such public revenue, the same salary or payment of which he shall be so in receipt, until he shall die, or shall cease to hold the office, or place, or situation held by him at the time of the taking effect of this Act: Provided that if any such minister as aforesaid shall die or shall cease to hold such office, place, or situation as aforesaid at any time within five years next after the taking effect of this Act, then the successor of such minister in such office, or place, or situation shall be entitled to receive, till the expiration of such five years, but no longer, the same salary or payment which such minister was in receipt of when he died or otherwise vacated the said office, place, or situation: And provided that as often as any minister who shall at the time of the taking effect of this Act be in receipt of any salary or payment from or out of the public revenue shall vacate the office, place, or situation then held by him, for the purpose of accepting some other office, place, or situation become vacant, of which the minister was, when by death or otherwise he caused such vacancy, in the receipt from the public revenue of any salary or payments, then such minister supplying such vacancy shall be entitled to receive until he shall die or shall cease to hold the said office, place, or situation, the same salary or payment of which his immediate predecessor was in receipt when such vacancy occurred.

No. 6—1833.—Sd. T. F. Wade.]

[Nov. 11, 1833.]

## ORDINANCE

For Authorizing a Sum of Money to be raised in Shares for building a Church at Wynberg.

Preamble.

WHEREAS several persons have subscribed certain sums of money for the purpose of erecting a church at Wynberg for the celebration of divine service according to the rites of the United Church of England and Ireland as by law established, on the site appropriated for the same by His Excellency the late Governor and consecrated by the Lord Bishop of Calcutta, upon the principle that such subscribers should have a right of property in the pews of the said church: And whereas the venerable Society in England for Promoting Christian Knowledge hath agreed to grant and

place at the disposal of His Excellency the Governor a certain sum of money for furthering the religious interests of this Colony according to a mode of appropriation recommended by His Excellency, and subject to the approval of the said society: And whereas His Excellency the late Governor hath recommended to the said society that a sum of four hundred and fifty pounds of their said grant shall be appropriated as a donation towards building the said church at Wynberg: And whereas several other persons have agreed to subscribe certain sums of money, by way of donations, for furthering and completing the building of the said church: And whereas at a public meeting of the persons interested in the said church, holden pursuant to notice thereof on the 16th day of July in the year of our Lord 1832, a committee of management was appointed for carrying their intention into effect, and it was agreed and resolved by the said meeting that in order to raise a sum of money amounting, together with the sum of money agreed to be granted by the Society for Promoting Christian Knowledge as aforesaid and the said other donations, to the sum of one thousand five hundred pounds, being near or about the estimated cost of building and completing the said church, a certain number of shares should be disposed of, that is to say, one hundred and fifty shares at five pounds each: And whereas the following persons have agreed to take shares in the said loan as aforesaid, that is to say, Major George Jackman Rogers and William Macdonald Mackay, six shares each; John Steuart, five shares; Joseph Hare, the Rev. Edward Judge (Master of Arts), and William Wilberforce Bird, four shares each; the Honourable William Menzies (senior Puisne Judge of the Supreme Court), three shares; His Excellency Lieutenant-Colonel Thomas Wade, Charles Blair, Ker Hamilton, Anthony Oliphant, William Hawkins, William Moore, and Edward George, two shares each; James Carey, H. C. Macartney, Robert Cooper, Captain Thomas Blair, Petrus Borchardus Borchards, the Rev. Chas. Wimberley, R. W. Maxwell, George F. Wilmot, Wm. Lutterman, and John Skirrow, one share each: And whereas the said persons have made application that an Ordinance may be passed to sanction and confirm the plan adopted at the lastmentioned meeting and to provide for carrying the same into effect: Now, therefore, be it enacted by His Excellency the acting Governor in Council that from and after the passing of this Ordinance it shall and may be lawful for the said persons who have already agreed and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree to take shares in the said loan to raise and provide in manner and for the purpose aforesaid such a sum of money as together with the said sum so to be granted by the Society for Promoting Christian Knowledge and the said donations shall amount to the requisite sum for building and completing the said church and other works connected therewith; and it shall

Capital to be raised  
by shares and loan.

- Ord. 6—1833. and may be lawful for such persons to become shareholders in the said loan and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed or shall hereafter agree to take in the said loan until the whole number of shares shall have been disposed of.
- Shares saleable and transferable. 2. And be it enacted that no shares shall be transferable by any holder thereof or any right or interest therein until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid it shall and may be lawful for any shareholder to sell or transfer his share or shares and all his right and interest in respect thereof to any other person by endorsement on the said share or otherwise as he shall see fit: provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only, and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.
- Interest upon capital paid up. 3. And be it enacted that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the day on which the said church shall be opened for divine service therein, and not sooner.
- Shareholders' rights of voting. 4. And be it enacted that all shareholders in the said loan shall at all public meetings of the shareholders have the right of voting in the election of trustees and in all matters relating to the erection of the said church and the management of the funds thereof until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares; that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares to two votes; the holder of four or five shares to three votes; the holder of six or seven shares to four votes; and the holder of eight, nine, or ten shares to five votes.
- Free sittings. 5. And be it enacted that on the completion of the said church a part of the whole number of sittings shall be appropriated to the use of the public as free sittings, and that the number of free sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.
- Sittings for shareholders. 6. And be it enacted that on the completion of the said church and after the proper number of pews and sittings shall have been set apart and allotted for the use of the minister and the church-wardens as hereinafter mentioned, all shareholders shall have a right to become each the renter of a pew in preference to any other persons who possess no shares, and the shareholders shall amongst themselves have priority in the choice of pews of whatever size or seats not exceeding six, according to the number of their shares, the holder of the greater number of shares to have the prior choice and the choice of holders of an equal number of shares to be determined if need be by ballot amongst them: Provided

however, that it shall and may be lawful for the trustees, at their discretion, upon the application of any shareholder whose family may require a greater number of seats in the said church than six to permit and allow such shareholder to choose two adjoining pews.

Ord. 6—1833.

7. And be it enacted that the trustees shall keep a book or plan wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall on making his choice as aforesaid sign his name in a column opposite to the said entry in acknowledgment of the truth thereof, and no second choice shall be afterwards made by any holder of the same shares or any of them, except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Record of sittings.

8. And be it enacted that upon any shareholder having duly made choice of a pew, the said shareholder, his heirs, and assigns shall and may for ever afterwards possess and occupy the same without the hindrance or disturbance of any person whatever so long as he or they shall continue to pay the rent affixed thereon when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustees by virtue of any of the provisions of this Ordinance.

Rights of shareholders in pews.

9. And be it enacted that a general meeting of the shareholders shall be holden on the first Wednesday of October in every year at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony fourteen days at least before the same is to be holden; and it shall and may be lawful for the trustees or the auditors, or either of the auditors to be elected as hereinafter mentioned, at any time to call a general meeting of the shareholders upon giving the like notice thereof.

General meetings of shareholders.

10. And be it enacted that as soon as conveniently may be after the passing of this Ordinance a general meeting of the shareholders shall be holden at Wynberg, notice whereof shall be given by the said committee of management by advertisement in one of the newspapers of this Colony six days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders or the greater part assembled at such meeting to elect out of the said shareholders any number of persons not exceeding nine to be trustees, and two other persons to be auditors of the accounts of the said trustees.

First election of trustees and auditors

11. And be it enacted that the trustees so elected by the shareholders and such as shall be afterwards elected upon the death, resignation, or removal of any trustee as hereinafter mentioned, shall continue in office until the first Wednesday in October next after the said church shall be erected and completed;

Time of first trustees holding office.

Ord. 6—1833.

and that upon the said first Wednesday in October, and yearly afterwards on the same day, two of the said trustees shall go out of office and two other trustees shall be elected instead of them by and out of the shareholders in manner aforesaid until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall, if necessary, be determined by ballot amongst them.

Election of auditors.

12. And be it enacted that two persons not being trustees shall be elected by and out of the shareholders yearly on the first Wednesday in October to be auditors of the accounts of the said trustees.

Custody of books, papers, funds, &amp;c.

13. And be it enacted that the said committee of management shall, upon the election of trustees as aforesaid and upon their acceptance of the said office, deliver over to the said trustees all deeds, books, plans, and vouchers relating to the said church in their custody or power and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid or securities for the same in their possession or control, and the said committee of management and the office and duties thereof shall thereupon cease and determine.

Application of church funds.

14. And be it enacted that the said trustees and all others who shall from time to time be hereafter elected as trustees under any of the provisions of this Ordinance shall during the time of their continuance in office stand and be possessed of all the said sums of money, donations, and subscriptions, and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury or from the Society for Promoting Christian Knowledge or shall arise from payments made by the shareholders in respect of their said shares or otherwise, and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church or in the burial-ground belonging thereto or for digging vaults in the said burial-ground or for placing monuments and digging vaults in the ground surrounding the said church, or funds arising from the sale of burial-places as hereinafter provided, or otherwise, upon trust in the first place, and until the said church shall be erected and completed, to cause the said church to be erected and completed according to the plan and specification thereof which has been approved of by His Excellency the late Governor and by the said committee of management and the building whereof has been commenced, and from and after the completion of the said church, inclosing the surrounding ground and the burial-ground belonging thereto and other necessary works connected therewith, upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues in manner following, that is to say, in the *first* place, to pay thereout

the cost of all the necessary repairs and expenses in and about the said church, for repairing, keeping up, and maintaining the same; and repairing and keeping up the fences and gates of the burial-ground belonging to the said church, and of the inclosed ground surrounding the said church; *secondly*, in payment of the interest, together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares, in an equal rate, when and as the funds at their disposal shall enable them so to do; and *lastly*, upon trust to pay and apply the residue thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan, at a rate of not less than five shillings sterling upon each share, until the whole of the said loan shall be paid off and discharged.

15. And be it enacted that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform, and execute, and compel the performance and execution of all such contracts and agreements, matters and things as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Power of trustees to compel payment of church fund, and to make contracts, &c.

16. And be it enacted that it shall and may be lawful for the trustees as such at all times and from time to time as they shall see fit to commence and maintain all such suits and actions in any competent Court in this Colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever, and all such suits and actions shall and may be brought by them in the name of the "trustees of the English church at Wynberg," or "the trustees of \_\_\_\_\_ church at Wynberg" (describing the same by its name, after it shall have been named), as the case may require, without specifying the christian or surnames of the trustees, and no action shall abate by reason of the death, or removal, or going out of office of any trustee.

Actions by trustees.

17. And be enacted that all suits or actions the cause of which shall arise or accrue to any person whatsoever from or by reason of any contract or agreement, or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust or which shall arise or accrue to any person whatsoever against the said shareholders jointly shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders.

Actions against trustees or shareholders.

18. And be it enacted that it shall and may be lawful for the trustees from time to time to call upon the shareholders for such payments in respect of their said shares as, together with the

Power of the trustees to make calls upon shares.

Ord. 6—1833.

donations and sums of money to be granted from the donation of the Society for Promoting Christian Knowledge as aforesaid, they may deem necessary for carrying on the building and completing the said church, fences, and other works as aforesaid. Provided, however, that no such call shall at any one time exceed one-third part of the amount of the said shares, and that the whole of such calls shall not exceed the amount of five pounds in respect of each share.

Advertisement of calls.

19. And be it enacted that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this Colony, together with the time and place appointed by them for payment thereof, fourteen days at least before the said time.

Consequence of on-payment of calls

20. And be it enacted that if any shareholder shall neglect or refuse to pay at the time and place appointed for that purpose his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of fourteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same: Provided however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid if they shall think fit so to do, instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

Accounts of trustees.

21. And be it enacted that the trustees shall keep an account wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors or either of them may inspect at all reasonable times; and the said account together with any report of the auditors or either of them thereon shall be laid before the shareholders for their inspection at their general annual meetings.

Receipts by trustees exceeding £10.

22. And be it enacted that the trustees shall as soon as they shall receive any sum of money exceeding ten pounds open an account with the Government discount bank <sup>(1)</sup> or the savings bank in this Colony in the names of the trustees; and such sum and every other sum exceeding ten pounds so received by them shall be forthwith paid into either of the said banks, to be placed to the credit of such account; and all cheques or orders for payment of any such money out of either of the said banks shall truly express the cause of such payment and the name of the

<sup>1</sup> See § 6 Ord. 5, 1842.

person in whose favour it is drawn, and shall be signed by all the trustees, or by two of them for themselves and co-trustees.

Ord. 6—1833.

23. And be it enacted that any trustee who shall retain in his hands or knowingly permit any co-trustee so to retain any sum of money exceeding ten pounds, part of the church fund, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum or cause it to be paid into one or other of the said banks, <sup>(1)</sup> or shall employ for his own benefit or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removable by the said shareholders from his said office, and shall, moreover, forfeit and pay for the benefit of the church fund double the amount of the sum so retained or employed, and which shall and may be recovered by the other trustees by action in any competent Court.

Penalty for retaining or employing church funds.

24. And be it enacted that as soon as the said church shall be erected and the other works connected therewith completed as aforesaid, the accounts of the said trustees shall be finally wound up and audited and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

Final accounts of trustees.

25. And be it enacted that in case any trustee shall die or desire to resign his said office or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying or desiring to resign or being removed as aforesaid; and the same notice shall be given of the time and place of the said meeting, and the same proceedings shall be observed thereat as upon the original election of trustees: Provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted to the satisfaction of the shareholders for all sums of money at any time received by him.

Death, resignation, or removal of trustees.

26. And be it enacted that as soon as the said church shall be erected and completed the trustees shall take over and enter upon the possession of the same, and the care and government of the said church shall thenceforward and until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, be committed to a vestry consisting of the officiating minister for the time being and the trustees elected by the shareholders in manner aforesaid; and the said minister shall when he is present preside at the said vestry, and when he is absent, then one of the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes the president shall likewise have a casting vote.

Temporary care and government of church.

<sup>1</sup> See Ord. 5, 1842, § 6. (Banks.)



- Ord. 6—1833. 27. And be it enacted that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.
- Duty of the trustees' vestry.
- Churchwardens, election and duties of 28. And be it enacted that there shall be two churchwardens chosen yearly on the first Wednesday in October by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings.
- Free pews. 29. And be it enacted that as soon as may be after the erection and completion of the said church the trustees shall set apart for the use of the minister a pew or pews sufficient to hold six persons, and shall also set apart another pew sufficient to hold four persons for the churchwardens; and thereafter shall call together the shareholders of each class according to their number of shares for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry according to the number of the sittings therein.
- Choice of pews.
- Notice of vacant pews. 30. And be it enacted that after the shareholders shall have chosen their pews in manner provided for that purpose the trustees shall give notice of all the pews and seats which are then vacant by affixing the same in writing upon the door of the said church, or otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year of all the pews which are then vacant or will become vacant at the commencement of the next year.
- Renting of unappropriated pews. 31. And be it enacted that all the pews and seats in the said church, except the pews set apart for the minister and churchwardens and the said free seats and the pews chosen by shareholders, shall and may be let by the said trustees by the year or for any shorter period to any person desiring to take the same at a rent to be affixed to the same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns without any hindrance or disturbance by any person whatsoever until the end of the said term; provided he shall continue to pay the rent affixed to the same at the times whereon and in the manner in which the same shall be made payable.
- Remedy for non-payment of pew rents 32. And be it enacted that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said trustees to

re-enter into the possession of the said pew for the purposes of this Ordinance without any other form or proceeding whatever ; and no person having been so dispossessed of his pew for non-payment of rent shall be entitled afterwards to any priority in the choice of a pew ; provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent Court.

Ord. 6—1833.

33. And be it enacted that no burial shall take place within or under the said church, but the burials of all persons according to the rights and ceremonies of the Church of England shall take place in the burial-ground consecrated and allotted for that purpose or in the inclosed ground surrounding the said church as hereinafter provided.

No burials within the church.

34. And be it enacted that it shall and may be lawful for the trustees during the subsistence of the said trust, and on the expiration thereof for the minister and churchwardens for the time being, to permit any monuments to be erected or placed in such convenient parts of the said church or of the inclosed ground around the same or in the burial-ground belonging thereto or vaults to be dug and made in the said burial-ground and inclosed ground, upon payment to the fund of the said church for such permission by the person or persons desiring to erect or place any such monument or to dig any such vault of such a reasonable fee as shall be affixed by the trustees during the subsistence of the said trust, and on the expiration thereof by the minister and churchwardens, and the spot for the said monument or vault being approved of by them.

Erection of monuments and vaults.

35. And be it enacted that it shall and may be lawful for the trustees from and after the passing of this Ordinance and during the subsistence of the said trust, and on the expiration thereof for the minister and churchwardens, to sell and dispose of lots or areas of ground for burial-places within the said burial-ground or the inclosed ground surrounding the church, upon payment to the fund of the said church by the person or persons desiring to purchase the said lots of ground of such a reasonable sum as shall be fixed by the said trustees or the minister and churchwardens as the price of the said lots of ground, and which lots of ground shall thereafter become the sole and separate property of the person or persons making such purchase as aforesaid and his or their heirs for ever for burial-places, and for no other purpose : Provided, however, that it shall not be lawful for the trustees during the subsistence of the said trust, or on the expiration thereof for the minister and churchwardens, to permit burials to take place in any part of the inclosed ground surrounding the said church except along the line of the external boundaries of the same, nor at a greater distance from the said line than the space of fifteen feet ; nor to sell or dispose of any lots of ground for

Burial places

Ord. 6—1833.

burial-places situated at a greater distance than fifteen feet from the said boundary line.

Rights in monuments or vaults.

36. And be it enacted that it shall and be lawful for any person or persons erecting or placing monuments in the said church or inclosed ground surrounding the same or digging and making any vault in the said burial-ground or inclosed ground by and with such permission or after the purchase of ground as aforesaid to have, maintain and keep up such monument or vaults according to the terms of such permission to and for the sole and separate use of the said person or persons and his or their heirs for ever.

Permanent care and government of church.

37. And be it enacted that on the first Wednesday in the month of October next after the whole of the said loan and interest shall have been paid off and discharged as aforesaid the office of the trustees and auditors shall thereupon cease and determine, and in the place of the said trustees there shall be elected on the said first Wednesday in October, and yearly afterwards on the same day, by and out of the inhabitant householders of Wynberg and of the vicinity thereof, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons, who shall together with the officiating minister for the time being form a vestry for the future care and government of the said church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office as aforesaid shall upon the last mentioned vestry entering upon their said office surrender and give up to the last mentioned vestry all documents, books plans, papers, and vouchers relating to the said church and to the administration of the funds thereof, and all sums of money in their custody, possession, or control arising from and belonging to the church fund.

Powers and duties of shareholders' vestry.

38. And be it enacted that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof and the administration of the funds, rents, and revenues thereof and all other matters and things relating to the same as shall and may be exercised by the trustees and vestry, or either of them, constituted and elected by such shareholders as aforesaid under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights and duties shall be applicable to the then existing circumstances of the said church.

Public ordinance.

39. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance, and shall be judicially taken notice of as such by all Judges, Magistrates and others, without being specially pleaded.

EDUCATION.

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| <p>1. Act 13—1865, (Grants in aid).<br/>                 2. " 24—1874, ( do. ).<br/>                 3. " 32—1884, (Gill College).<br/>                 4. " 29—1860, (Graaff-Reinet College).<br/>                 5. " 6—1856, (Port Elizabeth Grey Foundation).</p> | <p>6. Act 15—1878, (South African College).<br/>                 7. " 12—1879, ( do. ).<br/>                 8. " 9—1881, (Stellenbosch College).<br/>                 9. " 16—1873, (University Incorporation).<br/>                 10. " 9—1875, ( do. ).</p> |
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No. 13—1865.]

[Oct. 10, 1865.

ACT

For Regulating the mode of appropriating Grants from the Public Revenue in aid of General Education.

WHEREAS it is expedient to make provision for the more general extension of the system of granting aid by the Government in support of schools for the instruction of the youth of all classes throughout the Colony, and for the encouragement of young persons to qualify themselves for the duties of teachers within the Colony: And whereas it is expedient that the funds known as the Slave Compensation Fund and the Bible and School Commission Fund should be appropriated in future to the payment and training of young persons desirous of qualifying themselves to become teachers in schools established chiefly for the education of the poor: And whereas it is expedient that the institutions and schools aided or supported by grants of money under schedule D of the Ordinance, forming the schedule to the Order in Council of the 11th of March, 1853, should be included in the system of public education of the Colony: 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:—

Preamble.

1. All sums of money granted by Parliament for the purposes of public education shall be administered by the Governor, through the Superintendent-General of Education, in accordance with such rules and regulations touching public education as shall, from time to time, be approved of by the Governor, with the advice of the Executive Council, and published by proclamation in the *Government Gazette*: Provided that no such rule or regulation, nor any alteration or rescission thereof, which may from time to time become expedient, shall be proclaimed by the Governor, or shall take effect until such rule or regulation, or the alteration or rescission thereof, as the case may be, shall have been assented to by both Houses of Parliament by a resolution of each House: Provided, also, that the "School Regulations" contained in the schedule to this Act shall be, and the same are hereby declared to be, the rules and regulations touching public education for the

Moneys, how to be administered.

No rules for the administration of moneys to have effect before assented to by Parliament.

"School Regulations" declared rules

- No. 13—1865. time being, subject to alteration or rescission in the manner hereinbefore set forth: Provided, always, that an Annual Report in detail of the existing allocation of such sums of money, specifying, as to teachers, whether they act or are employed as clergymen or preachers in any church or congregation in the Colony, or are in the receipt of any salary or allowance from the public revenues, shall be prepared by the Superintendent-General of Education, and, shall each year be laid before Parliament within one month of the opening of its session: Provided, further, that none of the payments authorized by that part of the said school regulations headed "Order C—Border Department, Aborigines," shall be made except from and out of the sum reserved by the schedule marked D to the Appropriation Ordinance annexed to the Order in Council of the 11th of March, 1853.
- Annual report to be submitted to Parliament.
- Payments on account of Border Department, how to be made.
- Slave Compensation and Bible and School Funds to be administered by Master of Supreme Court.
- Disposal of interest thereof.
- Report of appropriation of interest to be laid before Parliament.
- Schools receiving aid from moneys reserved under Schedule D subject to inspection, &c.
- All aided schools subject to inspection.
- Schools provided for under Schedule A to be closed.
2. The capital sums of the Slave Compensation Fund and of the fund in the hands of the Bible and School Commission, together with such landed and other property as is now vested in the said Bible and School Commission, shall, within twelve months from and after the taking effect of this Act, be vested in the Master of the Supreme Court (in his capacity as administrator of the Guardian's Fund), and the interest on the said funds, and the profits of the said property, shall be paid from time to time by the said Master to the Superintendent-General of Education, to be appropriated by him to the payment and training of pupil-teachers in mission schools established chiefly for the education of the poor, in accordance with such rules and regulations as aforesaid: Provided that a report, signed by the Superintendent-General of Education, showing the objects to which such interest and profits shall have been applied during the past year, shall be annually laid before both Houses of Parliament.
3. All institutions or schools supported or aided by or from the moneys reserved under schedule D of the Ordinance aforesaid shall be subject to inspection by the Superintendent-General of Education or his deputy duly appointed by the Governor, and also to such rules and regulations in regard to such institutions or schools as may, from time to time, be contained in the rules and regulations for the time being touching public education, published by proclamation as aforesaid.
4. It shall and may be lawful for the Superintendent-General of Education, and he is hereby authorized and empowered, to inspect, whenever the Governor shall deem it expedient for him so to do, all schools, colleges, and other educational establishments that receive grants-in-aid from and out of the general revenue of the Colony, whether established under special Act of Parliament or otherwise.
5. The Government schools now existing on the fixed establishment of the Colony, and provided for from and out of the moneys reserved under schedule A of the Ordinance aforesaid, shall

respectively be closed upon the death, resignation, retirement, or removal from office of the present teachers in such schools respectively, or at such earlier period as circumstances shall permit.

No. 24—1874.

6. The thirty-second section of the Act No. 5, 1855, entitled “An Act for creating Divisional Councils in this Colony,” and the Act No. 14, 1858, entitled “An Act for the Creation of Educational Boards in the Field-corneteies, Villages, and Towns of this Colony, on which the Local Regulations of each shall be founded,” are hereby repealed.

Section 32 of Act 5 of 1855 and Act 14 of 1858 repealed.

7. This Act may be cited for all purposes as “The Education Act, 1865.”

Short title.

SCHEDULE.

[This Schedule has been amended under § 1 of this Act and is therefore not printed. The amendments made from time to time are shown in a Manual issued annually by the Superintendent-General of Education.]

No. 24—1874.]

[July 31, 1874.

ACT

To Regulate the appropriation of Grants from the Public Revenue in aid of Higher and Professional Education.

WHEREAS it is expedient to encourage the advancement of the youth of all classes throughout the Colony in literary and scientific studies, and to make better provision for enabling young persons to prepare themselves for the various examinations prescribed, or to be prescribed, by the University 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:—

Preamble.

1. All sums of money granted by Parliament for the purposes of higher and professional education shall be administered by the Governor, in accordance with such rules and regulations touching higher and professional education as shall from time to time be approved of by the Governor, with the advice of the Executive Council, and published by proclamation in the *Government Gazette*: Provided that no such rule or regulation, nor any alteration or rescission thereof, which may from time to time become expedient shall be proclaimed by the Governor or shall take effect until such rule or regulation or the alteration or rescission thereof, as the case may be, shall have been assented to by both Houses of Parliament by resolution of each House: Provided also that the regulations contained in the schedule to this Act shall be, and are hereby declared to be, the regulations touching higher professional educa-

Moneys to be administered by Governor under rules and regulations framed by him and approved of by Parliament.

Regulations for the time being to be those in the schedule to this Act.

No. 32—1884.  
Annual report to be submitted to Parliament.

No grant to be made to Graaff-Reinet College unless number of professors and lecturers exceed two.

Class 1, Order A, in schedule to Act No. 13 of 1865, amended.

Short title.

tion for the time being, subject to alteration or rescission in the manner hereinbefore set forth; and provided, further, that an annual report of the allocation of such sums of money shall each year be laid before Parliament.

2. In consideration of the payment from the Public Treasury of the Colony of four hundred pounds per annum to the Council of the Graaff-Reinet College, under the provisions of the 28th section of Act No. 29 of 1860, intituled "An Act for establishing a College at Graaff-Reinet," no grant under this Act shall be made in aid of the salary of a professor or lecturer of the said college, unless and until the number of such professors or lecturers shall exceed two, and then only in respect of the number of such professors or lecturers in excess of two.

3. The first condition, Class 1, Order A, in the schedule to the Education Act, 1865, shall be read as if the words "where no other provision has been made from the public funds for higher education" in the commencement thereof were omitted therefrom.

4. This Act may for all purposes be cited as "The Higher Education Act, 1874."

#### SCHEDULE.

[See note to Schedule to Act 13 of 1865, *supra*.]

No. 32—1884.]

[July 25, 1884.

#### ACT

To Enable the "Gill College Corporation" to sell certain Property and Appropriate the Proceeds thereof to certain purposes, and to Raise certain Moneys upon Loan.

Preamble.

WHEREAS one WILLIAM GILL, of Somerset East (hereinafter called the testator), did by his last will and testament, bearing date the 19th day of January, 1863, appoint certain seven persons therein named, under the style of the "Gill College Corporation," his sole and universal heirs, subject to the payment of certain legacies, and to the provisions of the said will generally, and did make due provision for the filling up of any vacancies that might arise in the said "Gill College Corporation," by reason of the death or resignation of any of its members from time to time: and whereas the said testator did further by the said will direct that the property bequeathed to the said corporation as aforesaid should remain in the custody of his executors, in the said will nominated, who should pay to the said corporation the annual interest, rents

and revenues derived from such property, to be by the said corporation applied in the formation and maintenance of an institution for public education at some convenient place in the Eastern Province of this Colony to be by the said corporation or the majority of its members selected: and whereas the said testator did further direct that after the death of all the said executors the said corporation should enter upon and execute all such trusts and duties by the said will committed to the said executors as should then be unfulfilled or incomplete: and whereas the said testator did by the said will order that the said corporation should apply no part of the property bequeathed to it as aforesaid in the erection or purchase of any buildings: and whereas by a codicil to the said will, bearing date at Somerset East, the 25th day of July, 1863, the said testator did direct that his landed property should not be sold, but should be retained as it then existed, as long and in as far as should be consistent with his said will: and whereas the said testator died in the year 1863, without having altered the said will or codicil in any manner material to the matters above recited, and leaving certain property which has devolved upon the said corporation subject to the provisions aforesaid: and whereas the Governor of the Colony, by deed under his hand and the public seal, under date the 16th day of April, 1867, granted to the said corporation, under the style of the Trustees or Corporation of the Gill College at Somerset East, and to their successors, a certain piece of land, situate at Somerset East, and in the said deed fully described, on condition that the said land should be used as a site for the erection of the college proposed to be erected for the purposes of such educational institution as aforesaid, and other buildings connected therewith and for no other purpose whatsoever: and whereas the said corporation has, with funds provided by public subscription, caused to be erected such college as aforesaid upon the land granted as abovementioned, and has established and maintained, and continues to maintain, such educational institution, styled the Gill College, under the provisions of the said will: and whereas a certain erf, known as Erf No. 57, in Paulett-street, with the buildings thereon, in the town of Somerset East, formed part of the estate left by the said testator at his death, and is now vested in the said corporation as aforesaid: and whereas it is expedient, in the interests of the public and of the said Gill College, that the said corporation should provide suitable buildings for the establishment of a boarding house for students in connection with the said college, and should be placed in a position to erect such buildings upon the land granted as aforesaid: and whereas it is advisable that, for the purpose of providing the funds necessary for the erection of the buildings last abovementioned, the said corporation should be empowered to sell the aforesaid erf with the buildings thereon, and also to raise money upon the security of the land granted as aforesaid, and the said college buildings and any

GGG



No. 29—1860.

other buildings that may be erected thereon: 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 sell certain erf in Somerset East.

1. It shall be lawful for the said Gill College Corporation, in pursuance of any resolution passed by a majority of its members, to sell the aforesaid Erf No. 57, situate in Paulett-street, in Somerset East, with the building thereon, in such manner as may be found most advantageous, and to devote the proceeds of such sale to the erection upon the land granted, as aforesaid, of buildings for the purpose of a boarding-house for the use of students, as in the preamble of this Act mentioned.

Power to borrow.

2. The said Gill College Corporation is hereby authorized, in pursuance of any such resolution as in the last section abovementioned, to borrow, upon the security of the land granted as aforesaid and the said college buildings and other buildings erected thereon, such sum or sums of money as may be needed, in addition to the proceeds of the erf above described, for the erection and completion of the buildings required for the purposes of the said boarding-house, and to execute all mortgage bonds, deeds, or other documents, and to do all things necessary to give effect to such security for the due repayment of such sum or sums, anything in the said deed of grant to the contrary notwithstanding.

How deeds to be executed.

3. Any mortgage bond, deed of transfer, or other document necessary to be signed or executed by the said corporation for the purposes of giving effect to the provisions of this Act may be signed or executed by any number of the members of the said corporation not being less than four, and when so signed and executed shall be as valid and effectual as if signed by the whole of the members of such corporation.

Short title.

4. This Act may be cited as the "Gill College Corporation Act, 1884."

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No. 29—1860.]

[July 17, 1860.

### ACT

#### For Establishing a College at Graaff-Reinet.

Preamble.

WHEREAS it is expedient for the advancement of learning in this Colony that a college be established at Graaff-Reinet; and whereas the sum of five thousand pounds has been subscribed, contributed, and advanced by certain inhabitants of Graaff-Reinet and others towards a fund raised 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, as follows:—

1. A college for affording instruction in literature and science shall be forthwith established at Graaff-Reinet, and the same shall be called the Graaff-Reinet College.

No. 29—1860.

College to be established at Graaff-Reinet, and styled "Graaff-Reinet College."

2. There shall be, as soon as circumstances will permit, a preparatory school in connection with the said college.

Preparatory school connected with it.

3. The general superintendence, management, and direction of the affairs of the college and schools shall be vested in a council of seven members, three of whom shall form a quorum.

Superintendence and management of college.

4. One of the members of the College Council shall be nominated by the Governor, one by the Divisional Council of Graaff-Reinet, and one by the Commissioners of the Municipality of Graaff-Reinet; the other four shall be elected by the subscribers to the college fund who have respectively contributed not less than twenty-five pounds to that fund.

Certain members of council to be nominated, others to be elected.

5. The Governor, the Divisional Council of Graaff-Reinet and the Commissioners of the Municipality of Graaff-Reinet, shall respectively communicate to the Resident Magistrate of Graaff-Reinet, on or before the second day of August, 1860; the names of the persons nominated by them to be members of the College Council, and the said Magistrate shall thereupon immediately cause the names of those persons to be posted up in some conspicuous place in front of his office, with a notice that they have been so nominated.

Names of nominated members to be communicated to resident magistrate. Proceedings thereupon.

6. A general meeting of all persons who have contributed twenty-five pounds or upwards to the said college fund shall be held before the Resident Magistrate of Graaff-Reinet, in his Court-room, on the eleventh day of August, 1860, at ten o'clock in the forenoon, for the election of the four elective members of the College Council, and every such contributor present at the said meeting shall be entitled to one vote for every member of the said council to be elected, and the election shall be by ballot, and the four persons who shall have the greatest number of votes shall be declared duly elected.

Election of members of council.

7. The seven persons nominated and elected as in the preceding sections prescribed shall hold office as members of the Graaff-Reinet College Council until the 31st day of December, 1863.

How long to hold office.

8. Within the first week of December of the year 1863, and of every subsequent third year, the Governor, the Divisional Council of Graaff-Reinet, and the Commissioners of the Municipality of Graaff-Reinet, shall respectively communicate to the College Council the names of the persons nominated by them as members of the said council for the next ensuing three years, which names the said council shall thereupon cause to be posted up in some conspicuous place within the municipality, with a notice that those persons have been so nominated.

Appointment of nominated members every third year.

9. A general meeting of the registered holders of the certificates in the eleventh section of this Act mentioned shall be held in the college building on some day between the 15th and 25th Decem-

Elected members how to be chosen.

- No. 29—1860. ber of the year 1863, and of every subsequent third year, for the purpose of electing four members of the College Council to serve for the next ensuing period of three years, and the said meetings shall be called by the College Council by notice published in the *Government Gazette* and in one of the local newspapers not more than thirty nor less than twenty days before the day appointed for such meeting.
- Council to elect chairman. 10. At the first meeting of the College Council after every general election, the members shall elect one of their number to be their chairman.
- Council to issue certificates to certain contributors to college fund. 11. As soon as may be after the first election of the College Council the said council shall issue to every person who shall have contributed the sum of twenty-five pounds or upwards to the college fund, a certificate signed by the chairman and the secretary of the council to that effect, and such certificate shall be numbered and registered in a book to be kept by the council for that purpose; and a similar certificate shall in like manner thereafter be issued to every other person who shall subscribe and contribute twenty-five pounds or upwards to the college fund.
- Certificates transferable. Holders entitled to vote for members of college council. 12. Every such certificate shall be transferable upon payment of a fee of ten pounds to the college fund; and every transfer made shall be registered in the register of certificates kept by the council and shall be endorsed, under the signature of the chairman and the secretary of the council, on the certificate transferred; and every person in whose name any such certificate shall stand registered at the time of any election of members of the council, and who shall be personally present, shall be entitled to one vote for every member to be elected.
- What to constitute vacation of seat in council. 13. Any member of the College Council who shall be absent from the meetings of the council during six consecutive months, except with leave of the council, or who shall become incapacitated by mental or bodily infirmity, shall, *ipso facto*, vacate his office.
- How to proceed in case of vacancies occurring. 14. Whenever any member of the College Council shall die or resign, or shall otherwise vacate office before the period for which he was nominated or elected shall have expired, a nomination or election, as the case may be, of a new member, shall immediately take place, as nearly as may be in the same manner as prescribed with regard to general triennial nominations and elections, and the person then nominated or elected shall hold office only during the unexpired period of the term for which the person in whose room he is nominated or elected had been nominated or elected.
- Votes by proxy. 15. At all elections of members of the College Council after the first, every registered holder of a certificate such as in the eleventh section of this Act mentioned, who shall reside at a greater distance than fifteen miles from Graaff-Reinet, and every female holder of such a certificate shall be entitled to vote by proxy, which proxy shall be in following form :

I, \_\_\_\_\_ do hereby authorize and appoint \_\_\_\_\_  
to vote for me at all elections of members of the Graaff-Reinet  
College Council.

No. 29—1860.

\_\_\_\_\_ (Signature).

Dated at \_\_\_\_\_ this day of \_\_\_\_\_

16. Any member of the College Council who shall vacate office, otherwise than from mental or bodily infirmity, shall be eligible for re-nomination and re-election. Members vacating office re-eligible.

17. The Graaff-Reinet College fund already existing and all moneys, assets, and other property, personal or real, of every nature and description whatsoever, now belonging and which shall hereafter accrue or become due and payable to the Graaff-Reinet College, shall be vested in and administered by the College Council for the purposes of the said college. Council to administer existing and future funds of college.

18. The Graaff-Reinet College fund, to the amount of five thousand pounds, shall be invested by the College Council on interest on good and sufficient security, and shall not be otherwise appropriated, except with the consent of three-fourths of the registered holders of the certificates in the eleventh section of the Act mentioned, given in writing at some meeting of such holders of certificates held for that purpose, upon a notice of not more than thirty and not less than twenty days, published in the *Government Gazette* and some local newspaper, but the interest may be used towards the payment of salaries and other necessary expenses incurred on behalf of the said college. College fund how to be invested.

19. The College Council shall provide the necessary buildings, apartments, and other requisites for the college and school. Council to provide buildings and other requisites.

20. The College Council shall appoint the professors and teachers required for the college and school from time to time, on such terms and at such salaries as the said council shall find expedient, and shall regulate and fix the fees to be paid by the students and scholars, and how the same shall be appropriated. To appoint professors and teachers and regulate fees.

21. The College Council shall appoint a secretary and treasurer, and such other officers as shall be deemed necessary, on such terms and with such instructions as the said council shall deem expedient. Secretary and treasurer to be appointed.

22. The College Council shall, from time to time, frame such rules and by-laws for their own guidance, and for the better regulation of the affairs of the college and school, as the said council shall find expedient, and all such rules and by-laws shall be in force and have effect until cancelled by the said council, provided the same be not repugnant to any of the provisions of this Act. Council to frame rules and regulations

23. The College Council shall cause true and correct records to be kept of all its proceedings, and true and correct accounts of all moneys received and paid on behalf and account of the college and school, and shall, in the month of January, in each year, transmit to the Colonial Secretary, for the information of the Records of proceedings to be kept.

- No. 29—1860. Governor and of Parliament, a statement of the revenue and expenditure during the preceding year, and a general report of the state and affairs of the college and school; and shall cause a copy of the said report and of the account of revenue and expenditure to be published in the *Government Gazette*.
- Annual statement of revenue and expenditure to be laid before Parliament and published in Gazette.
- How college senate to be constituted. 24. Two of the members of the College Council, nominated thereto by the council, shall, together with the professors of the college and the principal teacher of the preparatory school, form a senate, in which shall be vested the superintendence and regulation of the discipline and instruction of the several departments and classes of the college and school.
- Council and senate to determine subjects to be taught and arrangement of college departments. 25. The council and senate jointly shall determine what subjects shall be taught and what books shall be used in the college and school, what departments shall be taken by each professor, and the hours during which instructions shall be given, and shall also make arrangements for periodical public examinations, of which there shall be at least one in every year. Both in the college and in the preparatory school a portion of each day shall be devoted to reading the Holy Scriptures.
- Holy Scriptures to be read daily. 26. All complaints against or on the part or on behalf of the students or scholars, shall, in the first instance, be made to and decided upon by the senate, subject to appeal to the council, whose decision shall be final.
- Complaints on behalf of students to be made in first instance to Senate. Appeal thence to council. 27. The Governor shall have the power to admit to the college five free students.
- Governor may appoint free students. 28. The sum of four hundred pounds per annum shall be paid to the council of the Graaff-Reinet College, from the Public Treasury of the Colony, in monthly instalments, payable at the end of each month, the receipts for which shall be signed by the secretary to the said council. <sup>(1)</sup>
- Annual grant from treasury. 29. All actions and other proceedings at law, to be instituted by or against the council of the Graaff-Reinet College, shall be so instituted and proceeded in by or against the secretary to the said council for the time being.
- Proceedings at law to be in the name of the secretary.

No. 6—1856.]

[June 4, 1856.

## AN ACT

## For Regulating the Public Schools of Port Elizabeth upon the Grey Foundation.

## Preamble.

WHEREAS it is intended to establish public schools in Port Elizabeth, for the education of youth, without distinction of creed, class, or colour, which schools, in honour of His Excellency Sir George Grey, K.C.B., the Governor of this Colony, and in

<sup>1</sup> See § 2, Act No. 24, 1874, *supra*.

acknowledgment of the interest which he has evinced in their success, are to be called the "Public Schools of Port Elizabeth upon the Grey Foundation : " And whereas it is expedient that the board of managers for managing the said schools should be incorporated, and that certain other matters likely to promote the welfare of the said schools 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 :—

No. 6—1856.

1. The schools aforesaid shall be called the "Public Schools of Port Elizabeth upon the Grey Foundation," and shall be managed by a board of managers.

Designation of schools.

2. 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 schools, 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. <sup>(1)</sup>

Civil commissioner, municipal commissioners, and elective members form board of management.

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 Public Schools of Port Elizabeth upon the Grey Foundation," 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 board aforesaid shall be elected by donors to the said schools, of sums not less, respectively, than fifty pounds, and subscribers subscribing, each of them, a sum of not less than five pounds : Provided that any sum not less than five pounds paid by any person by way of a fee or fees for any pupil belonging to the said schools shall be deemed, for the purposes of this Act, to be a subscription.

Who elective members.

5. Every donor of a sum of fifty pounds shall be entitled to one vote ; every donor of one hundred pounds to two votes ; and in like manner, every donor shall have one vote for every fifty pounds of his donation : Provided that all successive donations given by the same person shall, for the purposes of this Act, be regarded as one donation of the whole amount of the donations of such person for the time being.

What entitles to vote.

6. Every such subscriber as already defined, of five pounds, shall be entitled to one vote ; every subscriber of ten pounds, to

Number of votes to each.

<sup>1</sup> See Act No. 14, 1868, § 80 (Municipalities).

- No. 6—1856. two votes; and in like manner, every subscriber shall have one vote for every five pounds of his subscription: Provided that no subscriber shall be entitled to vote at any election, except a subscriber who shall have paid a subscription of not less than five pounds for the year in which such election shall be held:
- Donor may vote. Provided, also, that a donation of not less than five pounds shall be considered as a subscription, entitling the donor to vote as if a subscriber of the same amount at any election which shall be held within twelve months next after the bestowal of such donation.
- Board when to be elected. 7. 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 donors and subscribers to the said schools, 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 there shall be to be elected.
- Election how to take place. 8. At the meeting last mentioned, 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 to vote. 9. 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 out-going elective members shall be eligible to be re-elected.
- Elective members to retire, and their places to be filled up. 10. 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 donors and subscribers to the said schools, for the election of elective members for the three years next succeeding, of which meeting a notice of not less than twenty-one days shall be given, by the Civil Commissioner aforesaid, in the *Government Gazette*.
- New members how elected.

11. 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 five pounds 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 donors 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.

No. 6—1856.  
What constitutes vacancy.

Vacancy to be filled.

12. Should it happen by reason of any failure or neglect, or other cause, that any such meeting as in the tenth 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 tenth section mentioned, call a meeting of donors 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 tenth section mentioned would have remained in office, and no longer.

In case of failure to elect.

13. 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 board until elective members are chosen.

14. Should the numbers 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 municipal commissioners for the time being: Provided, also, that if, during any such interval as aforesaid, the number of municipal

Increase or diminution in number of municipal commissioners, before any general election, not to affect the board.



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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 to hold property for the benefit of the institution.

15. 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 public schools 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 schools; 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 schools; and generally of all property, movable or immovable, belonging to the said schools.

Board may, with sanction of the Governor, sell or lease lands held in trust.

16. 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.

17. 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 schools, 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.

Schools to be three in number.

18. The schools aforesaid to be managed as aforesaid by the said board shall be, in the first instance, three in number, that is to say, one High or Collegiate School, to be called the "Grey Institution," and two Elementary or Training Schools, for the preparation of pupils for the High or Collegiate School aforesaid.

Board of managers to appoint and discharge teachers.

19. It shall be lawful for the board of managers to appoint all such teachers and masters as may be required for the said schools, at such salaries as the said board shall deem expedient, and to discharge any such teacher or master for improper conduct, or other incapacity, or for non-fulfilment of his engagements with the said board: Provided that no such teacher or master 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 three fourths of the members for the time being shall be present, shall have resolved that such teacher or master be so discharged.

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20. All persons other than teachers and masters employed in or about the said schools shall be engaged by the said board, and shall hold their situations at the pleasure of the said board.

Board to appoint other officers.

21. It shall be the duty of the board of managers to frame, and from time to time, if need be, to amend all 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 board; how many 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 board shall be kept; the ages and proficiency in learning which shall be a condition of admission into the Grey Institution aforesaid, and into both or either of the two other schools aforesaid; the fees or other charges which shall be payable by or in regard to the pupils in the said three schools respectively; the number and the duties of the teachers, masters, or other persons employed in each of the said schools; the length of notice to be given or received by each teacher or master, 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 19th section specified; the branches of learning which shall be taught in the said schools respectively; the terms and conditions upon which benevolent persons may entitle themselves, or others nominated by them, to send free pupils to the said schools respectively; and generally any subject connected with the due and proper conduct, discipline, management, and advancement of the said schools.

Board to frame rules for the institution.

To regulate duties and salaries of officers.

22. It shall at all times be provided by such rules and regulations that every donor to the said schools of not less than £50 shall have the right to send to and keep at the said schools, or any of them, for the term of twenty-one years next after the date of the donation, one free pupil; and that every donor of not less than £100 shall have the right to send and keep at the said schools, or any of them, for ever, one free pupil for every £100 which he shall give to the said schools; and such rules and regulations shall also provide for the manner in which, and the persons by whom, such donors as aforesaid may exercise such right of presentation: Provided that it shall be lawful for the board of managers to agree, if they should so think fit, to the mode of exercising a right of presentation which shall be proposed by any donor, or intended donor, anything in the said rules and regulations to the contrary notwithstanding.

Right of presentation to scholarships.

23. The board of managers shall furnish to the Governor for the time being a copy of the rules and regulations aforesaid for

Copy of rules and amendments to be sent to Governor.

No. 6—1856.

Board may purchase, rent, or dispose of lands, buildings, &c., for benefit of institution.

the time being, and shall regularly report to the said Governor all amendments thereof and additions thereto.

24. 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 schools, 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 any buildings, or the supply of any furniture or apparatus which shall be required for such schools: Provided that no contract for any purpose which shall require an expenditure above £20 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 state and proceedings, with accounts of expenditure, to be sent to Governor, for presentation to Parliament.

25. 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 31st of December in every year; and the said board shall also frame a full report of the state and proceedings of the schools, 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 1st 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.

26. This Act shall commence and take effect from and after the promulgation thereof.

No. 15—1878.]

[August 2, 1878.

## ACT

For Regulating and Providing for the South African College.

Preamble.

WHEREAS the several proprietors of shares in the South African College, for the purpose of extending the usefulness thereon, have, by resolution, passed on the first day of June, 1877, at a public

meeting held in the Town-house, after due notice, resolved to renounce all their right and title in and to the said college buildings, and it is desirable and expedient to repeal the Ordinance No. 11 of 1837, intituled "An Ordinance for establishing regulating, and providing for the South African College," the Act No. 19, 1858, intituled, "An Act to continue the Ordinance No. 11 of 1837," and the Act No. 30 of 1861, intituled "An Act to continue the Ordinance No. 11 of 1837," and to make other provision 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:—

No. 15—1878.

1. From and after the commencement and taking effect of this Act the said Ordinance No. 11 of 1837, the Act No. 19 of 1858, and the Act No. 30 of 1861 shall be and the same are hereby repealed.

Previous laws repealed.

2. The general superintendence of the affairs of the said South African College and any departments or schools connected, or that may hereafter be connected, therewith or shall hereafter belong to the same, and all the funds, property, and revenue belonging thereto shall be discharged and exercised by and vested in a council, to be called the South African College Council.

Superintendence of College and management of its property vested in a council.

3. The said council shall consist of nine members, three of whom shall be nominated by the Governor, three by the council of the University of the Cape of Good Hope, and the remaining three members by a constituency of past students and life governors of the college, any three of whom shall form a quorum. The members of the first council nominated under this Act shall, at their first meeting, elect a chairman for the ensuing year, and shall thereupon proceed to ballot for the purpose of fixing upon one of the said members of the said council nominated by the Governor, one of the said members nominated by the council of the University of the Cape of Good Hope, and one of the said members nominated by the said constituency of past students and life governors, who shall vacate their seats on the thirty-first day of March, 1880; and upon one of the said members nominated by the Governor, one of the said members nominated by the council of the University of the Cape of Good Hope, and one of the said members nominated by the said constituency of past students and life governors, who shall vacate their seats on the thirty-first day of March, 1881, and the remaining three members of the said council shall vacate their seats on the thirty-first day of March, 1882, and upon the retirement from office of such members of the said council they shall be succeeded by members who shall be nominated by the persons or bodies who nominated the members so vacating office, and such newly nominated members of the said council shall remain in office for three years, from the thirty-first day of March upon which the members of the said council whom they shall succeed, shall have retired from office, and shall in turn be succeeded by

Composition of council.

Arrangements as to retirement of members.

- No. 15—1878. members to be nominated in like manner: Provided, however, that no professor of the South African College or teachers of any school connected therewith shall be eligible to be nominated a member of said South African College Council: Provided, also, that any member of the council so vacating office shall be eligible for re-nomination: And provided, further, that in case of any failure to nominate the full number of members for the said council, such failure shall not affect the legal constitution or powers of the council so long as the number nominated shall not be less than a quorum.
- Who may not be members. Retiring members may be re-elected. How as to failure to nominate. Within what time members to be nominated. Governor to publish list and to fix time and place for first meeting. Council may frame bye-laws if not inconsistent with this Act. Proceedings when members vacate office otherwise than by retirement. Property of College vested in council.
4. The members of the said council to be nominated as aforesaid shall be nominated within three months after the taking effect of this Act, and such nominations shall be notified to the Governor by the several persons or bodies so nominating such members, and the names of such members so nominated as aforesaid, together with the names of the members nominated by the Governor, shall be notified by the Governor by proclamation in the *Government Gazette*, and the Governor shall in such proclamation fix the place, day, and hour for the first meeting of the said members of council.
5. It shall be lawful for the said council, and they are hereby authorized and empowered, from time to time, to frame and agree upon such bye-laws and rules of order and procedure as the said council may deem expedient for regulating their proceedings and for the proper management and undertaking the administration of the said college and the departments or schools in connection thereof, and of the property and funds belonging thereto: Provided they are not repugnant to or inconsistent with the true intent and meaning of the provisions of this Act.
6. Any member of said council who shall absent himself from the meeting of said council for four consecutive meetings without leave from the council having been obtained, or shall assign his estate for the benefit of his creditors, or shall become insolvent, 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 the secretary of the council shall, without any delay, notify the fact of such vacancy having occurred to the persons or bodies who shall have nominated such member of council, and thereupon the said person or bodies that appointed the member whose seat has become vacant shall proceed forthwith to nominate his successor, and the person thus nominated shall hold office during the unexpired portion of the time of the member whose seat shall have been so vacated.
7. The several funds already existing and all moneys, assets, and other property, movable and immovable, of every nature and description whatever, now belonging, and which shall hereafter accrue to, or become due and payable, or be devised and vested in the said college, and any department or schools connected or that may hereafter be connected therewith shall be vested in and be

administered by the said council for the purpose of the said college and departments, or schools connected therewith: Provided, however, that all existing trust, devised, or bequest money shall be administered, laid out, and applied by the said council, in terms and in conformity with the conditions on which said trust, devised, and bequest moneys have been made, bequeathed, or vested in the said college.

No. 15—1878.  
Existing trusts.

8. [Repealed by Act No. 12—1879.]

9. It shall and may be lawful for the Governor of this Colony for the time being to enter in the said college such number of free pupils as he shall think proper, not, however, exceeding five in the whole, at any time when there shall be not more than fifty pupils in the college, and not exceeding ten in the whole at any time when there shall be more than fifty pupils; and every such free pupil, having attained such degree of scholarship as shall be approved by the senate, shall, upon payment of such fee as shall be fixed by the council to be paid to the treasurer, be authorized to enter any class which shall be open at the time in the college, without payment of any fee in respect of any class belonging to the regular establishment of the college.

Governor may enter certain number of free pupils.

10. It shall be lawful for the said council to appoint during pleasure a secretary and treasurer and such other officers as shall be deemed necessary, on such terms and with such instructions as the said council shall deem expedient.

Council may appoint certain officers.

11. [Repealed by Act No. 12—1879.]

12. The said council shall cause true and correct records to be kept of all its proceedings and true and correct accounts of all moneys received and paid on behalf and for account of the college and departments or schools connected therewith, and shall in the month of March in every year transmit to the Colonial Secretary for the information of the Government and of the Parliament, a statement of the revenue and expenditure during the preceding year, and a general report of the state and affairs of the college and departments or schools connected therewith, and shall cause a copy of the said report and of the account of revenue and expenditure to be published in the *Government Gazette*.

Council to record its proceedings and keep proper accounts

Yearly financial statement and report to be transmitted to Government and published in *Gazette*.

13. [Repealed by Act No. 12—1879.]

14. The term "past student" shall mean any person who has been or hereafter may have been a student of the college, and who shall hold a certificate in literature and science granted by the late board of public examiners, under Act 4, 1858, or who shall have become a graduate of any university.

"Past student" defined.

15. The term "life governor" shall mean any person who at the time of the taking effect of this Act shall in his or her own right, be the proprietor of a share in the South African College, and also any person who shall be a donor of twenty pounds sterling to the said college.

"Life governor" defined.

No. 12—1879.

As to nomination of members of council by past students and life governors.

16. Whenever it shall be necessary for the past students and life governors to nominate any members of council, a meeting of such past students and life governors shall be called by the secretary of the council, by notice to be published in the *Government Gazette* not less than thirty days before the day appointed for holding such meeting: Provided, that any past student and life governor, resident at a greater distance from Cape Town than ten miles, may vote by proxy at any such meeting: Provided also, that no such nomination of a member of council by such past students and life governors shall be considered to have taken place, unless at any meeting called as aforesaid at least twenty votes given either personally or by proxy, shall have been recorded.

Council to sue and be sued by secretary.

17. All actions and other proceedings at law to be instituted by or against the council of the said college shall be so instituted and proceeded in by or against the secretary to the said council for the time being.

Act to be deemed a public Act.

18. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges, Magistrates and others, without being specially pleaded.

Short title.

19. This Act may be cited for all purposes as the "South African College Act, 1878."

No. 12—1879.]

[Sept. 11, 1879.

### ACT

#### To Amend the "South African College Act, 1878."

Preamble.

WHEREAS it is expedient to amend "The South African College Act, No. 15 of 1878," and to make better provision for the management of the schools connected with the said college: 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 certain sections of Act 13 of 1865.

1. The eighth, eleventh, and thirteenth sections, and so much of the said Act No. 15 of 1878, and so much of the Act No. 13 of 1865, and of the school regulations contained in the schedule to, or made in pursuance of, the said lastmentioned Act, as are repugnant to, or inconsistent with, the provisions of this Act, shall be, and the same are hereby, repealed.

College council may appoint a principal and shall appoint professors and teachers.

2. The South African College Council may from time to time, if it shall see fit, appoint from amongst the professors, or otherwise, a principal of the said college, and shall appoint such professors, assistant professors, lecturers, and teachers, as may be required for the college and for any department or school connected therewith, on such terms and at such salaries as the said council shall find expedient, and shall regulate and fix the fees to

be paid by the students and scholars, and the appropriation thereof.

No. 12—1879.

3. The superintendence and regulation of the discipline and instruction of the several departments and classes of the South African College shall be vested in a senate, to be constituted as hereinafter in this Act is provided, subject to such regulations and by-laws as have been, or may hereafter from time to time, be framed by the South African College Council under the provisions of the fifth section of the "South African College Act, 1878."

Superintendence and regulation of discipline, &c., vested in senate.

4. The senate shall consist of the principal of the college (should a principal be appointed), the professors, and two members of the South African College Council; any three of whom shall form a quorum for the transaction of business.

Constitution of senate.

5. The two members appointed by the said council to be members of senate shall hold office until the 31st day of March, 1880. The said council shall at some duly convened meeting, to be held not later than the 30th day of April in every year, choose, by a majority of votes, from amongst their number, two to be members of senate, who shall, unless they become disqualified, hold office until the appointment of their successors.

Term of office of two members appointed by council.

6. Any elected member of senate who shall cease to be a member of the council, shall thereupon vacate his seat.

Member ceasing to be member of council.

7. Upon the death, resignation, or disqualification of any elected member of senate, the council shall, in manner hereinbefore provided, elect a member to supply such vacancy, and to hold office during the unexpired portion of the time of the member so vacating office.

In case of death, resignation, &c.

8. Any act done by a quorum of the senate during any vacancy, shall be as valid and effectual as if no vacancy existed.

Acts of senate meanwhile.

9. The senate shall annually, in the month of May, elect one of their number to be chairman, who shall hold office for one year, and, in the event of a vacancy, shall elect another to hold office during the remainder of the year. The chairman shall, when present, preside at all meetings, and when absent from any meeting the senate shall elect a member to be chairman thereof. The chairman presiding at any meeting, at which the votes of members are equal, shall have a casting vote in addition to his original vote.

Election of chairman of senate.

10. The senate may from time to time frame, or alter or amend, rules for regulating the holding and proceedings of its meetings, and for the due discharge of the duties appertaining to the senate.

Senate to frame and amend its rules.

11. The South African College Council may establish in Cape Town an undenominational public school of the first class, or separate boys' and girls' schools, and shall be the managers of any schools which they shall so establish.

College council may establish an undenominational school.

12. Every such school shall, so long as aid shall be received from the public revenue, under the provisions of the Act No. 13 of

School to be under same regulations as other aided school.

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1865, be subject to all the regulations applicable to other public schools so aided.

Short title.

13. This Act may be cited for all purposes as the "South African College Amendment Act, 1879."

No. 9—1881.]

[June 25, 1881.

ACT

For Regulating the Stellenbosch Udenominational College and Public Schools.

Preamble.

WHEREAS it is expedient to provide means for the superintendence and direction of the affairs of the Stellenbosch College or Arts Department, the Udenominational Public School for Boys, otherwise known as the Stellenbosch Gymnasium, and such preparatory or branch departments as now are or may hereafter be connected therewith: 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:—

Direction of College affairs to be vested in a Council.

1. The general superintendence and direction of the affairs of the Stellenbosch College or Arts Department, the Udenominational Public School for Boys, otherwise known as the Stellenbosch Gymnasium, and such preparatory or branch departments as now are, or may hereafter be connected therewith, shall for the future be vested in a council of nine members, of whom three shall form a quorum, and the said council shall be called the Council of the Stellenbosch Udenominational College and Public Schools.

How members of the Council to be appointed.

2. One of the members of the council shall be appointed by the Governor, one shall be elected by the Divisional Council of Stellenbosch, one shall be elected by the Commissioners of the Municipality of Stellenbosch, and the other six shall be elected jointly by the Guarantors, Life Governors and Past Students, as in the succeeding section defined.

Interpretation of certain terms used in the Act.

3. The term "guarantor" shall mean every person who at the time of any election by guarantors, life governors, and past students as in the last section provided for, shall be furnishing a guarantee in connection with any of the institutions to which this Act applies, under the provisions of Act No. 13 of 1865; the term "life governor" shall mean every person who shall have contributed by way of donation not less than £10 sterling to the funds of the said institutions, or any one or more of them; and the term "past student" shall mean all former students of the said college who shall have matriculated or graduated in the University of the Cape of Good Hope or become graduates of any university recognized by the said University of the Cape of Good Hope, provided such persons shall have studied in the ordinary course

for a period of two years at least in the said college, and shall have paid to the funds of the said institutions, or any one or more of them a sum of £5 sterling; provided further that it shall not be competent for any guarantor, life governor, or past student to exercise, in more than one of the capacities mentioned in this section, the right conferred by this Act, of voting at any election.

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4. The Reverend John Murray, M.A., the Reverend Nicolaas Jacobus Hofmeyr, the Reverend Johannes Henoch Neethling, Cornelis Smuts, M.D., the Reverend Johannes Izaak Marais, Henry Edward Richard Bright, Petrus Wilhelmus Jacobus Bosman, George Lodewyk Meiring, Gideon Johannes Krige, shall become the first council of the Stellenbosch Undenominational College and Public Schools, as by this Act provided.

Names of first members of the Council.

5. The said first council shall at their first meeting after the passing of this Act, and thereafter the council from time to time being, shall annually elect a president of the council for the ensuing year, and such first council shall at their such first meeting, also fix, by ballot, on three of their number, who shall retire on the 31st December, 1881; upon three of their number who shall retire on the 31st December, 1882; and the remaining three members shall retire on the 31st December, 1883.

Mode of electing a President of the Council.

6. The said president shall preside at the meetings of the said council, when present, and, in his absence the said council shall elect a chairman, and such president or chairman, as the case may be, shall have a casting vote in addition to his ordinary vote.

President or Chairman to preside at meetings.

7. The vacancies created in the manner by the fifth section provided shall be filled up as follows:—On or before the 31st day of December, 1881, the Governor of the Colony shall appoint one member, and the body of Guarantors, Life Governors and Past Students, shall elect two members to supply the vacancies so occurring on the 31st of December, 1881; in like manner before the end of December, 1882, the Divisional Council of Stellenbosch shall elect one member, and the body of Guarantors, Life Governors and Past Students shall elect two members to supply the vacancies so occurring in the end of December, 1882; and in like manner before the end of December, 1883, the Commissioners of the Municipality of Stellenbosch shall elect one member, and the body of Guarantors, Life Governors, and Past Students shall elect two members to supply the vacancies so occurring in the end of December, 1883; and thereafter annually on or before the 31st of December, in each year the three members who have been longest in office shall retire from office, and the vacancies so arising shall be filled up by the persons or bodies having the right to appoint or elect in a similar rotation, provided that all members retiring from office as aforesaid shall be eligible for re-election.

How vacancies in the Council to be filled up.

8. No professor, lecturer, or teacher connected with the institutions to which this Act applies, or any of them, shall be eligible for a seat at such council.

Professors, &c., ineligible as Councilors.

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Names of persons elected or appointed to be communicated to Council.

9. Whenever any appointment or election shall take place under this Act, the Governor in case of appointment, or the persons or bodies electing, in case of election, shall forthwith communicate to the said council the name or names of the person or persons appointed or elected as aforesaid: provided, however, that no neglect or delay on the part of the said Governor, or persons, or bodies in so doing, shall in any way invalidate the proceedings of the said council.

Proceedings when election has to be made.

10. Whenever it shall fall to the general body of guarantors, life governors, and past students to elect any members or members of the said council, a general meeting of the said guarantors, life governors and past students for such purpose, shall forthwith be held in the college buildings, or in some other convenient place; and the said meeting shall be called by the council by notice specifying the time, place, and object of the meeting, which shall be published in the *Government Gazette* and in one or more newspapers circulating in the locality, not less than three weeks before the time fixed for such meeting, which notice shall give the names of the members of council then retiring; and the president of the council for the time being, or failing him, some one to be elected by the said meeting shall preside as chairman at said meeting; and every guarantor, life governor and past student, shall be entitled to one vote for every member of the said council then to be elected, and the election shall be by ballot or otherwise as such meeting shall determine, and the members who shall have the greatest number of votes shall be declared duly elected: provided that in case of an equality of votes the president or chairman aforesaid shall have a casting vote in addition to his ordinary vote.

How office of Councilor vacated.

11. Any member of the council who shall be absent from the meetings of the council during six consecutive months except with leave of the council, or who shall become insolvent, or incapacitated by mental or bodily infirmity, shall *ipso facto* vacate his office.

Proceedings to be taken on occurrence of vacancy.

12. Whenever any member of the council shall die, or resign, or shall otherwise vacate office before the period for which he was appointed or elected shall have expired, the secretary of the council shall, without delay, give notice of such vacancy to the Governor, or to the persons or bodies by whom the member whose seat has become vacant, was elected, as the case may be, and thereupon the Governor, in case such member shall have been appointed by him, or the persons or bodies, by whom such member was elected, as the case may be, shall forthwith proceed to appoint or elect his successor; and the person so appointed or elected shall hold office only during the unexpired period of the term for which the person in whose room he shall be appointed or elected had been appointed or elected.

By whom vacancies to be supplied.

13. Should any member or members of the first council die, or resign, or otherwise vacate office before the period for his or their

so vacating office in accordance with the rotation aforesaid shall have arrived, the vacancy or vacancies so arising shall be filled up in the following manner: The first thereof shall be filled up by the Governor; the second thereof by the Guarantors, Life Governors and Past Students, as aforesaid; the third thereof by the Divisional Council of Stellenbosch; the fourth thereof by Guarantors, Life Governors and Past Students; the fifth thereof by the Commissioners of the Municipality of Stellenbosch; the sixth thereof by the said Guarantors, Life Governors, and Past Students, and so on in a like rotation.

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14. At all elections of members of the council, guarantors, life governors and past students, who shall reside at a greater distance than ten miles from Stellenbosch, and every female life governor shall be entitled to vote by proxy, which proxy shall be in the following form:—

Voting by proxy

I, (name and designation) do hereby authorize and appoint \_\_\_\_\_ of \_\_\_\_\_ to record my vote for (specifying name or names) at the election of a member or members of the Council of the Stellenbosch Undenominational College and Public Schools, to take place on the day of \_\_\_\_\_ Dated this \_\_\_\_\_ day of \_\_\_\_\_

(Signature here.)

15. If at any time upon the occurrence of any vacancy or vacancies in the said council, there shall be a failure on the part of the said Governor to appoint, or on the part of any of the said persons or bodies to elect, a member or members to fill the said vacancy or vacancies at the time hereinbefore provided, the remaining members of the said council shall thereupon elect a member or members to fill such vacancy or vacancies, as the case may be.

In case vacancy not supplied by Government or by election.

16. The council shall cause a book to be kept by its secretary, in which shall be registered alphabetically the names of all guarantors, life governors, and past students, qualified to vote as aforesaid, and the registry aforesaid of the names of any persons in such book, shall be conclusive evidence of the right of such persons to vote for the purposes of this Act

Voter's book to be kept by Secretary.

17. All property movable and immovable of every sort and description belonging to the institutions to which this Act is applicable or any of them, or to which the said institutions, or any of them, shall become entitled, and all claims for moneys payable thereto shall be vested in, and become the property of the said council for the time being, in trust for the purposes of the said Stellenbosch Undenominational College and Public Schools; and the said council shall have power to buy and sell, and take and give transfer or delivery of property movable and immovable, and grant and take leases of property and pledge or mortgage such property, and generally become and be owners and administrators in trust for the said Stellenbosch Undenominational College and

All College property to be vested in Council.

Power to lease, mortgage, and sell.

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Public Schools; provided, however, that no immovable property vested in the said council shall be sold or mortgaged without the consent of the Governor first had and obtained.

Council to provide necessary College buildings.

18. The council shall provide the necessary buildings apartments, and other requisites for the said institutions to which this Act is applicable, and shall administer the grants of money received from the public revenue for educational purposes in accordance with the regulations laid down by law with regard to appropriation of grants of public money for educational purposes.

Appointment and dismissal of Professors, &c., to be vested in Council.

19. The right and duty to appoint and dismiss professors, lecturers, and teachers, in the said institutions, or any of them shall be in the said council, but no such appointment or dismissal shall take effect without the consent first had and obtained of the officer or department directing the public education of the Colony for the time being; and the said council shall also regulate and fix the fees to be paid by the students and scholars and how the same shall be appropriated.

Secretary and other officers to be appointed.

20. The council shall from time to time as occasion may require, appoint a secretary and treasurer and such other officers as shall be deemed necessary on such terms and with such instructions as the said council shall deem expedient.

Power to make bye-laws and regulations.

21. The council shall from time to time frame such rules and by-laws for their own guidance, and for the better regulation of the affairs of the said institutions or any of them, the discipline and instruction therein, and the conduct of the students and scholars thereof as the said council shall find expedient; and all such rules and bye-laws shall be in force and have effect until cancelled or amended by the said council, provided the same be not repugnant to any of the provisions of this Act.

Records and accounts to be kept.

22. The council shall cause true and correct records to be kept of all its proceedings, and true and correct accounts of all moneys received and paid on behalf and account of the said institutions respectively, and shall once in each year transmit to Government a report of the proceedings and management thereof, together with a statement of the revenue and expenditure during the preceding year.

Formation of a Senate.

23. One of the members of the council nominated thereto by the council shall, together with the professors of the college, form a senate in which shall be vested the superintendence and regulation of the discipline and instruction of the several departments and classes of the college, in accordance with regulations to be passed for that purpose by the said senate, and approved of by the council.

Senate annually to elect a Chairman.

24. The senate shall annually, in the month of July, elect one of their number to be chairman, who shall hold office for one year, and, in the event of a vacancy, shall elect another to hold office during the remainder of the year. The chairman shall, when present, preside at all meetings, and when absent from

any meeting the senate shall elect a member to be chairman thereof. The chairman presiding at any meeting, at which the votes of members are equal, shall have a casting vote in addition to his ordinary vote.

No. 16—1873.

25. The senate may, from time to time, frame, or alter, or amend, rules for regulating the holding and proceedings of its meetings, and for the due discharge of the duties appertaining to the senate.

Senate may make and alter rules for its meetings.

26. All actions and other proceedings at law to be instituted by or against the Council of the Stellenbosch Undenominational College and Public Schools shall be so instituted and proceeded in by or against the secretary to the said council for the time being.

How Council to sue and be sued.

27. This Act may be cited as "The Stellenbosch Undenominational College and Public Schools Act, 1881."

Short title.

No. 16—1873.]

[June 26, 1873.]

ACT

To Establish and Incorporate an University at the Cape of Good Hope. (1)

WHEREAS it is expedient, for the better advancement of sound learning amongst all classes of Her Majesty's subjects in this Colony, to establish and incorporate an University at the Cape of Good Hope, and thereupon to dispense with the services of the existing Board of Public Examiners: 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. An university, consisting of a chancellor, a vice-chancellor, a council, and graduates shall be established at the Cape of Good Hope, and shall be a body politic and corporate by the name of "The University 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 to purchase and to hold property, movable and immovable, and to sell, transfer, lease, or otherwise dispose of any such property, and also to do all other matters or things incidental or appertaining to a body politic: Provided that it shall not be lawful for the said university to sell, transfer, lease, or otherwise dispose of any immovable property to which it may become entitled, unless with the previous consent of the Governor.

Of whom university to be established shall consist.

Its name and powers.

2. The council of the said university shall consist of twenty members, who shall, within three months after the taking effect of this Act, be appointed by the Governor by proclamation, and the

First council to be appointed by Governor.

<sup>1</sup> See Act No. 9, 1875, *infra*.

- No. 16--1873. said Governor shall in the proclamation appointing such council fix the place, day, and hour for the first meeting of the same.
- Council to continue for six years. 3. The council so first appointed as aforesaid shall continue in office for six years; and at all meetings thereof, five members, including the vice-chancellor or other presiding member, shall form a quorum.
- Quorum. 4. Not sooner than six months nor later than three months next before the expiration of the said term of six years, ten members of council shall be appointed by the Governor by proclamation, and ten other members shall be elected by the convocation hereinafter mentioned, to form the new council to replace the council about to expire by effluxion of time: Provided that the ten members to be appointed by the Governor shall be so appointed not less than thirty-one days before the holding of the meeting of convocation for the election of the ten remaining members. And such new council shall continue in office for six years, and be succeeded by another council, to be appointed in like manner, and so on for ever.
- New council to continue for six years. 5. In case any member of the said council shall die, or resign, or be absent from the Colony for the space for six months, his office shall become vacant. All vacancies occurring under the provisions of this section shall be filled alternately by the Governor and the convocation hereinafter mentioned, the Governor being entitled to fill the first of the vacancies which shall so occur, and the convocation the next, and so on alternately; and any member so elected to fill any such vacancy shall be appointed or elected, as the case may be, to hold office until the expiration, by effluxion of time, of the term of office of the then existing council.
- Casual vacancies how to be filled up. 6. The said council shall, at the first meeting thereof, elect from amongst its own members the vice-chancellor of the university, who shall in the absence of the chancellor perform all duties and functions appertaining to the office of chancellor, and who shall, when present, preside at all meetings of the council: Provided that any meeting of such council at which the vice-chancellor shall not be present may elect its own chairman.
- Council to elect vice-chancellor, who shall be chairman. 7. The vice-chancellor shall continue in office for two years, unless during that time he shall die, resign, cease to be a member of the council, or be absent from the Colony for the space of three months, in any of which cases his office shall become vacant, and another member of the council shall be elected in his room and stead, who shall in turn continue in office for the term of two years, or until the expiration, by effluxion of time, of the term of office of the then existing council, whichever shall be the shorter period, but subject to the aforesaid conditions, and so on for ever.
- Vice-chancellor to continue in office for two years. 8. The council shall have power to confer, after examination, and according to the by-laws and regulations of the university, the several degrees of Bachelor of Arts, Master of Arts, Bachelor
- Council to confer degrees subject to regulations.

of Laws, Doctor of Laws, Bachelor of Medicine, and Doctor of Medicine: Provided, always, that it shall be lawful for the said council to frame such by-laws and regulations as it may deem fit for the admission without examination to any such degree of persons who have graduated in any other university; and provided, also, that the degree of Bachelor of Laws shall not be conferred on any person who shall not have obtained or been admitted to the degree of Bachelor of Arts in the university of the Cape of Good Hope, or who otherwise is not a holder of the second-class certificate in literature and science: Provided, further, that it shall be lawful by any such by-laws or regulations as aforesaid to provide that every person holding the certificate granted by the said board of having passed the second-class examination in literature and science in the third order of merit shall be entitled to proceed to the examination for the degree of Master of Arts without being subjected to the examination for the degree of Bachelor of Arts.

Holders of second-class certificates of Board of Examiners in Literature and Science may have certain privileges.

9. It shall be the duty of the council to appoint examiners for the examination of persons desiring to matriculate in the university or to obtain any degree, certificate, or distinction from the university, and the said council, in appointing such examiners, shall avoid, as much as may be, appointing any person to be an examiner of any candidate who shall have been under the tuition of such examiner at any time during the two years next before the examination. Every examiner shall hold office as such for a term not exceeding a year, and shall cease to hold office on some date to be fixed by the by-laws in the next succeeding section mentioned.

Council to appoint examiners.

10. The council shall from time to time frame the by-laws and regulations for the conduct of examinations, and for establishing, in regard to the subjects of examination, the tests and standards of qualification to be applied to the candidates, and shall appoint the times and places for holding examinations; as also the subjects of the various examinations for degrees, and for such other distinctions and certificates as the university is empowered to grant.

Council to frame by-laws as to examinations.

11. The council, on receiving the reports of the examiners, shall, accepting as conclusive the results of such reports, finally ascertain and decide what candidates are qualified to receive any degree, distinction, or certificate from the university.

Council to decide upon reports of examiners as to success of candidates.

12. It shall be lawful for the council, from time to time, to frame by-laws and regulations fixing reasonable fees to be paid for or in respect of matriculation examinations, degrees, and certificates, as well as for any other purpose regarding the university; but no by-law or regulation framed under this Act shall be repugnant to any of the provisions thereof, nor shall the same be of any force or effect until it shall have been approved of by the Governor and published in the *Government Gazette*.

Council to fix fees to be approved by the Governor and published in Gazette.

13. The convocation of the university shall consist of all graduates of such university and of the persons holding certificates in literature and science, granted by the Board of Public Examiners

Of whom convocation shall consist.



- No. 16—1873. Meetings when and how called. in this Colony under the ninth section of Act 4, 1858. Meetings of convocation may be called by the vice-chancellor at his own instance, and shall be called by him as often as a requisition signed by ten members, or more, of convocation shall be delivered to him requesting him to call such meeting, and stating the subject or subjects proposed to be considered thereat. Every meeting of convocation shall be called by a notice to be published in the *Government Gazette* for not less than twenty-one days before the day appointed for holding such meeting: Provided that the term "graduate" shall mean any person upon whom the university shall have conferred any degree after examination, and also any graduate of another university whom the council shall, in the exercise of the power in that behalf hereinbefore bestowed, have admitted to any degree: Provided also that at all meetings of convocation, members thereof resident at a greater distance from Cape Town than ten miles may vote by proxy, under such by-laws and regulations in that behalf as shall be established.
- Term "graduate," Who may vote by proxy. 14. As soon as the members of convocation shall have reached the number of one hundred, but not sooner, the vice-chancellor shall call a meeting of such convocation for the purpose of electing the chancellor of the university, and the chancellor so elected shall hold office for life, unless he shall sooner resign such office; and when by death or resignation a vacancy shall occur in the office of chancellor, then a meeting of convocation shall be called for the election of a successor, who shall hold office in like manner and under like conditions as his predecessor, and so on for ever.
- Chancellor to be appointed when convocation consists of 100 members. 15. The chancellor, or should he be absent, or should there be none, the vice-chancellor, shall, in the name of the university, confer degrees, in the presence of the council and the convocation.
- By whom degrees are to be conferred. 16. All and singular the moneys, records, and other property which shall be vested in or belonging to the Board of Public Examiners at the time of the taking effect of this Act shall thereupon vest in and belong to the council of the university, in like manner and upon the like trusts, in all respects, as if the said council were the said board.
- Property of board to vest in the council. 17. The council shall appoint, during its pleasure, an officer to be styled "The Registrar of the University of the Cape of Good Hope," who shall be charged with such duties as shall be assigned to him by the said council; and the said council shall also appoint, during pleasure, such other officers or persons as the service of the university shall require.
- Registrar and other officers to be appointed by council. 18. Vice-chancellors, councillors, and examiners going out of office by effluxion of time, or councillors vacating their office by reason of absence from the Colony, under the provisions of this Act, shall be eligible for re-appointment or re-election, as the case may be.
- Vice-chancellors, chancellors and examiners eligible for re-election. 19. Besides being empowered as aforesaid to grant degrees in law, the council of the university is also empowered to grant after
- Council may grant certificates of proficiency in law and jurisprudence.

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.

No. 16—1873.

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, &amp;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.

22. The council of the university is hereby empowered to grant certificates of proficiency in the theory of land surveying, and should the council deem it expedient so to do, in the theory of civil engineering, and in the theory and principles of navigation, in like manner as the Board of Public Examiners was, during its existence, by the seventeenth, eighteenth, nineteenth, twentieth, and twenty-first sections of the Act No. 4, 1858, empowered to grant similar certificates.

Council may grant certificates in land surveying, engineering, and navigation.

23. The council aforesaid shall also cause to be examined candidates for admission into the public service who may be authorized by the Governor to present themselves for examination in such subjects and under such regulations as may from time to time be appointed and fixed by the council, with the consent of the Governor.

Council may examine candidates for the civil service.

24. No religious test shall be administered or proposed to any

No religious test to be required.

No. 16—1873.

person in order to entitle him to be admitted as an undergraduate of the university of the Cape of Good Hope, or to hold office therein, or to graduate thereat, or to enjoy any advantage or privilege thereof.

Vacancies not to affect the corporate powers of the university.

Quorum necessary.

25. No vacancy in the office of chancellor or vice-chancellor of the said university nor any deficiency in the number of members of the council thereof shall be deemed or taken to impair or affect the corporate existence or powers of the said university: Provided that no meeting of the council shall be held at which the quorum in the third section of this Act mentioned shall not be present.

Report and accounts to be laid before Parliament annually.

26. The council shall annually furnish to the Governor a report of the proceedings of the university, together with a complete statement of the receipts and expenditure of the university, which report and financial statement shall be laid before each House of Parliament.

Acts repealed.

27. Upon and from and after the taking effect of this Act, the Act aforesaid No. 4, 1858, Act No. 18, 1860, intituled "An Act for amending Act No. 4, 1858, creating a Board of Public Examiners," Act No. 4, 1863, intituled "An Act to amend Act No 4 of 1858, constituting the Board of Public Examiners," and Act No. 10, 1868, intituled "An Act to repeal the third section of the Act No. 4 of the year 1858," shall be and the same are hereby repealed.

Short title.

28. This Act may be cited for all purposes as "The University Incorporation Act, 1873."

No. 9—1875.]

[June 30, 1875

## AN ACT

To Enable persons residing beyond the limits of this Colony to participate in certain of the benefits enjoyed by Her Majesty's subjects within this Colony under the University Incorporation Act, 1873.

Preamble.

WHEREAS it is expedient that persons residing beyond the limits of this Colony should be enabled to participate in some of the benefits enjoyed under the University Incorporation Act, 1873, by persons who reside within the Colony, and it is doubtful how far, as the law stands, they can do so: 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 University Incorporation Act, 1873, as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

2. It shall be lawful for the council of the University of the Cape of Good Hope to make provision for the examination as in the said Act mentioned, beyond this Colony, of persons desiring to matriculate in, or to obtain any degree, certificate, or distinction from the said university, whether such persons reside within the said Colony or not.

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Examinations may be held beyond this Colony.

3. It shall be lawful for the said council to confer, after examination, and according to the bye-laws and regulations of the said university, degrees and certificates, as in the said Act mentioned, upon duly qualified persons, whether such persons reside within this Colony or not.

Degrees may be conferred on persons duly examined, whether resident in this colony or not.

4. It shall be lawful for the said council, from time to time, to frame bye-laws and regulations under which persons not resident in this Colony may compete for and hold any fellowship, studentship, scholarship, exhibition, bursary, or other prize, which is or may be hereafter at the disposal of the council: Provided, that no such bye-laws or regulations shall be of any force or effect until they shall have been approved of by the Governor and laid upon the table of both Houses of Parliament at any time during the first session which shall be held after the framing of the said bye-laws and regulations, and shall have been before the said Houses for a period of not less than fifteen days.

Bye-laws may be framed as to competition of non-residents for fellowships, &c.

To be first approved of by the Governor and laid before Parliament for fifteen days.

5. This Act may be cited for all purposes as the "University Extension Act, 1875."

Short title.

### ESTATES.

1. Ord. 6—1843,	} (Insolvent).	9. Act 39—1877, § 13,	(Deceased Persons, Griquatland West).		
2. Act 38—1884,		} (Rehabilitation of Insolvents).	10. ,, 5—1864,	(Succession Duty).	
3. ,, 17—1886, § 11,			} (Master's Duties).	11. Ord. 105—1833,	(Minors, Lunatics, &c).
4. ,, 15—1859,				} (Deceased Persons).	12. Act 18—1858,
5. Ord. 103—1833,	} (do. do.).				13. ,, 1—1874,
6. ,, 104—1833,					
7. Act 14—1864,					
8. ,, 11—1873,					

No. 6.—Sd. George Napier.] [October 24, 1843.

Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony.

WHEREAS the law as contained in the Ordinance No. 64, bearing date the 6th of August, 1829, and entitled "An Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," requires certain additions and alterations: And whereas it is expedient in order

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Repeal of former laws.

that the said additions and alterations may most conveniently be made that the said Ordinance No. 64 should be repealed and a new Ordinance enacted in its stead: And whereas it is also expedient that all insolvent estates within this Colony should be hereafter administered under one uniform system of law, and to that end that the benefit or relief of cession of goods and property commonly called the *cessio bonorum* now available to insolvent debtors in this Colony should be abolished: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance the Ordinance aforesaid, No. 64, and the publication of the 4th of September, 1805, respecting transfers, cessions, pledges, and other securities entered into by debtors within twenty-eight days previous to their insolvency, and so much of Ordinance No. 5, 1842, entitled "An Ordinance to provide for the Lodgment elsewhere than in the Government Discount Bank of this Colony of certain Moneys now by law required to be lodged in the said Bank," as is in substance hereinafter set forth and re-enacted, and all laws and customs heretofore in force within this Colony in so far as the same are repugnant to or inconsistent with any of the provisions of this Ordinance shall be and the same are hereby respectively repealed.

*Cessio bonorum* abolished.

1. And be it enacted, that from and after the passing of this Ordinance, it shall not be lawful for any person or persons to obtain from any Court within this Colony, or for any such Court to grant to any person or persons, the benefit or relief of cession of goods and property, commonly called the *cessio bonorum*, as heretofore known to and allowed by the law of this Colony: Provided, however, that nothing herein contained shall be deemed or taken to affect in any way the estate or condition of any person to whom, before the passing of this Ordinance, the said benefit or relief shall have been duly granted, which estate shall be administered, and which condition shall be judged of, precisely as if this Ordinance never had been made.

Voluntary surrender.

2 (1) And be it enacted, that it shall and may be lawful for the Supreme Court, or any Circuit Court, or for the Chief Justice of this Colony, or any other of the Judges of the Supreme Court, upon the petition, in writing, of any person, setting forth that he is insolvent, and desirous of surrendering his estate for the benefit of his creditors, to direct such person to appear before him, to be examined touching his said insolvency, or to require such other proof thereof, by affidavits of the said insolvent and others, as to the said Court or the said Judge may seem fit; or to direct such petitioner to appear before any person, duly appointed by the Supreme Court its commissioner for such purposes, and to direct such commissioner to examine the petitioner in manner aforesaid, and to take

<sup>1</sup> See Act 38 of 1884, §§ 1 and 2, and § 11, Act 17, 1886. *infra*.

such proof of the matters aforesaid, as to the said commissioner shall seem fit; and to make out and transmit to the Registrar of the Supreme Court a report of such examination and proof taken as aforesaid. And it shall and may be lawful for the said Court or Judge, before whom such examination is taken, or for the said Court, or the Chief Justice, or any Judge of the Supreme Court, on considering the report of any such commissioner, made in manner aforesaid, upon proof of the matter aforesaid to his satisfaction, to accept the surrender of such estate, and by order, under his hand, to place the same under sequestration in the hands of the master of the said Court. Provided also, that any person authorized by power of attorney to administer the estate of any person absent from the Colony may present, in the name of such last-mentioned person, such petition as aforesaid, and thereupon the same proceeding shall, as near as may be, be had and taken as if the person so absent from the Colony had himself petitioned.

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Voluntary surrender by attorney.

3. And be it enacted, that it shall in like manner be lawful for the Supreme or any Circuit Court, or for the Chief Justice, or any other of the Judges of the Supreme Court, upon the like petition of any person legally vested with the administration of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, situated within this Colony, stating the insolvency of such estate; or upon the like petition, stating the insolvency of the estate of any company trading or having an estate or effects within this Colony, made by the greater number of the partners of such company, who, at the time of presenting the petition, are within this Colony, to examine the petitioner or petitioners, or cause him or them to be examined in manner aforesaid, or to take or cause to be taken proof of the matters aforesaid, in manner hereinbefore provided. And it shall be lawful for the judge before whom such examination is taken, or for the Chief Justice, or any Judge of the Supreme Court, on considering the report of any commissioner of the said Court, made in the manner aforesaid, upon proof of the matters aforesaid to his satisfaction, to accept the surrender of any such estate, and to place the same under sequestration in manner aforesaid. And after the order for any such sequestration is made, the like proceedings shall and may be had and take place concerning such estates, and the persons in whom the administration thereof is legally vested, and the partner or partners of such companies, as are herein provided concerning other estates and other insolvents.

Voluntary surrender by executors, &amp;c.

Or by trading companies.

4. And be it enacted, that if any person having any property, movable or immovable, personal or real, within this Colony, shall depart therefrom, or being out of this Colony, shall remain absent therefrom, or shall depart from his dwelling-house, or otherwise absent himself with intent to defeat or delay his creditors in obtaining payment of their debts; or having against him the sentence of any competent Court, being thereunto required,

Circumstances constituting insolvency.

*I Absence with fraudulent intention*

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*2 Return nulla  
bona*

shall not satisfy the same, or shall not point out to the officer charged with the execution thereof, sufficient disposable property to satisfy the same: if it shall appear from the return made by such officer or his affidavit, that he has not found sufficient disposable property of such person to satisfy such sentence: or shall make, or cause to be made, either within this Colony or elsewhere, any alienation, transfer, gift, cession, delivery, mortgage, or pledge of any of his goods or effects, movable or immovable, personal or real, with intent, or in such manner as, to defeat or delay his creditors in obtaining payment of their debts, or with intent to prefer one creditor before his other creditors, such person shall be deemed thereby to have committed an act of insolvency. <sup>(1)</sup>

*3. Undue preference  
& fraudulent  
Cession*

Compulsory seques-  
tration at instance of  
creditor.

5. (2) And be it enacted, that it shall and may be lawful for the Supreme or any Circuit Court, or for the Chief Justice of this Colony, or any other of the Judges of the Supreme Court, upon petition made in writing against any person having committed any act of insolvency, by any creditor or creditors whose debt or debts amount to the value hereinafter provided, and setting forth the amount of the debt of such creditor and the cause thereof, and the alleged act of insolvency, and praying that the estate of such person may be sequestrated for the benefit of his creditors, upon proof thereof to the satisfaction of the said judge, provided there shall be produced to the said judge, together with such petition, the affidavit or affidavits and certificate hereinafter required, by order, under his hand, to place the estate of every such person or persons under sequestration, in the hands of the Master of the said Court, until the same shall, in manner hereinafter mentioned, be adjudged to be sequestrated, or the said petition shall be discharged.

Debt of creditor  
petitioning for se-  
questration.

*£50. - -*

*Jointly £100.*

6. And be it enacted, that no estate shall be placed under sequestration, unless the debt of a single creditor, petitioning that the same may be sequestrated, shall amount to fifty pounds, or unless the debts of two or more creditors, so petitioning, shall jointly amount to one hundred pounds. And every person who is the creditor of another, upon valuable consideration, for any sum payable at a certain time, which time shall not have arrived when the act of insolvency was committed, may so petition, or join in petitioning as aforesaid, whether he shall have any security for the same or not.

Affidavit of and  
security by petition-  
ing creditor.

7. And be it enacted, that every petitioning creditor shall, before presenting any petition for having any estate placed under sequestration, make an affidavit in writing before one of the judges of the Supreme Court, or a commissioner of the said Court appointed to take affidavits, (which affidavits shall be filed with the proceedings in the estate) of the truth of his debt and the cause thereof; and shall likewise give security, to the satisfaction of the Master of

<sup>1</sup> For further acts of insolvency see §§ 21 and 129.

<sup>2</sup> See § 3 Act 38 of 1884.

the Supreme Court, or of the Resident Magistrate of the district in which such petition shall be presented, for payment of the necessary fees and charges for prosecution of the said sequestration, until the choice or appointment of trustees. And the Master of the said Court, or Resident Magistrate as the case may be, shall forthwith endorse on every such petition, a certificate that such security has been found, and shall sign the same.

8. And be it enacted, that the creditor or creditors on whose petition any order for sequestration shall be made, shall, at his or their own cost, prosecute all the proceedings in the said sequestration, until the election or appointment of trustees in manner herein-after mentioned; and the same having been first taxed and ascertained by the Master, the said trustees shall reimburse the said creditor or creditors out of the first money that shall be received. And the costs incurred under any sequestration, after the election or appointment of trustees, in rendering any part of the insolvent estate over which any creditor shall hold any special mortgage, pledge, hypothec or lien available for the payment of the debt thereby secured, shall be paid out of the proceeds of the property over which any such security extends, when the proceeds shall be sufficient for the same; and when the proceeds shall be insufficient, such creditor shall be personally liable for the same. And no creditor holding any such security shall be liable to pay, or to have deducted from the proceeds of any such property, any part of the costs of sequestration incurred for any other purpose: and all costs incurred previous to the election or appointment of trustees as aforesaid, in all cases in which upon the petition of the insolvent any estate has by order been placed under sequestration, together with all costs incurred in every case of the sequestration of estates as insolvent, (whether the same has been ordered, or petition as aforesaid is adjudged, at the instance of the creditors,) for any other purpose than as aforesaid, after the election or appointment of trustees as aforesaid, shall, in the first place, and before any other debt, be paid out of the free residue of the insolvent estate when it shall be sufficient for the same: and when the said free residue shall be insufficient for the payment thereof, all the creditors who have proved against the insolvent estate debts not secured as aforesaid, shall be personally liable for the same, in proportion to such debts. (1) Provided, however, that no person shall, by merely proving a debt, or receiving a dividend, or appearing or voting at a meeting of creditors as a creditor, be so liable for any claim by any person employed by the trustee in relation to any action or suit at law affecting the said estate, or for any portion of the compensation or remuneration of the trustee for his care and diligence, reserving always, to every person employed by the trustee, such recourse against the said estate or the said trustee as may be competent to

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*Certificate*

Petitioning creditor to prosecute sequestration.

Costs of realizing property mortgaged.

Liability of mortgagee as to costs of sequestration.

Costs of sequestration, how to be paid.

Liabilities of creditors for the costs.

<sup>1</sup> See Act 38 of 1884, § 3.



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him, and reserving also to such trustee recourse against the said estate and against such creditors thereof, or others, as may on other grounds be liable to such recourse.

Sequestration of  
company estates.

9. And be it enacted, that any creditor or creditors of any company may, in like manner as aforesaid, petition against the partners of any such company, to have the estate of such company placed under sequestration; in case any such company have, by any one or more of its partners, committed any act of insolvency, with intent or in such manner as to defraud the creditors of such company, or to defeat or delay them in obtaining payment of the debts due by such company; or provided the sentence of any competent Court has been obtained against such company, and the partners thereof, being thereunto required, have not satisfied the same, or pointed out, to the officer charged with the execution of such sentence, sufficient disposable property to satisfy the same; and provided it shall appear from the return made by such officer, or his affidavit, that he has not found sufficient disposable property of such company to satisfy such sentence; and every order for sequestration issued upon such petition shall be valid, although it do not include all the partners of the company. And after the order for sequestration of such estate is made, the like proceedings shall and may be had and take place concerning such estate, and such partner or partners, as are herein provided to be had and take place concerning other estates and other insolvents: Provided always, that nothing herein contained shall extend, or be construed, to prevent the creditor or creditors of any company from proceeding against any partner, or the separate estate of any partner thereof, in respect of debts due by such company, in the same way in which it is herein provided that the creditors of any person may proceed against him and his estate, in respect of debts due by such person in his individual capacity. And provided, also, that it shall be lawful, upon such petition and proof as last aforesaid, and such other proof, if any, as may be required, to include in the same order for sequestration, (should the Chief Justice or other judge aforesaid making the same see fit so to do) as well the separate estate or estates of any partner or partners of any company as the joint estate of such company. But the separate estate of a partner shall not be entered upon or attached by virtue merely of an order for the sequestration of the estate of the company to which such partner belongs, and when any separate estate or estates shall be included together with the estate of the company in the same order for sequestration, the creditors of the separate estate or estates, and of the estate of the company respectively, shall, together and indifferently, vote in the election of the trustee or trustees, and in all matters relating to the said estates so included, in the same order just as if the debt of every such creditor were due and owing by one single and undivided estate. Provided always, that the trustee or trustees of any sequestrated estates so consolidated, and

Effect of sequestration of company estate on proceedings against its partners.

Conjunction of company with partnership estates.

Separate accounts where estates conjoined.

x Vide § 34 Ranking & Administration of Company & Partners Estates.

the trustee or trustees of every joint and separate estate which may be included, as aforesaid, in the same order for sequestration, shall be bound to keep separate and distinct accounts of the joint estate and of each separate estate, and shall rank the respective creditors, and frame the account and plan of distribution herein-after mentioned, and award dividends, and generally dispose and arrange the respective rights and claims of the consolidated estate, and settle the affairs thereof according to the provisions herein-before in that behalf set forth, precisely as if each of the consolidated estates were under a separate administration.

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10. (1) And be it enacted, that any creditor or creditors of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, situated within this Colony, may, in like manner as aforesaid, petition to have such estate placed under sequestration as insolvent, provided the person in whom the administration of such estate is legally vested, has either in his individual or in his fiduciary capacity, committed any act of insolvency, with intent, or in such manner, as to defraud the creditors of such estate, or to defeat or delay them in obtaining payment of the debts due by such estate; or provided the sentence of any competent Court has been obtained against any such estate, and the person in whom the administration thereof is legally vested, has not satisfied the same, or, being thereunto required, pointed out to the officer charged with the execution of such sentence, sufficient disposable property to satisfy the same; and provided it shall appear, from the return made by such officer, or his affidavit, that he has not found sufficient disposable property belonging to such estate to satisfy such sentence; and after the order for any such sequestration is made, the like proceedings shall and may be had and take place concerning such estates and the persons in whom the administration thereof is legally vested, as are herein provided to be had and take place concerning other estates and other insolvents.

Sequestration of estates of deceased or incapable persons.

11. And be it enacted, that every privilege and power given by this Ordinance to any creditor, in respect of any debt due to him individually by any insolvent, and every liability or penalty imposed by this Ordinance on any such creditor, shall be, and is hereby declared to be, given to and imposed on the partner or partners of any company in respect of any debt due to such company by any insolvent, and to be given to and imposed on every person legally vested with the administration of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, situated within this Colony, in respect of any debt due to such estate, by any insolvent: Provided always, that, in reckoning the number of votes at any meeting of creditors, or the number of creditors who have signed the certificate of any insolvent, the partners of any company, and

Privileges, &amp;c., given to individual creditors extended to partners of companies and administrators of estates of third persons.

*Partners to have one vote and one signature*<sup>1</sup> See Act 38 of 1884, § 3.

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any persons in whom the joint administration of any estate is vested, as aforesaid, shall be entitled to only one vote, and shall be considered as one person.

Order of sequestration, deposit of with sheriff.

12. And be it enacted that the party obtaining any order for sequestration shall forthwith lodge the same with the Sheriff of this Colony, at his office in Cape Town, or with the Deputy Sheriff of the district in which such order has been obtained, and the said Sheriff or Deputy Sheriff shall enregister the said order, and note thereon the day and hour of its production, and the Deputy Sheriff shall forthwith deliver, or cause to be delivered, to the Sheriff, at his office in Cape Town, every order lodged with him, after the same shall have been enregistered as aforesaid; and the Sheriff shall at his said office enregister every such last mentioned order, and note thereon the day on which he received the same, and the Sheriff shall forthwith deliver, or cause to be delivered, to the Master of the Supreme Court, every order as aforesaid, whether lodged with himself or received from any deputy, and the said Master shall, when the order has been made at the instance of creditors, cause the same to be notified in the *Government Gazette* of the Colony; and every insolvent obtaining any order for sequestration shall also lodge with the Master of the Supreme Court, a list, containing, to the best of his knowledge and belief the names and places of abode of his several creditors.

Registration of by sheriff.

Transmission of by sheriff to master.

Publication of by master.

*Petitioning Insolvent  
to file list of creditors*

Attachment and inventory of estate by master.

13. And be it enacted, that the Master of the Supreme Court, upon any estate being placed under sequestration in his hands, shall by his messenger enter and lay an attachment on the estate, under inventory thereof; and, when the same shall be sequestrated upon the petition of any creditor, the said messenger shall be accompanied by the petitioning creditor, or some one authorized by him, on behalf of himself and the other creditors of the said estate; and when the said estate shall be sequestrated upon the surrender of any insolvent, it shall be lawful for any of the creditors, or for the agent of any of the creditors of the insolvent, to accompany the messenger, and to be present with him while making out the inventory aforesaid.

Intermeddling with property attached.

14. And be it enacted, that, when any movable property belonging to any insolvent estate is attached as aforesaid, in virtue of any order for the sequestration thereof, the messenger making such attachment shall leave with the person in whose possession any such property is attached, a copy of the said inventory, having subjoined thereto a notice, both in the English and Dutch languages, that the property therein specified has been attached by the said messenger, by virtue of an order for the sequestration thereof; and that any person who, knowing the same to have been so attached, shall dispose of, remove, conceal, or receive the same, or any part thereof with intent to defeat the said attachment is liable, on conviction of such offence to be transported for any period, not exceeding seven years, or to be imprisoned, with or without

hard labour, for any period not exceeding five years: Provided always, that it shall be lawful for such messenger to secure on the premises by sealing up any repository, room, or closet, any articles which, in the discharge of his duty, it shall seem to him expedient so to secure, causing no unnecessary hindrance or inconvenience to any party by so doing or to leave some person on the premises in custody thereof, and the said messenger shall forthwith report his execution of the said attachment to the Master of the Supreme Court, who shall take such measures, and give such directions for the safe custody of the said property as to him shall seem fit.

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Securing by master of property attached.

Report of attachment to the master.

15. And be it enacted, that the Resident Magistrates of this Colony, in their respective districts, aid shall and assist in carrying this Ordinance and the provisions thereof into effect; and, for that purpose, shall do and execute all such matters and things as they shall be required to do and execute by any rule or order of the Supreme Court by virtue of this Ordinance.

Resident magistrates, duty of, in regard to sequestration.

16. And be it enacted, that the Sheriff of this Colony, either by himself or by his deputy, and the messengers of the Courts of the Resident Magistrates, being thereunto required by the Master of the Supreme Court, shall, within the districts in which they have respectively been appointed to act, do and execute the duties directed by this Ordinance, or by any rule or order of the Supreme Court in pursuance of this Ordinance, to be done and executed by a messenger: and shall receive to their own use for such service, out of the assets of any insolvent estate as to which they may be so employed, such reasonable fees as are, or shall be, allowed by the Supreme Court for their service.

Sheriff, his deputies and messengers of magistrates, their duties in regard to sequestration.

17. And be it enacted, that it shall and may be lawful for every petitioning creditor who shall duly obtain any order for placing the estate of his debtor under sequestration, thereupon to take out the process of the Supreme Court, to summon the debtor that he appear before the Supreme Court, or the Circuit Court of the district within which the debtor's ordinary place of residence is, on a certain day, to be appointed by the judge making such order, as to the said judge shall seem fit, to show cause why his estate should not, by sentence of the said Court, be adjudged to be sequestrated for the benefit of his creditors; and the service of the said process shall be made in the same manner as is or shall be by law provided for the service of any other process of the said Court: Provided, that, if any debtor has been forty days absent from his usual place of residence or business within the Colony, copies of the said summons shall also be affixed upon the outer door of the Supreme Court, and inserted in the *Government Gazette* of this Colony.

Summons of insolvent for adjudication of sequestration.

18. And be it enacted, that, upon the day appointed for any person to show cause why his estate should not be adjudged to be sequestrated, it shall and may be lawful for the Court to receive proof of the matters aforesaid, and to adjudge thereon,

Adjudication on petition for sequestration.

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whether the said person having been thereto lawfully summoned, shall appear to the said summons or not; or upon sufficient cause being shown to their satisfaction, to delay the said adjudication for any reasonable time, at their discretion. And, if the petitioning creditor shall make default in appearing, or proving his said debt or the act of insolvency to the satisfaction of the Court, it shall and may be lawful for the said Court to supersede the said order for sequestration, and to dismiss the said petition, or to require further proof of the matters contained therein, as to the said Court shall seem fit. And whenever any petition shall be dismissed by the said Court, all questions affecting the estate of any person against whom it was presented, or any right of such person, or of his creditors or debtors, or the validity of any alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender, or discharge, made by such person, or payment made to such person, shall be judged of and determined as if such petition had never been presented.

Where petition  
vexatious or malici-  
ous.

*Dawson*

Sequestration may  
be followed out by  
other than petition-  
ing creditor.

19. And be it enacted, that if it shall appear to the Court before whom any person has been so summoned upon such petition for sequestration, that the said petition was unfounded, and vexatious, or malicious, it shall and may be lawful for the said Court to allow the said person, on his application for the same forthwith to prove any damage alleged to have been by him sustained thereby, and to award to the said person such satisfaction for the said damage, as the said Court shall deem fit, or otherwise to leave the said party to his action for the said injury.

20. And be it enacted, that if, after any order has been made for the sequestration of any estate, the debts of the petitioning creditors, or any of them, be found insufficient to entitle such creditors to apply for and obtain such order for sequestration, or if such order shall be superseded in consequence of the consent or default of the petitioning creditor or creditors, or his or their collusion with the insolvent, it shall be lawful for the Supreme Court, or such Circuit Court as aforesaid, upon the application of any other creditor or creditors whose debt or debts amount to the value hereinbefore provided, and have been incurred prior to the said order for sequestration, and who shall produce at the time of making such application, the affidavit or affidavits, and the certificate hereinbefore required, to order that the said sequestration shall be revived and proceeded in, as if it had been originally obtained on the petition of the creditor or creditors last mentioned; and thereafter the said sequestration shall be revived with all the consequences and effects thereof, as if it had never been superseded; save only, that when the sequestration shall be revived after the same shall have been superseded, the validity of every alienation, transfer, gift, cession, delivery, mortgage, pledge, payment, acquittance, surrender and discharge made by such insolvent, and every payment to and dealing with the said insolvent between the time of

the superseding of the order for sequestration and the time of the making of the order for reviving the same, shall be judged of and decided upon, on such and the like grounds and principles, and no other as would by law have been applicable to the same in case such order for revival were a primary and original order for sequestration.

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21. And be it enacted, that if any person against whom any order for sequestration has been made, shall pay any money to the person who obtained the same, or give or deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debt, than he would be entitled to receive if the sequestration were proceeded in, and the estate distributed among the creditors thereof, according to their legal rights and preferences, such payment, gift, delivery, satisfaction, or security, shall be a new act of insolvency. And every person so receiving such money, gift, delivery, satisfaction, or security, shall, in the event of the sequestration being afterwards proceeded in by any other creditor or creditors, in manner hereinbefore mentioned, or of a new order for sequestration being issued upon such new act of insolvency, deliver up such security, and shall repay the said money, gift, or the full value thereof to such person or persons as the Court shall appoint, for the benefit of the creditors of such insolvent, and shall pay all the costs which shall be incurred by any other creditor in obtaining the revival of the said sequestration, and shall forfeit the whole of the debt due and owing to him by such insolvent.

Collusive agreement between insolvent and petitioning creditor.

22. (1) And be it enacted, that further execution of any judgment against any insolvent, or his estate, for the amount of any debt or sum of money, shall, after any order for sequestration of such estate is lodged with the Sheriff, or any such Deputy Sheriff, as aforesaid, for registration, be stayed during the pendency of such sequestration, and the insolvent, if in prison in virtue of any decree of civil imprisonment given in respect of any judgment, debt or costs, or any order for committal made in respect of disobedience to any order for the payment of money made in any civil suit or proceeding, may be released from his imprisonment, in so far as the same is occasioned by reason of any such decree, order, or arrest as aforesaid, by the order of the Supreme Court, or of any judge thereof, or of any Circuit Court, in case such Court or judge shall not see cause to refuse to make such order, shall be discharged therefrom. And it shall and may be lawful for the person having right to such judgment, to prove the debt, and costs secured thereby, against the sequestrated estate, and to take the benefit thereof upon distribution of the said estate; and where any property has been attached by legal process for satisfaction of any judgment, and has not been sold, or, having been sold, the

Effect of order of sequestration upon judgments, &c.

<sup>1</sup> See Act 38 of 1884, § 2.

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proceeds thereof remain undistributed in the hands of the Sheriff or other officer of the law, such property or such proceeds shall be placed under sequestration in the same manner as any other part of the insolvent estate, and the person holding such judgment, shall, on the distribution of the said estate, be entitled to be preferred over the proceeds of the property attached or sold, as the case may be, at the time of the lodgment, with the Sheriff or Deputy Sheriff, of the order aforesaid, for the costs incurred by him, for and in respect of the writ of execution, and the execution of the same, but not for the amount of his judgment debt, or of his costs of suit by him incurred before the suing out of such writ of execution.

Effect of order of sequestration upon actions against insolvent.

23. And be it enacted, that all actions pending against any person for any debt or demand provable against his estate, and all proceedings therein, shall, upon any order being made for the sequestration of such estate, in virtue thereof, be stayed: and the insolvent, if in prison under any arrest granted in security of any debt or demand in regard to which any such action shall have been instituted, may, by the authority and under the condition in the last preceding section mentioned, be discharged therefrom, and it shall and may be lawful for the plaintiff in such action to prove his debt, together with the taxed costs of suit then incurred against the sequestrated estate, and to take the benefit thereof upon distribution of the said estate: Provided, however, that all actions pending against any insolvent for damages alleged to have been sustained from any injury or wrong, or breach of any contract, committed by him, such damages being uncertain, or for recovery of any claim unliquidated as to its amount, and all proceedings therein, shall, upon any order being made for the sequestration of his estate, be stayed until a trustee shall be elected for the administration thereof, if the sequestration shall remain in force so long; and thereupon, the plaintiff in such action, after summoning the trustee to take up and defend the said action, may proceed to obtain the judgment of the Court thereon, and the said judgment, when recovered, together with the taxed costs of suit, shall be a debt provable against the said estate.

Effect of order of sequestration upon actions by insolvent.

24. And be it enacted, that all actions commenced by any person whose estate shall afterwards be placed under sequestration as insolvent, for any debt or demand due to the said estate, and all proceedings therein, shall, upon the order for such sequestration being made, be stayed, until the trustee thereafter chosen for the administration of the said estate shall make election to prosecute or discontinue the same, and the trustee shall be bound to make such election within six weeks after notice to that effect shall be served upon him by any defendant in any such action, or otherwise shall be deemed to have abandoned the same. Provided, however, that any insolvent shall be permitted to continue, in his own name and for his own benefit, any action commenced by him previous to

*Trustee to elect within blocks after notice served on him by defendant whether he will prosecute or discontinue any suit commenced by insolvent before his sequestration against such Deb. Debt. Damages for personal injury saved from sequestration.*

*Creditor cannot claim to share in the proceeds  
Henyette*

his insolvency, for any personal injury or wrong done to himself, or any of his family, and any damages which may be recovered in any such action shall not go or belong to the insolvent estate, nor shall any property proved to have been purchased or obtained by the insolvent with any such damages.

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25. And be it enacted, that the Master of the Supreme Court shall, after any estate has been placed under sequestration, upon surrender thereof as insolvent, or has been adjudged to be sequestrated, forthwith cause notice thereof to be given in the *Government Gazette* of this Colony, and shall thereby appoint two public meetings of the creditors of such estate, at such times and places as he shall deem most convenient for all the parties concerned, the first for receiving proof of debts against the said estate, and the second for the same purpose, and for electing a trustee for the collection, administration, and distribution thereof. And such publication shall be deemed notice thereof to all persons who may reasonably be presumed to have seen the same. And the times and places so fixed for the holding of any of the meetings aforesaid, may, on cause shown to the said Master, or to the Supreme Court, by any party dissatisfied with the appointment made by the said Master, be altered; of which alteration notice shall be forthwith given in the *Government Gazette*: Provided always, that if it shall appear to the said Master, before causing notice to be given as aforesaid, that the goods and effects of the insolvent available for the payment of his debts are not the value of seventy-five pounds sterling, he shall specify the same in the said advertisement: and shall therein also give notice, that unless it shall be shown at the first meeting, called as aforesaid, that the goods and effects of the insolvent exceed the value of seventy-five pounds sterling, the Master, or Resident Magistrate holding such meeting, will summarily proceed to rank the debts which shall be proved at such meeting according to their respective preferences and to direct the proceeds of the insolvent estate to be forthwith distributed accordingly, by a trustee to be then elected by the greater part of the creditors in number and value attending at such meeting. And in such case, the said insolvent shall at such first meeting attend before the creditors to account for his insolvency, and shall, being thereunto required, do and perform thereat all such other matters and things as are hereinafter required to be done and performed by him at any meeting of creditors, under the provisions of this Ordinance. And if at the said first meeting, which meeting may be adjourned from time to time, if the said Master or Resident Magistrate shall deem it necessary to adjourn the same, it shall still appear to the said Master or Resident Magistrate, as the case may be, before whom the same is holden, that the available assets of the said estate do not exceed the amount of seventy-five pounds sterling, it shall and may be lawful for the said Master or Resident Magistrate to rank the

Calling of first and second meeting of creditors.

Election of trustee.

When value of estate not above £75.



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creditors who shall prove their debts at such meeting, according to the legal order of their preference, and for the creditors to elect a trustee for the collection, administration, and distribution of the estate of the said insolvent according to the order of ranking; and to direct the said trustee forthwith to collect, administer, and distribute the same accordingly. And further at the said first meeting the said Master or Resident Magistrate shall and may respectively execute all the powers and authority which may be executed by them at any meeting of creditors under the provisions of this Ordinance, and shall also do and perform thereat all matters and things required to be done for the final settlement of the said estate. And the creditors present at the said first meeting shall then determine what part of the wearing apparel, bedding, household furniture, and tools of trade of the insolvent shall be excepted from the sale of his movable property, and shall be allowed to him; and shall also give to the said trustee such directions as to the management of the said estate as to them shall seem fit. And no other meeting shall be thereafter holden, unless, upon cause shown to the said Master by any trustee or creditor of the said estate, the said Master shall think fit to order the same.

Before whom meet-  
ings of creditors to  
be held.

26. And be it enacted that in all cases where any meeting of creditors for the proof of debts or for the election of trustees shall be appointed to be holden in Cape Town, the same shall take place before the Master of the Supreme Court; and if in any district of the Colony other than the Cape district, then before the Resident Magistrate of such district, under the direction of the said Master; and the said Master or Resident Magistrate shall respectively take the votes of the creditors, and declare the party so elected trustee of the said estate; and in all cases where such meeting shall be holden before the Resident Magistrate of any district, he shall forthwith certify to the said Master the proceedings thereat.

Proof of debts.

27. And be it enacted, that every creditor shall prove his debt against the said estate to the satisfaction of the Master or Resident Magistrate, as the case may be, who shall admit any debt, or reject the same as not proved. And every creditor shall prove his debt by affidavit, which shall be sworn before the Master or Resident Magistrate, or some commissioner appointed by the Supreme Court for taking affidavits, or some Justice of the Peace, and which shall state the nature of the alleged debt, and when such debt accrued originally to the deponent himself, that the same is a just, true and lawful debt, and, when such debt has accrued to the deponent by cession, or otherwise, from any other person, then that the said debt is a just, true, and lawful debt, to the best of the deponent's knowledge and belief, and such affidavit shall state what other persons, if any, are, besides the insolvent, liable for the said debt or any part thereof, or that there are no such persons so liable, and shall state all pledges or security which the deponent, or any person for his use, holds from the insolvent for the said debt or

any part thereof, and shall depose to the genuineness of all vouchers or evidences of debt which the deponent shall produce with his said affidavit. Provided always, that it shall be lawful for the said Master or Resident Magistrate, in case he shall find that any clerk, agent, or other person is more fully cognizant of the nature of the debt sought to be proved than the creditor is, to allow such clerk, agent, or other person to swear the affidavit aforesaid with such alterations as will thereby become necessary. And provided that any creditor who is out of or absent from this Colony may, in case he have no known agent or mandatory in this Colony cognizant of and capable of proving the alleged debt, make the necessary affidavit before some person duly qualified to administer oaths in the place where he resides, such person being certified to be so qualified by some sufficient authority in that behalf, should such creditor reside or be in any part of Her Majesty's dominions, and if such creditor should reside or be elsewhere than in those dominions, then the said person shall be certified as aforesaid by a British Minister, or a British Consul, or by a notary public; and provided that it shall and may be lawful for the Supreme Court, or any Circuit Court, on the application of any party interested, finally to admit or reject any debt admitted or rejected by the said Master or Resident Magistrate, or to allow any action, which may have been instituted for the proof or recovery of any such debt against the insolvent, prior to the sequestration, and which has, in consequence thereof, been stayed, to be proceeded in after the election of a trustee shall have taken place, and after the trustee so elected shall have been duly summoned to take up and defend such action; and if the plaintiff shall thereafter obtain judgment thereon, he shall be ranked on the insolvent estate for the amount of such judgment. And provided, also, that any such Court as aforesaid, before adjudging finally as to the admission or rejection of any debt, may remit such case to the Master or Resident Magistrate for further proof, or may direct any question of fact to be tried by pleadings and proofs, or adopt such other course as to such Court shall seem fit.

28. And be it enacted, that all debts due by any insolvent at the time of adjudication or surrender, may be proved against his estate; and when there has been mutual credit given by the insolvent and any other person, upon which compensation can by law be pleaded on either side, the Master of the Court, or Resident Magistrate, taking the proof of debt, shall thereupon state the account between them, and shall set one debt or demand against the other; and what shall appear due on either side on the balance of such account, and no more, shall be allowed to be proved or claimed, or paid on either side respectively; Provided, that the person claiming the benefit of such set-off, had not, when such credit was given, or when the cause of his debt accrued, notice of the order for sequestration having been made, or of any act of

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Proof by agent.

Disposal of proofs  
by supreme court.Resumption of ac-  
tions against insol-  
vent.Nature of proof  
where mutual credits  
between insolvent  
and creditor.

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insolvency in virtue of which such order shall have been made; and provided always, that it shall and may be lawful for the Supreme Court, on the application of any person interested, who shall consider himself aggrieved by any such decision of the said Master or Resident Magistrate, to review the same, and to pronounce such judgment or to direct or allow such further proceedings, as to the Court shall appear just and proper.

Proof of debts not yet due.

29. And be it enacted, that in all questions upon this Ordinance, every person, to whom the insolvent was, at the time of the surrender or adjudication or sequestration of his estate, under any legal obligation to pay money, at a certain future time, shall be accounted creditor *de presenti*, and shall be entitled to prove his debt for the amount of the money specified in the obligation. But in case the said debt shall not have become payable at the date of the order for sequestration, and shall not bear interest until the term of payment, or shall bear interest at a less rate than six per cent. per annum, the said debt shall be valued in voting, and such creditor shall receive payment thereof, or dividend thereon only, after deduction thereout of a rebate of interest of six per cent. per annum, or of so much per cent. per annum as shall correspond with the difference between the rate of interest payable on such debt and the rate of six per cent. per annum, as the case may be, to be computed from the date of the order for sequestration, to the time when such debt would have become payable according to the terms on which it was contracted.

Dividend on debts not yet due.

*Deduction of rebate of Interest.*

Creditors holding lien, their rights as to proof of debt, &c.

30. And be it enacted, that any creditor who shall hold a preferable security or lien upon any part of the insolvent estate, shall, when he is the petitioning creditor, be obliged upon oath in the affidavit accompanying the petition, and when he is not the petitioning creditor, in the affidavit produced by him at the time of proving his debt, to put a value upon such security, so far as his debt may thereby be covered, and to deduct such value from the debt proved by him, but shall have the right to vote for trustees and commissioners, and in all matters regarding the property over which he shall have such security or lien, both in number and value for the full and entire amount of his debt, and in all other matters respecting the insolvent estate he shall vote as creditor only for the balance; which balance shall be specified in his affidavit, without prejudice to such valuation being afterwards corrected, and without prejudice to the amount of the said debt, in other respects: And, in case any creditor shall hold any preferable security or lien for payment of his debt, obtained prior to the order for sequestration of the insolvent estate, and not liable to be set aside in virtue of this Ordinance, upon any part of the said estate, the amount or value of such security or lien shall be deducted from his debt, and he shall only be ranked for, or receive payment of, or a dividend for, the balance after such deduction; and if any dispute shall arise about the value of such security, the creditor or claimant

shall, upon oath, put a value upon it, and the trustees shall then have an option, either of taking an assignment of the security for the benefit of the creditors at large, on payment of the value so estimated out of the first assets of the insolvent estate, or of reserving the full effect of it to the creditor himself; and, in either case, the creditor shall be ranked on the divisible fund for the balance of his debt so ascertained, together with the other creditors, such creditor being, in no event, entitled to draw more than full payment of the debt, but being, at the same time, entitled to vote both in number and value, according to the provisions and within the limits hereinbefore set forth.

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31. And be it enacted, that no person whose debt depends upon a contingency or an uncertain condition, shall be entitled to petition, or join in the petition, for sequestration of any estate, or to vote in the choice of trustee, or any of the other proceedings herein specified, so long as the contingency shall not happen, or the condition shall not be performed. Provided always, that the creditor in any such debt, contracted before the order for sequestration shall have been made, may if he think fit, while the contingency or condition upon which such debt depends shall not have happened, or shall not have been performed, apply to the trustee to set a value upon such debt, and the trustee is hereby required to ascertain the value thereof and to admit such creditor to prove the amount so ascertained; and such creditor shall thereafter be entitled to vote, and to receive dividends or payment, as in respect of a debt of the value of the amount so ascertained; but whether such value shall or shall not be so ascertained, before the contingency shall have happened, or the condition shall have been performed, such creditor may, whenever such contingency shall have happened, or such condition shall have been performed, prove in respect of his whole debt and receive dividends or payments, thereon with the other creditors. Provided always, that when the creditor in any such debt or claim, the contingency of which shall not have happened, or the condition of which shall not have been performed, and the value of which shall not have been ascertained, as aforesaid, shall enter a claim on the estate in respect of such debt, the trustee shall rank the claimant as if the contingency had happened, or the condition had been performed; and shall forthwith apply to the Supreme Court to make an order, and the said Court shall make such order, for securing the dividend or sum which the claimant would be entitled to draw until the contingency or condition upon which the debt depends, shall happen or be performed, or until it shall have become certain, that such contingency or condition shall never happen or be performed when the sum so secured shall be paid to the claimant, or to the other creditors, as the case may be; and any interest which may in the meantime arise and be received thereupon shall belong to and be paid to the other creditors. And provided, also, that the holder of any such contingent debt or claim, of which the value

Contingent creditors, proof by and ranking of.

*Contingent Debts.*

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shall not have been ascertained, and who has been ranked as a claimant as if the contingency had happened or the condition been performed, shall, for the purpose of agreeing to or dissenting from any offer of composition, or the certificate of the insolvent as hereinafter mentioned, be deemed and taken to be creditor for whatever sum the Master of the Supreme Court shall, under the circumstances of the said debt, fix and allow, subject to appeal from his decision to the Supreme Court.

Allowance of claim where debt not yet proved.

32. And be it enacted, that, when by reason of the absence of any person from this Colony or for any other cause appearing to the Supreme Court, the said Court shall be of opinion, that a claimant who has not proved a debt to the satisfaction of the Court, may eventually be able to establish the same, it shall and may be lawful for the said Court to allow such claim to be entered on the proceedings in the insolvent estate, and to give reasonable time for proving the same; and in the mean time to make such order for securing the amount thereof, in case the said claim shall be afterwards established, as the said Court shall see fit.

How interest upon claims to be ranked and paid.

33. And be it enacted, that the mode of settling claims and the interest upon them shall be as follows, viz: The principal sum of each debt on which interest is chargeable, together with the arrears of interest, if there be any due upon it, at the time the order for sequestration was made, shall be accumulated as at the date of the said order, for the purpose of the claimant being ranked for, and receiving payment of, such accumulated sum, together with the principal sums of such debts as do not bear interest, or from which there may be a rebate of interest, as not being payable till an after period; and the assets of the insolvent estate shall be applied.—1st. In payment according to the legal order of preference, of all the preferent debts and the interest which shall have been due thereon prior to the date of the said order to the extent to which such interest is, by law entitled to a preference; and every creditor shall have the same preference for the interest which shall have accrued on his debt between the date of the said order and the time of payment, to which he may be entitled for any part of the interest which may have become due prior to the said order. And 2dly, in payment of all the other accumulated sums so ranked, without allowing any interest upon them from and after the date of the said order, if the said assets shall not be sufficient to discharge all the claims due to the insolvent estate; but if after discharging the whole of such claims there shall be any residue left of the sequestrated estate, the creditors as well as those from whom interest has been deducted on account of the provisions of the twenty-ninth section of this Ordinance, as all others, shall be entitled to claim, out of such residue, any arrear of interest which may be due on them, as arising since the date of the order for sequestration, upon the respective sums ranked as hereinbefore mentioned.

34. And be it enacted; that in every case in which it shall happen that the estate of any company, and the estate or estates of any one or more of the partners of such company, shall be concurrently under administration as insolvent,—the creditors of the said company shall prove their debts against, and rank upon the estate of the company, and the creditors of each partner, in respect of debts due by such partner separately from the other partners, shall prove their debts against and rank upon the estate belonging to their debtor separately from the other partners, and the estate of the company, shall be first applied in satisfaction of the creditors of the company and each separate estate shall be first applied in satisfaction of the separate creditors of that estate. And if the estate of the company shall prove insufficient to satisfy the creditors of the company, or if there be no such estate, then each creditor of the company shall rank upon the surplus of each separate estate, which may remain after satisfying the separate creditors of that estate, either for the residue or entire of his debt, as the case may be, but so, however, as not to receive, in all, more than the whole of their debts respectively. And if the separate estate of any partner shall prove insufficient to satisfy the separate creditors who have claimed upon it, then the separate creditors upon that separate estate shall rank upon the surplus, if any, of the company's estate which shall remain after satisfying the creditors of that estate in proportion to the share in such surplus belonging to, or claimable in right of, the particular partner whose separate estate has so as aforesaid proved deficient. And whenever the company's estate shall prove insufficient to satisfy the company's creditors, and the latter shall thereupon receive satisfaction, wholly or in part, out of the surplus of the separate estate of any of the partners of such company, the trustee of the separate estate so satisfying, wholly or in part, any of the creditors of the company shall be entitled to rank upon the separate estate of any other partner of such company for amount of whatever the contribution in respect of the debts of the company wholly or in part discharged, such trustee may, by law, be authorized to claim. Provided however, that no partner, if insolvent, and no trustee of the insolvent estate of any partner shall, under any circumstances, rank for the amount of any such claim for contribution, upon the insolvent estate of any other partner in competition or concurrence with any of the creditors of the company claiming upon any such last-mentioned estate, which creditors are hereby declared to be entitled to be paid in preference and priority to any such partner or trustee. And provided, also, that nothing herein contained shall be construed so as to abridge or affect the rights which the creditors of any insolvent company may, by law, possess to seek satisfaction for their debts from any partner of such company whose estate shall not have been sequestrated, or to abridge or affect the rights which any such solvent partner may, by law, possess in regard either to the insolvent estate

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Ranking and administration of company and partners' estates.

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Company creditors  
may vote in seques-  
tration of partners'  
estates.

*Election of Trustees  
Composition  
Certificate*

of the company or to that of any of his partners whose estate may have been sequestrated.

35. And be it enacted, that in every case in which the separate estate of any partner of a company shall be sequestrated as insolvent, and whether the estate of such company shall also be or have been sequestrated or not, any creditor to whom the insolvent is indebted, jointly with the other partner or partners of the company, shall be entitled to prove his debt under the sequestration of such separate estate, for the purpose of voting in the election of trustees, and of agreeing to or dissenting from any offer of composition, and the certificate and discharge of the insolvent as hereafter mentioned, but no further. And such creditor shall not receive any dividend out of the separate estate of the insolvent until all the separate creditors shall have received the full amount of their respective debts; unless such creditor have been a petitioning creditor, in regard to the sequestration of such separate estate, in which case such creditor may vote and receive dividends in respect of his debt in the same manner as the separate creditor of such estate.

Law to prevail in  
cases not provided  
for as to competition  
between creditors of  
company and of part-  
ners.

36. And be it enacted, that, in every case not hereinbefore expressly provided for, and relating to the ranking and priority of the joint creditors of any company, in competition with the separate creditors of any of the partners of such company, or relating to the reciprocal claims of any such insolvent estates in reference to or in relief of each other, the rule for the time being in respect of the like case, according to the law and administration of bankruptcy in England shall first be resorted to, and failing any such rule, the common law of the Colony shall be applied.

Within what period  
debts may be proved.

*Creditor may call  
meeting to prove debt*

If dividend dis-  
turbed.

37. And be it enacted, that any debt which was due, or the cause of which arose prior to the order for sequestration of any estate may be proved at any meeting of the creditors appointed before the Master or a Resident Magistrate, at any time before the final distribution of the estate; and any creditor may, after the second meeting called by the Master of the Supreme Court in manner hereinbefore provided, at his own expense call such meeting expressly for the purpose of proving his debt: Provided always, that when any debt is so proved after any dividend has been paid to the creditors, such dividend shall not in any way be disturbed or affected by or in respect of any such debt: and provided also, that, when any such debt is proved after the plan of distribution of such estate has been confirmed, and in consequence of the proof of such debt, any alteration in such plan of distribution or any further proceedings in the sequestration shall be rendered necessary, the creditor proving such debt shall be liable for all expenses which may be incurred in consequence of any such alteration or proceedings.

How votes of cre-  
ditors to be reckoned

38. And be it enacted, that in all cases of votes given by creditors under this Ordinance, when the creditors are to be

*Voting for Trustees etc*

counted in number, no creditor whose debt is below thirty pounds sterling, shall be reckoned in number, but the debt due to such creditor shall be computed in value; and that, in all cases in which any deduction is directed by the provisions of this Ordinance, to be made from the amount of the debt of any creditor, the vote of such creditor shall still be counted in value to the extent of the balance remaining after such deduction; and such creditor shall also be reckoned in number, provided such balance amounts to thirty pounds, and upwards.

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as to number and value.

*£30. limit of number.*

39. And be it enacted, that in all cases where, under the provisions of this Ordinance, the creditors of any insolvent estate are required or entitled to meet and to vote in any matter regarding such estate, any creditor so entitled may attend and vote at such meeting personally, or by agent, authorized by any power of attorney to that effect duly executed, upon proof thereof to the satisfaction of the Master of the Supreme Court, Resident Magistrate, or other person presiding at such meeting, and all questions at any meeting of creditors shall be determined by a majority in value of those present and entitled to vote, in case a majority both of number and value shall not, in respect of any such question, be by law <sup>(1)</sup> specially required.

Vote of creditors by agent.

What votes to determine.

40. And be it enacted, that at the second meeting called as aforesaid, or any adjournment thereof, (if the said Master or Resident Magistrate shall find it necessary to adjourn the same, which they are hereby authorized and empowered to do,) a trustee, or trustees, not exceeding three in number, shall be chosen for the collection, administration, and distribution of the insolvent estate and effects; and all creditors who have proved debts against the insolvent estate shall be entitled to vote in such choice; and creditors holding any preferable security or lien shall vote in manner and form hereinbefore provided; and the choice shall be made by the votes of the greater part in number and value of the creditors, or their agents present and entitled to vote: Provided, however, that it shall be competent to any person interested in any such insolvent estate, or the due administration thereof, and who shall complain of any such election, upon giving, within two days after the said election, a notice in writing of the particulars of such complaint to the said Master or Resident Magistrate, as the case may be, at any time before the election is confirmed, in manner hereinafter mentioned, to bring the same under review of the Supreme Court, who shall summarily or otherwise as such Court shall see fit, decide and make such order thereon as the justice of the case may require: Provided always, that it shall be lawful for any person interested in the due administration of the estate, at any time after the confirmation, to apply to the Court to recall the confirmation, and set aside the election, on the ground that such election was fraudulently or unduly made.

Election of trustee.

*Trustees not to exceed three**See § 30**Votes to be value }  
3 times 258.  
Complaint against election.**B. ch. 1848/103*

Recall of election.

<sup>1</sup> See §§ 40, 98, 99, 106 and 117.



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Persons disqualified from being trustee.

41. And be it enacted, that in no case shall it be competent for the creditors to elect as trustee, the insolvent himself, or any person related to the insolvent by consanguinity or affinity within the fourth degree; nor any minor, nor any attorney, <sup>(1)</sup> nor any person, who having had his estate, at any time, placed under sequestration shall not have obtained the sequestration to be superseded, or who shall not have been rehabilitated under the provisions of the law heretofore in force within this Colony, or shall not have obtained his certificate and allowance thereof, as hereinafter provided, nor any person not resident within the jurisdiction of the Supreme Court, nor any person having an interest opposed to the general interest of the creditors in the insolvent estate, nor any person declared to be incapable of being elected by virtue of the provisions in the next succeeding section contained.

Acts by trustee inferring his disqualification.

42. And be it enacted, that if any person elected a trustee shall be proved, to the satisfaction of the Supreme Court, or of any Circuit Court, holden for the district in which the election of trustee was had, to have procured or been privy to the omission from the schedule of the insolvent of the name of any creditor of the insolvent, with intent thereby to obtain some peculiar advantage in regard to the election of trustee, or to have, either directly or indirectly, given or promised to give to any creditor of the insolvent, any species of valuable consideration whatsoever, in order to obtain the vote of such creditor at the election of trustee, or to have agreed to secure and make good to any creditor some certain sum or dividend in discharge or diminution of his debt, upon condition or in order that such creditor should give his vote to such trustee; or to have offered or agreed, in case any creditor of the insolvent should consent to vote for such trustee, to abstain from opening up or investigating some previous transactions between such creditor and the insolvent, which were, or were supposed to be, of questionable validity, or to have contrived, or been privy to, any plan or arrangement by which debts or securities really belonging to some one or more persons have been divided amongst a greater number of persons, for the purpose merely of increasing the number of votes at the election for trustee, and thereby influencing the same, or to have undertaken to share with any creditor or creditors of the insolvent, in return for his or their votes, the commission or remuneration to be awarded to him as such trustee;—then such Supreme or Circuit Court as aforesaid, shall, whether before or after the decree confirming the appointment of such trustee, declare such trustee to have forfeited the office of such trustee in regard to the insolvent estate for which he shall have been elected, and to be incapable of being again elected thereto, and it shall and may be lawful for such Court, if it should so think fit, to further declare, that the person so offending shall be incapable

*Trustee - what  
offences vacate  
office of -*

<sup>1</sup> Restrictions as to Attorney removed, Act 38 of 1884, § 6. (*infra*.)

of being elected a trustee under the provisions of this Ordinance, for and during his natural life, or such period as such Court shall determine and adjudge: and any person interested in the due administration of the insolvent estate may apply by motion to such Supreme or Circuit Court as aforesaid, either before or after the decree confirming the appointment of any trustee, to declare any such trustee to have forfeited his office by reason of any such misconduct as aforesaid; and as often as a vacancy in the office of trustee shall be created by any such forfeiture, the Court declaring the same shall order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustee.

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43. And be it enacted, that it shall and may be lawful for the Supreme Court, or for any judge thereof on circuit, and whether sitting in any Circuit Court or not, on cause shown by the Master of the said Court, or any person interested in the due administration of the insolvent estate, by order of Court to appoint one or more fit person or persons to be trustee or trustees of any insolvent estate provisionally, and until the creditors of the said estate shall make choice of a trustee; which trustee or trustees may be removed at the meeting of creditors for the choice of a trustee, if the said creditors shall think fit, but shall and may, until so removed, act in the collection, administration, and distribution of the said estate, in all respects the same as trustees elected by the creditors are by this Ordinance authorized or required to do. Provided however, that no such trustee or trustees shall proceed to make sale of any part of the said estate without the authority for that purpose of the Supreme Court, or of some judge thereof, or of some Circuit Court, or of the Master of the Supreme Court, first had and obtained.

Provisional trustee, appointment of.

Powers of.

44. <sup>(1)</sup> And be it enacted, that all trustees so appointed by the Court, or elected by the creditors, shall receive and be paid out of the assets of the said estate a reasonable compensation for their care and diligence in the said trust, to be assessed by the Master of the said Court, subject to the review of the said Court, upon the petition of any creditor, or of any of the said trustees, or of any person having any interest in the said estate.

Trustees, remuneration of.

45. And be it enacted, that so soon as the trustees elected by the creditors shall have accepted their office, it shall and may be lawful for the Supreme Court, upon the report of the Master, to make a decree confirming the appointment of such trustee.

Confirmation of election of trustee.

46. And be it enacted, that every order made for placing any estate under sequestration as insolvent shall, so soon as made, have the effect in law to divest the insolvent and all persons administering the whole or any part of his estate for his use and behoof, and to vest in the Master of the Supreme Court, for the uses

Vesting of insolvent's rights in master of court.

<sup>1</sup> Superseded by § 13 Act 38, 1884.

Ord. 6—1843.

and purposes of the sequestration, all the present and future estate, movable and immovable, personal and real, and every right, title, and interest in and to any property, movable or immovable, personal or real, wheresoever the same may be known or found, which shall belong or be due to such insolvent at the date of making such order, or as to which any right of reversion shall then be vested in him, or which may thereafter be purchased or acquired by, or may revert, descend, or be devised, or come, to the insolvent, at any time before the making of the order of Court allowing and confirming, as hereinafter mentioned, the account and plan of distribution to be framed by the trustees, (except as in the forty-ninth section is excepted), together with all deeds, vouchers, papers, or writings respecting the same: and after the said order for sequestration has been made, neither the insolvent nor any person claiming through or under him shall have power to alienate, give, cede, deliver, mortgage, pledge, or to recover, or to release or discharge the same, or any part thereof; neither shall the same be attached by any person, as the property of or belonging to the insolvent.

Vesting of insolvent's rights in provisional trustee.

47. And be it enacted, that every order of Court appointing any provisional trustee or trustees shall, so soon as made, have the effect in law to divest the Master of the Supreme Court, and to vest in such provisional trustee or trustees, for the uses and purposes of the sequestration, and until their removal, or until the making of the order of Court, allowing and confirming as hereinafter mentioned the account and plan of distribution, (whichever shall first happen), all the present and future estate of the insolvent as fully, as completely, to all intents and purposes, as the said estate, is by virtue of the next succeeding section of this Ordinance, vested in the trustee or trustees elected by the creditors, by the decree of the Court confirming the appointment of the same. And whenever any provisional trustee or trustees shall die or be removed before the making of the decree aforesaid for confirming the appointment of any trustee or trustees elected by the creditors, then the whole present and future estate of the insolvent for the time being, shall vest again in the said Master, precisely as if the same had never been divested.

Vesting of insolvent's rights in the permanent trustee.

48. And be it enacted, that every decree made as herein directed, for confirming any trustee or trustees, shall, so soon as made, have the effect in law, to divest the Master of the Supreme Court, or any provisional trustee, and to vest in the trustee or trustees thereby confirmed, for the uses and purposes of the sequestration, and so long as such trustee or trustees shall continue to hold their office, all the present and future estate, movable and immovable, personal or real, which shall have belonged or been due to such insolvent at the time when the order for placing his estate under sequestration was made, or as to which any right of reversion shall then be vested in him, or which may thereafter be purchased, or acquired by, or

may revert, descend, or be devised, or come, to the insolvent, during the continuance of the sequestration, and before the making of the order of Court allowing and confirming the account and plan of distribution, as hereinafter provided, wheresoever the same may be found or known, (except as in the forty-ninth section is excepted) together with all deeds, vouchers, papers, or writings respecting the same; and the said trustee or trustees shall have the like remedy to recover the said estate of the insolvent, or any part thereof in their own names for the purposes of the sequestration, as the insolvent himself might have had if his estate had not been sequestered; and all powers vested in any insolvent at the time the order for placing his estate under sequestration was made, or which may thereafter become vested during the continuance of the sequestration, and before the making of the said order allowing and confirming the account and plan aforesaid, which such insolvent might have legally executed for his benefit, shall, after the said order for placing his estate under sequestration, and until an order of Court appointing a provisional trustee or trustees, or until a decree be made for confirming the appointment of a trustee or trustees elected by the creditors, be executed by the Master of the Supreme Court, and may, after such order appointing a provisional trustee or trustees be executed by such provisional trustee or trustees until their removal, and may after their removal be executed by the said Master until a decree be made for confirming the appointment of such trustee or trustees as aforesaid, and after such decree is made for confirming such appointment as aforesaid may be executed by the trustee or trustees whose appointment is thereby confirmed, for the benefit of the creditors, in such manner as the insolvent might have executed the same, and the said insolvent is hereby declared to be incapable to exercise or execute any such powers, as aforesaid.

Ord. 6—1843.

Execution after order for sequestration of powers vested in the insolvent.

*Master to act part of Trustee as long as no Trustee exists.*

49. And be it enacted, that during the time which shall intervene between the time of the making of the order for the sequestration of any insolvent estate and the making of the order allowing and confirming the account and plan of distribution, as hereinafter provided, the insolvent so long as he shall remain without his certificate, shall (except in the certain cases hereinafter excepted), be absolutely disqualified and incapacitated to acquire or possess as against the person in whom, for the time being, the insolvent estate shall by law be vested, any property, goods or effects, movable or immovable, personal or real, or any right to any such property, goods or effects; and shall in like manner be absolutely disqualified and incapacitated to cede, transfer or convey, so as to bind the person in whom, for the time being, the insolvent estate shall by law be vested, any property, goods or effects, or any debt, claim or demand, or any bond, bill of exchange, promissory note, or other security for money, and as against or in question with such last-mentioned person every such attempted cession, transfer or conveyance shall be totally

Insolvent incapacitated from acquiring property.

Ord. 6—1843. null and void. And no person who shall have sold and delivered  
 From contracting ; upon credit any goods, wares, merchandize, or other matter or  
 things, to any such insolvent shall be entitled to reduce or set aside  
 the sale, or to claim the amount of the purchase money from the  
 person in whom the insolvent estate shall, for the time being, by  
 law be vested, by reason merely that the said insolvent was, at the  
 time of the contract of sale, so disqualified and incapacitated as  
 aforesaid, or that the articles sold and delivered have been taken  
 possession of by such person in whom the said estate was vested as  
 aforesaid, for the benefit of the said estate. And no such insolvent  
 shall be deemed or taken to have any power to bind any such last-  
 mentioned person, or the insolvent estate in him vested, by any sort  
 or description of dealing, contract or transaction whatsoever, unless  
 the same shall have been entered into by virtue of an authority to  
 that effect from such person in writing: Provided always, that  
 nothing herein contained shall be construed so as to prevent any  
 such insolvent from passing a valid title by any such cession,  
 transfer, or conveyance as aforesaid, while acting, so far as he shall  
 be authorized in writing so to do, as the mandatory or agent of his  
 trustee, or from acting as the mandatory or agent of any other  
 person by whom such insolvent shall be authorized in writing so  
 to act, and for whom he shall have been in writing permitted so  
 to act by the person in whom, for the time being, the insolvent estate  
 shall be vested: Provided also, that nothing herein contained  
 shall be construed so as to prevent any insolvent whether acting as  
 such mandatory or agent as aforesaid or not, from well and  
 effectually passing title to any person whatever, by the delivering  
 to him of any movable goods or effects which were next before  
 such delivery in the actual possession of such insolvent, in pursuance  
 of any real and *bona fide* purchase from such insolvent for a just  
 price duly paid, or to prevent any such insolvent from well and  
 effectually passing title to any money paid by him in cash down  
 for any matter, or thing purchased by him at the time of such  
 payment, or to prevent any such insolvent from receiving, suing  
 for and recovering, in his own name and for his own personal and  
 exclusive use, and free from the control of his trustee, the hire,  
 wages, or reward of his work and labour, or that of any of his  
 family, by him or them bestowed during the intervening time  
 aforesaid, or any part thereof, or any damages claimable by reason  
 of any personal wrong or injury done to such insolvent or any  
 member of his family. And provided that whenever any property,  
 goods, or effects shall be proved by such insolvent to have been  
 purchased or obtained by means of any moneys receivable or  
 recoverable as aforesaid for his own personal use, such property,  
 goods, or effects shall also be free from the control of his trustee,  
 in like manner as the moneys were by which they were purchased  
 or obtained.

But not from acting as an agent.

Or completing delivery of goods sold and paid for.

Or from working for hire.

Or from vindicating personal wrongs.

Power of election by trustee as to ac-

50. And be it enacted, that it shall and may be lawful for the

trustees, to take up, and continue in their own names, the process in any action commenced for any debt or demand due to the estate, before their appointment, or to discontinue the same, as they shall see fit; and also to commence any new suit or action in any competent Court, for any debt or demand due to or affecting the estate of any insolvent person; and also to defend any action brought against them, or pending against the insolvent, relating to or affecting the said estate.

Ord. 6—1843.  
tions in favour of or  
against estate.

51. And be it enacted, that in every such action as in the last preceding section mentioned, and in every action between any parties for determining the validity of the claim of any person claiming to be a creditor in the insolvent estate, or the right of any person or persons to or of preference over any part of the assets of the insolvent estate, the insolvent, whether he shall have obtained his certificate or not, shall not be deemed or taken to be an incompetent witness either for or against the said trustees, or either of the parties in any such action as aforesaid, by reason of any interest which he may have, or be presumed to have, in the event of the suit.

Insolvent compe-  
tent witness in suits  
affecting estate.

52. And be it enacted, that it shall and may be lawful for the Supreme Court, or any Circuit Court, on cause shown by the Master of the said Court, or by any person interested in the due administration of the insolvent estate, to remove any trustee or trustees for insolvency, or for any misconduct in the said trust, or on account of absence from this Colony; and thereupon, and as often as any trustee shall die, or obtain leave from the said Court to resign, or shall become incapacitated, it shall and may be lawful for the said Court, or any judge thereof, to order a new trustee to be elected, and the same proceedings shall be had thereon as on the original election of trustees; and it shall and may be lawful for the said Court, or any judge thereof, in the mean time, to make such order as may be necessary or expedient for the preservation of the insolvent estate, until such new trustee shall be elected and confirmed.

Causes for removal  
of trustee.

When office of  
trustee vacant, how  
to be supplied.

53. And be it enacted, that whenever, on the death or removal of any trustee, any new trustee shall be elected and confirmed in manner hereinbefore provided, the decree confirming the appointment of such new trustee shall have the effect in law to vest in the new trustee the whole insolvent estate, present or future, as hereinbefore particularly described, and every power, right, title, privilege, and remedy vested in or competent to the former trustee, as trustee, before his death or removal, as fully and to the same extent as the same was vested in the former trustee by the decree made for confirming his appointment, in manner aforesaid: Provided always, that the death or removal of any trustee shall not affect the validity or force of any lawful act done by him as trustee for the purposes of the sequestration, prior to his death or removal. And during any period of time which shall elapse between the death or removal of any trustee, and the making of the decree for confirming the

Vesting of estate  
in trustees newly ap-  
pointed.

Death of trustee  
not to affect his acts.

Ord. 6—1848.  
Vesting of estate during vacancy in office of trustee.

election of the trustee confirmed in his place, and no longer, the whole of the then existing insolvent estate shall, except when notwithstanding such death or removal there shall remain in office one or more of the trustees of the said estate, be vested in the Master of the Supreme Court. *or any provisional trustee.*

Death of trustee not to abate actions.

54. And be it enacted, that whenever a trustee shall die, or a new trustee shall be chosen, no action relative to the insolvent estate shall be thereby abated; but the Court in which any such action is depending, may, upon the suggestion of such death or removal, or that a new trustee has been chosen and confirmed, allow the name of the surviving or new trustee or trustees to be substituted in the place of the former; and the said action shall proceed as if such surviving or new trustee or trustees had originally commenced or defended the same.

Gazette notice of sequestration and of appointments or removal of trustees.

55. And be it enacted, that every trustee, on being confirmed, shall forthwith cause notice of the sequestration and of his appointment to be given by advertisement in the *Government Gazette*, and the Master of the Supreme Court shall cause notice of every order made for the removal of any trustee to be given by advertisement in the *Government Gazette*.

*Vide § 77.*

Power of trustees to call meetings of creditors.

56. (1) And be it enacted, that it shall and may be lawful for any trustee or trustees, at any time, to call a general meeting of the creditors, and to require their directions concerning the collection or sale of any part of the estate, or concerning any matter or question relating to the administration of the said estate, and the trustee or trustees shall call such meeting whenever they are thereto required by one fourth of the creditors in value who have produced and proved their claims; and the said trustees shall pursue the directions of the greater part of the creditors attending such meeting: Provided always, that twenty-eight days' notice, at the least, shall be given of every such meeting, and of the purpose thereof, in the *Government Gazette*, unless in any particular case the Master or Resident Magistrate shall authorize the trustee or trustees to call a meeting upon some shorter notice: And provided also, that no such meeting shall be competent to direct the said trustees to do any thing calculated to interfere with or injure the just rights of any creditor who shall hold any preferable security or lien upon any part of the insolvent estate; and in case any direction shall be given by any such meeting calculated to interfere with or injure such rights, such creditor may apply by motion to the Supreme Court, to set aside such direction, and thereupon the said Court shall make such order in the premises as shall to justice appertain.

Gazette notice of meetings.

*28 days.*

Saving of rights of creditors holding liens.

Before whom meetings of creditors to be held.

57. And be it enacted, that all meetings of creditors called by virtue of this Ordinance, and appointed to be holden in Cape Town, shall take place before the Master of the Supreme Court; and if

<sup>1</sup> See also §§ 77 and 98 as to instructions of creditors.

appointed to be holden in any district of the Colony other than the Cape district, then before the Resident Magistrate of such district or the person acting as such, who shall forthwith certify to the said Master the proceedings thereat.

Ord. 6—1843.

58. And be it enacted, that it shall and may be lawful for the trustees, to take legal advice on any legal question affecting the insolvent estate, or the administration thereof, and to employ an attorney for the conducting and defending all actions and suits for or against the insolvent estate, and to charge against the insolvent estate all such fees as shall thereby be incurred and shall be allowed upon taxation by the Master of the Supreme Court, subject to the review of the Supreme Court, upon the complaint of the attorney so employed, or of any person having an interest in the due administration of the estate under sequestration; and when it shall be made to appear to the Supreme Court, that any attorney has improperly advised, commenced, conducted, or defended any such action or suit, or incurred any improper or unnecessary expense therein, with the purpose of thereby benefiting himself, and not with the *bonâ fide* purpose of thereby benefiting the insolvent estate, it shall and may be lawful for the said Court, to order the whole or any part of the costs of such action to be paid by such attorney, as the said Court shall think fit.

Legal advice may be taken by trustees.

Attorneys look out.

Arbitrary

59. And be it enacted, that it shall and may be lawful for the Master of the Supreme Court, and for any trustees, whether provisional or elected, respectively, to grant and allow to the insolvent, out of the assets of the insolvent estate, such moderate sum or sums as the said Master or the said trustees, respectively, shall find to be indispensably necessary for the support of the insolvent and his family, pending the decision of the creditors in regard to such support, and the said Master and such trustees as aforesaid, may, if they shall, respectively, see fit, employ the insolvent, or any other person, in the gathering and preservation of any crops or produce, for any reasonable time necessary for the gathering and preservation thereof; and also leave the said insolvent, or place any other person, in the charge of any property, manufactory, or concern, belonging to the insolvent estate, until the same shall be sold, disposed of, or wound up, and make to the said insolvent, or other person, so employed, a reasonable allowance, per diem, for his labour: Provided that the amount of every such allowance, whether for support or labour, as the case may be, granted before the meeting of creditors which shall be first holden after the second meeting of creditors by this Ordinance directed, shall be submitted to such meeting, which meeting shall have power to decide whether any such allowance shall be continued, and if so, for what length of time, and what shall be the amount thereof. And provided, also, that every trustee who shall make any such allowance to an insolvent, except with the consent of the creditors assembled at such meeting as last aforesaid, or at

Interim allowance to insolvent by master or trustees.

Interim care of estate.



Ord. 6—1843.

some other meeting duly convened, shall forthwith report to the Master of the Supreme Court the amount and grounds of such allowance. And provided, that every such allowance made by any trustee, without the consent of the creditors, shall be subject to the review of the Supreme Court upon the application of the said Master or of any person interested in the due administration of the insolvent estate.

Insolvent to attend meetings of creditors.

60. And be it enacted, that the insolvent or legal administrator of any insolvent estate shall attend before the creditors at the first, second, and third meetings of creditors to be holden by virtue of this Ordinance, and at every adjournment of the said second meeting, unless authorized by the Master or Resident Magistrate, as the case may be, not to attend any such adjourned meeting, and shall also attend before the creditors at every other meeting of creditors held by virtue of this Ordinance, whenever he shall be required so to do by a notice in writing signed by the Master of the Supreme Court or by the Resident Magistrate before whom such meeting is to be held, (which notice the said Master and Resident Magistrate are hereby respectively authorized to give), and shall, at every meeting of creditors which he shall attend, answer all such lawful questions as shall be put to him by the said Master or the said Resident Magistrate, as the case may be, touching and concerning his affairs and estate and the cause and ground of his insolvency, and shall, at the said second meeting, being thereunto required by the creditors, lodge with the Master or Resident Magistrate, as the case may be, to be by him delivered to the trustee or trustees when appointed or confirmed, a true inventory of the whole of such estate and effects, movable and immovable, personal and real, wheresoever the same may be situated, and of all estates and effects in expectancy or contingency, or to which the insolvent may have any eventual right, and all debts due to and by him, to the best of his knowledge and belief, and all books of accounts, papers, writings, documents, bills, and vouchers, relating to the said estate, which are in his custody or power; and the said insolvent or administrator shall, upon being thereunto required, surrender the said books, papers, writings, documents, bills, and vouchers to the said Master or Resident Magistrate, as the case may be, to be by him delivered to the trustee or trustees when appointed or confirmed.

To answer questions.

To give account of his estate.

And to deliver up papers, &c.

Examination of insolvent by officer presiding at meetings.

61. <sup>(1)</sup> And be it enacted, that it shall and may be lawful for the Master of the Supreme Court and for the Resident Magistrate, when they shall respectively preside at any meeting of creditors before which the insolvent shall attend, to examine the insolvent upon oath, if they shall see fit so to do, touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret alienation, transfer, cession, delivery, or conceal-

<sup>1</sup> Any creditor or agent of creditor may also examine the insolvent, Act 38 of 1884, § 7.

ment of his estate and effects, movable or immovable, personal or real, and to cause his examination to be reduced to writing, and signed by him and annexed to the proceedings in the said estate.

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62. And be it enacted, that it shall and may be lawful for the Supreme Court, or any Circuit Court, upon the application of the trustee or trustees, whenever and so often as they shall see fit, to summon any insolvent before the Supreme Court, or any Circuit Court, or any commissioner of the Supreme Court, if the said Court shall see fit so to order, whether the said insolvent shall have obtained his certificate and allowance thereof or not. And it shall be lawful for such Court, or commissioner, to examine him upon oath touching all matters relating to his trade, dealings, or estate, which may tend to disclose any secret alienation, transfer, cession, delivery, or concealment of his estate or effects, movable or immovable, personal or real, and to cause his examination to be reduced to writing, and signed by him, and annexed to the proceedings in the said estate.

Special examination of insolvent as to estate, &amp;c.

63. And be it enacted, that if any insolvent, being lawfully summoned as aforesaid to appear before the Supreme Court, or any Circuit Court, or any commissioner of the Supreme Court, shall not, at the time and place appointed in the summons for his appearance, come before such Court or commissioner, (having no lawful impediment at such time made known to and allowed by such Court or commissioner), it shall be lawful for such Court or for such commissioner, under his hand, to grant warrant, authorizing any officer of the law or other person to apprehend such insolvent, and forthwith to bring him before such Court or commissioner, or to lodge him in any prison, therein to be detained until the time which such Court or commissioner, as aforesaid, shall have appointed anew, on the application of the trustee or trustees, for his examination: and the gaoler of every such prison shall cause him to be brought before such Court or commissioner, at the time and place specified in such warrant: and every insolvent aforesaid, who, being summoned as aforesaid, shall depart from the Colony, or abscond, or conceal himself within the same, with the purpose and intent to evade appearing at any such examination to which he was summoned, or to prevent any warrant hereinbefore mentioned from being executed upon him, shall be deemed guilty of the crime of fraudulent insolvency: and shall, on conviction thereof, suffer transportation for any period not exceeding seven years, or imprisonment, with or without hard labour, for any period not exceeding five years.

Consequence to insolvent of not obeying summons for examination.

And of absconding.

*Act of fraudulent insolvency*

64. And be it enacted, that if any insolvent shall at the second meeting of his creditors, or any adjournment thereof held as aforesaid, being thereunto required, refuse to lodge a true inventory of his estate and effects, or to surrender the books, papers, writings, documents, bills, or vouchers, relative to his estate as aforesaid; or shall, at his examination before any Court or commissioner before

Consequence to insolvent of not lodging inventory of estate, &amp;c.

Ord. 6—1843.  
And of refusing to  
be examined.

mentioned, or any meeting of creditors which he shall attend as aforesaid, refuse to be sworn, or shall refuse to answer any lawful questions put to him by such Court or commissioner, or by the said Master or Resident Magistrate touching any of the matters aforesaid; or shall refuse to sign or subscribe his examination so reduced into writing as aforesaid, (not having any lawful objection to so doing), it shall be lawful for such Court, or commissioner, or for such Master, or such Resident Magistrate, by warrant under his hand to commit him to such prison as they shall think fit, there to remain without bail, until he submit to do the matters aforesaid, or to be sworn, or make answer to such lawful questions as shall by them be put to him, or sign and subscribe such examination as aforesaid.

*Imprisonment*

Examination of  
third parties in re-  
gard to estate.

65. And be it enacted, that after surrender or adjudication of sequestration of any estate as insolvent, it shall and may be lawful for the Supreme Court, or any Circuit Court, upon the application of the said trustee or trustees, to summon before the said Court, or any Circuit Court or any commissioner of the Supreme Court, the wife of the insolvent, or any person known or suspected to have in possession any of the estate of the insolvent, or to be indebted to the insolvent, or any person whom the said Court may see reason to believe capable of giving information concerning the person, trade, dealing, or estate of such insolvent, or any information material to the full disclosure thereof: and also to require such person to produce any books, papers, deeds, writings, or other documents, in his or her custody, which may appear to the said Court necessary to the verification or disclosure of any of the matters aforesaid; and it shall and may be lawful for the said Supreme Court, or Circuit Court, or commissioner, to examine every such person, upon oath, concerning the person, trade, dealings, or estate of such insolvent, and to cause his or her examination to be reduced to writing, and signed by him or her, and annexed to the said proceedings; and, if any such person shall, upon being lawfully summoned to appear to be examined, fail so to appear, (having no lawful impediment made known to the Court or commissioner, before whom such person is summoned at such time, and allowed by them,) it shall be lawful for such Court, or for such commissioner under his hand to grant warrant, authorizing and directing any officer of the law, or other person, to apprehend the person so summoned and failing to appear, and to bring the said person before such Court or commissioner, or to lodge the said person in any prison, therein to be detained until the time which such Court or commissioner shall, on the application of the trustee or trustees, have appointed anew for his or her examination: and the gaoler of any such prison shall cause such person to be brought before such Court or commissioner at the time and place specified in such warrant. And if any such person, so summoned or brought before such Court or commissioner for examination, shall refuse

Consequence to  
third parties of re-  
fusing to be exam-  
ined.

to be sworn, or shall refuse to answer any lawful question put by such Court or commissioner touching any of the matters aforesaid, or shall refuse to sign his or her examination so reduced into writing as aforesaid, (not having any lawful objection allowed by such Court or commissioner), or shall not, being thereunto required, produce any books, papers, deeds, writings, or other documents in his or her custody or power, relating to any of the matters aforesaid, and to the production of which he or she shall not state any objection allowed by them, it shall be lawful for such Court or for such commissioner by warrant under his hand, to commit him to such prison as they shall think fit, there to remain without bail, until such person shall submit to be sworn, or make answers to all such lawful questions, as shall by such Court or commissioner be put, or sign such examination, or produce such books, papers, deeds, writings, or other documents as aforesaid, in his or her custody or power, to the production of which no such objection as aforesaid shall be allowed.

Ord. 6-1943.

66. And be it enacted, that the insolvent and every other person summoned before the Supreme Court, or Circuit Court, or any commissioner, by order of the said Court to be examined or give evidence, or make disclosure of the trade, dealings, estate, or effects of any insolvent, under or by virtue of this Ordinance, shall have his necessary expenses tendered to him by the trustee or trustees of such insolvent estate, in like manner as is by law required upon service of a subpoena to a witness in any civil suit. And such necessary expenses shall also be tendered to every insolvent who is required by any notice in writing, signed by the Master of the Supreme Court, or by any Resident Magistrate, to attend any meeting of creditors other than the first, second, and third meetings as aforesaid, or some adjournment of the second meeting.

Tender of expenses to parties to be examined.

67. And be it enacted, that every insolvent or other person sworn by or before any Court, or commissioner, or by the Master of the Supreme Court, or by any Resident Magistrate, by virtue of any of the provisions of this Ordinance, who shall wilfully make any false answer to any lawful question put by such Court, Commissioner, Master, or Resident Magistrate, such person shall be deemed guilty of the crime of perjury, and on conviction thereof shall suffer any punishment provided by law for such crime.

Penalty of false answers during examination.

68. And be it enacted, that if any person whatsoever be committed by any Court or commissioner, or by the said Master, or by any Resident Magistrate, for refusing to answer, or not fully answering, any question put to him by them, they shall, in their warrant of commitment, specify every such question: and if any person, so committed as aforesaid, shall make any application to any Court or judge, competent to entertain the same, in order to be discharged from such commitment, and there shall not appear to such Court or judge any insufficiency or informality in the form of the warrant, whereby such person was committed, by reason

Warrant of commitment at examination.

Proceedings on application to be discharged.

*Fraudulent Insolvency.*

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whereof he might be discharged, it shall be lawful for such Court or judge, and such Court or judge is hereby required, to recommit such person to the same prison, there to remain until he shall conform as aforesaid ; unless it be shown to such Court or judge by the party committed, that he has fully answered all lawful questions put to him on his examination as aforesaid ; or, if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such Court or judge, that he had a sufficient reason for the same : Provided also, that such Court or judge shall, if required thereto by the party committed, consider the whole examination of such party, whereof any such question was a part, and, if it shall appear from the whole examination, that the answer or answers of the party committed is or are satisfactory, such Court or judge shall and may order the party so committed to be discharged.

Master, &c., same protection as justices of peace in action brought against them.

69. And be it enacted, that in case any suit or action shall be instituted, or sought to be instituted against the Master of the Supreme Court, or any commissioner of the said Court, or any Resident Magistrate, by reason or on account of any commitment to prison of the insolvent or other person, the said Master, Commissioner, and Resident Magistrate shall respectively possess and enjoy, in reference to such action, and the process and proceedings therein, every right, privilege and provision, and be subject to every liability which do, or shall by law, belong and pertain to suits or actions instituted or sought to be instituted against Justices of the Peace, for anything done by them in the execution of their office ; Provided also, that the Court before which any action founded upon a commitment for refusing to answer, or not fully answering, any question or questions put to the plaintiff, is tried, shall, if required thereto by the defendant, consider the whole examination of the plaintiff, whereof such question was, or such questions were, a part ; and if it shall upon such consideration appear to such Court that the plaintiff was lawfully committed, the defendant shall have the same benefit therefrom as if the whole of such examination had been set forth in the warrant of commitment.

What acts constitute fraudulent insolvency.

70. And be it enacted, that if any insolvent whose estate shall have already been, or shall hereafter be, surrendered or adjudged to be sequestrated as insolvent, shall either before or after the making of the order for sequestration, have alienated, transferred, given, ceded, delivered, mortgaged, or pledged, or shall have embezzled, concealed, or removed, any part of his estate or effects, to the value of ten pounds sterling or upwards ; or shall have concealed, removed, destroyed, falsified, or mutilated any books of accounts, papers, writings, documents, bills, or vouchers relating thereto with intent to defraud his creditors ; or shall have fraudulently contracted any debt ; or if any such insolvent shall, at the second meeting of his creditors, or any adjournment thereof, holden before the Master of the Supreme Court, or any Resident Magistrate, for the

*Alienated 1*  
*£10.-*

*Concealed or Books 2*

*Contracted Debt*

purposes aforesaid, wilfully lodge any inventory containing any false statement of his estate or effects, or any part thereof, or with respect to any debt due to or by him, or shall produce any books of accounts, papers, writings, documents, bills, or vouchers, which are false, or on which any erasure or alteration has been made, or caused to be made by him, or with his knowledge, with intent to defraud his creditors; or, if any such insolvent shall, at any time when examined in manner aforesaid before any Court or commissioner, or by the Master of the Supreme Court, or by any Resident Magistrate, wilfully make any false answer to any lawful questions then put to him, with intent to defraud his creditors, or shall have connived at or concealed from the trustee, his knowledge of the proof, by any person, of a false debt against his estate, he shall be deemed to be guilty of the crime of fraudulent insolvency, and, on conviction thereof, shall suffer transportation for life or for any shorter period not less than five years, or imprisonment, with or without hard labour, for any period not exceeding five years.

71. <sup>(1)</sup> And be it enacted, that if any insolvent whose estate shall hereafter be surrendered or adjudged to be sequestrated as insolvent, shall fail to attend before his creditors at the first, second, and third meetings thereof, or shall fail to attend at any adjournment of the said second meeting, unless authorized by the Master or Resident Magistrate, as the case may be, not to attend the same, or shall, without good and lawful reason for absenting himself, fail to attend before his creditors, at any meeting thereof, after having been personally served with a notice in writing signed by the Master or the Resident Magistrate, as the case may be, requiring him to attend such meeting, or shall not, in case his estate is deficient to the amount of five hundred pounds, or upwards have kept, or caused to be kept, such reasonable and proper books or accounts containing all such entries belonging to, and exhibiting the nature of, his dealings and transactions as (regard being had to his particular trade or calling), might reasonably be expected and required; or shall not, when thereto required by the said Master or the Resident Magistrate, as the case may be, at any meeting of his creditors, account for or discover what has become of any money, or valuable security, or other property or effects, which shall have been proved to have been in his possession so recently before the sequestration as to make it his duty so to do; or shall not, when thereto required by such Master or Resident Magistrate as aforesaid, give a true and a sufficient explanation of the cause or causes of his insolvency; or if he shall have given to any of his creditors an undue preference as the same is hereinafter defined; or shall have contracted any debt without any reasonable or probable expectation, at the time of contracting the same, of being able to pay the same; or shall have incurred any debt by reason of

What acts constitute culpable insolvency.

<sup>1</sup> Amended by Act 38 of 1884, §§ 9, 10.

Ord 6-1949.

any breach of trust; or shall, without having obtained his certificate and the allowance thereof, between the time of the making of the order for the sequestration of his estate and the time of the making of the decree confirming the account and plan of distribution as hereinafter mentioned, have entered into any dealing or business, or taken upon him the buying and selling of any goods, wares, or merchandize, whether for himself or any other person whatsoever, without the authority in writing of the person in whom the insolvent estate shall, for the time being, by law be vested, first had and obtained; or shall have granted, made, or promised any gratuity, payment, security, or other undue consideration in order to procure or obtain the concurrence or assent of any creditor either to any offer of composition, or to the certificate, as the same are hereinafter mentioned, such insolvent shall be deemed to be guilty of the crime of culpable insolvency, and, upon conviction, be imprisoned with or without hard labour, for any period not exceeding six months.

Jurisdiction of magistrates in culpable insolvency.

72. And be it enacted, that it shall and may be lawful for the Courts of the Resident Magistrates in this Colony, respectively, on the conviction before any such Court of any person of any of the offences set forth in the last preceding section mentioned, to sentence such person to the punishment in the said section provided.

Prosecution of culpable insolvency by creditors.

73. And be it enacted, that every trustee and every creditor of or on the estate of any insolvent shall, with regard to any of the offences set forth in the seventy-first section of this Ordinance, have the same right of prosecution which any private person has by law with regard to any offence committed against his person or property, and no other right; Provided always, that no creditor or creditors shall be entitled to exercise any such right of prosecution for any such offence without first obtaining from the trustee, and producing, a certificate that the trustee declines to prosecute for that offence.

Fraudulent alienation, &c., by insolvent in favour of third parties.

74. And be it enacted, that if any person shall receive or accept any alienation, transfer, gift, cession, delivery, mortgage, or pledge made by any insolvent of any part of his estate or effects, with intent to defraud the creditors of the insolvent, knowing, at the time, the same to be fraudulently made, such person shall, on conviction thereof, suffer transportation for life, or for any period not less than five years, or imprisonment, with or without hard labour, for any period not exceeding five years.

Removal, &c., of effects sequestrated.

75. And be it enacted, that if any person shall dispose of, remove, conceal, embezzle, or receive, any movable property belonging to any insolvent estate, which has been attached by virtue of any order for the sequestration thereof, or any movable property, which has been attached by process of any competent Court, knowing the same to have been so attached, and with intent to defeat the said attachment, such person shall, on conviction thereof, suffer transportation for any period not exceeding seven years, or

imprisonment with or without hard labour, for any period not exceeding five years.

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76. And be it enacted, that in all cases when, on the application of the Master of the Supreme Court, or any trustee or trustees of any insolvent estate, it shall, on oath, be made to appear to the satisfaction of any Judge of the Supreme Court, or Resident Magistrate, or Justice of the Peace, that there is reason to suspect or believe that property of any insolvent is concealed in any house or other place not belonging to the insolvent, it shall and may be lawful to the said Judge, Magistrate, or Justice of the Peace, to grant a warrant to search for and take the said property; which warrant shall be executed in like manner as is by law allowed in execution of a search warrant for property reputed to be stolen and concealed: and any property of the insolvent so found shall forthwith be delivered if, no trustee or trustees have hitherto been confirmed, to the Master of the Supreme Court, or otherwise, to the trustee or trustees who have been confirmed, or to any person appointed by the said Master, or trustee or trustees, to receive the same.

Recovery of sequestrated effects concealed.

77. And be it enacted, that it shall be lawful for the Master of the Supreme Court, and he is hereby required, so soon as the trustee or trustees, chosen at the second meeting of the creditors of any insolvent estate in manner aforesaid, have been confirmed, forthwith to appoint the third meeting of the creditors of the insolvent to be holden before himself, or any Resident Magistrate, at such time, and at such place, as he shall deem most expedient for all parties concerned, for the purpose of receiving proof of debts and for receiving the report of the trustee or trustees as to the condition of the insolvent estate, and for giving directions to the trustee or trustees as to the management thereof; and the said trustee or trustees shall give notice of the time and place at which, and of the purposes for which, such meeting is to be held, in the same advertisement in the *Government Gazette*, in which notice is hereinbefore required to be given by them to the creditors, of their confirmation as trustee or trustees.

Third meeting of creditors.

For proof of debts. And report as to condition of estate.

Vide 855

78. And be it enacted, that it shall and may be lawful for the creditors of any insolvent estate present at such third meeting as aforesaid, or at any other subsequent meeting, to elect, if they shall by a majority determine so to do, one commissioner, who shall be either a creditor or the mandatory of a creditor, and the same proceedings shall take place, and the same regulations apply, in regard to his election, as are hereinbefore provided in regard to the election of trustees except that no decree of the Supreme Court confirming his appointment shall be necessary. Provided that no person shall be eligible to be a commissioner who is disqualified to be a trustee, and provided that after every such election of a commissioner, the Master of the Supreme Court, or the Resident Magistrate, as the case may be, shall annex a record thereof to the

Commissioner, election of. at third meeting

LLL



Ord. 6—1843.

proceedings in the insolvent estate; and provided that the trustee shall, in all cases when a commissioner has declined to act, or died, or resigned, or become incapacitated, call a meeting of creditors for the purpose of electing, should they, by a majority think proper so to do, a new commissioner, and such new commissioner shall be elected in the manner hereinbefore provided:—and provided that no commissioner shall be entitled to or receive any species of salary, commission, allowance, or remuneration whatever from the insolvent estate for his services as such commissioner. And provided, that, when the question of electing a commissioner shall be sought to be submitted to any meeting of creditors other than the third meeting, a public notice of not less than fourteen days shall be given in the *Government Gazette*, that such a question will be submitted to such meeting.

*Election of a new  
meeting other than  
3-14-82y Holie*

Duties of commissioner.

79. And be it enacted, that it shall and may be lawful for the said commissioner, when such shall be elected as aforesaid, to superintend the proceedings of the trustee, give his advice and assistance in the management of the estate, inquire from time to time, into the situation thereof, and of every part thereof, examine all the accounts of the trustee regarding the said estate, require from the trustee all such reasonable explanation or information as he or they may, from time to time, demand, touching any matter or thing belonging to the administration of the said estate, and assist the Master of the Supreme Court in assessing the compensation to be paid to the trustee.

Power of commissioner to call meetings and report.

80. And be it enacted, that it shall and may be lawful for the commissioner, to call at any time, a general meeting of the creditors, and to make to such meeting such reports or representations in regard to any matter or question respecting the administration of the insolvent estate as he shall deem necessary or expedient; and the trustee shall pursue the directions of the greater part of the creditors attending such meeting: Provided always, that twenty-eight days' notice at the least, shall be given of every such meeting, and of the purpose thereof, in the *Government Gazette*.

Trustee to furnish information to commissioner.

81. And be it enacted, that any trustee who shall neglect or refuse to give to any commissioner any such information concerning the situation and administration of the insolvent estate, or any such insight into the accounts thereof, as the said commissioner is, as aforesaid, authorized and empowered to demand and require, shall be deemed and taken to have misconducted himself in his trust, and may thereupon be removed in manner and form as hereinbefore provided, from the office of trustee.<sup>(1)</sup>

Getting in of debts by the trustee.

82. And be it enacted, that the trustee or trustees shall, after being confirmed, forthwith call in and collect all debts due to the estate, and, for that purpose, they shall, by advertisement in the *Government Gazette*, summon all debtors to pay, or cause the same

*no time*

<sup>1</sup> See § 52.

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to be paid to them at such time and place, as shall be therein appointed for that purpose; and any person neglecting or refusing to make such payment, and being afterwards sued for any such debt, shall, if the said trustee or trustees obtain a judgment against him, and if he shall not show cause, to the satisfaction of the Court awarding such judgment, for such neglect or refusal, pay to the said trustee or trustees double costs of suit, for the benefit of the said estate: and the said publication shall be deemed notice thereof to all persons who may reasonably be presumed to have seen the same. And the said trustee or trustees shall also proceed to set aside, and if necessary, by legal process, all such payments, alienations and pledges, made by any person whose estate shall be sequestrated as insolvent, as are hereinafter particularly described, and declared to be null and void, precisely as if the money, or other property delivered or pledged, had belonged to the said trustee or trustees at the time of the making of such payments, alienations, or pledges respectively.

83. And be it enacted, that every alienation, transfer, gift, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, made by any insolvent, at a time when it shall be made to appear by proof, that his liabilities fairly calculated exceeded his assets fairly valued, shall, unless the same shall have been made *bonâ fide*, and upon just and valuable consideration, be null and void. And whenever the immediate and necessary effect of any such alienation, transfer, gift, cession, delivery, mortgage, or pledge, as aforesaid, shall be to cause such an excess of liabilities over assets, then the same, to the extent to which such excess shall have been thus produced, shall be null and void.

Gratuitous alienations by insolvent, i.e. at a time when his assets exceeded his liabilities

84. And be it enacted, that every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent to any creditor, such insolvent at the time contemplating <sup>(1)</sup> the sequestration, either voluntary or otherwise, of his estate, and intending thereby to prefer directly or indirectly such creditor before his other creditors, shall be deemed to be an undue preference, and is hereby declared to be null and void. And every such alienation, transfer, cession, delivery, mortgage, or pledge as aforesaid, made by any insolvent to any person whatever, such insolvent at the time contemplating, as aforesaid, the sequestration of his estate, and intending thereby to prefer directly or indirectly any creditor before his other creditors, shall be deemed to be an undue preference of such creditor in so far as he shall have been benefited thereby, and the trustee or trustees shall be entitled to recover the amount or value of such undue preference from the creditor so preferred.

Undue preference of creditors.

<sup>1</sup> See § 8, Act 38 of 1884 *infra*.

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Undue preference  
of sureties for insol-  
vent.

85. And be it enacted, that every alienation, transfer, cession, delivery, mortgage, or pledge of any goods or effects, movable or immovable, personal or real, and every payment made by any insolvent, with the intention of thereby benefiting any person, who, not being a creditor of such insolvent, would yet have become liable for the amount paid, satisfied, or secured by the insolvent, in case it had not been so paid, satisfied, or secured, either in the character of a surety for such insolvent, or in some character by law analogous thereto, such insolvent at the time contemplating <sup>(1)</sup> the sequestration, either voluntary or otherwise, of his estate, shall be deemed to be an undue preference, and the trustee or trustees shall be entitled to claim and recover from the person so intended to be benefited whatever amount the insolvent shall have paid, satisfied or secured, in discharge or relief of such persons' liability.

Transactions in or-  
dinary course of  
trade.

86. And be it enacted, that every alienation, transfer, cession, delivery, mortgage or pledge as aforesaid and every payment made by any insolvent to any creditor in the usual and ordinary course of trade or business, shall, *primâ facie*, be held and taken to have been made or given *bonâ fide*, and without an intention to give to such creditor any preference, although such insolvent may, at the time, contemplate the sequestration of his estate as insolvent, and in every such case it shall be necessary for the trustee or trustees seeking to set the same aside, to show the existence of some collusive arrangement, mutual understanding, or common consent, between the insolvent and the creditor, the one to give and the other to get a preference over the other creditors of the insolvent, under colour of a transaction in the usual and ordinary course of trade or business.

Collusive payments  
to creditors under  
execution before se-  
questration.

87. And be it enacted, that every payment obtained by any creditor before the making of the order for sequestration, by means or under colour of legal process against the insolvent, shall be deemed an undue preference, and be null and void, when and as often as such payment shall have been obtained or facilitated by connivance of the insolvent, or by collusion between such insolvent and such creditor, such insolvent, when so conniving or colluding contemplating <sup>(1)</sup> the sequestration of his estate, and intending to give such creditor, or allow such creditor to get, a preference above the other creditors of such insolvent.

Forfeiture by cre-  
ditors where undue  
preference collusive.

88. And be it enacted, that, in every case in which any person, whether actually a creditor or not, shall be obliged, by virtue of the eighty-fourth or eighty-fifth or eighty-seventh sections of this Ordinance, to restore or repay, as the case may be, for the benefit of the insolvent estate, any alienation, transfer, cession, delivery, mortgage or pledge, or any payment as having been an undue preference, such person shall not be allowed to claim or prove as a

<sup>1</sup> See § 8, Act 38 of 1884.

debt the amount of what he shall have so restored or repaid, but shall wholly forfeit such amount as regards the insolvent estate, in case such undue preference was received by such person by or through any collusive arrangement, mutual understanding, or common consent between such person and the insolvent, the one to give and the other to get such undue preference.

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89. And be it enacted, that it shall and may be lawful for the trustee or trustees of any insolvent estate, in any suit or action which he may cause to be instituted against any person for the restoration or repayment of any matter, money or thing alleged to have been given or paid by the insolvent by way of undue preference, to claim amongst other things, that the defendant in such suit or action may be declared by the judgment of the Court in which such suit or action shall be pending, to have forfeited, in regard to the insolvent estate, the amount in which he shall be found to have been unduly preferred by reason of the collusive arrangement, mutual understanding, or common consent, in the last preceding section mentioned, and the question of such forfeiture shall be tried and determined together with the other questions in the case. And in case it shall not be necessary to institute any suit or action against persons who shall be alleged by the trustee or trustees to have been unduly preferred, the right of any such last-mentioned persons to prove a debt in respect of the amount or value of the matter, money, or thing by them restored or repaid shall, if disputed, be determined in manner and form as is hereinbefore provided for the regulation of the proof of debts.

How question as to forfeiture in 88th section may be raised.

90. And be it enacted, that in case any creditor of any insolvent shall have received from such insolvent an undue preference, but under circumstances which do not, by force and virtue of the eighty-eighth section of this Ordinance, occasion a forfeiture of the value or amount of such preference, then in case such creditor shall have received such undue preference in respect of any bill of exchange or promissory note, with recourse on other parties, which was payable by the insolvent, and held by such creditors, or in any respect of any debt of the insolvent for which such creditor had any security, which, by reason of the act of the insolvent constituting the undue preference, such creditor has *bonâ fide* given up, discharged, or in law, precluded himself from enforcing, such creditor shall not be liable to restore or repay to the trustee or trustees the value or amount of such undue preference, unless the trustee will indemnify and save him harmless in respect of whatever loss such creditor would sustain in case he were unconditionally condemned and adjudged to restore the value or amount aforesaid, and which loss such creditor would not have sustained in case he had never received from the insolvent the payment or other satisfaction constituting such preference.

If no forfeiture under 88th section, creditor before restoring preference to be indemnified as to his recourse on third parties.

91. And be it enacted, that if any person shall lawfully, *bonâ fide*, and without notice, purchase or acquire any bills of exchange,

*Bonâ fide* purchases by third parties of subject of undue pre-

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ference from credi-  
tor preferred.

promissory notes, or other securities for money, or any goods or effects, movable or immovable, personal or real, which have been alienated, transferred, given, ceded, or delivered by any insolvent, under circumstances or in a manner declared by any of the preceding or succeeding sections of this Ordinance to be null and void, from any person to whom such bills, notes, goods, or effects, were so alienated, transferred, given, ceded, or delivered, by any true bargain or agreement upon just and valuable consideration, nothing contained in this Ordinance shall extend or be construed to extend to annul or affect any right which any such person has lawfully, *bonâ fide*, and without notice, purchased or acquired in such bills or notes, goods, or effects. But in all such cases the persons to whom the same were alienated, transferred, given, ceded, or delivered by the insolvent, shall be bound and obliged to pay the true value of all such goods and effects, by them disposed of to the third party, to the trustee or trustees of the insolvent estate for the benefit of the creditors thereof.

Collusive and  
fraudulent dis-  
charges of debt giv-  
en by insolvent.

92. (1) And be it enacted, that all acquittances, surrenders, or discharges of any just debt, or of any security for any just debt, or other matter or thing, payment or delivery of which has not been actually and *bonâ fide* received, made by any insolvent while contemplating the sequestration of his estate, having the effect to deprive his creditors of the benefit of any debt or other matter or thing, shall be, and are hereby declared to be, as against the trustee or trustees of such insolvent, null and void. And in every case in which the person accepting from the insolvent any such acquittance, surrender or discharge as aforesaid had, at the time of accepting the same, actual knowledge or reasonable notice that the effect of the same, if undetected, would be to deprive the creditors in the insolvent estate of the debt or other matter or thing in question, such person, shall besides making good such debt, matter or thing to the trustee or trustees of the insolvent estate, be also bound and obliged to pay to such trustee or trustees a further sum equal to the value of the debt or other matter or thing, originally due and owing, and wrongfully acquitted, surrendered or discharged, or attempted so to be.

Dealings with in-  
solvent estate after  
the order of seques-  
tration.

93. (1) And be it enacted, that all alienations, transfers, gifts, cessions, deliveries, mortgages, or pledges of any goods or effects, movable or immovable, personal or real, belonging to the insolvent estate, and all payments, and all acquittances, surrenders, and discharges of any just debt due to such insolvent estate, or of any security for any such just debt, or of any other matter or thing belonging or owing to the said estate, made by any insolvent after any order for the sequestration of his estate has been made, and before the making of the order of Court allowing and confirming, as hereinafter mentioned, the account and plan of distribution to

<sup>1</sup> See Act 38 of 1884, § 8.

be framed by the trustees, shall be and are hereby declared to be null and void, the several payments and alienations which such insolvent is by virtue of the forty-ninth section of this Ordinance rendered competent to make, alone excepted.

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94. And be it enacted, that all payment or satisfaction made to any insolvent by any person who was the debtor of such insolvent at the time of the making of any order for the sequestration of the insolvent's estate, after the making such order shall be null and void; except only that where the sequestration of such estate shall have been adjudged at the instance of the creditors thereof, all payment or satisfaction really and *bonâ fide* made to any such insolvent, or to any person legally entitled to receive the same on his behalf, before such sequestration has been adjudged, shall be valid and effectual, in case any such person as aforesaid making such payment or satisfaction had not, when so doing, notice of any order for the sequestration of the estate of the insolvent having been made.

*Bona fide* payments by debtors to insolvent after the order of sequestration.

95. (1) And be it enacted, that every provision hereinbefore contained relative to what shall be deemed to be undue preferences made by persons contemplating the sequestration of their own estates, and to the avoiding of the same, and to the forfeiture, under certain circumstances, of the amount of every such preference, shall be deemed and taken to apply, *mutatis mutandis*, to preferences given out of the assets of the estates which they administer by persons legally invested with the administration of the estates of deceased persons, and of persons legally or actually incapable of the administration of their estates, when such persons, so invested, contemplating the sequestration of the estates which they administer and intend to prefer some one or more creditors of any such estate before the other creditors thereof.

Undue preferences given by executors and the like persons.

96. And be it enacted, that it shall and may be lawful for the trustee or trustees of the insolvent estate of any deceased person, or of the insolvent estate of any person legally or actually incapable of the administration of his estate, to demand and recover either from the person legally administering such estate before the sequestration thereof, and by whom any such undue preference shall have been given, out of the assets of such estate, or from the person to whom, or for whose benefit, such undue preference shall have been given, the value or amount of such undue preference, or such trustee or trustees may sue such persons successively. Provided always, that it shall not be competent for any such trustee or trustees to require the restoration or repayment of such undue preference, or of the amount thereof, from both such persons as aforesaid concurrently, or to recover from them both, when sued successively, more than the single value or amount of such undue preference, together with the costs and charges of such trustee or trustees.

Recovery of preferences given by executors and the like persons.

<sup>1</sup> See Act 38 of 1884, § 8.

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Transaction by trustees of claims by estate on third parties.

97. And be it enacted, that it shall and may be lawful for the trustee or trustees, subject to the directions of the creditors given in the manner hereinbefore mentioned, to agree, if he or they should think fit, to any offer of composition made by any debtor of the insolvent estate who is himself insolvent, or to the certificate of any such insolvent, and to compound with any debtor to the insolvent estate, and take any reasonable part of the debt in discharge of the whole, or to give a reasonable time or take security for the payment of such debt, or to submit any dispute between them and any person concerning or effecting the said estate to the determination of arbitrators, to be chosen by the trustee or trustees and the party with whom they shall have such dispute; and the award of such arbitrators shall be binding on all the creditors: Provided always, that previous notice of their intention so to agree to any offer of composition, or to any certificate, or to compound any debt, or submit any dispute to arbitration has been given for twenty-eight days, at least, by advertisement in the *Government Gazette*. And for the purpose of such offer of composition or certificate, the trustees signing, if more than one, shall reckon only as one creditor in number and value.

Reference to arbitration.

Sale by trustee of sequestrated estate.

98. (1) And be it enacted, that the trustee or trustees shall, subject to the directions of the creditors given in manner hereinbefore provided, forthwith proceed to make sale of all the property belonging to the said estate, movable and immovable, giving due notice thereof in the *Government Gazette*, and also such other notice as they shall think fit: Provided, that from the sale of the said movable property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, household furniture, and tools of trade of the insolvent and his family; and provided, that the sale of all immovable property shall take place in such manner and under such conditions as shall be determined on by the greater part in number and value of the creditors present at any meeting duly summoned: provided, however, that such conditions shall be subject to the approval or disapproval of the Supreme Court, or of any Circuit Court, on the application of any person interested in the due administration or reversion of the estate under sequestration.

Exceptions.

Retention of wearing apparel, &amp;c., by insolvent.

99. And be it enacted, that it shall and may be lawful for the said trustee or trustees, with the consent of the greater part in number and value of the creditors who shall have proved their debts, present at any meeting, whereof and of the purpose of which twenty-eight days' notice shall have been given in the *Government Gazette*, to permit the said insolvent to retain for his own use the whole or such part of his wearing apparel, bedding, household furniture, and tools of trade, excepted from the sale of his movable property, as the said creditors shall agree to allow to the said insolvent. Provided that every such permission shall be subject to the

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<sup>1</sup> See also §§ 39 and 56.

approval or disapproval of the Supreme or any Circuit Court, on the application of any person interested in the due administration of the estate.

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100. And be it enacted, that it shall and may be lawful for, and shall be the duty of the creditors of any insolvent estate, at the meeting held for the election of trustees, immediately after such election, in case such election shall take place at such meeting, and in case such election shall not then take place, then immediately after the votes of the said creditors in regard to such election shall have been given, to nominate and appoint some certain bank or banks within this Colony, with which bank or banks it shall be the duty of the trustee or trustees of such estate to open an account, and, in case of a difference of opinion amongst the said creditors assembled at such meeting, the greater part in value of the said creditors shall determine upon the bank or banks to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank or banks, the trustee or trustees of such insolvent estate, whether chosen by the creditors or provisionally appointed, shall, as soon as he or they shall receive any sum of money exceeding twenty pounds belonging to such estate, open an account with such bank or banks in the name of the insolvent estate, and such sum and every other sum exceeding twenty pounds so received by him or them shall, with all convenient speed, be paid into such bank or banks, to be placed to the credit of such account, and all checks or orders for the payment of any such money out of the said bank or banks shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the trustees or by one of them for himself and co-trustees. Provided that in case the creditors of any insolvent estate shall neglect, in manner aforesaid, to nominate any such bank or banks as aforesaid, it shall be lawful for the trustee or trustees aforesaid to open an account with, and pay all such moneys as aforesaid into, any such bank or banks in this Colony as he or they shall select. And provided that every provisional trustee appointed under this Ordinance before the meeting of creditors for the election of trustees shall, pending such meeting, open an account with, and pay all such moneys as aforesaid into, any such bank or banks in this Colony as he shall select. And provided that all trustees whether provisional or elected, shall, in regard to the bank or banks with which such account as aforesaid shall be kept, and such moneys as aforesaid lodged, pursue such directions as they shall, from time to time, receive from any general meeting of the creditors of the insolvent estate.

Choice by creditors of bank for deposit of moneys of estate.

Deposit of sums exceeding £20.

Cheques upon bank account.

Choice of bank by trustee.

Opening of bank account by provisional trustees.

101. And be it enacted, that any trustee who shall retain in his hands, or knowingly permit any co-trustee so to retain, any sum of money exceeding twenty pounds sterling, part of any insolvent estate, longer than until the first day after his receiving the same, upon which it shall be possible for him to pay the said sum, or

Non-deposit or use by trustee of sums exceeding £20.



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cause it to be paid, into some such bank or banks as aforesaid, and who shall not have any just and lawful cause for so retaining the same, or shall employ for his own benefit, or knowingly permit any co-trustee so to employ, any sum of money, part of any insolvent estate, shall forfeit and pay, for the benefit of the said estate, double the amount of the sum so retained or employed; and the said sum so forfeited shall be deducted out of any claim the said trustee may have against the said estate, and the surplus, if any, shall be recovered by action in any competent Court.

Accounts to be kept by trustee.

102. And be it enacted, that the trustee or trustees shall keep an account, wherein they shall enter all property of the insolvent received by them, and all payments made by them on account of the insolvent's estate; which account every creditor who shall have proved, may inspect at all reasonable times. And it shall and may be lawful for the Master of the said Court, whenever he shall think fit, to summon the said trustee or trustees, by writing under his hand, to produce the said book, and the said Master shall, as often as he shall see fit examine and inspect the same.

Election by trustee as to adopting purchases by insolvent of immovable property.

103. And be it enacted, that if any insolvent shall have entered into any agreement for the purchase or exchange of any estate or interest in any immovable property, it shall and may be lawful for the trustee or trustees of such insolvent, either to abide by, execute, and sue for performance of such agreement, or abandon <sup>(1)</sup> the same; and, if the said trustees shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, the vendor, or person having made such agreement as aforesaid, or any one legally claiming under him, shall be entitled to apply, by motion, to the Supreme Court, or to any Circuit Court, who may thereupon order the said trustees to deliver up any such agreement, and the possession of the premises to the vendor or person so agreeing as aforesaid, or any one claiming under him, or may make such other order therein, as the said Court shall think fit: Provided, that nothing herein contained shall prevent such vendor, or person having made such agreement as aforesaid, from suing the trustee or trustees in any competent Court, and recovering judgment against the insolvent estate for any damage which he shall prove to the satisfaction of such Court to have been by him sustained by the non-fulfilment, on the part of the insolvent, of any such agreement, or deprive the said trustee or trustees of their legal defence against such suit.

Right of action reserved to vendor.

Leases terminated by sequestration.

104. And be it enacted, that if any insolvent, shall be entitled to any lease, or agreement for any lease of immovable property, such lease or agreement for lease shall, upon the surrender or adjudication of sequestration of the estate of such insolvent, cease and determine: <sup>(1)</sup> Provided, that nothing herein contained shall

Saving rights of action to lessor.

<sup>1</sup> See Act 5, 1884, § 19 sub. § 15 (Transfer Duty).

<sup>1</sup> But see § 7, Ord. 16, 1880, Griq. West Statute Law p. 386, as to non-termination of leases of claims by insolvency.

prevent the lessor, or person having made such agreement, from suing the trustee or trustees in any competent Court, and from recovering judgment against the insolvent estate for any rent which he shall prove to the satisfaction of such Court to have been due by the insolvent prior to the surrender or adjudication of sequestration of his estate, or for any damage which he shall prove to the satisfaction of such Court to have been by him sustained, in consequence of the non-performance of the conditions of such lease or agreement for a lease during the full period of the stipulated endurance thereof, or to deprive the trustee or trustees of their legal defence against such suit; or to prevent such trustee or trustees from suing the lessor or person having made such agreement in any competent Court, for the amount of any ameliorations made on the subject, and in contemplation of such lease or agreement, by the insolvent, prior to the surrender or adjudication of sequestration of his estate, or to deprive such lessor or person of his legal defence against such suit; and provided also, that it shall be lawful for such trustee or trustees, when sued for damages for the non-fulfilment of such lease or agreement for a lease, to offer to take over and accept the same, and to perform the conditions thereof, during the full period of the stipulated endurance thereof; and that it shall be lawful for such lessor or person having made such agreement, when sued for the amount of such ameliorations as aforesaid, to offer to receive the trustee or trustees, as lessors in the place of the insolvent, under the conditions and for the full period of the stipulated endurance of such lease; and if such offer shall be refused, the party who has made it shall be absolved from the suit in which it has been made, and shall be entitled to his costs.

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Saving claim of trustee for meliorations.

Action upon lease may be avoided by adopting it.

105. And be it enacted, that no person from whom any insolvent shall have purchased any property, movable or immovable, personal or real, and who shall have delivered or caused or permitted such property to be delivered to such insolvent, shall be entitled either to claim such property being in the sequestered estate, or to claim to be preferred, in any way, for the price or value thereof, by reason alone that such property was sold by such person to such insolvent without any period having been stipulated, until the expiration of which period the price should not be payable, or upon any actual agreement or tacit understanding that such price should be paid or payable forthwith. Provided that nothing herein contained shall be deemed or taken to alter or affect any previous law in force in this Colony, in regard to the right of a vendor to rescind any sale and reclaim his property on account of fraud and circumvention practised upon him by the purchaser, except only in so far as the matters aforesaid hereby declared to be of themselves not sufficient to entitle any such vendor to claim again property sold and delivered, shall have been deemed to amount to, or to be conclusive evidence of, such fraud

Reclamation by vendors of property sold to insolvent but not paid for.

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and circumvention; and provided, also, that nothing herein contained shall apply to any case in which any such vendor shall, within three <sup>(1)</sup> days of the delivery of any property sold as aforesaid, reclaim by notice in writing, the possession of the said property, and proceed thereafter, without any unnecessary delay to enforce the re-delivery of the said property by means of legal process.

Offer of composition by or for insolvent.

106. And be it enacted, that, if at the third public meeting of the creditors, appointed by the Master of the Supreme Court, as aforesaid, or at any subsequent meeting of the creditors assembled together by advertisement in the *Government Gazette*, stating the purpose of such meeting, the insolvent, or any person on his behalf, shall make an offer of composition, or security for composition, which nine tenths of the creditors in number and value assembled at such meeting shall agree to accept, the trustee or trustees shall forthwith call another meeting for the purpose of deciding upon such offer, whereof at least forty-two days' notice shall be given by advertisement in the *Government Gazette*, specifying the time, place, and purpose of such meeting; and if, at such second meeting, nine tenths in number and value of the creditors then present shall also agree to accept such offer, then upon such acceptance being certified to the Supreme Court, by the Master of the said Court, and upon oath of the insolvent, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, to obtain the concurrence of any creditor to the said offer of composition, it shall be lawful for the said Court, upon motion, to pronounce, if it should so think fit, a decree discharging the insolvent from all debts due by him at the time his estate was surrendered or adjudged to be sequestrated, and from all claims and demands proved or hereby made provable or claimable against his estate, and declaring the sequestration at an end, and the insolvent re-invested with his estate, but reserving, however, always the claims of the creditors for such composition, or security for composition, as may have been agreed for and be still unexecuted. Provided that at least twenty-one days' notice of the day on which such motion as aforesaid is to be made shall have been given by advertisement in the *Government Gazette*, and that the said Court shall hear any objection which may be made by any creditor against the pronouncing of such decree, and shall determine thereupon as the justice of the case shall require. Provided also, that if the creditors present at any such second meeting as aforesaid, and agreeing to the offer of composition, do not amount in number and value to four fifths in number and value of the whole of the creditors who have proved debts against the insolvent estate, then the acceptance of such offer

Composition

Meeting of creditors upon

42 days' notice

Oath to be taken by insolvent.

Discharge by court.

Discharge by Composition

Previous notice to creditors.

21 Days notice of intention to be given

Objections by creditors.

<sup>1</sup> Ten days. § 11, Act 38 of 1884.

of composition by at least four fifths in number and value of such lastmentioned creditors must be certified to the said Court by the said Master at the time of the making of the said motion. And provided, that nothing in this section contained shall be construed so as to affect the right of any creditor entitled by law to be paid in preference, in so far as such creditor shall be so entitled, unless such creditor shall expressly consent to give up his preference, and be bound by the said composition, and no creditor by accepting any such offer of composition shall be deprived of his right to claim from any person bound to him as surety for the insolvent, the balance of the debt secured. And provided that the Court aforesaid shall not, in any case, pronounce the decree aforesaid until it shall be satisfied that no injury or injustice will thereby be done to any person who has been allowed by the said Court to enter a claim upon the insolvent estate, and who shall not, at the time of the making of such motion as aforesaid, have yet proved his debt, and until the said Court shall have made or caused to be made inquiry, by taking the oath of the insolvent, or otherwise, whether there are not other creditors having just and lawful debts and claims against the estate of such insolvent, and who, by reason of absence from the Colony or other causes, may not have proved or claimed against the said estate. And provided that if, upon such inquiry, it shall appear to the said Court that there are such just and lawful debts and claims, it shall not be competent for the said Court to pronounce such decree as aforesaid, until it shall have been certified to such Court by the said Master that there has been paid to or deposited with him, or to or with some other person or persons with his approbation, for and on account of such other just and lawful creditors as aforesaid, whatever amount, according to the terms of the composition, they would have been entitled to receive in case they had proved their debts. And provided that no sum of money or other matter or thing which shall be impounded or secured for any person who has entered a claim upon the insolvent estate, or any such creditor as last aforesaid, shall, after any discharge of the insolvent as in this section provided, revert to such insolvent, but the same, in case the person or persons on whose behalf it was so impounded or secured, shall not, within such reasonable time as the Supreme Court shall fix, prove title to and claim the same, shall be ordered by the said Court, upon the motion of any person interested, to be divided ratably amongst the remaining creditors and claimants, the costs of the motion last mentioned being first deducted and paid to the party making the same.

107. And be it enacted, that it shall and may be lawful for the Supreme Court, upon the application of any insolvent, to release, if it should so think fit, the estate of such insolvent from sequestration, whenever it shall be certified to the said Court by the Master of the said Court, that all creditors who have proved debts or entered claims against such estate, have testified in writing, their consent to

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Effect of composition upon preferences or securities.

Upon claims reserved to be proved.

Inquiry for absent creditors.

Release of estate from sequestration.

*By consent*

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Not before third meeting.

Nor before inquiry as to other creditors.

*Release not to affect rights of creditors who have not proved*

such release, or whenever it shall be certified by the said Master that all the creditors who have proved debts or entered claims as aforesaid, have been paid, or have had tendered to, or deposited for them, as the case may be, the full amount, as well principal as interest, of their several demands. Provided that no such application to release any such estate from sequestration under the provisions of this section shall be capable of being granted until after the third meeting of creditors as hereinbefore mentioned shall have been held. And provided that it shall be lawful for the said Court, before granting any such application as aforesaid, to make or cause to be made such inquiry relative to the existence of other just and lawful creditors who have neither proved nor claimed as is in the last preceding section mentioned, and thereupon to grant or refuse such application, and that either absolutely or conditionally, as to the said Court shall seem just. And provided that no such release as aforesaid shall be construed to be a discharge of the insolvent, or to alter or affect, in any way, the rights of any creditors of any such insolvent who have neither proved debts nor entered claims upon the insolvent estate, which rights shall be judged of after any such release exactly as if such estate had never been surrendered.

Account of estate to be rendered by trustee to the master.

108. (1) And be it enacted, that the trustee or trustees of any insolvent estate shall, as soon as may be, and not later than six months after their appointment, unless upon application to the Supreme Court, upon sufficient cause to the satisfaction of the said Court, further time be given for that purpose, frame and lay before the Master of the said Court, an exact account and balance of the said estate, containing the proceeds of all sales and debts then collected, and an account of all debts still outstanding, and an inventory of all property and effects still unsold, and also all debts due by the said estate; and shall also form a general plan for distribution of the assets of the said estate, specifying, first, such creditors as are preferent by law in the order of their legal preference, and, secondly, the concurrent creditors, and as nearly as may be, the probable balance which will remain for division amongst them. And when and as often as the usual place of residence of any insolvent shall be in any district of this Colony, other than Cape Town and the district thereof, or the Cape Division, the trustee or trustees of that insolvent shall, before laying the account and plan aforesaid before the said Master, lay the same before the Resident Magistrate of such district, in whose office it shall remain for the inspection of creditors, for at least seven days, and every such Resident Magistrate shall cause to be affixed in some public place in or about his said office, a list of all insolvent estates in which such account and plan as aforesaid remains, for the time being, for inspection, together with the date of its intended transmission.

Plan of distribution.

Account and plan to be exhibited in magistrate's office.

<sup>1</sup> See Acts 38 of 1884, § 15, and 11 of 1873, § 2, *infra*.

109. And be it enacted, that, as soon as the Master shall receive from the trustees any such account of the estate and plan for distribution, the same shall lie open in his office, for the inspection of the creditors, a reasonable time, to be appointed by the said Master, not being less than fourteen days from the advertisement thereof, according to the distance from Cape Town of the residence of any creditor who has proved a debt against the said estate; and the said trustee or trustees shall cause notice thereof to be given in the *Government Gazette*, and that the Supreme Court will thereupon be moved to confirm and allow the said account and distribution of the estate.

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Plan and account also to lie in master's office.

110. And be it enacted, that it shall and may be lawful for the insolvent or any party interested in the estate under sequestration, and for any creditor who may conceive himself aggrieved by the said plan of distribution, within the time aforesaid, to enter his objection in writing with the said Master, stating the grounds thereof; and, also, it shall and may be lawful for the Supreme Court to permit such objection to be entered at any time before the final confirmation of the said plan upon sufficient cause to be shown to the satisfaction of the said Court, and upon such terms as the said Court shall impose.

Objections to plan of distribution.

111. And be it enacted, that any person objecting to the said account or plan of distribution shall apply to the Supreme Court, on motion, calling upon the trustees, and also upon the party whose interest might be affected thereby, to show cause why the said plan should not be altered or amended, as the case may be, and thereupon it shall and may be lawful for the said Court, upon hearing the said parties, to make such order thereon, as to the said Court shall seem fit: Provided that, when any alteration or amendment shall be ordered in the said plan, whereby the interest of any party who has not made appearance in the said Court shall be affected, the same shall again lie open for inspection of the creditors, and notice thereof shall be given as aforesaid.

Disposal of objections.

Exhibition of plan after alterations upon it.

112. And be it enacted, that it shall and may be lawful for the trustee or trustees, after the expiration of the time appointed for the inspection of the said account and plan of distribution, and no objection being entered thereto, or if any objection has been stated, after the Court has made order thereon, as aforesaid, to apply to the Supreme Court, on motion, praying that the said plan may be allowed and confirmed by the Court, and thereupon it shall and may be lawful for the said Court to allow and confirm the same; and such allowance and confirmation shall have the effect of a final sentence of the said Court except against such creditors as shall afterwards be admitted by the said Court, in manner hereinbefore provided, to prove their debts, and rank upon the said estate at any time before the final distribution thereof.

Confirmation of account and plan.

Effect of confirmation.

113. And be it enacted, that after confirmation and allowance of the said account and plan of distribution, the trustees shall, upon

Distribution of estate.

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the demand of the said creditors, distribute the said estate according thereto, and the remedy of any creditor to obtain payment of any dividend due to him shall be, during the continuance in office of the said trustee or trustees to the Supreme Court, or any Circuit Court, by motion.

Scheme of division.

114. And be it enacted that if it shall, from the nature and circumstances of the insolvent estate, be found impracticable to frame the plan of distribution aforesaid, so as to arrange the distribution according thereto, of the whole of the insolvent estate, then the trustee or trustees shall, as soon as may be, after the allowance and confirmation of the said plan, and not later than six months after such allowance and confirmation, unless upon application to the Supreme Court, upon sufficient cause to the satisfaction of the said Court, further time be given for that purpose, frame and lay before the Master a scheme of division which shall contain an account of such of the matters hereinbefore required in regard to the account and plan of distribution in the one hundred and eighth section of this Ordinance mentioned, as the then state and condition of the assets of the insolvent estate shall permit, and shall duly apportion the funds in hand amongst the creditors, and the like proceedings in all respects shall be had and taken relative to the said scheme of division as are hereinbefore prescribed in regard to the said account and plan of distribution, and after the allowance and confirmation of such scheme of division, the dividends declared thereby shall be distributed, and there shall be the like remedy as aforesaid for obtaining the same. And if it shall happen that the whole of any insolvent estate shall not be included in one such scheme of division as aforesaid, then as soon as may be after the framing of the same, but not later (except as hereinbefore excepted) than six months after the date on which the six months above fixed for the framing of the first scheme of division shall have expired, a second such scheme of division shall, in like manner and form be framed and proceeded on, and so on from six months to six months until the whole estate shall have been wound up, and finally distributed.

Successive schemes of division.

Advertisement of dividends.

115. And be it enacted, that the trustee or trustees shall, whenever any dividend is payable, give a public notice in the *Government Gazette*, stating that such dividend is in course of payment, and calling upon all creditors entitled thereto, to apply for, and receive the same; and in case any dividend or dividends shall remain unclaimed for the space of six months from the date of such notice, then it shall be the duty of the trustee or trustees, should he or they still continue in office, or of the Master of the Supreme Court, should the said trustee or trustees have been discharged, to pay such unclaimed dividend or dividends into the guardian fund to the credit of the parties entitled, there to be 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

Unclaimed dividends.

placed in the said fund belonging to persons absent from the Colony. And if any trustee or trustees shall neglect to pay, in manner aforesaid, into the said fund, by the hands of the said Master, any dividend remaining unclaimed for the space and term aforesaid, such trustee or trustees shall forfeit and pay, for the benefit of the Colonial Treasury, any sum not exceeding the amount of the dividend or dividends unduly retained, which shall be awarded by the Supreme Court, and it shall be lawful for the said Master to summon any such trustee or trustees to show cause before the said Court, why he or they should not be adjudged to pay to him the amount of any such dividend or dividends, as also the fine or forfeiture aforesaid, and the said Court shall summarily make such decision thereon as to it shall seem meet. And the said Master shall be, at all times, after the confirmation and allowance of the plan of distribution, authorized and entitled to call upon such trustee or trustees to show, by vouchers or other sufficient proof, what number of the dividends payable are actually paid; and for the purpose of the penalty hereby imposed, any neglect or refusal to produce such vouchers, or other sufficient evidence to prove the payment of any given dividend, shall amount to *prima facie* proof that the same is still unclaimed. And it shall be lawful for the Supreme Court, in case of disobedience, by any such trustee or trustees, to any order or decision of such Court, made by virtue of this, or of the one hundred and thirteenth section, to direct the sum in question to be levied by attachment and sale of the goods of the offender, or otherwise to commit such offender to prison until he shall obey such order, or until the said Court shall order his liberation, or otherwise, to apply both remedies, and that either concurrently or successively, as the Court shall see fit.

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Penalty on trustees not paying over unclaimed dividends.

Master to require account of dividends paid.

116. And be it enacted, that when any trustee desires to resign his office, or so soon as the plan of distribution of the insolvent estate has been confirmed, it shall be lawful for such trustee to apply to the Supreme Court, by motion, for leave to resign his office, and to be discharged and acquitted of the said trust; and, if no valid objection be stated, and if the Court be satisfied that the trustee has complied with the regulations of this Ordinance, so far as regards him, his application may be granted by the said Court; but if any objection be stated thereto, the Court shall proceed to determine the same in a summary manner, and shall make such order thereon as they shall think fit. And if the application of the trustee for leave to resign be granted, the said Court shall thereupon make such order as they shall see fit, for the preservation and administration of the estate, until a new trustee be chosen and confirmed, and for the discharge and acquittance of the said trustee, and for the security and payment of any unclaimed dividends to the parties entitled to the same. Provided always, that no order of the said Court allowing the said trustee to resign, shall prevent the trustee thereafter chosen and confirmed in his

Discharge of trustee.

Trustee to account with successor.

MMM



Ord. 6—1843.      stead from calling upon him to account for any part of his conduct as trustee prior to his resignation: and provided always, that before making any application for leave to resign, the trustee shall make out a full statement of his accounts, and of the situation of the insolvent estate, and shall call a meeting of the creditors to consider the same, of which meeting at least twenty-eight days' notice shall be given by advertisement in the *Government Gazette*, intimating the purpose of the meeting, and also, that the aforesaid statement, will, in the mean time, lie open for their inspection in the office of the Master of the Supreme Court.

Account by trustee before discharge.      117. <sup>(1)</sup> And be it enacted, that any insolvent may, after the third public meeting of his creditors called by the Master of the Supreme Court as aforesaid, and after his examination (if any has been applied for and ordered as aforesaid) apply to his creditors for a certificate, testifying their consent to the discharge of the insolvent being granted by the Court, in manner hereinafter mentioned; and every insolvent who shall have obtained such certificate <sup>(2)</sup> signed by four fifths in number and value of the creditors who have proved debts against his estate, or after six months from the date of the confirmation, in manner aforesaid, of the plan of distribution, then either by three fifths in number and value of such creditors, or by nine tenths in value alone, <sup>(2)</sup> and who shall make oath, in writing, that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, in order to obtain the consent and certificate of his creditors or of any of them, may apply to the Supreme Court, by motion, to have his certificate allowed. Provided, that at least six weeks' notice of the day on which such motion is to be made shall have been given by advertisement in the *Government Gazette*; and if no objection be made thereto by any of the creditors of the insolvent, the said Court shall make an order, allowing such certificate; but, if any objection shall be made by any creditor, the said Court shall judge and determine thereon, and shall refuse or suspend the said certificate, or allow the same absolutely or conditionally, as the justice of the case shall require. Provided always that where in consequence of the goods and effects of the insolvent being under the value of seventy-five pounds sterling, the proceedings in such case directed by the thirty-second clause of this Ordinance shall have taken place, it shall be lawful for such insolvent at any time, not being less than three months after the said first meeting, to apply to his creditors for a certificate as aforesaid.

Discharge of insolvent.      Consent of creditors.      Notice of application for.

<sup>1</sup> Repealed by Act 15 of 1859, which is repealed by Act 38 of 1884, and this section re-enacted.

<sup>2</sup> Four years after insolvency Court may discharge insolvent without production of this certificate, Act 38 of 1884, § 14.

118. And be it enacted, that, if any insolvent shall have committed any act herein declared to amount to the crime of fraudulent insolvency, such insolvent shall not be entitled to his certificate or allowance, and any certificate and allowance, which such insolvent may have obtained, shall be null and void.

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Fraudulent insolvent not to have discharge.

119. And be it enacted, that all preferences, gratuities, securities or payments granted, made, or promised by any insolvent, to or in trust for any creditor of such insolvent, and all secret and collusive agreements and transactions intended to persuade any such creditor to accept any offer of composition, or security for composition, or to consent to sign such certificate shall be, and are hereby declared to be null and void: and any creditor who shall have received any money, matter, or thing, or promise of the same, as a consideration for or inducement to such creditor to accept any such composition, or sign any such certificate as aforesaid, shall forfeit a sum equal to the amount of whatever debt such creditor originally proved upon the insolvent estate, together with the amount of whatever money, matter, or thing he may have received from such insolvent, as such consideration or inducement as aforesaid, and also the amount of any composition which may have been paid or secured to such creditor: and all such moneys, matters, or things hereby declared to be claimable or recoverable from any such creditor, shall and may be sued for and recovered in any competent Court by any person who was a creditor of such insolvent estate at the time of the acceptance of any such composition, or the signing of any such certificate, for the use and benefit of such person jointly with that of all such other persons who were also creditors at the time aforesaid, as shall within twenty-eight days after a public notice in the *Government Gazette*, signed by the person purposing to sue, join and concur in the bringing of such suit, and agree to contribute to the expense thereof; but no such notice need set forth the name of the party intended to be sued, or state more than that legal proceedings are intended to be taken under this section in a certain case of which the particulars may be learned from the person signing the said notice.

Collusive agreements with creditors as to composition or discharge.

Forfeiture by the creditors.

Action for recovery of forfeiture.

120. And be it enacted, that every such certificate, when allowed by the Supreme Court, shall have the effect to discharge the insolvent from all debts due by him at the time his estate was surrendered or adjudged to be sequestrated, and from all claims or demands proved or hereby made provable, or in any manner claimable against his estate; but no such certificate and allowance thereof shall have effect to release or discharge any person who was partner with such insolvent at the time of his insolvency, or who was then jointly bound, or who had made any joint contract with such insolvent, or who was a surety for him.

Effect of discharge of insolvent.

121. And be it enacted, that in every case any residue of the insolvent estate which may remain after the payment of all claims thereupon, shall be paid to the insolvent or his legal representatives,

Residue of estate.

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to whom shall also be restored the property of, and in all debts and assets belonging to the estate which may, after the satisfaction as aforesaid, of all claims, remain or be outstanding.

Trustee becoming insolvent, as such, effect of as to his discharge.

122. And be it enacted, that any trustee becoming insolvent, and being indebted to the estate, of which he was trustee, in respect of any sum of money improperly retained or employed by him, if he shall obtain his certificate and allowance thereof shall not be discharged thereby, as to his future effects, in respect of the said debt, and such insolvent shall be for ever incapable of being again elected a trustee under this Ordinance.

Discharge answers to action for previous debts.

123. And be it further enacted, that any insolvent, who, after his certificate has been allowed, shall have any action brought against him for any debt, claim, or demand due by him at the time his estate was surrendered or adjudged to be sequestrated, proved or hereby made provable, or in any manner claimable, against his estate, may plead in general that the cause of action accrued before he surrendered his estate, or the same was sequestrated aforesaid, and may give this Ordinance and the special matter in evidence; and such insolvent's certificate and allowance thereof shall be sufficient evidence of the insolvency, surrender, or adjudication, and other proceedings precedent to the obtaining the said certificate and allowance thereof; and if any such insolvent shall be taken in execution, or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any judge of the Court wherein judgment has been obtained (or for any judge of the Supreme Court) on such insolvent's producing his certificate and allowance thereof, to order any gaoler or officer who shall have the said insolvent in custody by virtue of the said execution, to discharge him therefrom, so far as regards such estate, without exacting any fee from the defendant, and the said gaoler or officer shall be and is hereby indemnified for so doing.

And ground for release from execution.

Imprisonment of insolvent.

124. And be it enacted, that at any time after the plan for distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned, or after the distribution of the said estate has been directed to be made under the provisions of the twenty-fifth clause of this Ordinance and before the insolvent shall have obtained his certificate and allowance thereof, it shall and may be lawful for the trustees, or any creditor of the said estate, to apply to the Supreme Court or any Circuit Court, by motion, for the process of the said Court for the civil imprisonment<sup>(2)</sup> of the said insolvent; provided the said insolvent shall first have been duly summoned to appear before such Court on the day whenever the said motion shall be made, to show cause why process of civil imprisonment should not be issued against him, and thereupon, and upon proof, to the satisfaction of the said Court, that the said estate

<sup>2</sup> But see Act 38 of 1884, § 17.

is not sufficient to discharge the debts proved or provable against the said estate as aforesaid, it shall and may be lawful for the Court to which such application shall be made, to grant the same absolutely or conditionally, or to refuse the same, as to the said Court shall seem just. Provided that, when the application for civil imprisonment has been made by one or more creditors, and the said Court shall suspend the same upon the condition of the insolvent paying any sum of money, such payment shall be made to the trustees or to the Master of the Court, as the case may be, for the benefit of the creditor or creditors making the application, and of such other creditors as shall, before distribution, claim to be admitted to a share thereof.

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125. And be it enacted that at any time after the plan for the distribution of any insolvent estate has been confirmed in manner hereinbefore mentioned, or after the distribution of the said estate has been directed to be made under the provisions of the twenty-fifth clause of this Ordinance, and before the insolvent shall have obtained his certificate and the allowance thereof, it shall and may be lawful for any insolvent to apply to the Supreme or any Circuit Court, by motion, for a decree of such Court, declaring such insolvent not liable to process of civil imprisonment for or in respect of any debt, claim or demand, proved or provable, or in any manner claimable against the insolvent estate. Provided that at least six weeks' notice of the day on which such motion is to be made shall have been given by advertisement in the *Government Gazette*; and upon the making of such motion, any creditor of the insolvent estate who has not been fully paid and satisfied, may be heard against making the said decree, and such Court having regard to the conformity of the insolvent to the provisions of this Ordinance, and to his conduct, as well before as since the sequestration of his estate, and to his ability to pay from time to time or otherwise any sum or sums of money for the benefit of such creditors as aforesaid, and, generally to the justice of the case, shall judge of any objection against the making of such decree, and either find the insolvent entitled thereto, and make the same, or refuse or suspend the making thereof, or annex such conditions thereto as circumstances shall render just. And every such decree declaring any insolvent not liable to the process of civil imprisonment in respect of any of the matters aforesaid, shall have the same effect in protecting his person from such process as his certificate and the allowance thereof would have had. But no such decree shall have any effect whatever, either upon the assets of the insolvent estate, or upon the right and power of any such creditor to proceed, in manner and form as hereinafter mentioned, against the future acquired property of such insolvent (so long as he shall remain without his certificate and the allowance thereof), in order to obtain payment of his debt. Provided, that upon cause shown to the satisfaction of such Court, establishing that any such decree as aforesaid was fraudulently or unduly obtained,

Application by insolvent to be freed from imprisonment.

Opposition of creditors.

Effect of order relieving insolvent from imprisonment.

Ord. 6—1843.

it shall be competent for such Court to recall the same, and thereupon the condition of the insolvent shall be judged of precisely as if it never had been made.

Competency of insolvent to acquire property.

126. And be it enacted, that from and after the making of the decree aforesaid, confirming the account and plan of distribution of the insolvent estate aforesaid, the insolvent, although he shall not have obtained his certificate and the allowance thereof, shall be competent to acquire and possess, for his own use and as his own property, all such goods and effects, movable or immovable, personal or real, as may be purchased or acquired by him, or may revert, descend, or be devised or come to him in manner whatsoever other than by virtue of any right of reversion which was vested in the insolvent at the date of the order for the sequestration of his estate, precisely as if the estate of such insolvent had never been placed under sequestration.

Execution against insolvent for deficiency of estate.

127. <sup>(1)</sup> And be it enacted, that in every case in which any insolvent shall not have obtained the allowance of his certificate as hereinbefore mentioned, it shall and may be lawful for the trustee or trustees of the insolvent estate, should any such be, or for the Master of the Supreme Court, or for any creditor of the insolvent estate, to whom it shall appear by such account and plan as aforesaid or any such scheme of division as aforesaid, that any portion of his debt is still due and owing, to apply to the Supreme Court or any Circuit Court, by motion, of which notice shall be given to said insolvent, for leave to issue execution against such insolvent, for any sum not exceeding the whole amount of the deficiency which shall at the time of making such application exist in the insolvent estate; and the said Court, upon being satisfied by affidavit or otherwise, that a certain deficiency does so exist, and that there are reasonable grounds for believing that there are assets belonging to the insolvent capable of satisfying the same, wholly or in part, shall allow a writ of execution to be issued, and such writ of execution shall be executed in the like manner as writs of execution issued upon judgments of the said Court, and every attachment or levy made thereunder, and every incident belonging thereto, as well in regard to the right of other writs of execution lodged in the hands of the Sheriff, or other proper officer of the law, to share in the proceeds levied and made, as otherwise, shall be judged of upon the same principles which do or shall by law belong to ordinary writs of execution; and the proceeds of every execution levied under the provisions of this section shall be paid by the Sheriff or other proper officer of the law to the trustee or trustees of the insolvent estate, if such there be, or, if there be none such, to the Master of the Supreme Court, and every such payment by the said Sheriff or other proper officer of the law shall be deemed in law to be the distribution of the proceeds of the writ

Proceeds of execution how to be applied.

<sup>1</sup> But see Act 38 of 1884, § 17.

of execution, and the amount of any such proceeds which shall be so paid to any such trustee or trustees, or to the said Master, after deducting thereout any costs which shall have been properly incurred by the party realizing the same, shall be divided amongst all such creditors of the insolvent estate as shall before the distribution thereof claim to be admitted to participate in the same; Provided that the said trustee or trustees, or the said Master, as the case may be, shall distribute such proceeds ratably and proportionably amongst the creditors so claiming, except that if the said proceeds shall have arisen out of an execution issued at the instance of any concurrent creditor, such creditor shall receive a dividend greater by five shillings in the pound than that receivable by any other creditor of equal rank, and if by reason of there being preferent creditors in the said estate, or from any other cause the said recompense shall be deemed inadequate, it shall be lawful for the Master of the Supreme Court to award to such concurrent creditor such reasonable commission in lieu thereof as he shall think fit, subject to an appeal to the Supreme Court: provided also, that no division of such proceeds shall be made by any such trustee or trustees, or by the said Master, until after twenty-one days' previous notice shall have been given in the *Government Gazette*.

Ord. 6--1843.

128. And be it enacted, that it shall and may be lawful for the Chief Justice of this Colony, or any other of the judges of the Supreme Court, to accept, if he shall see cause so to do, the surrender of the estate of any insolvent who shall not have obtained his certificate and the allowance thereof, at any time after the making of the decree of Court confirming the plan of distribution as aforesaid, and the estate of any such insolvent may be adjudged to be sequestrated at the instance of his creditors, as well those whose debts remain unsatisfied from any former sequestration (if there shall have been more sequestrations than one), as those whose debts have been incurred since the making, for the last time, of such decree as aforesaid, precisely as if the estate of such insolvent had never been placed under sequestration.

Fresh surrender by  
undischarged insol-  
vents.

129. And be it enacted, that in addition to the several matters and things hereinbefore mentioned and declared to be respectively acts of insolvency, all of which are hereby declared to be applicable to the case of every such insolvent as is in the last preceding section mentioned, equally with every other person, the suffering of any attachment to be laid on, under and by virtue of any writ of execution issued under and by virtue of the one hundred and twenty-seventh section of this Ordinance, and the subjecting himself by any such insolvent to the issuing against him of the process of civil imprisonment, under and by virtue of the one hundred and twenty-fourth section of this Ordinance, shall be deemed to be, respectively, acts of insolvency in the case of every such insolvent as aforesaid, and shall entitle any creditor or creditors whose debt

Compulsory seques-  
tration against un-  
discharged insol-  
vents.

Ord. 6--1843.

or debts is or are of the competent amount, and has or have accrued since the making of the last decree confirming such account and plan of distribution as aforesaid, to petition in manner and form as by this Ordinance is provided, to have the estate of such insolvent as aforesaid sequestered for the benefit of his creditors. But no order for sequestration issued in regard to the estate of any such insolvent shall discharge or affect any process of civil imprisonment which may have been issued under and by virtue of the one hundred and twenty-fourth section of this Ordinance, unless the Chief Justice, or other judge making such order should, as he is hereby authorized to do, otherwise direct.

Ranking under fresh sequestration of creditors under former sequestration

130. And be it enacted, that as often as the estate of any insolvent, remaining as aforesaid uncertificated, shall be again sequestered as insolvent, the creditors under any former sequestration shall prove debts and rank upon the insolvent estate for whatever balance shall still be due and owing to them, respectively, according to the nature of their respective debts, whether preferent or concurrent, just as if the last order for sequestration had been the only such order ever issued.

Preferences by undischarged insolvent.

131. And be it enacted, that in determining all questions relating to undue preferences given by any insolvent remaining as aforesaid uncertificated, and the proceedings thereon, and the consequences thereof, the creditors under any former sequestration, and those who have first become such since the making of the last decree confirming the account and plan of distribution, shall be considered as one body and without difference or distinction, except in so far as in particular cases, the circumstances of the one class of creditors or of the other may affect, as matter of evidence, the application of the principles hereinbefore, in regard to such questions as aforesaid, stated and set forth.

Publication of the names of undischarged insolvents.

132. And be it enacted, that the Master of the Supreme Court shall cause to be published in the *Government Gazette*, once every three months for general information, two lists alphabetically arranged, the first showing the name and residence of every *uncertificated insolvent*, in whose estate the account and plan of distribution aforesaid shall not have been confirmed, together with the date of the order for the sequestration of the estate of such insolvent; and the second showing the name and residence of every uncertificated insolvent in whose estate such account and plan as aforesaid shall have been confirmed, together with the date of the decree confirming the same. And the charge of publishing such lists in the said *Gazette*, as well as of inserting all such notices as are hereinbefore directed to be given by the Master of the Supreme Court, by advertisement in the said *Gazette*, shall be defrayed by Government.

Ordinance to regulate sequestrations under Ordinance No. 64.

133. And be it enacted, that all the provisions of this Ordinance shall apply to and regulate all estates placed under sequestration in pursuance of Ordinance No. 64, in so far as the provisions of

this Ordinance, or any part thereof, shall be applicable thereto in the situation and condition in which such estates shall be, at the time of the passing of this Ordinance: Provided always, that nothing in this Ordinance contained shall be applied to, or affect in any way, the rights of any person at whose suit any property shall have been attached by legal process at the time of the promulgation of this Ordinance, or the determination of any actions or suits which shall be pending at the time of the promulgation thereof, all which rights, suits, and actions shall be determined according to the principles and provisions of Ordinance No. 64, precisely as if this Ordinance never had been passed. And provided also, that all crimes created or declared by the said Ordinance No. 64, and committed before the promulgation of this Ordinance, may, notwithstanding the repeal of the said Ordinance, be prosecuted and punished precisely as if the said Ordinance remained in full force and effect.

Ord. 6—1843.

134. And be it enacted, that as often as the Ordinance No. 64 is mentioned in Ordinances Nos. 104 and 105, or in any other former Ordinance, or any of the clauses or provisions of the said Ordinance No. 64 mentioned or referred to, every such former Ordinance shall be construed as if this Ordinance were therein mentioned, instead of Ordinance No. 64, and as if the provision of this Ordinance corresponding to that provision of Ordinance No. 64 which is in such former Ordinance referred to, were expressly substituted in lieu and stead thereof.

This Ordinance to be read for Ordinance No. 64 in certain Ordinances.

135. And be it enacted, that the Master of the Supreme Court shall enter of record, and have the custody, of all proceedings relating to any insolvency under and by virtue of this Ordinance; and the insolvent, or any creditor who has proved, shall at all reasonable times have inspection of the same, and be permitted to take extracts or copies therefrom; and extracts of such proceedings, signed by the said Master, shall be received as evidence in all Courts of Justice within the Colony.

Custody of proceedings in insolvencies.

136. And be it enacted, that whenever it shall be made to appear to the Supreme Court, or any Circuit Court, that the Master of the said Court or Resident Magistrate, as the case may be, is prevented by illness, or any unavoidable cause, from holding any meeting under the provisions of this Ordinance, it shall and may be lawful for the said Court to appoint a commissioner for the special purpose of holding such meeting, who shall have, for the purpose of such meeting, the same powers and authorities as are by this Ordinance given to the said Master or Resident Magistrate in the like cases, and failing such appointment, the Chief Clerk of any Resident Magistrate is hereby authorized to exercise, for the purpose of any such meeting, the powers and authorities of such Magistrate.

Substitution of commissioner for master or magistrate.

137. And be it enacted, that for the hearing and determination of all questions, matters, and things, as to which jurisdiction is given to the Supreme Court in virtue of the clauses of this

What things may be done by one judge.



Ord. 6—1843.

Ordinance hereinafter enumerated, that is to say, the twenty-second, twenty-fifth, thirty-first, fortieth, forty-fifth, sixty-second, sixty-third, sixty-fourth, sixty-fifth, ninety-eighth, one hundred and thirteenth, one hundred and sixteenth, one hundred and seventeenth, one hundred and twenty-fourth, one hundred and twenty-fifth, and one hundred and thirty-sixth clauses, except as to so much of the fortieth clause as relates to recalling the confirmation, and setting aside the election of any trustee or trustees, on the ground that such election was fraudulently or unduly made, the said Court shall and may be holden in Cape Town, before any one or more of the judges thereof, at such times as the said Supreme Court shall by any rule or order of Court appoint.

Rules to be framed  
by Supreme Court.

138. And be it further enacted, that it shall and may be lawful for the Supreme Court, from time to time, as they shall think fit, to make such rules, orders, and regulations, for carrying this Ordinance into effect, and also touching the form and manner of proceeding under the same, as to the said Court shall seem fit.

First operation of  
Ordinance.

139. And be it enacted, that this Ordinance shall be in full force and effect from and after the date of publication hereof, from and after which day the Ordinance No. 64 shall stand repealed.

No. 38—1884.]

[July 25, 1884.

## ACT

To Amend in certain respects the Law relating to Insolvent Estates.

Preamble.

WHEREAS it is expedient to amend the law relating to insolvency and the administration of insolvent estates: 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:—

Ten days' notice of  
desire to surrender to  
be given in Govern-  
ment Gazette.

1. From and after the passing of this Act, every person who may be desirous of voluntarily surrendering any estate as insolvent under the provisions of the Ordinance No. 6 of 1843 entitled "Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," (hereinafter referred to as the said Ordinance), shall give public notice in the *Gazette*, at least ten days before he makes application for the surrender of such estate, of his intention to make such application and of the date upon which and the place where he intends to make the same; and shall prepare for the inspection of the creditors of such estate a statement of its affairs and all such schedules, statements, accounts or other documents as he intends to lay before the Court or Judge, to whom such application as aforesaid is to be made, in support of the same; and shall lodge such statement or statements, schedules, accounts or documents at

Schedules, &c., to  
be lodged with Resi-  
dent Magistrate.

See Act 2 of 1887 these questions matter etc may be heard & examined in Chamber

the office of the Resident Magistrate of the district in which he resides, where the same shall lie for the inspection of creditors at all reasonable times for a period not less than seven days from a date to be stated in such notice; and no estate shall be surrendered as insolvent until proof shall have been given to the satisfaction of the Court or Judge to whom such application as aforesaid is made that the provisions of this section have been complied with.

No. 38—1884.

2. From and after the publication of any such notice as in the last preceding section mentioned it shall not be lawful to sell any property belonging to the estate to which such notice relates, attached under any writ of execution or other process in the nature of an execution, at any time before the application for the surrender of such estate shall have been made and adjudicated upon, except by order of some competent Court; and if the proceeds of any property sold under legal process for the satisfaction of any debt due by such estate shall remain in the hands of the Sheriff or other officer of the law at the date of the publication of any such notice, such proceeds shall be retained by such Sheriff or officer and shall not be paid over or distributed, except by order of some competent Court, before such application as aforesaid shall have been made and adjudicated upon. <sup>(1)</sup>

No sale of property after notice, except by order of Court.

3. It shall be lawful for the Supreme Court and for the Court of the Eastern Districts, and the High Court of Griqualand respectively, within the limits of the jurisdiction of such Courts, or for the Chief Justice or any other of the Judges of the Supreme Court, upon the petition of any creditor or creditors having a claim or claims amounting in the aggregate to one hundred pounds against any person, company, or estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, and whether such claim or claims shall or shall not be actually due or payable at the time, stating that such person, company, or estate of any person deceased, or any person legally or actually incapable of the administration of his estate is insolvent and that it would be for the benefit of the creditors that such estate should be sequestered, and setting forth the grounds upon which such statements are based, to grant a provisional order for the sequestration of such estate in terms of the fifth, ninth, or tenth section, as the case may be, of the said Ordinance, and thereupon all and singular the provisions of the said Ordinance relating to the compulsory sequestration of persons, or companies, or estates of persons deceased, or of persons legally and actually incapable of the administration of their estate, shall, *mutatis mutandis*, apply to such provisional order.

Supreme, E. D. and High Courts on petition of creditors to grant provisional order of sequestration.

4. It shall be lawful, at any meeting of creditors of any insolvent estate, by resolution passed by the votes of the greater part in

Security may be demanded from Trustee.

<sup>1</sup> See § 11 Act 17, 1886, *infra*.

No. 38—1884.

number and value of the creditors or their agents present and entitled to vote, to require from the trustee of such estate reasonable security for the due administration and distribution thereof, to such amount as may by such resolution be fixed and determined, such security to be approved of by the Master of the Supreme Court or other officer before whom such meeting may be held, and to be filed with the proceedings in the said estate; and if any trustee shall fail to provide such security within fourteen days after the date of the passing of such resolution, his election if not confirmed shall be void, and if confirmed he shall be removed from his trust: Provided, that it shall be competent to such trustee or any person interested in the due administration of the said estate, to bring the amount of such security in review before the Supreme Court, and such Court may thereupon make such order as justice may require.

When security to be cancelled.

5. Every security given by a trustee under the provisions of the last preceding section shall be cancelled by the said Master as soon as the final account of the liquidation and distribution of the estate shall have been confirmed according to law, and receipts for all dividends awarded to creditors of the estate shall have been lodged with the said Master from all such creditors by the said trustee; or in the case of unclaimed dividends the amount thereof lodged with the said Master as required by the one hundred and fifteenth section of the said Ordinance: Provided that the cancellation of such security shall not be taken in any manner to affect the liability of the said trustee in respect of his trust.

Attorney may be a Trustee.

6. So much of the forty-first section of the said Ordinance as prohibits the election of any attorney as trustee of an insolvent estate is hereby repealed.

Examination of Insolvent.

7. It shall be lawful for any creditor or the attorney or agent of any creditor, as well as for the Master of the Supreme Court or the Resident Magistrate, as the case may be, to examine any insolvent upon oath under the provisions of the sixty-first section of the said Ordinance. And if at any such examination it shall appear to the said Master or Magistrate that there are reasonable grounds for suspecting that the said insolvent has been guilty of culpable or fraudulent insolvency, it shall be the duty of such Master or Magistrate to call for such further evidence and documents as he may deem necessary, and submit such evidence to the Attorney-General or Solicitor-General or Crown Prosecutor, as the case may be, for the purpose of instituting criminal proceedings against such insolvent; and at any such examination no insolvent shall be entitled to refuse to answer any question on the ground that the answer, if given, might tend to criminate him.

Master or Magistrate may send papers, &c. to Public Prosecutor.

8. If at the trial of any action brought for the purpose of setting aside any alleged undue preference, under the provisions of the eighty-fourth, eighty-fifth, eighty-seventh, ninety-second or ninety-fifth section of the said Ordinance, it be proved that the

Contemplation of insolvency to be presumed from certain acts of insolvent.

alienation, transfer, cession, delivery, mortgage, pledge, or payment, forming the subject of such action, was made, granted or given within six months before the sequestration of the estate of the insolvent, and at a time when his liabilities fairly calculated exceeded his assets fairly valued, it shall be presumed that the insolvent at such time contemplated the sequestration of his estate unless proof he made to the contrary by the defendant in such action.

No. 38—1884.

9. Every insolvent whose estate shall be surrendered or sequestrated after the passing of this Act, and who shall not have kept or caused to be kept such reasonable and proper books or accounts containing all such entries concerning and exhibiting the nature of his dealings and transactions as (regard being had to his particular trade or calling) might reasonably be expected or required, shall be deemed to be guilty of the crime of culpable insolvency, and shall be liable to the punishment by the seventy-first section of the said Ordinance provided, anything in the said section to the contrary notwithstanding.

Not keeping proper books to be culpable insolvency.

10. Every insolvent who shall fail, when thereto required in writing by the trustee of his insolvent estate, to give a true and sufficient explanation of the cause or causes of his insolvency, shall be deemed to be guilty of the crime of culpable insolvency, within the meaning of the seventy-first section of the said Ordinance, and shall be liable to punishment accordingly.

Not giving proper account of estate, culpable insolvency.

11. The last proviso to the one hundred and fifth section of the said Ordinance shall in future be read and construed as if a period of ten days instead of three days were thereby allowed within which to reclaim by notice in writing the possession of any property sought to be recovered by virtue of the said proviso.

Property reclaimable within ten days.

12. If the estate of any person holding a commission as a Justice of the Peace shall be surrendered or sequestrated as insolvent, such commission shall upon such surrender or sequestration be considered as annulled and cancelled.

Justice of Peace becoming insolvent to lose his commission.

13. The rate of remuneration to be paid to trustees who shall be appointed after the passing of this Act shall henceforth be,

Rates of trustees' commission.

Upon the proceeds of immovable property for the first £1,000 or less than £1,000  $2\frac{1}{2}$  per cent.; for every following £100 or fraction thereof,  $1\frac{1}{2}$  per cent.;

Upon the proceeds of movable property for the first £1,000 or less than £1,000, 5 per cent.; for any following £100 or fraction thereof,  $2\frac{1}{2}$  per cent.,

but such rate may be increased or reduced, as occasion may require, by the Supreme Court.

14. The "Insolvents' Rehabilitation Act, 1859" and the rules of court having reference thereto and confirmed by the Act No. 15 of 1867, are hereby repealed, and the one hundred and seventeenth section of the said Ordinance is hereby re-enacted: Provided:—

Insolvents' Rehabilitation Act, 1859, and rules thereunder repealed.

No. 38—1884.

Insolvent not convicted of fraudulent insolvency entitled to discharge on lapse of four years.

(1) That it shall be lawful for the Supreme Court, upon motion made by any insolvent, who shall not have been convicted of the crime of fraudulent insolvency, at any time after the lapse of four years from the date of the surrender or sequestration of his estate, to make an order for the discharge of such insolvent without the production of any certificate from his creditors (subject to such conditions as to the giving of notice to creditors and otherwise as the Court may impose) and such discharge shall have the same force and effect as the certificate and the allowance thereof in the said section of the said Ordinance mentioned; and

No retrospective effect.

(2) That nothing in this section contained shall affect the rights of any insolvent whose estate shall have been sequestrated before the passing of this Act; and that any application for discharge made by any such insolvent shall be dealt with as if this Act had not been passed.

Filing of accounts by trustees.

15. If any trustee shall neglect to lay before the Master of the said Court any account by the said Ordinance required, within the time prescribed, it shall be lawful for the said Master, and he is hereby required, to call upon any such trustee to show cause before the Supreme Court why he should not forthwith be ordered to file the said account, and the said Court shall summarily make such order thereon and impose such penalty for the non-observance thereof as to such Court shall seem fit and proper: Provided that, in rendering all such accounts as aforesaid, the trustee shall be guided by and conform to all such rules, orders, and regulations as may be made in that behalf by the Supreme Court under and by virtue of the one hundred and thirty-eighth section of the said Ordinance.

Evidence of facts.

16. A copy of the *Gazette*, containing any notice inserted therein in pursuance of any law relating to or regulating the administration of insolvent estates, shall be evidence of the facts stated in the notice.

No decree of civil imprisonment or writ of execution against insolvent after lapse of 4 years.

17. It shall not be lawful for any person to make application for the process of any Court for the civil imprisonment of any insolvent under the provisions of the one hundred and twenty-fourth section of the said Ordinance, or for leave to issue execution against any insolvent under the provisions of the one hundred and twenty-seventh section of the said Ordinance, or to proceed in any manner against such insolvent in respect of any debt or demand proved or provable against his insolvent estate, at any time after the lapse of four years from the date of the surrender or sequestration of his estate as insolvent: Provided that nothing in this section contained shall apply to any insolvent who shall have been convicted of the crime of fraudulent insolvency.

18. It shall be lawful for the Governor, upon the necessary provision being made by Parliament, to direct that all or any of the duties imposed upon or the powers or functions exercised by the Master of the Supreme Court, under or by virtue of the laws relating to insolvency and the administration of insolvent estates, shall be performed or exercised by an insolvency commissioner or such other officer as may be appointed for the purpose: and such commissioner or other officer shall during his tenure of office be in all respects in the same position as if his name were substituted for that of the said Master wherever the said Master is mentioned in any of the said laws.

No. 15—1859.  
Insolvency commissioner may be appointed by Governor when necessary provision made by Parliament.

19. This Act shall be read as one with the said Ordinance, and may be cited as the "Insolvent Law Amendment Act, 1884."

Short title.

No. 17—1886.<sup>1</sup>

[June 29, 1886.

\* \* \* \* \*

11. Unless by order of any judge to whom application shall be made by any petitioner for the surrender of his estate, execution against his property shall not be stayed under and by virtue of the second section of Act No. 38 of 1884, for a longer period than fourteen days from the date of the publication of the notice in the said section mentioned.

Execution stayed against petitioner for surrender for only 14 days.

\* \* \* \* \*

No. 15—1859.]

[July 8, 1859.

### ACT

#### To Amend the Law relating to the Rehabilitation of Insolvents. (2)

WHEREAS it is expedient to amend the law relating to the rehabilitation of insolvents: 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 117th section of the Ordinance No. 6, 1843, entitled "Ordinance for regulating the due collection, administration, and distribution of Insolvent Estates within this Colony," is hereby repealed.

Section 117, Ordinance 6, 1843, repealed.

2. Any insolvent may, after the third meeting of the creditors called by the Master of the Supreme Court, according to the provisions of the said Ordinance in that behalf, and after the examination of such insolvent (should such examination have been applied for and ordered), apply to the Supreme Court, by motion,

When and how insolvent may apply for his discharge.

<sup>1</sup> For full text of this Act, see under Administration of Justice.

<sup>2</sup> This Act is repealed by § 14, Act 38, 1884, but is reprinted in view of the second proviso to that section.

No. 15—1859.

for his discharge: Provided, however, that no such motion shall be made before the expiration of six months from the date of the making of the order of sequestration.

How notice of motion to be made.

3. Not less than six weeks' notice of the day on which such motion is to be made shall be given by advertisement in the *Government Gazette*, provided that notice in writing of such motion shall be given to the trustee of the insolvent, and in any other manner which the Supreme Court, by any such rule or order thereof as is hereinafter mentioned, shall provide.

Insolvent may apply for discharge when proceedings in section 32, Ordinance 6, 1843, have taken place.

4. Where, in consequence of the goods and effects of the insolvent being under the value of seventy-five pounds sterling, the proceedings in such case, directed by the thirty-second section of the Ordinance aforesaid, shall have taken place, it shall be lawful for such insolvent at any time, not being less than six months after the first and final meeting in the said section mentioned, to apply, by motion as aforesaid, for his discharge.

Certificate of creditors, consenting to discharge, not necessary.

5. No certificate of or from the creditors of any insolvent, or any majority of them, testifying their consent to his discharge, shall be necessary in order to entitle such insolvent to obtain his discharge: Provided that every insolvent may support the motion for his discharge by producing to the Court a certificate in writing, signed by his creditors, or any of them, testifying their consent to his discharge: Provided, also, that no such motion shall be capable of being made until such insolvent shall have given sufficient security, in the sum of twenty-five pounds, for the payment of the costs of any person who may appear to oppose such discharge, and to whom the Court shall see fit to award his costs against the said insolvent: And provided that it shall be lawful for the said Court, by any such rule or order thereof as is hereinafter mentioned, to regulate the manner of giving such security, and to nominate the officer to whose satisfaction it shall be given: Provided, also, that the Court may, upon cause shown to its satisfaction by any insolvent, dispense with such security.

How, in regard to creditors opposing the discharge.

6. Every insolvent applying to the Court, as aforesaid, for his discharge shall make oath in writing that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment, or entered into any secret or collusive agreement or transaction, with intent to persuade his trustee or trustees, or any creditor, to forbear opposing such insolvent's discharge by the said Court.

Insolvent applying for discharge, to make oath that surrender of estate has been full and fair.

Trustee or creditors may appear and oppose granting of discharge.

7. Upon the day fixed for the hearing of such motion, the trustee or any of the creditors of the insolvent may appear, in person or by counsel, and oppose the granting of the discharge aforesaid, and the Court, having regard to the conformity of the insolvent to the insolvent law, and to his conduct, whether a trader or not, before as well as after the sequestration of his estate as insolvent, shall, whether the discharge of such insolvent be opposed by the trustee or any creditor or not, judge of any

objection against granting such discharge, and either find the insolvent entitled thereto, or refuse or suspend the granting of the same, or annex such conditions thereto as the justice of the case may require: Provided, always, that in case any insolvent shall apply for his discharge within four years after having obtained a former discharge in insolvency, then the Court shall not entertain such application unless three fourths of his creditors, in number and value, certify their assent to the making of such application.

No. 15—1859.

Consent of three fourths of creditors required, when application for discharge is made within four years after a previous one.

8. It shall be lawful for the Supreme Court, by any rule, order, or regulation thereof made in manner and form as are in the Act No. 26, 1856, set forth, to fix and determine the course of procedure upon such motions as aforesaid, for the discharge of insolvents, and to provide by such rules, orders, or regulations for taking evidence in the country districts in cases in which such evidence shall be required, and to make known the evidence or information, documentary or otherwise, which the Court will in addition to the oath in the sixth section mentioned, require.

Supreme court to make rules as to procedure in regard to motions for discharge.

*See rules of Court page 137*

9. The order of the Court, granting the discharge of any insolvent, shall be in such form as shall, by such rule, order, or regulation as aforesaid, be established, and shall have the same force and operation, to all intents and purposes, as is by the Ordinance aforesaid, No. 6, 1843, attached to the certificate and allowance thereof in the said Ordinance mentioned, and shall be null and void for any reason on account of which, according to the Ordinance aforesaid, such certificate and allowance would have been null and void.

Order for discharge to have same force and operation as certificate under Ordinance 6, 1843.

10. All and singular the provisions of the one hundred and nineteenth section of the Ordinance aforesaid, regarding preferences, gratuities, securities, or payments, and secret and collusive agreements and transactions intended to persuade any creditor to consent to sign the certificate in the said section mentioned, shall apply to the same matters and things, when intended to persuade any trustee or any creditor to forbear opposing the discharge of such insolvent; and any trustee or creditor receiving any money, matter, or thing, or promise of the same, as a consideration for, or inducement to, such creditor to forbear such opposition, shall incur the forfeiture in the said one hundred and nineteenth section mentioned.

Provisions of section 119, of Ordinance 6, 1843, to apply to all contracts or agreements intended to persuade trustees to forbear opposing discharge.

11. The provisions of the one hundred and twenty-third section of the Ordinance aforesaid, in regard to the manner of pleading the certificate therein mentioned, shall apply, *mutatis mutandis*, to the manner of pleading the discharge granted by the Court.

Provisions of section 119, of Ordinance 6, 1843, to apply to manner of pleading for discharge.

12. The order of Court granting the discharge of any insolvent, or refusing or suspending the allowance thereof, shall be final and conclusive, and shall not be reviewed by the Court, unless the Court shall thereafter see good and sufficient cause to believe that the granting of such discharge, or the refusal or suspension thereof, has been obtained on false evidence, or by

Order of court, granting discharge, to be final, unless court shall order a rehearing of the case.

NNN



No. 16—1859. reason of an improper suppression of evidence, or has otherwise been fraudulently obtained; in any of which cases it shall and may be lawful for the Court, upon the application of the insolvent, or of the trustee or any creditor of the insolvent, and subject to such order as to deposit of a sum for costs, and to such notices to the insolvent, or to any trustee or creditor, by advertisement or otherwise, as the Court shall think fit, to grant a re-hearing of the matter, and to re-hear the same accordingly. And upon such re-hearing, the Court shall make such order as to the granting of such discharge, or the refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, as far as the case will admit, as upon an original hearing; and in case the discharge shall have been previously granted, and upon such re-hearing, the granting thereof shall not be confirmed, such discharge shall be of no force or effect whatever; but, on the contrary, null and void.

How, if case be re-heard.

Short title of act. 13. This Act may be cited for any purpose as "The Insolvents' Rehabilitation Act, 1859."

No. 103.—Sd. G. Lowry Cole.] [July 5, 1833.

Ordinance for Abolishing the Orphan Chamber within this Colony, and for providing that the Duties heretofore performed by the said Orphan Chamber shall henceforth be performed by the Master for the time being of the Supreme Court of this Colony.

Preamble. WHEREAS it has been enacted by His Majesty's Royal Charter of Justice, dated at Westminster, on the fourth day of May, 1832, that the Orphan Chamber within this Colony shall be abolished, and that the duties heretofore performed by the said Chamber should henceforth be performed by the Master for the time being of the Supreme Court of this Colony: Be it therefore enacted by His Excellency the Governor in Council that from and after the first day of March next the Orphan Chamber within this Colony, and the offices of the president, masters, secretary, bookkeeper, and clerks thereof, and of the agents thereof in the several districts of this Colony, shall be, and the same are hereby declared to be, abolished: Provided always, that it shall and may be lawful for the Governor of this Colony, by any proclamation to be by him issued for that purpose, to suspend the abolition of the offices of the secretary and bookkeeper thereof, and of such clerks and agents thereof, as to him shall seem fit, so long as the existence of such lastmentioned offices shall be necessary for the administration, distribution, and final settlement of all property, estates, matters, and things which previously to the said first day of March next, shall lawfully have come or been placed, and shall then be under

Abolition of orphan chamber.

the administration of the said Orphan Chamber. And every such office the abolition of which shall be suspended by the said Governor in manner aforesaid, shall be, and the same is hereby declared to be, finally abolished at such time as shall for that purpose be specified by the said Governor by any advertisement or advertisements inserted in the *Government Gazette* of this Colony; and the duties of all such offices the abolition of which shall be suspended in manner aforesaid shall be performed, so long as such offices shall continue to exist, under the superintendence and subject to the directions, orders, and absolute control of the Master of the Supreme Court, by the persons holding the same, or by such persons as shall hereafter be appointed by the said Governor to perform the duties thereof.

Ord. 103—1833.

Temporary suspension of abolition of certain offices by the governor.

2. And be it further enacted that from and after the said first day of March next all the duties which have heretofore been performed by the said Orphan Chamber, except in so far as shall to the contrary be provided by this or any other law or ordinance, shall henceforth be performed by the Master for the time being of the Supreme Court of this Colony.

Performance by master of the supreme court of the duties of orphan chamber.

3. And be it further enacted that all persons, property, estates, matters, and things, which have at any time lawfully fallen or been placed and taken under, and which on the said first day of March next, shall respectively be under the guardianship, charge, or administration of the said Orphan Chamber, shall be, and the same are hereby declared to be, from and after the said day, placed respectively under the guardianship, charge, and administration of the Master of the Supreme Court.

Transfer of administrations from orphan chamber to master.

4. And be it further enacted that on the said first day of March next all books, accounts, vouchers, and other documents, of whatsoever description, which, if the said Orphan Chamber had been in existence on that day, ought by law then to have been under the charge, control, or custody of the said Orphan Chamber, or of any of the officers thereof, shall be placed and shall thereafter be and remain under the charge, control, and custody of the Master of the Supreme Court.

Custody of books, accounts and documents.

5. And be it further enacted that from and after the said first day of March next, the Master of the Supreme Court shall, and he is hereby empowered and required to demand and receive delivery and to take and keep possession of all property, estates, matters, and things, books, accounts, vouchers and documents, which, under and by virtue of the provisions of this Ordinance, shall be placed and become under his administration, charge, control, or custody. And that if any such property, estates, matters, or things, or books, accounts, vouchers, or documents shall be withheld or withdrawn, or if any attempt shall be made to withhold or withdraw the same from his possession, charge, control, or custody, the said Master shall and may summarily apply for redress according to law in the premises to the Supreme Court, or

Proceedings by master to obtain possession of property, books, documents, &c.

Ord. 103—1833.

if the said Court shall not then be sitting to some one of the judges thereof, who shall thereupon respectively make such order as to such Court or Judge respectively shall seem proper and necessary for carrying into effect the provisions of this Ordinance: Provided always, that nothing herein contained shall extend or be construed to extend to prevent the said Master from bringing any action or actions in regular form against any person or persons where such a mode of procedure shall be necessary or expedient for the better carrying into effect the aforesaid provisions of this Ordinance. And provided also, that all bonds and other vouchers of any debts thereon payable to the Orphan Chamber, or due or payable or belonging to any person or estate which having been under the guardianship, charge, or administration of the Orphan Chamber, shall by virtue of the provisions of this Ordinance have been placed under the guardianship, charge, or administration of the said Master, shall be delivered to and received by the said Master on inventory, which shall be signed by the said Master and by the person or persons by whom the said bonds or vouchers are delivered to the said Master, and shall thereupon be filed in the office of the Registrar of the Supreme Court.

Delivery of bonds, &c., to master on inventory.

Payment of money to master.

6. And be it further enacted that on the said first day of March next all sums of money which shall form part of any estate or estates, or of any fund under the administration of the said Orphan Chamber, and which shall then be in the charge, possession, or custody of any officer or officers of the said Orphan Chamber, shall by such officer or officers be paid over to the said Master, who shall grant to him or them a receipt for the same. And every such receipt by the said Master shall be a full and sufficient discharge to such officer or officers for the sums therein acknowledged to have been received by the said Master. And all sums of money which by virtue of the provisions of His Majesty's Order in Council dated 28th November, 1828, or otherwise, have been paid into the discount bank, and in the books of such bank have been carried to the account of the said Orphan Chamber, shall on the said first day of March next be in the books of the said bank carried to the account of the Master of the Supreme Court.

Transfer of bank account to master.

Powers of master.

7. And be it further enacted, that from and after the said first day of March next, the Master of the Supreme Court shall and he is hereby authorized and required to do, and cause to be done, every matter and thing, which by virtue of the provisions of His Majesty's Order in Council dated 28th November, 1828, the said Orphan Chamber, or any of the members or masters thereof, is or are authorized or required to do, or to cause to be done.

Authority to master to take up and carry on, and to institute actions.

8. And be it further enacted, that from and after the said first day of March next, it shall and may be lawful for the Master of the Supreme Court, as such, without any previous application to any Court or Judge, to take up, continue, and carry on all actions

and other legal proceedings which shall have been instituted by or against the said Orphan Chamber, in respect of, or with relation to any person, property, estate, matter, or thing under the guardianship, charge, or administration of the said Orphan Chamber, and which shall on the said first day of March next be still pending in any Court in this Colony. And likewise to institute every action or other legal proceeding in respect of or with relation to any such person, property, estate, matter, or thing, which the said Orphan Chamber, if it had continued to exist, might lawfully have instituted in respect of or with relation to the same: Provided always, that it shall not be lawful for the said Master to institute any proceedings for calling in or enforcing payment from any person whose estate shall not be under sequestration as insolvent or who shall not have committed an act of insolvency, of any capital which shall have been lent out to such person by the said Orphan Chamber, without first advising thereupon with and obtaining the consent thereto of the Treasurer-General and Auditor-General of this Colony, or any other two persons holding civil offices under the Government of this Colony, who shall be from time to time appointed for that purpose by the Governor; or in the event of both or either of them refusing such consent unless he shall have applied to and obtained from the Supreme Court or any Judge thereof an order of such Court or Judge authorizing the said Master to institute proceedings for the purpose aforesaid.

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Proceedings to call  
in bonds &c.

9. And be it further enacted that from and after the said first day of March next the Master of the Supreme Court shall be and he is hereby empowered and required to execute legal transfers in favour of persons legally entitled thereto of all immovable property which having at any time been or placed or taken under the administration of the said Orphan Chamber, shall not previously to the said day have been duly transferred to the persons entitled by law to receive transfer of the same, and generally to execute every such deed and to do and cause to be done every such matter and thing touching and concerning any person, property, estate, matter, or thing, who or which shall under and by virtue of the provisions of this Ordinance be placed under his guardianship, charge, or administration, as the said Orphan Chamber, if it had continued to exist would have been legally authorized or could have been legally required to execute or to do or cause to be done touching and concerning the same.

Transfer of im-  
movable property.

10. And be it further enacted that from and after the said first day of March next it shall and may be lawful for any person who if the said Orphan Chamber had continued to exist might then lawfully have instituted any action or other legal proceeding against the said Orphan Chamber in respect of or in relation to any person, property, estate, matter, or thing, who or which shall by virtue of the provisions of this Ordinance have been placed under the guardianship, charge, or administration of the Master of the

Proceedings at law  
against orphan  
chamber to be  
brought or continued  
against master, ex-  
cept actions for  
damages for miscon-  
duct by officers of  
the chamber.

Ord. 103—1833.

Supreme Court, to institute any such action or legal proceeding against the said Master as such, and in place of the said Orphan Chamber. As also to continue and carry on any action or other legal proceeding which previously to the said first day of March next any such person shall have instituted against the said Orphan Chamber in respect of or with relation to any such person, property, estate, matter, or thing as aforesaid against the said Master as such, and in the place of the said Orphan Chamber: Provided always, that nothing herein contained shall extend or be construed to extend to make it lawful for any person to continue and carry on, or to institute against the said Master any action or other legal proceeding which such person shall, previously to the said first day of March next have instituted, or, if the said Orphan Chamber had continued to exist, might have instituted against the said Orphan Chamber or any person or persons who shall at any time have been members or officers of the said Chamber, for reparation of any loss, damage, or injury which shall be alleged to have been at any time occasioned by any act improperly done or omitted to be done by the members or officers of the said Orphan Chamber or any of them in the performance of the duties of their office. And that nothing herein contained shall extend or be construed to extend to free, discharge, or relieve any person or the heirs, executors, or representatives of any person who shall at any time have been a member or officer of the said Orphan Chamber from any obligation, claim, or demand in or to which any such person has at any time made himself or his heirs, executors, or representatives, liable by reason of any act improperly done or omitted to be done by such person in the performance of the duties of his office of member or officer of the said Orphan Chamber.

Liability of heirs  
of such officers.

Duties of master  
under Ordinance No.  
105.

11. And be it further enacted that the Master of the Supreme Court, so soon after the said first day of March next as may be, shall in order to provide for the proper custody, care, control, maintenance, and education of all such persons as shall by virtue of the provisions of this Ordinance be placed under his guardianship and charge, do, and cause to be done, every act and thing which by the provisions of the Ordinance No. 105, he shall be authorized and required to do or cause to be done with reference to the custody, care, control, maintenance, and education of such persons as shall by virtue of the provisions of that Ordinance be placed under his guardianship and charge.

Administration,  
&c., by master in  
conformity with the  
laws governing ad-  
ministration, &c., by  
orphan chamber.

12. And be it further enacted that with respect to all property, estates, matters, and things which shall by virtue of the provisions of this Ordinance be placed under the administration of the Master of the Supreme Court, he shall proceed in the administration, distribution, and final settlement thereof in conformity with and according to the rules and regulations, in conformity with, and according to which the same ought by law to have been administered, distributed, and finally settled by the said orphan chamber,

if it had continued to exist. And the said Master is hereby authorized and required from and after the said first day of March next to demand, exact, receive, and retain, in respect of such property, estates, matters, and things, and in respect of any proceedings touching or concerning the same all such fees as by law would have been due and could have been exacted by the said orphan chamber or any of the officers thereof, if such property, estate, matter, or thing had previously to the said day been administered, distributed, or finally settled by the said Orphan Chamber, or any of the officers thereof. And the said Master shall keep a separate and distinct account of all such fees so received or retained by him, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as Master of the Supreme Court: Provided always, that it shall and may be lawful for the said Master, in all cases in which it shall appear to him expedient so to do, to proceed in the administration, distribution, and final settlement of all such property, estates, matters, and things as aforesaid, in such manner and in conformity with and according to the rules and regulations which shall be provided respectively by the Ordinances Nos. 104 and 105, for the administration, distribution, and final settlement of any property, estate, matter, or thing which shall by the provisions of such Ordinances respectively be placed under the administration of the said Master. And provided also, that when under and by virtue of the provisions of this Ordinance there shall be paid to or received by the said Master any money belonging to any person or estate under his guardianship, then and in every such case it shall and may be lawful for the said Master to open a debit and credit account in the wards' book with the person or persons to whom, or the estate to which such money shall belong, and to pay such money into the discount bank, to be carried to the credit of the guardian's fund, in like manner in all respects as is provided by the twenty-sixth, twenty-seventh, twenty-eighth, and twenty-ninth sections of the Ordinance No. 105, touching and concerning any money therein mentioned.

Ord. 103—1833.  
Payment of fees.

Account of fees.

Administration  
under Ordinances  
No. 104 and 105.

Wards' book,  
guardians fund.

No. 104.—Sd. G. Lowry Cole.]

[July 5, 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 this Colony. <sup>(1)</sup>

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice dated at Westminster on the 4th day of May, 1832.

Preamble.

<sup>1</sup> Ord. 6, 1843, to be read for Ord. 64 in this Ord. See § 134, Ord. 6, 1843, *supra*.

Ord. 104—1833.

Repeal of instructions, &c., to orphan chamber, and of ordinance No. 42.

Lodging of wills, &c., with master.

Register and custody of such testamentary deeds.

that the Orphan Chamber within this Colony shall be abolished, and that the duties which have heretofore been performed by the said Orphan Chamber shall henceforth be performed by the Master for the time being of the Supreme Court: And whereas the registration of wills, and the administration of certain estates of persons dying within this Colony heretofore formed part of the duties of the said Orphan Chamber, and were performed by the said Orphan Chamber, and by the agents thereof according to certain regulations contained in certain "instructions" and "provisional instructions for the Orphan Chamber," and in certain "instructions for the agents to the board of Orphan Masters in the country districts of the Colony of the Cape of Good Hope," which have heretofore been in force, or have been enforced in this Colony, and in the Ordinance No. 42: And whereas, by reason that the duties hereinbefore specified are henceforth to be performed by the Master of the Supreme Court, instead of by the said Orphan Chamber, many of the said regulations have become impracticable or inexpedient: And whereas it is now expedient, in certain respects, to alter and amend the law of this Colony in so far as relates to 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 this Colony: Be it therefore enacted by His Excellency the Governor in Council, that from and after the first day of March next, the instructions and provisional instructions hereinbefore mentioned, as also the Ordinance No. 42, shall be and the same are hereby repealed, except in so far as it has been enacted and declared by the Ordinance No. 103, that the said instructions and provisional instructions, and Ordinance, or any of the provisions thereof, shall subsist and have force and effect for regulating the administration, distribution, and final settlement of such property, estates, matters and things, as by virtue of the provisions of the said Ordinance No. 103 shall be placed under the administration of the Master of the Supreme Court: Provided always, that nothing herein contained shall extend, or be construed to extend, to repeal any of enactments or provisions of His Majesty's Order in Council dated 24th November, 1828.

2. And be it further enacted, that from and after the said first day of March next, it shall and may be competent for any person, to lodge in the office of the Master of the Supreme Court, enclosed under a sealed cover, any will, codicil, or testamentary instrument, executed by him; and the said Master shall keep, or cause to be kept, a register of the names and descriptions of the persons lodging every such deed, and of the date of lodging the same; and every such deed shall be kept under the charge and custody of the said Master, unopened, until the death of the maker thereof, unless re-delivery of the same shall be demanded by the said maker, or in his lifetime by his lawful attorney, specially authorized for that

*to be wills*

purpose by any deed duly executed by the said maker; and when any such deed shall be re-delivered in manner aforesaid, the maker, or his attorney, as the case may be, shall sign a receipt for the same in the margin of the aforesaid register, opposite to the entry of such deed.

Ord. 104—1833.

3. And be it further enacted, that from and after the said first day of March next, every person, who shall, at the time of the death of the maker thereof, have in his possession any deed being, or purporting to be, or entitled the last will, codicil, or other testamentary instrument of any other person, or into whose possession any such deed shall come after the death of the maker thereof shall forthwith, by the first opportunity, deliver or transmit every such deed <sup>(1)</sup> at or to the office of the Master of the Supreme Court, when such possessor shall reside in Cape Town, or the district thereof, or the Cape district, or the district of Stellenbosch; and when such possessor shall reside in any other district of the Colony, then to the Resident Magistrate of the District in which he shall reside. And every such Resident Magistrate shall cause a copy of every such deed so delivered or transmitted to him to be made, and shall authenticate such copy with his signature, and shall forthwith, by the first opportunity, transmit the original deed to the office of the said Master of the Supreme Court, and shall keep and preserve the aforesaid copy thereof, until he shall receive information from the said Master that such original deed has been safely lodged in his office; and when any such Magistrate shall receive information, that any deed transmitted by him as aforesaid to the office of the Master, has not arrived there, but has been lost or has miscarried, he shall forthwith, from the copy in his custody, cause another copy to be made, and shall authenticate such copy with his signature, and shall, by the first opportunity, transmit the same to the office of the said Master, and he shall proceed in like manner so often as may be necessary, until he shall receive information from the said Master that the copy so transmitted has been safely lodged in his office; and so soon as he shall be so informed that such original deed or copy thereof has been safely lodged in the said office, the copy kept by the said Resident Magistrate in manner aforesaid, shall be delivered to any person having an interest therein, who shall apply for the same, or shall be destroyed if no such application be made within twelve months after the original shall have been lodged with such Resident Magistrate. <sup>(1)</sup>

Persons in possession of wills, &c., on testator's death, bound to transmit them forthwith to the master in Cape Town, or the resident magistrate in the country districts.

Transmission of copy in case of loss of original.

4. And be it further enacted, that if any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal any will, codicil, or other testamentary instrument, every such offender

Penalty for theft, destruction or concealment of wills, &c.: seven years' imprisonment with hard labour.

<sup>1</sup> And also a duplicate or fair copy thereof, § 5, Act 11 of 1873, *infra*.

<sup>1</sup> But see § 5, Act 11, 1873.



Ord. 104—1833.

Civil actions.

shall, being convicted thereof, be liable, at the discretion of the Court before which he shall be so convicted, to transportation from this Colony for seven years, or such other punishment by imprisonment with or without hard labour, for any period not exceeding seven years, or by fine, or by both, as the said Court shall award; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument, is the property of any person, or is of any value: Provided always, that nothing herein contained, relating to the said offences, nor any proceeding, conviction, acquittal, or judgment, to be had or taken thereupon, shall prevent, lessen, or impeach any remedy which any person aggrieved by any such offence might or would by law have had by means of any civil action, suit, or proceeding, if this Ordinance had not been passed; but nevertheless, the conviction of any such offender shall not be received as evidence against him, nor his acquittal as evidence for him, in any such civil action, suit, or proceeding against him. And no person shall be liable to be convicted of the offence aforesaid, by any evidence whatever, in respect of any act done by him, if he shall at any time previous to his being indicted for such offence have disclosed such act on oath, in consequence of any compulsory process of any competent Court in any civil action, suit, or proceeding, which shall have been been *bonâ fide* instituted by any party thereby aggrieved, or if he shall have disclosed the same in any examination which he may have undergone under and by virtue of the provisions of the sixty-first and sixty-fourth sections of the Ordinance No. 64.

Warrants to search for stolen or concealed wills by judges, magistrates, &c.

5. And be it further enacted, that the Chief Justice of the Colony, every Judge of the Supreme Court, and every Resident Magistrate or Justice of the Peace within the Colony, upon an information taken on oath, being transmitted to him by the Attorney-General, or any Clerk of the Peace, or upon the information of any person, made on oath before any such Judge or Magistrate, that there is reason to suspect that any will, codicil, or other testamentary instrument, stolen or concealed for any fraudulent purpose, is concealed in any place within the jurisdiction of such Judge or Magistrate, may, by warrant under his hand, cause every such place to be searched during the day time.

Application by master to the court or a judge for an order on persons refusing to give up wills.

6. And be it further enacted, that, if any person, who shall be in possession of any will, codicil, or testamentary instrument shall, after the death of the testator or testatrix, refuse or fail to deliver or transmit the same in manner hereinbefore provided, at or to the office of the Master of the Supreme Court, or to the Resident Magistrate of the district in which such person shall reside, the said Master is herewith authorized and required forthwith summarily to apply to the Supreme Court, or any Judge thereof, for an order of such Court or Judge, on such person, forthwith to deliver to the said Master such will, codicil, or other instrument; and further, on proof that any such person hath refused or failed to obey such

order, to apply for and obtain from the said Court, or any Judge thereof, a warrant for the imprisonment of such person, until he shall deliver up to the said Master every such will, codicil, or other instrument in his possession, or under his control. And every such warrant shall and may be executed in like manner in all respects as any arrest may be made under and by virtue of the provisions of the nineteenth section of the Ordinance No. 73.

Ord. 104—1833.

7. And be it further enacted, that every deed, being or purporting to be, the will, codicil, or other testamentary instrument of any person which shall have been lodged in or delivered at or transmitted to the office of the Master of the Supreme Court in any manner hereinbefore provided, shall after the death of the maker thereof, in the original be enregistered by the Master in a register to be by him for that purpose kept in his said office, and to be called the Register of Wills, for which purpose the said Master is hereby authorized and required to open or cause to be opened every such deed which may be sealed up: Provided always, that notwithstanding any such registration, all questions as to the validity and legal effect of every such deed, shall be reserved and remain for the decision of the Supreme Court, or any Circuit Court, in which any action or suit shall be brought or shall depend touching or concerning the validity and effect of any such deed.

Enregistrement of wills &amp;c., at testator's death.

8. And be further enacted, that it shall and may be lawful for any person, on any day, Sundays and holidays excepted, at any hour, when according to any regulation made by competent authority for that purpose, the office of the Master of the Supreme Court shall be directed to be kept open, to apply at the said office, and to demand inspection of any deed enregistered in the Register of Wills aforesaid, and to demand any copies or extracts thereof; and for every such inspection, copy, or extract, there shall be paid by the person demanding the same such fee as is specified in the schedule hereunto annexed, marked A: Provided always, that every person holding office under the Government of this Colony shall be and they are hereby authorized without the payment of any fee or charge whatever to inspect any such deeds as aforesaid, and to take copies or extracts thereof, whenever it shall be necessary or expedient that the same should be done by any such person in the discharge of the duties of his office.

Inspection and copies and extracts of wills.

9. And be it further enacted, that whenever any death shall occur the nearest relative or connection of the deceased who shall at the time be at or near the place of death, and in default of any such near relative or connection, the person who at or immediately after the death, shall have the chief charge of the house in or of the place on which, the death shall occur, shall cause notice <sup>(1)</sup> of the death to be given in manner following, that is to say,—where

Death notices to master, magistrate, or field-cornet.

<sup>1</sup> Duplicate or fair copy of death notice also to be furnished. See § 5, Act 11 of 1873, *infra*.

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the death shall occur in Cape Town or within six hours' distance thereof, at the office of the Master of the Supreme Court; where the death shall occur elsewhere and in, or within six hours' distance of any town or village in which the office of any Resident Magistrate shall be holden, at such office; and where the death shall occur at any place situated at a greater distance from any such town or village, to the Field-cornet of the Field-cornetcy in which the death shall occur. And every person herein required to cause such notice as aforesaid to be given, who shall without some lawful and sufficient excuse fail to do so, shall, on conviction thereof before the Resident Magistrate of the district, at the instance of the Clerk of the Peace thereof, incur a penalty not exceeding five pounds sterling nor less than five shillings, to be levied out of the movable property of such person. And every Field-cornet within the Cape district, and the district of Stellenbosch, to whom any such notice as aforesaid of any death shall be given, shall forthwith transmit the same to the office of the Master of the Supreme Court; and every Field-cornet in any other district to whom any such notice shall be given, shall forthwith transmit the same to Resident Magistrate of such district; and every Resident Magistrate to whom any such notice shall be transmitted, shall forthwith transmit the same to the Master of the Supreme Court: Provided always, that it shall not be necessary for any person to cause notice of any death to be given under and in terms of the provisions of this Ordinance before the lapse of the period within which it is hereinafter provided that inventories taken of the property left by deceased persons shall be transmitted in manner hereinafter (1) mentioned, and that such notices may at all times be transmitted along with such inventories in manner hereinafter mentioned, anything herein contained to the contrary notwithstanding.

Particulars of death notices.

10. And be it further enacted, that all such notices of death as are hereinbefore required to be given, shall contain and set forth the following particulars, in so far as the same shall be known to the person giving the same, that is to say:

1. The name and birth-place and names of the parents of the deceased.
2. His or her age.
3. His or her condition.
4. Whether married or unmarried or widower or widow.
5. The day of the decease.
6. At what house or where the person died.
7. Names of the deceased's children, and whether they are majors or minors.
8. Whether deceased has left property of any kind.

Provided always, that in such notice it shall not be necessary to specify the nature or amount of such property.

<sup>1</sup> See §§ 14 and 16.

11. And be it further enacted, that a register, to be called the "Death Register," shall be kept in the office of the Master of the Supreme Court, in which the said Master shall cause to be inserted every notice of death which shall be transmitted to him in manner hereinbefore provided, together with all the particulars therein contained.

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Death register.

12. And be it further enacted, that every person, by whom the funeral of any deceased person shall be performed, or caused to be performed, shall, for the amount of the expenses of such funeral, in so far as the same were suitable to the condition of the deceased, have a preference on the property and assets of the estate of the deceased, before any other debt or claim which may have been owing by the deceased at the time of his death, or which may arise against his estate after his death.

Preference on estate for funeral expenses.

13. And be it further enacted, that when one of two spouses who have been married in communion of property shall die, the joint estate shall remain under the charge of the survivor until the executors of the deceased, or the tutors testamentary, or dative, of the minor children of the marriage, or the Master of the Supreme Court, or curator bonis lawfully appointed to such minor children, shall institute proceedings for the administration, distribution, and final settlement of the said joint estate, under and by virtue of the provisions of this Ordinance, or of the Ordinance No. 105: Provided always, that nothing herein contained shall extend, or be construed to extend, to prevent any such joint estate from being placed under sequestration as insolvent, at the instance either of the surviving spouse, or of any creditor or creditors on such estate, in like manner as the same might have been done under and by virtue of the provisions of the Ordinance No. 64, prior to the passing of this Ordinance.

Possession by survivor of estate in community until institution of proceedings under ordinance No. 105.

14. And be it further enacted, that, when one of two spouses who have been married in community of property shall die, the survivor shall within six weeks after the death of the deceased, cause an inventory of all property, goods, and effects, movable and immovable, of what kind soever, which at the time of the death shall have formed part or belonged to the estate possessed in community between the predeceasing and surviving spouses, to be made in presence of two witnesses, being persons qualified by law to serve on juries in the Supreme or Circuit Courts of this Colony, and of such persons having an interest in the distribution of the joint estate, as heirs or legatees of the predeceased spouse, who shall attend. And every such inventory shall be subscribed by the surviving spouse, the witnesses aforesaid, and such heirs or legatees as shall be present at the making thereof. Provided always, that it shall be lawful for the Supreme Court and Circuit Courts or any judge of the Supreme Court on cause being shown by the Master of the Supreme Court, or any person having an interest in such joint estate, respectively, to order that an inventory thereof shall

Inventory of estate in community by surviving spouse within six weeks of the death.

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be taken by any person or persons named in such order, or to appoint a curator to take the charge and custody of any such joint estate at any time either before or after the lapse of the said period of six weeks.

Penalties on omission of inventory.

15. And be it further enacted, that every surviving spouse, who shall wilfully neglect to cause an inventory of the joint estate to be made, in manner and within the period hereinbefore provided, or shall knowingly omit to enter in such inventory any article of property, of whatsoever kind, shall in the distribution of such estate forfeit all right to, and share in, any thing which may accrue to the joint estate after the death of the predeceasing spouse, and in and to such property so omitted in the inventory, and every loss which shall have been caused by the destruction or deterioration of any such property so omitted in the inventory, or which shall have accrued to the joint estate after the death of the predeceasing spouse, by the loss or deterioration of any part thereof, shall in the distribution of the estate fall upon and be borne by such surviving spouse solely and exclusively: Provided always, that nothing herein contained shall extend, or be construed to extend, to free or exempt any person who shall for any fraudulent purpose make, or cause to be made, any false inventory of any such joint estate, from any penalty or punishment hereinafter, or by any other law or Ordinance provided, with respect to the offence of making false inventories for fraudulent purposes.

Inventory on the death of persons not being spouses married in community.

16. And be it further enacted, that on the death of any person not being one of two spouses married in community of goods, the wife or husband of the deceased, and in default or absence of the wife or husband, the child or children of the deceased, or in default, absence, or minority of the child or children, the next of kin of the deceased, or in default, absence, or minority of the next of kin, the person who at or immediately after the death, shall have the chief charge of the house in, or of the place on which the death shall occur, shall secure and take charge of all goods and effects, of whatever description, belonging to the deceased, and being in the house or upon the premises at the time of the death of the deceased, and shall retain the same in his or her custody and possession until delivery thereof shall be demanded by the executor or executors of the deceased, or by any person lawfully appointed by the Supreme Court, or by a Judge, or the Master thereof to receive delivery of the same, and shall within six days after the death, make or cause to be made in the presence of two witnesses, being persons qualified by law to serve on juries in the Supreme or Circuit Courts of this Colony, an inventory of all such goods and effects as aforesaid and of all others known by the person making, or causing such inventory to be made, to have belonged to the deceased. And every such inventory shall be subscribed by the person making or causing the same to be made and by the witnesses aforesaid.

17. And be it further enacted, that if any person required and directed under and by virtue of the provisions of the fourteenth and sixteenth sections of this Ordinance, to make or cause to be made, an inventory of any estate, goods, or effects, shall, for any fraudulent purpose, make a false inventory thereof, every such offender being convicted thereof, shall be liable, at the discretion of the Court before which he shall be so convicted, to punishment by imprisonment, with or without hard labour, for any period not exceeding two years, or by fine, or by both, as the said Court shall award.

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Penalty for false inventory, two years' imprisonment or fine

18. And be it further enacted, that every person hereinbefore required or directed to make or cause to be made any such inventory as aforesaid, shall, so soon as the same has been made, forthwith by the first opportunity deliver or transmit every such inventory (<sup>1</sup>) at or to the office of the Master of the Supreme Court, when such person shall reside in Cape Town or the district thereof, or the Cape district, or the district of Stellenbosch; and when such person shall reside in any other district, then to the Resident Magistrate of such district. And every such Resident Magistrate shall cause a copy or copies of every such inventory so delivered or transmitted to him to be made, and shall authenticate such copy or copies with his signature, and shall transmit the original of every such inventory to the office of the said Master: Provided always, that when such inventory as aforesaid shall have been made by the survivor of two spouses, to whom the predeceasing spouse shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse, or whom the predeceasing spouse shall by will or other lawful instrument have appointed the executor of his or her will, and the tutor of his or her minor children, and the administrator (boedelhouder) of the said joint estate during the minority of such children, then and in every such case it shall and may be lawful for such spouse, if he or she shall think fit so to do, to transmit every such inventory as aforesaid, sealed up, to the office of the Master of the Supreme Court, or to the Resident Magistrate of the district respectively, in manner hereinbefore provided. And when any such inventory, so sealed up, shall be transmitted to any Resident Magistrate, there shall also be transmitted to such Magistrate a duplicate and triplicate of such inventory, also sealed up. And such Resident Magistrate shall transmit the original of every such sealed inventory to the office of the said Master, and for and with respect to the transmission of such original inventory, whether sealed up or open, and of such copy or copies thereof as aforesaid, and of such duplicate and triplicate thereof as aforesaid, shall do and cause to be done, everything which, under and by virtue of the provisions of the third section of this Ordinance, such Resident Magistrate

Transmission of inventory to master or resident magistrate.

Transmission of original by resident magistrate to master

<sup>1</sup> And also a duplicate or fair copy thereof, see Act 11 of 1873, § 5.

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is required to do, or cause to be done, for the transmission of the originals and copies of wills, and shall proceed in all respects in like manner as is therein directed : Provided always, that no such duplicate or triplicate shall be re-delivered by such Resident Magistrate to any person, except the surviving spouse by whom the same was transmitted to him, or to some person authorized by such survivor to receive the same ; and that no such sealed inventory, or duplicate or triplicate thereof, shall be opened, except by virtue of an order of the Supreme Court, or some judge thereof, on sufficient cause for opening the same being shown by the Master of the Supreme Court, or by some person having an interest in the said joint estate.

Letters of administration

19. And be it further enacted, that the estates of all persons dying either testate or intestate, in so far as the same shall be situated within this Colony, shall be administered and distributed according to law under and by virtue of letters of administration <sup>(1)</sup> to be granted in the form contained in the schedule hereunto annexed, marked B, by the Master of the Supreme Court, to the testamentary executors duly appointed by such deceased persons, or to such persons as shall in default of testamentary executors be appointed executors dative to such deceased persons, in manner hereinafter mentioned : Provided always, that in all cases where the same may be necessary or expedient, the Master of the Supreme Court shall and may appoint a curator bonis, to take the custody and charge of any such estate, until letters of administration shall be granted to executors testamentary or dative, for the due administration and distribution thereof. And that every appointment so made by the said Master of any curator bonis, shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed, or set aside by the Supreme Court, or any judge thereof ; and such Court or judge by whom any such appointment shall be set aside, shall and may appoint some other fit and proper person to be curator bonis.

Appointment of curator bonis until issue of letters of administration.

Letters of administration to executors appointed by will.

20. And be it further enacted, that in all cases in which any deceased person shall by his will have duly appointed any person or persons to be his executor or executors, the Master of the Supreme Court shall, upon the application of such executor or executors, forthwith grant letters of administration to him or them, so soon as the will of the deceased shall have been lodged in the office of the said Master, in manner hereinbefore mentioned : Provided always, that if it shall appear to the said Master, or if any person by writing lodged at the office of the said Master shall object that any deed by virtue whereof any person or persons shall claim to be the testamentary executor or executors of any person deceased is not in law sufficient to warrant and support such claim, then and in every such case letters of administration shall not be granted until

<sup>1</sup> As to estates of natives, see Act 18 of 1864 (natives).

the validity and legal effect of such deed shall have been determined by the judgment of some competent Court, or until such objection as aforesaid shall have been withdrawn by the party by whom the same was made.

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21. And be it further enacted, that when any person shall have died without having by any valid deed appointed any person or persons to be his executor or executors, or where any person or persons duly appointed to be the executor or executors of any deceased person shall have predeceased him, or shall refuse, or become incapacitated to act as such, then and in every such case the Master of the Supreme Court shall cause to be published in the *Gazette* of this Colony, and in such other manner as to him shall seem fit, an edict, calling the surviving spouse (if any), the next of kin, legatees, and creditors of the deceased, to attend at his office at the time therein specified, not being less than six weeks from the day of publication, to see letters of administration granted to such person or persons as shall then be appointed by him executor or executors dative to the estate of such deceased person: Provided always, that when it shall appear to the said Master necessary or expedient so to do, it shall and may be lawful for him, in such edict, to call such persons as aforesaid to attend at the office of any Resident Magistrate at such time as aforesaid, for the purpose of proposing some person or persons, to be by such Magistrate reported to the Master as fit and proper to be by him appointed executor or executors dative. And the said Master shall, at the meeting so to be holden at his office, or upon receiving the report of such Resident Magistrate, appoint such person or persons as to him shall seem fit and proper to be executor or executors dative of the estate of the deceased, and shall grant letters of administration accordingly, unless it shall appear to him necessary or expedient to postpone such appointment, and to call another or other such meeting or meetings as aforesaid. And provided also, that when it shall appear to the satisfaction of the said Master that the estate of any such deceased person as is hereinbefore mentioned is manifestly insolvent, then and in every such case it shall not be necessary for the said Master to take any such proceedings as aforesaid for the appointment of an executor or executors dative, and no such proceedings shall by him be taken for that purpose; and it shall and may be lawful for him, and he is hereby declared and required to take the necessary proceedings for having such estate placed under sequestration as insolvent, under and by virtue of the provisions of the third section of the Ordinance No. 64.

Proceedings on failure of appointment of executors, or on death, incapacity or refusal to act.

Proceedings on insolvency of estate.

22. And be it further enacted, that in every case in which a competition shall take place for the office of executor dative, the surviving spouse, whom failing, the next, or some of the next of kin, whom failing, a creditor or creditors, whom failing, a legatee or legatees, shall be preferred by the Master of the Supreme Court to the office of executor dative. Provided always, that

Competition for office of executor dative.



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nothing herein contained shall prevent any one or more of the above-mentioned classes of persons from being conjoined in the said office with any one or more of any other of the above-mentioned classes of persons. And that, when it shall appear to the Master or to the Supreme Court, or any judge thereof, on reviewing the appointment of the Master, that any valid objection exists to the appointment of all or any of the above-mentioned persons, or classes of persons, as executor or executors dative, such objectionable person or class of persons shall be passed by, and some other fit and proper person or persons shall by the said Master, or by such Court or Judge, be appointed executor or executors dative. And provided also, that every such appointment so made by the said Master shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed, or set aside by the Supreme Court or any Judge thereof; and such Court or Judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person or persons to be executor or executors dative.

Review of master's appointment by court or judge.

Appointment of tutors of minors, where minors would have been entitled to appointment.

23. And be it further enacted, that when it shall happen that any of the next of kin, or creditors, or legatees, of any deceased person shall be minors under the guardianship of any tutor or tutors duly appointed, then and in every such case such tutor or tutors shall be entitled to be preferred to the office of executor or executors dative, under the provisions of the immediately preceding section of this Ordinance, in like manner in all respects as the minor or minors whose tutor or tutors he or they are, would, if of full age, have been entitled to be preferred to that office under the provisions of the said section.

Assumption of executors under power contained in will.

24. And be it further enacted, that nothing herein contained shall extend or be construed to extend to prevent any testamentary executor or executors of any testator from assuming any other person or persons as executor or executors of such testator, under and by virtue of any power for that purpose to him or them committed by such testator, by his will, or by any other deed duly executed by him: Provided always, that no person shall be entitled or qualified to act as assumed executor until letters of administration shall have been granted to him as such by the Master of the Supreme Court, who is hereby directed and required to grant the same, on production to him of the will or other deed by which the assumption of such executor is authorized, and of the deed by which such testamentary executor or executors has or have assumed such person as executor. And every provision of this and of every other law or ordinance, applicable or relating to or affecting executors dative, shall be deemed and taken to, and shall apply and relate to and affect every such executor so assumed.

Letters of administration to assumed executors.

Proceedings in case of death, incapacity or removal of testamentary or assumed executors.

25. And be it further enacted, that when, by reason of any testamentary or assumed executor to whom letters of administration shall have been granted for the administration of any estate,

having died or become incapacitated to act as such, or having been removed from his office by the decree of any competent Court, there shall not remain, for the administration of such estate, any executor whatever, or so many executors, either testamentary or assumed, as by the provisions of the deed by which such executors were appointed or permitted to be assumed, shall be required to form a quorum of executors for the administration of such estate, and when it shall happen that any executor dative shall, after letters of administration have been granted to him, die or become incapacitated, or be removed in manner aforesaid, then and in every such case proceedings, in order to the appointment of an executor dative, in place of such executor so dying or becoming incapacitated or removed, shall be had and taken by the Master of the Supreme Court, in like manner in all respects as is hereinbefore provided by the provisions of the twenty-first, twenty-second, and twenty-third sections of this Ordinance.

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26. And be it further enacted, that letters of administration granted to any person as testamentary executor, shall at all times be subject to be revoked and annulled by the decree of the Supreme or of any Circuit Court on the proof to the satisfaction of such Court that the deed in respect of which such letters have been granted to such persons is null, or has been revoked, either wholly or in so far as relates to the nomination and appointment of such executor: and that letters of administration granted to any person as executor dative shall be at all times subject to be revoked and annulled by the order of the Master of the Supreme Court, on production to him of any valid deed, by which any other, who shall then be legally capable and qualified, and who shall consent to act as executor, has been legally nominated and appointed testamentary executor to the estate which such executor dative has been appointed to administer: Provided always, that, if the non-production of such deed, prior to letters of administration having been granted to the executor dative has been owing to the fault or negligence of the person therein appointed testamentary executor, such person shall be personally liable for all expenses which have been incurred in respect of and with reference to the appointment of the executor dative.

Revocation of letters of administration by decree of court, or in some instances by master.

27. And be it further enacted, that every executor dative shall, before he shall be permitted to enter on the administration of the estate, find security to the satisfaction of the Master of the Supreme Court, for the due and faithful administration of the estate of which he has been appointed executor dative, to such amount as in the circumstances of each particular case shall be reasonable.

Security by executor dative for due administration.

28. And be it further enacted, that every executor, whether testamentary or dative, shall, so soon as letters of administration shall have been granted to him in manner aforesaid, forthwith make an inventory of all property, goods, and effects, movable and

Inventory by executors.

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Transmission of inventory to master.

Cases in which inventory need not be transmitted.

Liability in certain cases for debts and legacies by persons who previously to the granting of letters of administration have intermeddled with estates, and by persons to whom letters have been granted,—in respect of property not contained in inventory.

immovable, of what kind soever, belonging to, or forming part of, the estate which such executor shall have been appointed to administer, and shall, in like manner, from time to time, thereafter and so soon as such executor shall find or know of any other such property, goods, or effects, belonging to, or forming part of, such estate, and not contained in such first-mentioned inventory make an additional inventory or inventories of all such last-mentioned property, goods, and effects. And every such executor, either testamentary or dative, shall forthwith cause every such inventory and additional inventory to be transmitted to the office of the said Master. And when any such additional inventory shall be so transmitted by any executor dative, he shall find such further security as aforesaid as shall be required of him: Provided always, that when the person by whom any testamentary executor has been appointed shall, by any deed duly executed by him, have directed that such testamentary executor shall not transmit to the office of the said Master any such inventory or additional inventory as aforesaid, then and in every such case no such executor shall be required,—and that the survivor of any two spouses, married in community of property, to whom the predeceasing spouse shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse, or whom the predeceasing spouse shall by will or other lawful instrument have appointed the executor of his or her will, and the tutor of his or her minor children, and the administrator (boedelhouder) of the said joint estate during the minority of such children, shall not in any case be required,—to transmit to the office of the said Master, or to produce any such inventory as aforesaid, except when an order for the production of the same shall have been made by the Supreme Court, or any judge thereof, on sufficient cause for the production of the same being shown by the Master, or by some person having an interest in the said joint estate; anything to the contrary herein contained notwithstanding.

29. And be it further enacted, that if previously to letters of administration being granted by the Master of the Supreme Court to any executor or executors, testamentary or dative, for the administration of any estate, any person shall take upon himself to administer, distribute, or in any wise dispose of such estate or any part thereof, except in so far as may be absolutely necessary for the safe custody or preservation thereof, or for providing a suitable funeral for the deceased, or for the subsistence of the family or household or livestock left by the deceased, or if any person to whom letters of administration have been granted either as executor testamentary or dative shall administer, distribute, or in any wise dispose of any property or effects belonging to the estate of which he is the executor, and which shall not have been contained in the inventory or inventories of such estate lodged in the office of the said Master, previously to the granting of the said

letters of administration, or shall not be contained in any additional inventory or inventories made by him and transmitted by him to the said office, in terms of the provisions of the twenty-eighth section of this Ordinance; every such person shall thereupon and in respect and by reason of such undue administration, distribution, or disposal of any such estate or any part thereof become and be personally liable to pay to the creditors and legatees of the deceased all debts due by the deceased at the time of his death, or which have thereafter become due by his estate, and all legacies left by the deceased, in so far as the proceeds and assets of such estate shall be insufficient for the full payment of such debts or legacies: Provided always, that when any person who shall be sued for the payment of any debt or legacy which he shall have rendered himself personally liable to pay in manner aforesaid, shall prove to the satisfaction of the Court before which he shall be sued, that the true amount and value of the property which has actually been unduly administered, distributed, or disposed of by him, did not exceed a certain sum, and that his administration, distribution, or disposal of the same was not fraudulent, then and in every such case such person shall only be personally liable for the amount of such sum, or for such part thereof as he shall fail to prove has been distributed or disposed of in such manner and for such purposes as by law the same ought to have been distributed or disposed of, and for the amount of the costs by him incurred in and concerning such suit, as well as for the amount of the taxed costs incurred in and concerning such suit by the plaintiff therein, notwithstanding that by reason of such person's personal liability have been restricted in manner aforesaid such plaintiff shall not have recovered from such person any part of the debt or legacy sued for.

30. And be it further enacted, that every executor, whether testamentary or dative, shall so soon as he shall have entered on the administration of any estate, forthwith cause a notice to be published in the *Gazette* of this Colony, and in such other manner as may be deemed expedient, calling upon the creditors of and all others having claims against the deceased or his estate, to lodge the same with such executor within such period from the date of the publication thereof, as shall be therein specified, not being less than six weeks, or more than four calendar months, as in the particular circumstances of each case shall by such executor be deemed proper.

31. And be it further enacted, that it shall not be lawful for any person who shall have obtained the judgment of any Court against any deceased person in his lifetime, or against his executor or executors, in any suit or action commenced against such executor or executors, or which having been pending against the deceased at the time of his death, shall thereafter have been continued against the executor or executors of such person, to

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Public notice by executors to creditors and others to lodge their claims.

Suspension of execution of judgments against deceased until expiration of period of notice.

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Order of court or of a judge for execution within six months after date of letters of administration.

sue out or obtain any process in execution of any such judgment before the expiration of the period notified in the *Gazette* in manner hereinbefore provided. As also, that it shall not be lawful for any such person as aforesaid, to sue out or obtain any process in execution of any such judgment as aforesaid, within six months from the time when letters of administration shall have been granted to the executor or executors against whom execution of such judgment is sought, without first obtaining an order from the Supreme Court or some judge thereof for the issuing of such process.

Duties of executors after expiration of period for lodging claims.

Payment of debts.

Liability of executors in regard to preferent debts.

32. And be it further enacted, that on the expiration of the period notified in the *Gazette* in manner hereinbefore provided, every such executor or executors as aforesaid shall forthwith proceed to rank, according to their legal order of preference, all such debts and claims against the deceased, or his estate, as have been lodged with them, or of the existence of which they shall have knowledge, and shall pay off and discharge the same so soon as the funds necessary for that purpose shall have been realized out of the estate. And if the proceeds of such estate shall be found to be insufficient for the payment of all the just and valid claims to which it is liable, the executor or executors thereof shall be liable to pay to any person having any such just and valid claim, the amount to which such person would have been entitled to receive in respect of such claim if ranked according to the legal order of preference, in so far as such executor or executors shall have within the said period last-mentioned, or afterwards, at any time when he or they knew of the existence of such claim, paid such amount to any person or persons, the payment of whose claims against the deceased, or his estate, according to the legal order of preference, ought to have been postponed until such just and valid claim as aforesaid had been satisfied; reserving always to such executor or executors recourse against the person or persons to whom payment of their claims may have been improperly made, Provided always, that, when such notice to creditors as aforesaid shall have been duly published as aforesaid no creditor or claimant on the estate of any deceased person, who shall not have lodged the same with the executor or executors within such period as aforesaid, or thereafter before the distribution of the funds of the estate, shall, in respect thereof, be entitled to recover from any person having a just and valid claim against such estate, restitution of any part of such funds which may have been paid to such person in satisfaction thereof, after the expiry of such period, and before the claim of the person seeking such restitution was lodged with the executor or executors, although, if lodged in due time, such last-mentioned claim would, according to the legal order of preference, have been preferent to that of the person to whom such payment had previously been made, nor shall such person have any claim against any executor or executors in respect of any such distribution as aforesaid of the funds of any such

estate made by him or them after the expiry of such period as aforesaid, and before the claim of such person shall have been made known to such executor or executors.

33. And be it further enacted, that every executor, whether testamentary or dative, shall so soon as the estate under his administration shall have been fully administered and distributed, lodge with the Master of the Supreme Court, and the Resident Magistrate of the district within which such estate was situated, who shall respectively cause the same to be preserved and registered in their offices for the inspection of all concerned, a full and true account of the whole administration and distribution of such estate.

(<sup>1</sup>) And every person having an interest in such estate, shall and may, at any time after the expiration of six months, from the day on which the letters of administration were granted to such executor or executors, summon him or them to show cause before the Supreme Court, or any Circuit Court, why such account as aforesaid has not been lodged with the said Master and the said Resident Magistrate. And every executor who shall fail to lodge such account as aforesaid, in manner herein provided, and who shall have no lawful and sufficient excuse for such failure, shall by reason thereof forfeit all claim to any fees which he might otherwise be entitled to receive in respect of his administration of such estate.

34. And be it further enacted, that, when any person shall die intestate, whose estate, in so far as situated within this Colony, shall appear to the Master of the Supreme Court to be under the value of forty pounds, then and in every such case the said Master shall and may cause such estate to be administered and distributed according to law by an executor dative, to be by him summarily appointed by letters of administration granted by him for that purpose.

35. And be it further enacted, that none of the provisions of this Ordinance shall extend or apply to the estate, property, or effects actually on board any vessel lying or being in any harbour, port, or place of, or within the limits of this Colony, or the dependencies thereof, and belonging to any person who, being one of the officers or crew of, or passengers by, such vessel, shall die on land within this Colony, or on board of any such vessel while lying or being in any such harbour, port, or place, as aforesaid, unless such person so dying shall at the time of his death have left property situated on land within this Colony, not being wearing apparel, bedding, or other articles of the like nature, or unless it shall be shown to the Supreme Court, or one of the Judges, or the Master thereof, that for the preservation or due administration and distribution of such property, it is necessary or expedient that such property and effects

Ord. 104—1833.

Filing of account of administration by executor with the master and resident magistrate.

Summons if account has not been lodged within six months.

Forfeiture of fees.

Appointment by master of executors to intestate estates under £40.

£40 —  
Summarily appointed by master

Movable property of officers, crew, passengers, &c. of ships in colonial harbours dying on land not affected by this ordinance.

<sup>1</sup> See Act 14 of 1864; Act 5 of 1864, § 7; and Act 11 of 1873, § 2, *infra*.

Ord. 104--1833.

Officers in the  
army, soldiers, &c.Invalidity of ap-  
pointment after 1st  
March 1834, of the  
orphan chamber or  
the master as execu-  
tor.Retention of colo-  
nial law as to duties  
of executors and as  
to "boedelhouders-  
schap," except where  
expressly repealed.Transmission by  
executors to the mas-  
ter of claims of un-  
represented minors  
and lunatics against  
the estates adminis-  
tered by them.

should be administered, distributed, and disposed of under and by virtue of the provisions of this Ordinance; and that none of the provisions of this Ordinance shall extend or apply to the estate, property, or effects (except immovable property situated within this Colony) of any officer employed on or belonging to the staff, or of any commissioned or non-commissioned officer or private soldier, present with or belonging to any regiment or corps of His Majesty's Army serving in this Colony who shall die whilst so employed or belonging to the said staff, regiment, or corps.

36. And be it further enacted, that if any person who shall die after the first day of March next, shall by any will of a testamentary nature, unrevoked at the time of his death, have appointed the Orphan Chamber or the Master of the Supreme Court, to be the executor of his estate, then and in every such case such person shall be deemed and taken in law to have died without having appointed any executor, and the like proceedings shall be had and taken for and in respect of the appointment of executors to administer and distribute his estate, as would have been had or taken under and by virtue of the provisions of this Ordinance, if no such deed had ever been executed by such deceased person.

37. And be it further enacted, that the law respecting the duties, powers, rights, relief, and responsibility of executors, and touching and concerning the administration by the survivor of two spouses of the joint estate of such spouses during the minority of the children of the predeceased spouse (boedelhouderschap) in force within this Colony, prior to the passing of this Ordinance, shall, except in so far as the same has been expressly repealed or altered by the provisions of this Ordinance, remain in full force and effect in like manner as if this Ordinance had not been made, any thing to the contrary herein contained notwithstanding: Provided always, that every executor, either testamentary or dative, shall in respect of his administration, distribution, and final settlement of any estate, be entitled to claim, receive, or retain out of the assets of such estate, or from any person who, as heir, legatee, or creditor, shall be entitled to the whole or any part of such estate, such fees only as are specified in the tariff contained in the schedule hereunto annexed, marked C, and shall not be entitled to claim, receive, or retain any other reward or remuneration whatever for his trouble or personal expenses touching or concerning the same.

38. And be it further enacted, that every executor, either testamentary or dative, who shall, in administering, distributing, and settling any estate find that any minor not having a tutor testamentary or dative, or any lunatic, not having a lawful curator, or any person absent from this Colony, and not having a lawful representative within the same, has, any just and lawful right or claim to such estate, or any part thereof, such executor shall forthwith transmit in writing, to the office of the Master of the Supreme Court, a statement containing the name of such minor,

lunatic, or absent person, and specifying the nature and amount of the property to which such minor, lunatic, or absent person has such right or claim as aforesaid.

Ord. 104-1883.

39. And be it further enacted, that the Master of the Supreme Court shall cause to be kept in his office a register, containing the names of every executor, either testamentary or dative, to whom any letters of administration shall have been granted, and of every surety for any executor dative. And whenever any order for sequestration shall, under and by virtue of the provisions of the nineteenth section of the Ordinance No. 64, be delivered to the said Master, he shall cause such register to be examined, and if upon such examination it shall appear that the person, whose estate has been placed under sequestration by such order, is either an executor or the surety of an executor, of any estate not previously administered, distributed, and finally settled, the Master shall in the first notice of such sequestration, which shall be published in the *Gazette* of this Colony, insert a statement of every such estate as aforesaid, of which such insolvent is an executor, or for the executor of which such insolvent is a surety; and specifying whether he is the executor or the surety for the executor of such estate.

Register of executors and of their sureties.

Notice in Gazette by the master in case of the insolvency of executors or their sureties.

40. And be it further enacted, that the Master of the Supreme Court shall, and he is hereby authorized and required to charge and to demand, receive, retain, or recover, in respect of the acts, matters, and things done or caused to be done by him, or in his office, under and by virtue of the provisions of this Ordinance, all such fees as are specified in the tariff contained in the schedule hereunto annexed, marked A, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as Master of the Supreme Court. Provided always, that nothing herein contained shall extend or be construed to extend to repeal any law now in force requiring any stamp to be used for any purpose or any stamp duty to be paid in respect of any proceeding except in so far as any such alteration shall be expressly made in the tariff of fees hereinbefore mentioned.

Master's fees.

Retention of stamp law except where expressly altered in tariff.

41. And be it further enacted, that whenever and so often as the words "any law in force within this Colony prior to the passing of this Ordinance" occur in any of the provisions of this Ordinance, then and in every such case the said words shall be construed and deemed and taken to mean, such law as was then in force within this Colony, independently and exclusively of the provisions or enactments of the instructions and of the Ordinance No. 42, hereinbefore repealed, and of any other instructions or regulations which had at any previous time been in force within this Colony, touching or concerning the functions, duties, or powers of the Orphan Chamber.

Interpretation of words "any law in force within this colony prior to the passing of this ordinance."



Ord. 104--1833.

## SCHEDULE A.

[Repealed by Act 20, 1884.]

## SCHEDULE B.

Form of letters of administration.

These are to certify, that A. B. has been duly appointed the executor testamentary (or dative, as the case may be), and is hereby authorized as such to administer the estate of C. D., deceased.

(Signed) E. F.,  
Master of the Supreme Court.

Cape Town, --- day of --- 18 .

## SCHEDULE C.

Assessment of executors' compensation by master.

Section 37.—To be paid out of the assets of the estate, a reasonable compensation, to be assessed and taxed by the Master; subject, nevertheless, to the review of the Supreme Court, upon the petition of the executor testamentary or dative, or any person having an interest in the estate.

No. 14—1864.]

[July 26, 1864.]

## AN ACT

For Obliging Executors, Tutors, and Curators to lodge their Accounts.

Preamble.

WHEREAS it is necessary and expedient that better provision be made for obliging executors, tutors, and curators to lodge their accounts with the Master of the Supreme Court: 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 :—

Executor failing to lodge account of administration with Master within twelve months may be summoned before Supreme Court.

1. As often as any executor, whether testamentary or dative, shall fail or shall have failed to lodge with the Master of the Supreme Court the certain account mentioned in the thirty-third section of the Ordinance No. 104, within the space of twelve months from the day on which letters of administration were granted to such executor, it shall be lawful for the said Master to summon said executor, so in default, to show cause before the Supreme or any Circuit Court why said account has not been so lodged as aforesaid: Provided that the said Master shall, not sooner than three months nor later than one month, before suing out any such summons as aforesaid, apply by letter, to the executor in default requiring him to lodge his account on pain of being summoned to do so under this Act, Provided further that any executor receiving any such application from the said Master, may lay before the said Master such grounds and reasons as he may be able to advance why he has not lodged his account, and the said Master, should such grounds and reasons seem to him sufficient, may grant to such executor such an extension of time for the lodging of such account, as such Master shall under the circumstances deem reasonable, And provided also that if any such executor so in default shall fail to satisfy the said

Master to apply for account previous to suing.

Master may extend time on sufficient cause being shown.

On failure to satisfy Master, summons may be issued, unless a judge's order shall have been obtained.

Master that he ought to receive an extension of time, said Master shall be at liberty to summon such executor to lodge his account, unless such executor shall obtain from the Supreme Court, or some judge thereof, and deliver to such Master an order made upon motion of which the said Master shall get notice, granting to such executor an extension of time within which to lodge his account.

2. Although the Court or Judge aforesaid shall be of opinion that the ground and reasons laid before the said Master, by any executor, who shall be summoned to lodge his account as aforesaid, were such as would have warranted the said Master in granting an extension of time; the said Master shall nevertheless be entitled to his costs in case he shall, before summoning the executor whose grounds and reasons the said Master shall have overruled, and declared insufficient, have allowed such executor sufficient time for enabling him to apply to the Supreme Court or some judge thereof, for such an order as aforesaid, granting to such executor an extension of time.

Master entitled to costs in certain cases where the Supreme Court overrules his decision.

3. Provided always that when the person by whom any testamentary executor has been appointed shall, by any deed duly executed by him, or by any clause in a will or codicil to a will, have directed that such testamentary executor shall not transmit to the office of the said Master an account of the whole administration and distribution of the estate of which he is such executor, then, and in every such case, no such executor shall be required to lodge the same with the said Master of the Supreme Court; except when an order for the production of the same shall have been made by the Supreme Court or any judge thereof, on sufficient cause for the production of the same being shown by the Master, or by some person having an interest in the said joint estate: And that the survivor of two spouses married in community of property, to whom the predeceasing spouse, shall by will have lawfully bequeathed all the share of the said joint estate belonging to such predeceasing spouse, shall by will or other lawful instrument have appointed the executor of his or her will and the tutor of his or her minor children, and the administrator (*boedelhouder*) of the said joint estate during the minority of such children, shall not in any case be required to transmit or lodge at the office of the said Master any such account as before mentioned, except when an order for the production of the same shall have been made by the Supreme Court, or any judge thereof in manner aforesaid.

Exemptions from obligation to lodge account.

4. The costs adjudged to the said Master upon any summons sued out by him or on his behalf, shall be payable by the executor in default in his individual capacity, and he shall not be at liberty to charge the same to the estate under his administration, unless authorized so to do by the said Supreme Court.

Costs unless otherwise ordered by Supreme Court, to be paid by executor in default.

5. It shall be the duty of the said Master to summon, as aforesaid, every tutor, whether testamentary or dative, and every

Master to sue every tutor and curator who shall fail to lodge

No. 14—1864.  
account within pre-  
scribed date.

curator, whether nominative or dative, and every curator bonis, to show cause why any account which, under the thirty-eighth section of the Ordinance No. 105, ought to have been lodged with such Master has not been lodged, and unless such tutor or curator shall, before the day fixed by the said section for the filing of such account, obtain from the said Master or from the Supreme Court, or some judge thereof, an extension of time within which to lodge the same, then the provisions of the second and fourth sections of this Act, regarding costs, shall apply to the motion aforesaid when made by the said Master under this section.

Act to apply to exe-  
cutors appointed  
after and within five  
years before Act  
coming into opera-  
tion.

6. The provisions of this Act shall extend to all executors to whom letters of administration as aforesaid shall be granted at any time after the taking effect of this Act, and to all executors to whom such letters of administration shall have been granted at any time within five years next before the taking effect of this Act, but not to any other executors: Provided that this Act shall extend or apply to no executor except the individual who received letters of administration to administer the estate of which the account has not been lodged, and that, in case of his death, the liability of his executors or heirs to lodge the account which, had he been living, he ought to have lodged, shall be judged of as if this Act had not been passed: Provided also that no executor to whom letters of administration shall have been granted at any time before the taking effect of this Act, shall be summoned to lodge his account until the expiration of twelve months next after the taking effect of this Act.

Liability confined  
to person to whom  
letters of administra-  
tion have been grant-  
ed.

Executors appoint-  
ed previous to this  
Act not to be sued  
before the expiration  
of twelve months  
after its coming into  
effect.

Master to furnish  
Supreme Court with  
periodical return of  
estates in which no  
accounts have been  
lodged.

7. It shall be the duty of the said Master to render to the Supreme Court, at the first sitting thereof, held after the expiration of three months from the taking effect of this Act, a return, in writing, of all such estates and administrations as aforesaid, in which accounts should have been lodged, but have not been lodged, and such Master shall, thereafter, on the first day of every term, render a return, in writing, to the said Court of all such estates and administrations as aforesaid, in which accounts shall have been lodged since the last preceding return was rendered, as well as of all estates and administrations (if any), in which accounts should have been lodged but have not been lodged, and a copy of every such return shall lie open for inspection in the office of the said Master.

Short title.

8. This Act may be cited for all purposes as the "Executors' Accounts Act, 1864."

No. 11—1873.]

[June 26, 1873.

## ACT

To Provide for lodging the Accounts of Executors, Tutors, Curators, and Trustees in the Offices of the Resident Magistrates of the respective Districts in which the Estates administered are situated.

WHEREAS by the thirty-third section of the Ordinance No. 104 it is enacted and provided that every executor, whether testamentary or dative, shall so soon as the estate under his administration shall have been fully administered and distributed, lodge with the Master of the Supreme Court and the Resident Magistrate of the district in which such estate was situated a full and true account of the whole administration and distribution of such estate; and whereas the provision of the said section, so far as relates to lodging such accounts as aforesaid with the Resident Magistrate, has not hitherto been generally observed: And whereas it is expedient to provide for more effectually carrying the object of the said section into effect, and at the same time to make similar provision in regard to the accounts of tutors, curators, and trustees administering insolvent estates, and otherwise to provide for better means of information in the country districts in regard to the estates of deceased and absent persons, minors, and lunatics: 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. So much of the Ordinances numbered 104 and 105 respectively, and of the Ordinance numbered 6, 1843, as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Repugnant laws repealed.

2. Every executor, whether testamentary or dative, who shall pursuant to the provisions of the thirty-third section of the Ordinance No. 104, and every tutor, either testamentary or dative, and every curator, either nominate or cative or bonis, who shall, pursuant to the provisions of the thirty-eighth section of the Ordinance No. 105, be bound to lodge with the Master of the Supreme Court the certain accounts in the said sections of the said Ordinances respectively mentioned; and every trustee who shall pursuant to the provisions of the 108th and 114th sections respectively of the Ordinance No. 6, 1843, be bound to frame and lay before the Master of the Supreme Court an account and plan of distribution of the assets of any insolvent estate, shall at the same time lodge with the said Master a duplicate, or otherwise a copy, of every such account or account and plan of distribution, as the case may be; and every such executor, tutor, curator, or trustee who shall fail or neglect to lodge such duplicate or copy as aforesaid shall be

Certain accounts to be lodged with Master in duplicate.

Consequence of failure to lodge account in duplicate.

No. 11—1873.

Such lodgment by an executor to be instead of lodgment with magistrate.

Master to endorse date of filing and confirmation of accounts, and to examine and sign same.

Master to forward duplicates to magistrates.

Wills, codicils, death notices, inventories, &c., to be lodged in duplicate with magistrate, who shall examine and sign same.

Magistrates to register such duplicates for inspection.

Copy authenticated by magistrate or Master to be admissible in evidence.

deemed and taken to be in the like plight and condition as if no account had ever been lodged or tendered at all: Provided that in regard to any such executor as aforesaid the lodging of such duplicate or copy with the Master shall be in place and instead of lodging an account with the Resident Magistrate, as required by the thirty-third section of the Ordinance No. 104.

3. The Master of the Supreme Court shall, when any such account as is in the last preceding section mentioned has been approved and filed in his office, endorse upon every duplicate or copy the date upon which such account was filed, or in regard to any insolvent estate the date upon which such account was confirmed by order of the Supreme Court; and as to every copy lodged as aforesaid shall cause the same to be examined and authenticated with his signature.

4. The Master aforesaid shall, as soon as may be after the expiration of every month forward the duplicates, or copies authenticated as aforesaid, of all accounts lodged with and filed by him in his office, to the Resident Magistrates of the respective districts in which the estates to which such accounts, respectively, relate were situated.

5. Every person who shall by virtue of the third, ninth, and eighteenth sections, respectively, of the Ordinance No. 104 be bound and obliged to deliver or transit to the Resident Magistrate of the district in which he shall reside, either directly or through the Field-cornet of the Field-cornetcy in which any death shall occur, any deed being or purporting to be the last will, codicil, or other testamentary instrument of any deceased person, or any notice of the death, or inventory of the goods or effects of such deceased person, shall at the same time deliver or transmit, as the case may be, a duplicate or otherwise a copy fairly written of every such deed, death notice, or inventory aforesaid; and every Resident Magistrate receiving any such deed, death notice, or inventory, and a duplicate or copy thereof, shall cause every copy to be examined and compared with the original, and, if need be, corrected, and shall authenticate such duplicate or copy with his signature.

6. Every Resident Magistrate receiving such duplicates or copies of documents as are hereinbefore in this Act mentioned shall cause the same to be preserved and registered; and any person may on any day, Sundays and holidays excepted, inspect and take copies thereof.

7. Whenever any duplicate original document shall, under the provisions of this Act, have been lodged in the office of any Resident Magistrate, a copy or extract thereof, signed and certified as a true copy or extract by the Resident Magistrate having the custody of such document, and every such copy authenticated by the Resident Magistrate or Master of the Supreme Court, as the case may be, as shall under the provisions of this Act have been

lodged in the office of any Resident Magistrate, shall be admissible in evidence in any Court of Justice, or before any person having by law or consent of parties authority to hear, receive, and examine evidence.

8. This Act may be cited for all purposes as the "Executors' and Trustees' Accounts Act, 1873."

No. 39—1877.

Short title.

No. 39—1877.]<sup>1</sup>

[Oct. 15, 1880.

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13. As often as in or by any Proclamation, Ordinance, Act, or other instrument having the force of law within the said province at the time of the said annexation, any right, power, duty or function, shall be vested in the Master of the High Court, in regard to the registration of wills and the administration of the estates of deceased persons, and in regard to the administration of insolvent estates, and in regard to any matter or thing whatsoever, such right, power, duty or function, shall not, except as is otherwise provided by this Act, be deemed or taken to be vested in the Master of the Supreme Court, but shall continue to be vested in the Master of the said High Court: Provided, that all letters of administration or of confirmation which shall be granted, and all other matters or things which shall be lawfully done by the Master of the Supreme Court by virtue of the powers and jurisdiction vested in him before the annexation, shall, in regard to any property, movable or immovable, found or situated within the said province, have the same force and effect as within any other portion of the said Colony: Provided further, that it shall be the duty of the Master of the said High Court, forthwith after any order for sequestration of any estate, or any deed purporting to be a testamentary disposition, or any death notice, or any inventory of the estate of any deceased person or persons, or any account or plan of distribution of the estate of any minor, lunatic, or deceased person or of any insolvent estate, shall have been delivered or transmitted to him, and forthwith after granting any letters of administration or of confirmation, and forthwith after security shall have been found or given for any executor, tutor, or curator to forward to the Master of the Supreme Court a true copy of such order, deed, death notice, inventory, account, plan or other instrument, for the purpose of being duly registered by the said Master of the Supreme Court: Provided, however, that it shall not be necessary for the Master of the said High Court to forward any duplicates or copies of accounts lodged with and filed by him in his office to the Resident Magistrates of the respective districts in which the estates to which such accounts respectively relate were situated.

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Duties of Master.

<sup>1</sup> For full text of this Act see "Annexation."

AN ACT

To Impose Duties on Successions to Property.

Preamble.

WHEREAS it is expedient to impose certain duties on successions to property: 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:—

Definition of terms used in Act.

1. Every past or future disposition of property by reason whereof any person has or shall become entitled to any property not being immovable property out of this Colony or the income thereof, upon the death of any person dying after the taking effect of this Act, either immediately or after any interval, either certainly or contingently, and either directly or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the time appointed for the taking effect of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled, by reason of any such disposition or devolution, "a succession," and the term "successor" shall denote the person so entitled, and the term "predecessor" shall denote the testator, intestate, ancestor, or other person from whom the interest of the successor is or shall be derived.

Rates of duties to be levied.

2. There shall be levied and paid to Her Majesty the Queen in her Colonial revenue in respect of every succession as aforesaid, according to the net value thereof, the following duties, that is to say:—

1. Where the successor shall be the lineal descendant or the lineal ancestor of the predecessor, a duty of one pound per centum upon such value.
2. Where the successor shall be a brother or sister of the predecessor, a duty at the rate of two pounds per centum upon such value.
3. Where the successor shall be a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds per centum upon such value.
4. Where the successor shall be in any degree of consanguinity to the predecessor other than is hereinbefore described, or shall be a stranger in blood to him, a duty of five pounds per centum upon such value.

Exemptions.

3. From the duties aforesaid, imposed by this Act, the following estates and persons shall be exempt, that is to say:—

1. Where the whole succession or successions derived from the same predecessor, and passing upon any death to any person or persons shall not amount, in money or other property, to the sum of one hundred pounds, no duty

shall be payable under this Act in respect thereof or of any portion thereof.

2. Where the successor shall be a son or daughter of the predecessor, no such duty, as aforesaid, shall be payable by such successor in case the net amount or value of the succession of such successor do not amount to the sum of one hundred pounds.
3. No successor whatever shall be liable to pay duty upon any succession which shall be of less value than twenty pounds.
4. Every surviving spouse, being a successor of his or her deceased spouse, shall be exempt from the payment of any duty upon such succession.
4. As often as a donation *mortis causa* shall be made there shall be payable by the donee the same duty upon the net amount or value of the donation as such donee would have paid under this Act in case the donor had been a predecessor, and such donee had been a successor under this Act.

Duty chargeable on donations.

5. The duties by this Act imposed shall be under the care and management of the Master of the Supreme Court, who shall be entitled to collect and recover the same.

Master of the Supreme Court charged with duties under this Act.

6. It shall be lawful for any person domiciled in any division of this Colony, other than Cape Town and the district thereof, and the Cape Division, and liable to the payment of duty under this Act, to pay such duty, as assessed by the Master, to the Civil Commissioner of such division, whose receipt for such duty, when transmitted to, and received by, the said Master, shall be a sufficient discharge for such duty.

Duty may be paid in country divisions to the civil commissioner.

7. It shall be lawful for the said Master to call upon all executors, whether testamentary or dative, and all trustees, tutors, and curators, for a full and true account of all property in regard to which duty shall be payable under this Act, excluding immovable property not actually in this Colony, and which property shall have been received or disposed of by them in their said capacities, and of the value of such property, together with the names of the successor and predecessor, and their relation to each other, and all such other particulars as shall be necessary or proper for enabling the said Master to ascertain the duties payable: Provided that if any executor shall, by last will, or codicil to a last will, have been directed not to file such an account, it shall be lawful for such executor to make a solemn declaration of the amount upon which such succession duty shall be due and payable under this Act; and it shall be lawful for the said Master, if dissatisfied with the value placed by any successor, or by any person acting for or representing him, upon his succession, or if such successor shall fail to place any value thereupon, to cause the value thereof to be appraised by any person or persons appointed by such Master for the purpose, and to assess the duty upon the

Power of Master to call for full account in regard of property administered.

Declaration may be substituted in lieu of such account.

Appraisement may be made by Master.



No. 5—1881. footing of the value as ascertained by such appraisalment, together with reasonable expenses of such valuation, subject to appeal as hereinafter provided : But in case such valuation shall not exceed the value of such succession put upon the same by such successor to the extent of one sixth of the value thereof, the duty shall be paid upon the valuation put upon the same by such successor or by any person acting for and representing him, and the expense of the valuation shall be borne by Government.

Expense of appraisalment. Succession duty may be deducted by executor. Successor to remain liable if not so deducted. 8. It shall be lawful for every executor, whether testamentary or dative, and he is hereby required to deduct from the succession of every successor in the estate under the administration of such executor, the amount of succession duty payable by such successor : Provided, that as often as any such succession duty shall not have been so deducted, the successor entitled to such succession shall be liable for the same.

Appeal against Master's assessment may be made. 9. It shall be lawful for any person liable for any duty under this Act, and who shall be dissatisfied with the assessment made by the Master of the Supreme Court of the duty payable under this Act, to give notice to the said Master, at any time within thirty-one days after he shall have had notice from the said Master of such assessment, that he intends to appeal against such assessment, and to give at the same time a statement of the grounds of such appeal, and thereupon such person may appeal by petition to the Supreme Court, and such Court, or any judge thereof sitting in Chambers, shall have jurisdiction to hear and determine the matter of such appeal, and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any Resident Magistrate or other person, as such Court or judge shall think fit.

Supreme Court empowered to determine appeals. Annuities, value of. 10. As often as any succession shall be an annuity, then the value of such annuity shall be calculated according to the tables contained in the schedule annexed to the Act of the Imperial Parliament, called "The Succession Duty Act, 1853."

Sections 7, 8, 9, and 10 to apply to donations. 11. The provisions of the seventh, eighth, ninth, and tenth sections of this Act shall extend and apply to donations *mortis causa*, in like manner as if the same had been successions under this Act.

When return of duty paid may be claimed. 12. In estimating the value of a succession no allowance shall be made in respect of any contingent incumbrance thereon : but in the event of such an incumbrance taking effect as an actual burden on the interest of the successor, he shall be entitled to a return of a proportionate amount of duty paid by him in respect of the amount or value of the incumbrance when taking effect.

On encumbered successions. On succession passing to another. 13. In estimating the value of a succession, no allowance shall be made in respect of any contingency upon the happening of which the property may pass to some other person ; but in the event of the same so passing, the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the

amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest.

No. 5—1864.

14. Where a successor shall not have obtained the whole of his succession at the time of the duty becoming payable, he shall be chargeable only with duty on the value of the property or benefit from time to time obtained by him; and whenever any duty shall have been paid on account of any succession, and it shall afterwards be proved to the satisfaction of the Master of the Supreme Court that such duty, not being due from the person paying the same, was paid by mistake, or was paid in respect of property which the successor shall have been unable to recover, or from or of which he shall have been evicted or deprived by any superior title, or that for any other reason it ought to be refunded, the Master of the Supreme Court, being thereto authorized by the Governor, shall thereupon refund the same to the person entitled thereto.

Duty chargeable only on value of successions actually obtained.

Duty paid in error may be refunded.

15. Where the interest of any successor in any property shall before he shall have become entitled thereto in possession, have passed by reason of death, to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession; but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them.

Where interest of successor shall have ceased by reason of death.

16. Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition which, if made in favour of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trust, a duty at the rate of five pounds per centum upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property, at interest, with power for him to give effectual discharges for the money so raised: Provided, however, that this clause shall not extend to charitable institutions, namely: Hospitals for the blind, deaf, and dumb, lunatics, lepers, chronic sick, aged, and poor.

Duty chargeable on property bequeathed for charitable purposes.

Exemptions.

17. This Act may be cited for all purposes as "The Successions Duty Act, 1864."

Short title.

No. 105.—Sd. G. Lowry Cole.]

[July 5, 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. (1)

Preamble.

WHEREAS it has been enacted by His Majesty's Royal Charter of Justice dated at Westminster on the 4th day of May, 1832, that the Orphan Chamber within this Colony shall be abolished and that the duties which have heretofore been performed by the said Orphan Chamber shall henceforth be performed by the Master for the time being of the Supreme Court; And whereas the administration of the estates and property of minors and in certain cases of persons absent from the Colony, and the care of the persons of minors heretofore formed part of the duties of the said Orphan Chamber; And whereas, by the Ordinance No. 103 the regulations according to which such duties were performed by the said Orphan Chamber have from and after the first day of March next been repealed, and it has now become expedient to provide for the due administration and management of the estates and property of minors, lunatics, and in certain cases of persons absent from this Colony, and also for the proper care of the persons of minors and lunatics: Be it therefore enacted by His Excellency the Governor in Council, that from and after the first day of March next it shall not be lawful for any person except the father of any minor or mother of any minor whose father is dead, by any will or other deed to nominate and appoint any tutor or tutors to administer and manage the estate or to take care of the person of such minor: Provided always, that nothing herein contained shall extend, or be construed to extend to prevent any person, who shall give or bequeath any property to any person to appoint any curator or curators to administer and manage such property during the minority or during the continuance of the insanity of the person to whom the same shall be given or bequeathed in like manner and as fully in all respects as the same might lawfully have been done prior to the passing of this Ordinance; and that all curators so appointed for any such purpose shall be called and known in law by the style and appellation of curators nominate.

Appointment by father or mother only of tutors to minors.

Curators nominate.

Tutors testamentary.

2. And be it further enacted that all tutors nominated and appointed by fathers or mothers in manner aforesaid to their minor children shall be called and known in law by the style and appellation of tutors testamentary, whether such tutors shall have been nominated and appointed by wills, or by any other deeds duly executed by such fathers or mothers; and that no tutor testamentary shall assume or enter upon the administration or

<sup>1</sup> Ord. 6, 1843, to be read for Ord. 64 in this Ord. See § 134 Ord. 6, 1843, *supra*.

management of the estate or property of any minor, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation shall have been granted to him by the Master of the Supreme Court in the form contained in the schedule hereunto annexed marked A.

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Confirmation of tutors testamentary by master.

3. And be it further enacted, that the Master of the Supreme Court shall, on application in writing being made to him for that purpose, grant letters of confirmation as tutor testamentary to every person who shall have been lawfully nominated and appointed tutor testamentary to any minor by any valid deed produced by such person together with his application or which shall previously have been registered in the office of the said Master under and by virtue of the provisions of the Ordinance No. 104. And it shall and may be lawful for any person who shall have been appointed tutor testamentary to any minor by any will, codicil, or other testamentary instrument, which such person shall under and by virtue of the provisions of the said Ordinance No. 104 be required to transmit or to cause to be transmitted to the office of the said Master to transmit to the Master together with such deed an application for letters of confirmation as tutor testamentary. And whenever it shall come to the knowledge of the said Master that any person who has been duly nominated and appointed tutor testamentary by any valid deed has not applied for letters of confirmation, the said Master shall by writing require of such person to inform him whether he is willing to act as such tutor testamentary, and if he shall consent so to do shall grant him letters of confirmation accordingly: Provided always, that letters of confirmation as tutor testamentary shall not in any case be granted to any person who shall at the time be by law incapacitated or disqualified to hold the office of tutor.

Mode of granting letters of confirmation.

4. And be it further enacted, that no curator nominate shall assume or enter upon the administration or management of such estate or property, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation shall have been granted to him by the Master of the Supreme Court. And in order to the granting of such letters of confirmation proceedings shall be had and taken by any such person and by the Master, in like manner in all respects as is hereinbefore provided by the provisions of the third section of this Ordinance as to the granting of letters of confirmation to tutors testamentary, and such letters shall be in the form contained in the schedule hereunto annexed marked B.

Letters of confirmation to curators nominate.

5. And be it further enacted, that it shall and may be lawful for the Supreme Court or any Judge thereof on the application of the Master thereof or of any relation or of any person having an interest in the due administration of the estate or property of any minor, in every case in which prior to the passing of this Ordinance any tutor testamentary might by law have been required to give

Security "*rem pupilli salvam fore*" by tutors and curators nominate in like manner as before the passing of this ordinance.

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security *rem pupilli salvam fore*, to make an order that letters of confirmation shall not be granted to any such tutor testamentary or curator nominate as aforesaid until he shall have found security to the satisfaction of the said Master to such an amount as in the circumstances of each particular case shall be reasonable, for the due and faithful administration and management of such estate or property.

Appointment of  
tutors dative by mas-  
ter.

6. And be it further enacted, that in every case in which it shall come to the knowledge of the Master of the Supreme Court, that any estate or property within this Colony has devolved on or come to belong to any minor, being within this Colony, and not being at the time under the natural guardianship of his or her father or mother, or of a tutor or tutors testamentary duly confirmed, then and in every such case the said Master, except when it shall be known to him that a tutor or tutors testamentary has or have been duly nominated and appointed to such minor by any valid deed (in which case he shall proceed in manner for that purpose provided by the third section of this Ordinance), shall cause to be published in the *Gazette* of this Colony and in such other manner as to him shall seem fit an edict calling on the relations of the minor, both paternal and maternal, to attend at his office at the time therein specified, not being less than three weeks or more than eight weeks from the day of the publication thereof, to see letters of confirmation granted to such persons as shall therein be appointed by him tutor or tutors dative of such minor: Provided always, that when it shall appear to the said Master necessary or expedient so to do, it shall and may be lawful for him in such notice to call on the relations of such minor, both paternal and maternal, to attend at the office of any Resident Magistrate at the time therein specified for the purpose of stating any objections which may exist to any of the next of kin or other person being appointed tutor dative, or of proposing some person or persons to be by such Magistrate reported to the Master as fit and proper to be by him appointed tutor or tutors dative. And the said Master shall at the meeting so to be holden at his office, or upon receiving the report of such Resident Magistrate, appoint such person or persons as to him shall seem fit and proper to be the tutor or tutors dative of such minor, and shall grant to him or them letters of confirmation as such, unless it shall appear to him necessary or expedient to postpone such appointment, and to call another or other such meeting or meetings as aforesaid. And provided also, that when any such minor shall not be possessed of or have claim to any other estate or property except such as shall have been given or bequeathed to such minor by some person who has duly appointed a curator or curators nominate to administer and manage the same during the minority of such minor, it shall not be necessary for the said Master to take any such proceedings as aforesaid for the appointment of a tutor dative, and no such proceedings shall by him be taken for that purpose.

Publication of  
edict.

7. And be it further enacted, that when it shall be necessary to appoint a tutor dative to any minor in manner hereinbefore provided, the Master of the Supreme Court shall appoint as tutor or tutors dative the mother and one or two or more of the nearest male relations, paternal or maternal, of such minor, who shall have attained the age of twenty-one years, and shall be willing to act as such: Provided always, that when it shall appear to the Master, or to the Supreme Court, or any Judge thereof, on reviewing the appointment of the Master, that any valid objection exists to the appointment of all or any of such relations to be the tutor or tutors dative of such minor, such objectionable person or persons shall be passed by, and some other fit and proper person or persons shall by the said Master, or by such Court or Judge, be appointed tutor or tutors dative. And provided also, that every such appointment so made by the said Master shall, on the application of any of the relations, either paternal or maternal, of or of the curator or curators nominate of any estate or property belonging to such minor, be subject to be reviewed and confirmed or set aside by the Supreme Court or any Judge thereof, and such Court or Judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person or persons to be the tutor or tutors dative of such minor.

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Selection of persons to be appointed tutors dative.

Review of appointment.

8. And be it further enacted, that nothing herein contained shall extend or be construed to extend to prevent any tutor or tutors testamentary of any minor, or curator or curators nominate of any estate, from assuming respectively any other person or persons as tutor or tutors of such minor, or curator or curators of such estate, under and by virtue of any power for that purpose to him or them committed by the will of or any other deed duly executed by the person by whom such tutor or tutors testamentary or curator or curators nominate shall have been appointed: Provided always, that no person shall be entitled or qualified to act as assumed tutor or curator until letters of confirmation shall have been granted to him as such by the Master of the Supreme Court, who is hereby directed and required to grant the same on production to him of the will or other deed by which the assumption of such tutor or curator is authorized and of the deed by which such tutor or tutors testamentary or curator or curators nominate has or have respectively assumed such person as tutor or curator. And every provision of this and of every other law or ordinance applicable or relating to or affecting tutors or curators dative, shall be deemed and taken to and shall apply and relate to and affect every such tutor or curator so assumed respectively.

Assumption, under power in will or deed, of other persons by tutors testamentary and curators nominate.

Confirmation by master of assumed tutor or curator.

9. And be it further enacted that when by reason of any tutor of any minor, either testamentary or assumed, or of any curator of any estate, either nominate or assumed, to whom letters of confirmation shall have been granted, having died, or become incapacitated to act as such, or having been removed from his office

Proceedings in case of death, incapacity, or removal of tutors or curators.

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by the decree of any competent Court, there shall not remain for the guardianship of such minor or for the administration or management of such estate, respectively, any tutor or curator whatever or so many tutors, either testamentary or assumed, or curators nominate or assumed, as by the provisions of the deed by which such tutors or curators were respectively appointed or permitted to be assumed shall be required to form a quorum of tutors or curators of the guardianship of such minor, or for the administration and management of such estate respectively, and when it shall happen that any tutor dative shall after letters of confirmation have been granted to him die or become incapacitated or be removed in manner aforesaid, then and in every such case proceedings in order to the appointment of a tutor dative in place of the person so dying or becoming incapacitated or removed shall be had and taken by the Master of the Supreme Court, in like manner and in all respects as is hereinbefore provided by the provisions of the sixth and seventh sections of this Ordinance.

Revocation of letters of confirmation by supreme or circuit court; and, as to tutors dative, by master on production of a valid deed appointing a tutor testamentary.

10. And be it further enacted that letters of confirmation granted to any person as tutor testamentary or as curator nominate of the estate of any minor shall be at all times subject to be revoked and annulled by the decree of the Supreme Court or of any Circuit Court on proof to the satisfaction of such Court that the deed in respect of which such letters have been granted to such person is null or has been revoked either wholly or in so far as relates to the appointment of such tutor or curator, and that letters of confirmation granted to any person as tutor dative shall be at all times subject to be revoked and annulled by the order of the Master of the Supreme Court on production to him of any valid deed by which any other person, who shall then be legally capable and qualified and who shall consent to act as tutor, has been legally appointed tutor testamentary of the minor to whom such tutor dative had been appointed: Provided always, that if the non-production of such deed prior to letters of confirmation having been granted to the tutor dative has been owing to the fault or negligence of the person therein appointed tutor testamentary, such person shall be personally liable for all the expenses which have been incurred in respect of and with reference to the appointment of the tutor dative.

Appointment of curators dative for the benefit of lunatics, by the court on the application of the master or other persons interested.

11. And be it further enacted, that in every case in which it shall come to the knowledge of the Master of the Supreme Court that any estate or property within this Colony (not being an estate or property for the administration and management of which a curator nominate has been duly appointed in manner hereinbefore mentioned) has devolved on or come to belong to any lunatic or insane person being within this Colony and not being at the time under the guardianship of some person lawfully appointed his curator dative, then and in every such case the said Master shall

apply to the competent Court to appoint some fit and proper person or persons to be the curator or curators of such lunatic or insane person, and to make an order for the safe custody of such lunatic or insane person; and every such application shall be made by the Master, and every such appointment and order shall be made by such Court, in like manner in all respects as the same ought by law to have been made prior to the passing of this Ordinance. And all curators so appointed to any lunatic or insane persons shall be called and known in law by the style and appellation of curators dative: Provided always, that nothing herein contained shall extend or be construed to extend to prevent any person other than the said Master from making such application for the appointment of a curator dative to any lunatic or insane person in like manner as the same might by law have been made by any such person prior to the passing of this Ordinance. And provided also, that it shall and may be lawful for the said Master or any other person at any time to apply to any competent Court to make an order for the safe custody of any lunatic or insane person, although such lunatic or insane person shall not be possessed of or have right to any estate or property, or although any property or estate of which he may be possessed or to which he may have right shall be under the administration and management of any curator or curators nominate duly appointed for that purpose.

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Custody of lunatic.

12. And be it further enacted, that, when after any person shall have been found and declared by the decree of any competent Court to be a lunatic or insane, and shall have had a curator dative appointed to him, or an order shall have been made for his safe custody, it shall happen that the curator dative of such lunatic or insane person or the curator nominate of any estate or property which has been given or bequeathed to such person shall die or become incapacitated to act as such or be removed from his office by the decree of any competent Court, then and in every such case proceedings in order to the appointment of a curator dative to such lunatic or insane person in place of the person so dying or becoming incapacitated or removed shall be had and taken by the Master of the Supreme Court in like manner in all respects as is hereinbefore provided by the provisions of the sixth and seventh sections of this Ordinance as to the appointment of tutors dative to minors.

Proceedings on death, incapacity, or removal of curator dative of lunatic or curator nominate of his property.

13. And be it further enacted that in every case in which it shall come to the knowledge of the Master of the Supreme Court that in consequence of the death of any person any estate or property hath devolved on or come to belong to any person absent from this Colony and not having a legal representative within the same, then and in every such case the said Master shall cause to be published in the *Gazette* of this Colony, and in such other manner as to him shall seem fit, an edict calling on all whom it may concern to attend at his office at the time therein specified, not being less than six weeks from the day of the publication thereof, to see

Appointment of curator dative of property belonging to absent person not having a legal representative in the colony.



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letters of confirmation granted to such person as shall then be appointed by him curator dative of the estate or property of such absent person. And the said Master shall at the meeting so to be holden at his office appoint some fit and proper person to be such curator dative as aforesaid: Provided always, that when the only property known by the said Master to belong to any such absent person shall consist of a sum or sums of money due and payable to him by the executor of any deceased person or by the trustee of the sequestrated estate of any insolvent person it shall not be necessary for the said Master to take any such proceedings as aforesaid for the appointment of a curator dative, and no such proceedings shall be had or taken, but it shall and may be lawful for the said Master to demand, recover, and receive payment of all such sums of money, to be after the same are so received by him disposed of in manner hereinafter provided.

Appointment of curator ad litem by supreme or circuit court:

14. And be it further enacted that nothing herein contained shall extend or be construed to extend to prevent the Supreme Court or any Circuit Court after the passing of this Ordinance from appointing a curator ad litem to any person in every case and in the same manner in all respects in which such appointment might by law have been made by such Court prior to the passing of this Ordinance. And that in all cases when the same may be necessary or expedient the Master of the Supreme Court shall and may appoint a curator bonis to take the custody and charge of any estate or property until, in order to the due administration and management of the same, letters of confirmation shall be granted to some person as tutor testamentary or dative or as curator nominate or dative in manner hereinbefore provided. And every such appointment as curator bonis so made by the said Master shall on the application of any person having an interest in such estate be subject to be reviewed and confirmed or set aside by the Supreme Court or any Judge thereof; and such Court or Judge by whom any such appointment shall be set aside shall and may appoint some other fit and proper person to be curator bonis.

and of curator bonis by master, subject to review by the court or judge.

Retention of colonial law as to powers, &c., of curators ad litem and curators bonis, except where specially repealed.

15. And be it further enacted, that nothing herein contained shall extend or be construed to extend to repeal or alter the law in force within this Colony prior to the passing of this Ordinance in so far as relates to the powers, rights, duties, obligations, and liabilities of curators ad litem or curators bonis, except in so far as the same is hereinbefore or hereinafter expressly repealed or altered by any special provision of this Ordinance.

Security for due administration by tutor dative and curator dative.

16. And be it further enacted that every tutor dative and every curator dative who shall be appointed by the Master of the Supreme Court or any Court or Judge to administer the estate or property of any minor or lunatic or insane or absent person shall, before he shall be permitted to enter on the administration of such estate or property, find security to the satisfaction of the Master of the Supreme Court to such amount as in the circumstances of each

particular case shall be reasonable for the due and faithful administration and management of such estate and property.

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17. And be it further enacted, that every person shall be deemed incapacitated and disqualified to hold and shall be incapable of holding the office of tutor, either testamentary or dative, or of curator, either nominate or dative, in every case and by and for every cause in, by, and for which any person appointed tutor testamentary would previously to the passing of this Ordinance have been deemed incapacitated and disqualified to hold and would have been incapable of holding the office of tutor testamentary under and by virtue of any law then in force within this Colony.

Disqualifications of persons as tutors or curators.

And that every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate shall be placed under sequestration as insolvent, under and by virtue of the provisions of the Ordinance No. 64 shall cease to exercise or hold, and shall thereupon be deemed to have been removed and shall *ipso facto* be removed from his office as tutor or curator aforesaid so soon as the order for such sequestration has been made when the same has been made on the petition of the insolvent himself, and so soon as the sequestration has been adjudged by the competent Court when the order for the same has been made on the petition of any creditor or creditors of the insolvent. And every such tutor or curator as aforesaid shall be subject to be removed from his office by the Supreme Court or any Circuit Court or to be suspended therefrom by any judge of the Supreme Court in every case and for every cause in or for which any tutor testamentary might previously to the passing of this Ordinance have been removed or suspended from his office by any Court or Judge under and by virtue of any law then in force within this Colony.

Removal *ipso facto* of insolvent tutors and curators.

18. And be it further enacted, that all tutors, either testamentary or dative, and all curators, either nominate or dative, shall within eight weeks at most after entering upon the administration of their office make or cause to be made and shall subscribe, an inventory of all property, goods, effects, movable and immovable, forming part of or belonging to the estates or persons under their guardianship in the same manner and form in all respects in which any tutor testamentary ought prior to the passing of this Ordinance to have made any such inventory under and by virtue of any law then in force within this Colony. And every such tutor and curator shall thereafter from time to time and so soon as any other such property, goods, or effects as aforesaid shall come into his possession or to his knowledge make in like manner and form as aforesaid an additional inventory thereof. And every such tutor or curator shall respectively, forthwith transmit all such inventories to the office of the Master of the Supreme Court: Provided always, that when the person by whom any tutor testamentary or curator nominate has been appointed shall in the deed by which such appointment is made or in any other deed duly executed by

Removal and suspension for cause of tutors and curators.

Inventory within eight weeks, by tutors and curators.

Additional inventories.

Transmission of sealed inventory by tutor testamentary or curator nominate;

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and by surviving parent to master.

Order of court or judge for opening of sealed inventory.

Penalties on failure of tutors and curators to make and transmit inventory.

Penalty on conviction of tutor or curator for making false inventory.

Duties and liabilities of tutors and curators after confirmation.

him have directed that the inventory and additional inventories to be made by such tutor or curator in manner hereinbefore provided shall be transmitted to the said Master sealed up, then and in every such case it shall and may be lawful for such tutor or curator,—and when any such inventory shall have been made by the survivor of two spouses whom the predeceasing spouse shall by will or other lawful instrument have appointed the tutor of his or her minor children and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children, then and in every such case it shall and may be lawful for such spouse, if he or she shall think fit so to do,—to transmit every such inventory, sealed up, to the office of the said Master. And no such sealed inventory shall be opened except by virtue of an order of the Supreme Court or some judge thereof, on sufficient cause for opening the same being shown by the said Master or by some person having an interest in the said joint estate. And with every such inventory, whether sealed or unsealed, there shall be transmitted a list of the names of every person who shall by virtue of any bond or other written instrument be indebted to the estate to which such inventory relates and of every surety for every such debtor.

19. And be it further enacted, that every tutor or curator who shall fail to make up and transmit any such inventory as aforesaid in manner hereinbefore provided and who shall have no lawful and sufficient excuse for such failure shall by reason thereof and in addition to every other liability, consequence, and penalty which he shall thereby by law subject himself to and incur be liable to pay all the expenses which shall have been and shall be incurred as well with reference to his own appointment as to the appointment of the tutor or curator who shall on his removal be appointed in his place.

20. And be it further enacted, that if any tutor or curator required and directed under and by virtue of the seventeenth section of this Ordinance, to make or cause to be made an inventory of any estate, goods, or effects, shall for any fraudulent purpose make a false inventory thereof, every such offender being convicted thereof shall be liable at the discretion of the Court before which he shall be so convicted, to punishment by imprisonment with or without hard labour for any period not exceeding two years, or by fine or by both as the said Court shall award.

21. And be it further enacted that when letters of confirmation shall have been granted to any tutor, either testamentary or dative, or to any curator, either nominate or dative, then and in every such case, except in so far as shall to the contrary herein be provided, every such tutor shall in all respects and for all intents and purposes, and every such curator shall in so far as relates to the particular estate or property which has been placed under his guardianship, have every power, right, and privilege, and shall

do and cause to be done, every act, matter, and thing, touching and concerning the inventorisation, administration, and management of the estate or property under their guardianship, and every such tutor or curator and his estate shall in respect and by reason of every act, matter, or thing done or omitted to be done by him, incur and be subject to every liability, obligation, and penalty, which by any law in force within this Colony, prior to the passing of this Ordinance, any tutor testamentary would then respectively have had, or have been directed or required to do, and which he and his estate would then in respect and by reason of any such act, matter, or thing done or omitted to be done by him, have incurred or been subject to: Provided always, that nothing herein contained shall extend, or be construed to extend, to give any curator nominate or dative, any power or authority as to the maintenance, education, or custody of the person of any minor or lunatic or insane person, except in so far as the same may have been specially given and committed to him by the decree or order of any competent Court or Judge. And provided, also, that every tutor testamentary and curator nominate shall, in the discharge of of such their office and in the administration of the estate and property respectively under their guardianship, conform and obey every lawful direction touching and concerning the same, which shall have been given by the person by whom such tutor or curator shall have been appointed in the deed by which such appointment was made or in any other writing duly executed by such person.

22. And be it further enacted, that when, by reason of the death of one of two spouses who have been married in community of property, any part of the joint estate of such spouses shall devolve to any minor, then and in every such case, except when the survivor shall have been by the pre-deceasing spouse appointed the tutor of his or her children, and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children, the tutor either testamentary or dative or curator nominate of such minor shall and he is hereby authorized and required to take such proceedings as may be necessary to cause the surviving spouse to make an inventory of the joint estate in such manner and form as is provided by the fourteenth section of the Ordinance No. 104 or when such inventory has been made before letters of confirmation have been granted to such tutor, to cause an additional inventory to be made of all property, goods, or effects movable or immovable of what kind soever which at the time of the death shall have formed part or belonged to the estate possessed in community between the predeceasing and surviving spouses, and which shall have been omitted in the inventory made by the surviving spouse. And so soon as the amount and extent of such property, goods, or effects as aforesaid, which shall have formed part of or belonged to the said joint estate shall have been ascertained by the inventory or inventories hereinbefore mentioned

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Powers of curators nominate and tutors dative as to maintenance, &c., defined by order of court or judge.

Obligation of tutors testamentary and curators nominate to conform to directions in deed of appointment.

Proceedings by tutor of minor to cause inventory of estate in community to be made by surviving parent:

and to ascertain and secure minor's share

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every such tutor as aforesaid shall forthwith take such proceedings for ascertaining and securing the share of such estate to which such minor shall have right as shall be in conformity with any lawful directions for that purpose given by the deceased spouse in any will or other deed duly executed by such spouse, or in default of such directions as shall be most expedient for the interest of the minor and as shall be consistent with the lawful rights of the surviving spouse: Provided always, for the more effectual securing the interest of such minors, that no Matrimonial Court within this Colony shall authorize or permit, and all such Courts are hereby prohibited to authorize or permit, the father or mother of any such minor heirs, to re-marry, until there shall be produced to such Court a certificate under the hand of the Master of the Supreme Court or of such person or persons as shall have been duly appointed tutor or tutors testamentary or dative, or curator or curators bonis, to such minors that the shares due to such minors out of such joint estate as aforesaid, have been ascertained and secured according to law; <sup>(1)</sup> and every such father or mother who shall re-marry before the shares due to their minor children out of such joint estate as aforesaid have been ascertained and secured in manner aforesaid, shall forfeit one-fourth part of his or her share in the said joint estate for the benefit of his or her aforesaid minor children.

Prohibition of re-marriage of surviving parent until minor's shares have been secured.

*Parents remarrying without securing minor's children's portion to forfeit 1/4 interest in joint estate in favor of such children*

Retention (except when expressly repealed) of colonial law relative to "boedelhouderschap."

"Kinderbewyzen."

Paternal and maternal authority,—

Maintenance and education,

and custody of minors. Rights and privileges, and actions competent to minors.

23. And be it further enacted, that nothing herein contained shall extend or be construed to extend to repeal or alter any law in force within this Colony prior to the passing of this Ordinance, touching and concerning the administration by the survivor of two spouses of the joint estate of such spouses during the minority of the children of the predeceased spouse (boedelhouderschap), or touching and concerning the execution, requisites, and privileges of bonds passed by surviving spouses previously to their remarriage for securing the inheritance due to the minor children of their predeceased spouse (kinderbewyzen) or touching and concerning the paternal power, guardianship, duties, and obligations of fathers and mothers over, and to their legitimate children, and of mothers over, and to their illegitimate children, or touching and concerning the maintenance and education of minor children, either by their parents or others, and either out of the interest accruing from the paternal or maternal inheritance to which such children have succeeded or otherwise,—or touching and concerning the charge and custody of the persons of minors,—or touching and concerning the rights, privileges, remedies, or obligations of minors or other persons under the guardianship of tutors or curators, or touching and concerning any action competent to such minors against their tutors or curators, or competent to their tutors or curators against such minors or other persons as aforesaid, except in so far as any such law is hereinbefore or hereinafter expressly repealed or altered

<sup>1</sup> See § 6, Act 9 of 1832 and Act 12 of 1856 (Marriage).

by any special provision of this Ordinance: Provided always, that when any question shall arise touching and concerning the maintenance or education, or the charge or custody of the person of any minor, then and in every such case it shall and may be lawful for any judge of the Supreme Court, to make such temporary order as to him shall seem necessary, to provide for the due maintenance, education, and the charge and custody of the person of such minor until such question shall be decided by the decree of the Supreme Court or any Circuit Court.

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Temporary order by a judge as to maintenance, custody, &c., of minor.

24. And be it further enacted, that no tutor, either testamentary or dative, and no curator, either nominate or dative, or curator bonis shall sell, alienate, or mortgage any immovable property belonging to any minor, or forming part of any estate under the guardianship of such tutor or curator, unless the Supreme Court or any Judge thereof shall by any order made by such Court or Judge have authorized such sale, alienation, or mortgage, or unless the person by whom any such tutor testamentary or curator nominate shall have been appointed shall have directed such sale, alienation, or mortgage to be made.

Prohibition of alienation of immovable property by tutor or curator, except by order of court, or of a judge, or by direction in deed of appointment.

25. And be it further enacted, that every tutor dative and every curator dative or curator bonis shall forthwith pay over to the Master of the Supreme Court, all moneys belonging to the person or estate under his guardianship, so soon as the same shall be received by or come into the possession of such tutor or curator, except in so far as the same may be required for the instant payment of debts due by such estate or for the immediate maintenance of such person. And if any such tutor or curator shall without any lawful and sufficient excuse retain and fail to pay over to the said Master any such moneys as it is herein directed, shall be so paid over to the said Master, every such tutor or curator shall be liable to pay to and for the benefit of the person or estate to whom or which such money belongs interest on the same at the rate of ten per cent. per annum for the whole period during which such money shall be so improperly retained and shall not be paid over to the Master; and shall be liable to be removed from his office of tutor or curator by the decree of any competent Court if it shall appear expedient to such Court so to do; and whenever it shall come to the knowledge of the said Master that any such money has been so retained and not paid over to him by any such tutor or curator, he shall forthwith institute an action against such tutor or curator in order to recover payment thereof and of the above-mentioned penal interest due thereon.

Payment to master by tutors dative and curators dative and curators bonis, of all moneys except as far as required for instant payment of debts.

Penalty, interest at ten per cent. for the period during which such money has been improperly retained.

Action by master to recover amount with penal interest.

26. And be it further enacted, that it shall and may be lawful for any tutor testamentary or curator nominate to whom it shall seem expedient so to do, except where the person by whom such tutor or curator has been appointed shall have directed that the same shall not be done, to pay over to the Master of the Supreme Court any money belonging to the person or estate under the

Liberty to tutor testamentary or curator nominate to pay moneys in their possession to master

- Ord. 105-1833. guardianship of such tutor or curator and which by law such tutor or curator might lend out on interest.
- Wards' book. 27. And be it further enacted, that the Master of the Supreme Court shall so soon as any money shall be paid over to or received by him under the provisions of the thirteenth, twenty-fifth, and twenty-sixth sections of this Ordinance open in a book to be kept for that purpose, and which shall be called and known in law by the style and appellation of the "Wards' Book," a debit and credit
- Separate accounts. account with the person or persons to whom or with the estate to which such money shall belong, and in this account shall enter to the credit of such person or estate all such money then or which may hereafter be paid over to him or received by him on account of such person or persons or estate. And when such money shall belong to more persons than one the said Master shall ascertain the amount of the share actually belonging to each of such persons, and shall open such account as aforesaid with each of such persons separately and not with the whole collectively, and shall in such account place to the credit of each the amount of the share actually belonging to each respectively. And when it shall not be known to what person or persons any such money or any part thereof shall belong, then the account aforesaid in so far as relates to the share or shares of such unknown person or persons shall be opened in the name of the estate of which such money formed part or from which it has proceeded.
- Interest on accounts in 'Wards' Book.' 28. And be it further enacted, that every sum which shall be placed to the credit of any person or estate in any such account so to be opened as aforesaid shall bear interest from the first day of the second month which shall occur after such money shall have been entered in such account, and such interest shall be at the rate of one per cent. less than the legal rate of interest current at the time within this Colony (<sup>1</sup>). And on the first day of January in each year all such interest as shall have become due to any such person as aforesaid and shall not have been paid to him or on his account shall be accumulated with the capital then due to such person; and the accumulated sum shall be placed to his credit in such account, and bear interest in like manner as is hereinbefore mentioned: Provided always, that no such money as aforesaid shall bear interest after the period at which the person to whom it shall belong being or having a legal representative within this Colony might by reason of his or her having attained the age of majority, or otherwise, have demanded and received payment of the same. And provided also, that when such money shall belong to any person absent from this Colony and not having any known legal representative within the same or to any unknown person or persons, such interest shall so long as such person shall be unknown or absent from the Colony without having a legal representative
- Accumulation of interest.
- Cessation of interest.
- Interest on money belonging to 'absent persons.'

<sup>1</sup> Such interest may be at the rate of 4 per cent. § 3 Act 1 of 1874.

within the same, provided such period shall not exceed five years, be at the rate of one half of the legal rate of interest current at the time within this Colony; and such interest shall on the first day of January in each year be placed to the credit of the person to whom it has become due or of the estate on which it has accrued; but it shall not be accumulated with the capital nor bear interest. And after the lapse of such period of five years, if the person or persons to whom it shall belong shall so long continue to be unknown or absent from the Colony without having a legal representative within the same, no such money as aforesaid shall bear any interest whatever.

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Cessation of interest after lapse of five years.

29. And be it further enacted, that for the purposes of the provisions of the twenty-eighth section of this Ordinance the legal rate of interest current within this Colony shall be deemed and taken to be and shall be calculated at the rate of six per cent. per annum, until some other rate of interest shall by any law hereafter to be made be declared and established for the purposes aforesaid.

Rate of interest for purposes of twenty-eighth section, six per cent. per annum.

30. And be it further enacted, that of the moneys which shall be paid over to or received by the Master of the Supreme Court in manner before provided there shall be formed a fund which shall be called and known in law by the style and appellation of the "Guardian's Fund," and that immediately after the promulgation of this Ordinance a debit and credit account shall be opened in the books of the discount bank of this Colony with and in the name of the said guardian's fund; and the Master of the Supreme Court shall on every day on which the said discount bank shall be open for the transaction of business and before the hour of closing the same for the day pay or cause to be paid into the said bank to be carried to the credit of the guardian's fund all moneys which on or previously to every such day shall have been paid to or received by him under and by virtue of the provisions of the thirteenth, twenty-fifth, and twenty-sixth sections of this Ordinance, as also all such moneys as shall have been so paid to or received by him in payment of the interest or repayment of the principal of money belonging to the said guardian's fund, and lent out on bond by him in manner hereinafter provided. And it shall and may be lawful for the said Master from time to time to withdraw the whole or any part of the moneys so paid into the said discount bank and placed to the credit of the guardian's fund upon cheques signed by him, and specifying the purpose for which the sum contained in every such cheque is to be appropriated, and no part of such moneys as aforesaid shall be withdrawn from the said bank otherwise than upon such cheques as aforesaid.

Establishment of 'Guardian's Fund.'

31. And be it further enacted, that it shall and may be lawful for the Master of the Supreme Court to pay any sum of money which in the wards' book aforesaid is placed to the credit of any person or of any estate to the person (or legal representative of the

Payment by master to pay moneys placed to the credit of persons or estates to persons entitled to receive the same or to tutors or curators.

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Review by court or judge of master's refusal to make such payment.

Loans on mortgage by master of moneys to the credit of guardian's fund.

Advice thereupon of treasurer and auditor-general.

Bonds to be payable to guardian's fund.

person) by law entitled to demand and receive the same as also to pay to any tutor or curator (upon the written order or receipt of such tutor or curator) of any minor, lunatic, insane, or absent person or of any estate, the whole or any part of such sum of money as in the wards' book aforesaid shall at the time be placed to the credit of such minor, lunatic, insane, or absent person or such estate as aforesaid, and as such tutor or curator is by law authorized or required to expend or dispose of for any purpose touching or concerning or in respect of or with reference to the person or estate under the guardianship of such tutor or curator: and when it shall appear to the said Master that it is either unnecessary or illegal for such tutor or curator to expend or dispose of any such sum of money for the purpose for which it is alleged that the same is to be appropriated it shall and may be lawful for the said Master to refuse or to suspend making such payment until the Supreme Court or some judge thereof shall have made an order directing such payment to be made.

32. And be it further enacted, that the Master of the Supreme Court shall from time to time and so soon as he shall find opportunity so to do lend or cause to be lent on the mortgage of immovable property situated within this Colony (<sup>1</sup>) and with or without additional security, as may in each particular case be deemed expedient, all such money as shall at the time be placed to the credit of the guardian's fund in account with the said discount bank and as shall not be required to meet the current expenditure of the said guardian's fund: Provided always, that no such loan shall be made by the said Master without first advising thereupon with the Treasurer-General and Auditor-General of this Colony or any other two persons holding civil offices under the Government of this Colony who shall be from time to time appointed for that purpose by the Governor, or in the event of both or either of them refusing such consent unless he shall have applied to and obtained from the Supreme Court or any judge thereof an order of such Court or judge authorizing the said Master to make such loan. And provided also, that it shall not be lawful for any such loan to be made to or in favour or on account of the said Master or of any of the two civil officers of Government appointed for the time being in manner aforesaid for the purpose of advising with the said Master touching and concerning such loan.

33. And be it further enacted, that all bonds which shall be taken for any money so to be lent out shall be taken payable to the guardian's fund, and it shall and may be lawful for the said Master to demand, receive, recover, and enforce, by proceedings at law, payment of all such bonds and of the interest which may be due thereon, in like manner to all intents and purposes as if the

<sup>1</sup> Master may also invest in Government Stock or Debentures. Acts 18 of 1858 and 1 of 1874.

said bonds had been taken payable to the Master of the Supreme Court; and he shall pay or cause to be paid all sums received by him either as the principal or interest due on any such bonds into the discount bank, to be placed to the credit of the guardian's fund: Provided always, that it shall and may be lawful for the said Master to assign any such bond to any person lawfully entitled to demand and receive payment of any sum which shall be placed to the credit of any person or estate in the wards' book aforesaid in payment of the same, if such first-mentioned person shall consent to receive such bond in payment of his just demand, but not otherwise.

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Assignment of bonds.

34. And be it further enacted, that it shall be the duty of the Master of the Supreme Court, and he is hereby required and directed so to regulate the amount and duration of the loans to be made of the money belonging to the guardian's fund, as that when any sum placed in the wards' book to the credit of any minor shall become payable by reason of such minor having attained majority, there shall then be money sufficient for the payment of the sum placed to the credit of the guardian's fund, in account with the discount bank: Provided always, that if it shall at any time happen that there shall not be so placed to the credit of the guardian's fund money sufficient to make any payment or payments which ought to be made by the said Master out of the guardian's fund, then and in every such case it shall and may be lawful for the said Master to overdraw by such cheques as aforesaid the account of the guardian's fund with the discount bank to any amount not exceeding two thousand pounds to be employed by him in making such payment or payments, and the amount so overdrawn shall be paid by the said bank and shall in the said account be placed to the debit of the guardian's fund, and no interest shall be charged by the bank in respect of any money so overdrawn.

Regulation of duration of loans so as to have sufficient to make payment to minors on attaining majority.

35. And be it further enacted that on the first day of July, in the year 1834, or so soon thereafter as may be within the said month of July, and at the same period in every succeeding year the Master of the Supreme Court, the Treasurer-General and the Auditor-General shall balance the wards' book and ascertain the total amount of principal and interest due on the thirtieth day of June preceding to all the persons and estates with whom or with which such accounts as aforesaid shall then be open in the said book, and they shall also ascertain the amount which shall on the said day have been placed to the credit of the guardian's fund in account with the discount bank, as also the amount of all sums belonging to the guardian's fund which shall have been lent on bonds in manner hereinbefore provided and of the repayment of which when due there shall then appear to be no reason to doubt. And they shall grant a certificate in writing signed by them of the amount of the sum, if any, by which the

Balancing of wards' book in July of each year.

Ascertaining of amount to credit of guardian's fund:

And of amount of moneys lent on bonds

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Certificate of excess of moneys due to guardian's fund above the amount to the credit of persons and estates in wards' book.

Appropriation of such excess.

Lapse to the crown of moneys unclaimed for forty years.

Publication in Gazette of the Colony, in London Gazette, and other newspapers, of estates or property belonging to persons unknown.

total amount of the money due to the guardian's fund by the discount bank and in virtue of such bonds as aforesaid, shall on the said thirtieth day of June have exceeded the total amount then placed to the credit of persons and estates, with whom and with which accounts shall then have been open in the wards' book, and the said certificate shall thereupon be filed in the office of the Registrar of the Supreme Court. And the sum the amount of which shall be so certified shall thereupon be appropriated in the first place to replace any sums which prior to the said first day of July have been withdrawn from the ten thousand pounds placed in deposit in the discount bank under and by virtue of the provisions of His Majesty's Order in Council dated 24th November, 1828, and the balance of the sum so certified remaining after replacing the sums so withdrawn from such deposit fund as aforesaid shall thereupon and in respect of such certificate become due and payable out of the guardian's fund to the public revenue of this Colony. And the Master of the Supreme Court shall and he is hereby authorized and required to draw by such cheque or cheques as aforesaid for such amount on the account of the guardian's fund with the discount bank and to pay the same to the Treasurer-General or to assign over to the Treasurer-General any good bond or bonds due to the guardian's fund, in order that the Treasurer-General may, as he is hereby authorized and required to do, demand, receive, and recover payment of the same; and the Treasurer-General shall grant a receipt for such money so paid or such bonds so assigned to him by the said Master as aforesaid.

36. And be it further enacted, that when any money which shall have been placed in the wards' book to the credit of any person or estate shall remain and shall not have been claimed by any person having a just and lawful right thereto for the period of forty years from the date of the entry of such money in the wards' book then and in every such case every account with such person or estate shall be closed, and all such money shall in respect of the lapse of such period become and be forfeited to the Crown, and shall be applied by the Master of the Supreme Court or be by him paid over to the Treasurer-General for the like purposes and in the like manner in all respects as by the provisions of the thirty-fifth section of this Ordinance is hereinbefore provided with respect to any sum or sums of money certified in manner aforesaid as being the amount of the excess of the guardian's fund over the total amount due to the persons and estates having at the time open accounts in the wards' book aforesaid.

37. And be it further enacted, that on the first day of October next and on the first days of July and of October respectively in every succeeding year, the Master of the Supreme Court shall cause to be drawn up an exact account of the amount of all estates or property which shall be entered in the wards' book and shall belong to any persons unknown, or not residing and not having

some known legal representative within this Colony, with a statement of the names and designations of the persons so far as known who are supposed to be interested therein, and shall cause the same to be inserted in the *Gazette* of this Colony, and shall forthwith deliver two copies thereof to the Secretary to the Government of this Colony, who shall cause the same to be transmitted for publication in the *London Gazette* and other newspaper or newspapers of the country to which the persons interested in such estates or property may be supposed to belong. And in the said advertisements all persons interested shall be required to transmit their claims to the Master of the Supreme Court. And the expense of such advertisements shall be borne proportionately by the estates to which they relate.

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38. And be it further enacted, that every tutor, either testamentary or dative, and every curator, either nominate or dative or bonis, shall on or before the fifteenth day of February in every year lodge with the Master of the Supreme Court (who shall cause the same to be preserved and registered in his office for the inspection of all concerned) a just, true, and exact account of his administration of the estate or property under his guardianship up to the thirty-first day of December preceding <sup>(1)</sup>. And every such tutor or curator who shall fail to lodge such account as aforesaid in manner herein provided, and who shall have no lawful and sufficient excuse for such failure shall by reason thereof forfeit all claim to any fees which he might otherwise be entitled to receive in respect of his administration of such estate during the year preceding the said thirty-first day of December: Provided always, that when the person by whom any testamentary tutor or curator nominate has been appointed, shall by any deed duly executed by him have directed that such tutor or curator shall not lodge with the said Master any such annual account of his administration as aforesaid, then and in every such case no such tutor or curator shall be required to lodge any such annual account in manner aforesaid. And that the survivor of two spouses whom the predeceasing spouse shall by will or other lawful instrument have appointed the tutor of his or her minor children and the administrator (boedelhouder) of the joint estate of such spouses during the minority of such children shall not in any case be required to lodge any such annual account in manner aforesaid; any thing to the contrary herein contained notwithstanding.

Accounts of administration by tutors and curators.

Penalty on failure of due lodging of account.

Exception in favour of tutors testamentary and curators nominate by direction of deeds of appointment,

and in favour of surviving spouses administering the joint estate.

39. And be it further enacted, that every tutor either testamentary or dative, and every curator either nominate or dative, shall in respect of his administration and management of any estate be entitled to claim, receive, or retain out of the assets of such estate a reasonable compensation for his care and diligence in the said

Compensation of tutors and curators.

<sup>1</sup> And also a duplicate or copy of such account, § 2, Act 11 of 1873. See also Act 14 of 1864, *supra*.

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administration, to be assessed and taxed by the Master of the Supreme Court, subject to the review of the said Court upon the petition of any such tutor or curator or of any person having an interest in the said estate.

Nullity of appointment of orphan chamber or of master as tutor or curator.

40. And be it further enacted, that if any person who shall die after the first day of March next shall by any deed unrevoked at the time of his death have appointed, or if any person who shall after the said day give any estate or property to any minor, lunatic, or insane person shall appoint, the Orphan Chamber or the Master of the Supreme Court to be the tutor testamentary of any minor or curator nominate of any estate or property given or bequeathed by him to any minor or lunatic or insane person, then and in every such case every such appointment shall be null and void and of no effect. And the like proceedings shall be had and taken for and in respect of the appointment of tutors dative, or curators dative to such minor, lunatic, or insane person as would have been had and taken under and by virtue of the provisions of this Ordinance if no such appointment of the Orphan Chamber or of the Master of the Supreme Court had ever been made.

Register of tutors and curators and their sureties and of debtors to minors.

41. And be it further enacted, that the Master of the Supreme Court shall cause to be kept in his office a register containing the names of every tutor, either testamentary or dative, and of every curator, either nominate or dative, to whom any letters of confirmation shall have been granted, and of every surety for every such tutor or curator, and of every person who shall by virtue of any bond or other written instrument be indebted to any minor, lunatic, insane or absent person whose estate has by virtue of letters of confirmation been placed under the guardianship of any tutor or curator, and of every surety for any such debtor; and whenever any order for sequestration shall under and by virtue of the provisions of the nineteenth section of the Ordinance No. 64 be delivered to the said Master, he shall cause such register to be examined, and when upon such examination it shall appear that the person whose estate has been placed under sequestration by such order is then either a tutor or curator to any minor, lunatic, or insane or absent person, he shall forthwith take such proceedings in order to the appointment of a tutor or curator dative in the place of such insolvent as are hereinbefore directed for that purpose; and when it shall appear that such insolvent is then the surety for any tutor or curator, he shall forthwith require such tutor or curator to give such other additional security as in the circumstances of the case shall be reasonable for the due and faithful administration and management of the estate or property under his guardianship; and when it shall appear that such insolvent is the debtor of any minor, lunatic, or insane or absent person, or is then surety for any such debtor, the Master shall in the first notice of such sequestration which shall be published in the *Gazette* of this Colony insert a statement containing the name of the person or persons to

Proceedings by master in case of insolvency of tutors or curators or of sureties to tutors or curators.

whom such insolvent is indebted as aforesaid or for whose debtor such insolvent is a surety; and specifying whether he is the debtor or surety for the debtor of any such person or persons as aforesaid.

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42. And be it further enacted, that the Master of the Supreme Court shall and he is hereby authorized and required to charge and to demand, receive, retain, or recover in respect of the acts, matters, and things done or caused to be done by him or in his office under and by virtue of the provisions of this Ordinance, all such fees as are specified in the tariff contained in the schedule hereunto annexed, marked D, and shall account for and pay over the same in like manner as is by law provided in respect of any other fees received or retained by him as Master of the Supreme Court: Provided always, that nothing herein contained shall extend or be construed to extend to repeal any law now in force requiring any stamp to be used for any purpose or any stamp duty to be paid in respect of any proceeding except in so far as any such alteration shall be expressly made in the tariff of fees hereinbefore mentioned.

Master's fees.

43. And be it further enacted, that when the Master of the Supreme Court shall be plaintiff or defendant in any action instituted by him or against him in his official capacity and with reference to any matter or thing placed under his guardianship, control, or superintendence or which he is required to do or cause to be done under and by virtue of the provisions of this Ordinance, and the party against whom such action has been instituted by the said Master or by whom it has been instituted against him shall have his or their costs in and with respect to such action adjudged to him or them by the Court before which such action shall have depended, then and in every such case such Court shall cause the registrar thereof to certify on the record thereof whether in opinion of such Court the said costs so adjudged to the said party shall be paid by the Master out of his private funds or out of the guardian's fund. And when it shall be certified as the opinion of such Court that the said costs should be paid out of the guardian's fund such certificate shall be a sufficient warrant to the said Master to draw the amount of such costs from the guardian's fund by any such cheque or cheques as aforesaid, and with the money so drawn to pay the same: Provided always, that although it shall be certified as the opinion of such Court that the said costs should be paid by the Master out of his private funds, it shall and may be lawful for the Governor of this Colony by any writing under his hand to authorize (and any such writing shall have the effect of authorizing,) the said Master to draw the amount of such costs out of the guardian's fund and to pay the same in manner aforesaid.

Liability of master for costs of actions by or against him.

44. And be it further enacted, that it shall and may be lawful for the Master of the Supreme Court and he is hereby authorized and required from time to time to appoint such and so many persons as to him shall seem fit and as shall be necessary to act as

Appointment of appraisers for the valuation of estates and property.

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appraisers for the valuation of all estates and property the appraisement of which shall become necessary or shall be had for the better ascertaining of the amount of the share or shares thereof which may belong or be due to any person or persons who, or to any estate or estates which shall at the time be under the guardianship of the said Master, or of any tutor, either testamentary or dative, or curator nominate or dative or bonis. And every such appraiser shall in respect of every such appraisement so to be made by him be entitled to demand and receive, and shall be paid out of the estate or property by him appraised, a reasonable compensation, to be assessed and taxed by the Master of the Supreme Court: Provided always, that no person shall act as such appraiser in any case in which he has an interest in the estate to be valued or appraised.

Payment of ap-  
praisers.

Oath of appraisers  
before judge, magis-  
trate, or justice of  
the peace.

45. And be it further enacted, that every person who shall be appointed by the Master of the Supreme Court to act generally as an appraiser of such estates or properties as aforesaid shall, before he shall proceed to act in virtue of such appointment, take an oath before any judge of the Supreme Court, Resident Magistrate, or Justice of the Peace, that he will appraise all such estates or properties as may be submitted to his valuation according to the just, proper, and true valuation thereof, to the best of his skill and knowledge, and shall transmit the said oath so taken by him and certified by the Judge, Magistrate, or Justice of the Peace before whom the same shall have been taken to the office of the said Master; and when any such person or persons shall be appointed in manner aforesaid to appraise any particular estate or property, it shall and may be lawful for the said Master in such his appointment, to direct whether such person or persons shall be required before proceeding to make such appraisement, to take such oath as aforesaid or not: Provided always, that when any such person or persons as last above mentioned shall have made such appraisement, without having taken such oath as aforesaid, it shall and may be lawful for the said Master, or any person having an interest in the estate or property appraised, to require that the person or persons by whom the same has been appraised shall before such appraisement shall be received and acted on take an oath in manner aforesaid that such estate and property has been by him or them appraised according to the just, proper, and true valuation thereof, to the best of his or their skill and knowledge.

Laws, &c., repeal-  
ed by ordinances  
Nos. 103 and 104 not  
revived, except where  
expressly re-enacted  
in this ordinance.

46. And be it further enacted, that nothing herein contained shall extend or be construed to extend to revive or preserve in force or effect the "provisional instructions for the Orphan Chamber," or the "instructions for the agents to the Board of Orphan Masters in the country districts of the Colony of the Cape of Good Hope," or the Ordinance No. 42, or any other law or ordinance repealed or altered by the provisions of the Ordinances Nos. 103 and 104, except in so far as any of the provisions of such

instructions, laws, or ordinances so repealed or altered shall have been expressly re-enacted by some special provision of this Ordinance. And that, whenever and so often as the words "any law in force within this Colony prior to the passing of this Ordinance" occur in any of the provisions of this Ordinance, then and in every such case the said words shall be construed and deemed and taken to mean such law as was then in force within this Colony, independently and exclusively of the provisions or enactments of the said instructions and of the said Ordinance No. 42, so repealed or altered as aforesaid, and of any other instructions or regulations which had at any previous time been in force within this Colony touching or concerning the functions, duties, or powers, of the Orphan Chamber.

Ord. 105—1833.

Interpretation of words,—“any law in force prior to the passing of this ordinance.”

## SCHEDULE A.

*Form of Letters of Confirmation of Tutors.*

These are to certify that A. B. has been duly appointed and is hereby authorized to act as the tutor testamentary (or dative, as the case may be) of C. D.

Letters of confirmation of tutors,

(Signed) E. F., Master of the Supreme Court.

Cape Town, the — day of — 18—.

## SCHEDULE B.

*Form of Letters of Confirmation of Curators.*

These are to certify that A. B. has been duly appointed and is hereby authorized to act as the curator nominate of the estate given (or bequeathed, as the case may be) to C. D. by G. H. (here describe the deed of gift or bequest by its date and otherwise, or as the case may be), as the curator dative of the estate of C. D.

of curators.

(Signed) E. F., Master of the Supreme Court.

Cape Town, — day of — 18—.

## SCHEDULE C.

Tariff of fees to be taken by tutors and curators, under and by virtue of the provisions of this Ordinance.—(See Section 39.)

Fees of tutors and curators.

## SCHEDULE D.

[Repealed by Act 20 of 1884.]

## SCHEDULE E.

Tariff of Fees to be paid to Appraisers, under and by virtue of the provisions of this Ordinance.—(See Section 44.)

Fees of appraisers.



No. 18—1858.]

[June 5, 1858.

## AN ACT

For Enabling the Master of the Supreme Court to lend, upon Government Securities, Moneys belonging to the Guardian's Fund.

Preamble.

WHEREAS, by the 32nd section of Ordinance No. 105, bearing date the 5th of July, 1833, and entitled "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," it is enacted that the Master of the Supreme Court shall, from time to time, as he may find opportunity, lend on mortgage of immovable property, situated within this Colony, and with or without additional security, as may in each particular case be deemed expedient, all such money as shall at the time be to the credit of the "Guardian's Fund : " And whereas it is expedient that the said Master should be authorized to invest money belonging to the said fund in any debentures which may be issued by 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 :—

Moneys of Guardian's Fund may be invested in Government debentures.

1. It shall be lawful for the Master of the Supreme Court, when and as often as he shall find it to be for the advantage of the Guardian's Fund so to do, to invest any unemployed moneys belonging to the said fund in any debentures or other securities which may at any time hereafter be issued by the Government of this Colony and charged upon the public revenue thereof : Provided that every investment under this Act shall be made with the same advice, or upon the same authority, as if such investment were a loan on mortgage.

No. 1—1874.]

[June 23, 1874.

## ACT

To Regulate the Investment of the Guardian's Fund, and the rate of Interest payable in respect thereof.

Preamble.

WHEREAS it is expedient to increase the powers at present possessed by the Master of the Supreme Court as to the investment of money in his hands as Administrator of the Guardian's Fund ; and whereas the Act No. 15 of 1873, intituled " An Act to amend in certain respects Ordinance No. 105 of 1833, and to repeal Ordinance No. 3 of 1837, to endure for one year from the taking effect thereof," was by the third section thereof only to continue in operation for the period of one year from the 30th day of June, 1873, and it is expedient that the provisions thereof should be

continued: 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. 1—1874.

1. The Ordinance No. 3 of 1837, intituled “Ordinance for altering the Ordinance No. 105, intituled ‘Ordinance of His Excellency the Governor in Council 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.’” and so much of the Ordinance No. 105 of 1833, intituled as aforesaid, as may be repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed.

Ordinance No. 3 of 1837, and repugnant portions of Ordinance No. 105 of 1833 repealed.

2. 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 stock and so many of any debentures which now have been or may hereafter be authorized to be raised or taken up by the Governor, 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 moneys of Guardian’s Fund in Government stock or debentures.

3. In lieu and instead of the rate of interest provided for by the twenty-eighth and twenty-ninth sections of the Ordinance No. 105 of 1833, the interest payable by the said Master as Administrator of the Guardian’s Fund, upon money which shall belong to any estate or to any person being or having a legal representative within this Colony, and which shall have been duly paid over to the said Master under the provisions of the twenty-fifth and twenty-sixth sections of the Ordinance No. 105, may be at the rate of four per cent. per annum.

Interest paid by Master to be four per cent. in certain cases.

4. This Act shall commence and take effect from and after the expiration of the said Act No. 15 of 1873, and no sooner.

Commencement of Act.

5. This Act may for all purposes be cited as “The Guardian’s Fund Act, 1874.”

Short title.

## EVIDENCE.

- |                                                                                                                             |                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Ord. 72—1830, (Law of).<br>2. „ 14—1846, ( do. ).<br>3. Act 4—1861, ( do. ).<br>4. „ 3—1864, § 12 (Unstamped documents). | 5. Act 17—1874, §§ 4, 5 and 8 (Depositions, &c.)<br>6. „ 21—1877, (Bankers' Books).<br>7. „ 13—1886, §§ 6, 7 and 8 (Evidence of Accused Persons). |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|

No. 72.—Sd. G. Lowry Cole.] [March 1, 1830.

(<sup>1</sup>) Ordinance for altering, amending, and declaring in certain respects, the Law of Evidence within this Colony.

Preamble.

WHEREAS it is expedient to alter, amend, and declare, in certain respects, the law of evidence within this Colony: Be it therefore enacted and declared by His Excellency the Governor in Council, that from and after the passing of this Ordinance no person shall be excluded from being sworn as a witness, or from giving evidence in any Court within this Colony, except in respect of a legal objection to his competency made, and appearing, to such Court to be valid.

No person to be excluded from giving evidence, except on a legal objection held valid.

The court to decide on admissibility of evidence.

The jury to determine effect of evidence admitted.

2. And be it further enacted and declared that it shall be competent for the Court alone in which any case may be depending to decide upon all questions concerning the competency of any witness or the admissibility of any evidence; and that in all cases which shall and may lawfully be tried by a jury it shall be competent for such jury alone to determine as to the effect of any evidence admitted by the Court, and as to the degree of credit to be attached thereto.

Incompetency from insanity and intoxication.

3. And be it further enacted and declared, that no person appearing, or proved to be afflicted, with idiocy, lunacy, or insanity, or labouring under any imbecility of mind arising from intoxication or otherwise whereby he is deprived of the proper use of reason, shall in any case be competent to give evidence while under the influence of any such malady or disability.

Children who understand the obligation of an oath competent.

4. And be it further enacted and declared, that no child shall in any case be excluded from being sworn as a witness, or be deemed incompetent to give evidence, in respect of age, provided such child understands the nature and recognizes the religious obligation of an oath: And be it further enacted and declared, that it shall not be competent to examine any child as a witness except upon oath; and that when any child cannot be sworn in consequence of want of sufficient understanding, it shall not in any case be competent to admit in evidence any account or statement which such child may have given or made to any other person as the evidence of such child on the subject-matter of such account or statement. (<sup>2</sup>)

Children to be examined on oath.

Witnesses to be examined on oath.

5. And be it further enacted and declared, that it shall not, in any case, be competent to examine any person as a witness except upon oath, or to administer an oath to any person as a witness who does not understand the nature and recognize the religious

<sup>1</sup> Under various Statutes certified extracts from or copies of documents, &c., are admissible. See Alphabetical Index under "Evidence."

<sup>2</sup> Amended by § 12, Act 4 of 1861.

obligation of an oath: <sup>(1)</sup> Provided, always, that no person who understands the nature and recognizes the religious obligation of an oath shall in any case be excluded from being sworn as a witness on account of the religious tenets professed by such person. <sup>(2)</sup>

Ord. 72—1836.

6. And be it further enacted and declared that in all cases the oath to be administered to any person as a witness shall be administered in the form which shall most clearly convey to him the meaning of the oath and which he shall consider to be binding on his conscience.

Form of oath.

7. And be it further enacted and declared, that every Quaker or Moravian who shall be required to give evidence in any case whatsoever, criminal or civil, shall instead of taking an oath in the usual form be permitted to make his or her solemn affirmation or declaration in the words following, that if to say: "I, A. B., do solemnly, sincerely, and truly declare and affirm," &c., which said affirmation or declaration shall be of the same force and effect in all Courts of Justice and other places, when by law an oath is required, as if such Quaker or Moravian had taken an oath in the usual form; and if any person making such affirmation or declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such offender shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful and corrupt perjury are or shall be subject. <sup>(3)</sup>

Affirmation by Quakers and Moravians.

8. [Superseded by § 2 Ord. 14 of 1846.]

9. And be it further enacted and declared, that no person shall in any criminal case, be incompetent to give evidence, in respect of having been an accomplice, either as principal or accessory, in the commission of any crime or offence charged in the indictment, information, or complaint under trial in such case.

Competency of accomplices.

10. And be it further enacted and declared that where any person who has been an accomplice, either as principal or accessory, in the commission of any crime or offence charged in the indictment, information, or complaint under trial, shall in any case be produced as a witness by and on the part of the prosecution, shall submit to be sworn as a witness, and shall fully answer to the satisfaction of the Court all such lawful questions as shall be put to him while under examination, such person shall thereby be absolutely freed and discharged from all liability to prosecution for any such crime or offence, either at the instance of the public prosecutor or of any private party where he has been produced as a witness by and on the part of the public prosecutor, or where he

Freedom from liability to prosecution of accomplices giving evidence.

<sup>1</sup> Amended by § 12, Act 4 of 1861.

<sup>2</sup> § 32 of the Charter of Justice provides that in all criminal cases the witnesses shall deliver their evidence *viva voce* and in open Court (see Ad. of Justice).

<sup>3</sup> See § 7, Ord. 14 of 1846 and § 10, Act 4 of 1861.

Ord. 72—1830.

Accomplice entitled to require from prosecutor a writing under his hand discharging such accomplice from liability to prosecution.

has been produced as a witness by and on the part of any private prosecutor, from all prosecution for such crime or offence at the instance of such private prosecutor. And it shall and may be lawful for the said Court, thereupon to cause such discharge to be duly entered on the record of the proceedings in such trial: Provided always, that no such accomplice, produced as a witness by and on the part of any private prosecutor, shall in any case be bound, or legally compellable, to answer any question whereby he may criminate himself in respect of any crime or offence charged in the indictment, information, or complaint under trial, unless there shall be produced to him, and put on record where the case is tried in the Supreme or any Circuit Court, a writing under the hand of the Attorney-General, and in any inferior Court a writing under the hand of the officer who by law is entitled to prosecute at the public instance in such Court, discharging such accomplice from all liability to prosecution at the instance of the public prosecutor for such crime or offence.

Evidence of accomplice not to be used against him, if he should thereafter be tried for the offence.

11. And be it further enacted and declared, that where any such accomplice as aforesaid in any crime or offence charged in any indictment, information, or complaint, shall have been produced as a witness, by and on the part of the public prosecutor or of any private prosecutor (by whom there shall have been obtained from the Attorney-General, or other officer as aforesaid, a written discharge of such accomplice from liability to prosecution as aforesaid), and shall have given evidence at the trial of such indictment, information, or complaint, it shall not be competent to give in evidence against such accomplice, if he shall thereafter be tried for such crime or offence, any part of the testimony which shall have been so given by him at the said trial as aforesaid: Provided always, that nothing herein contained shall extend or be construed to free or exempt any such accomplice who shall be guilty of prevarication, or who shall be convicted of having committed wilful and corrupt perjury, while under examination as a witness in any such trial as aforesaid, from any pains, penalties, or forfeitures to which persons guilty of prevarication, or convicted of wilful and corrupt perjury, are or shall be liable by any law or ordinance of this Colony; or to render incompetent or inadmissible any evidence which would otherwise be competent and admissible in the trial of such accomplice on a charge of having been guilty of wilful and corrupt perjury on his examination as a witness in any such trial as aforesaid.

But accomplice is notwithstanding liable to penalties of prevarication and perjury,—and evidence on charge of perjury not affected.

Conviction on single evidence of accomplice provided the crime be proved *aliunde*.

12. And be it further enacted and declared, that it shall and may be lawful and competent for any Court or jury in any case which shall and may be lawfully tried by such Court or jury respectively, to convict any person who shall be so tried before any such Court or jury, of any crime or offence charged in the indictment, information, or complaint under trial on the single evidence of any such accomplice as aforesaid: Provided always, that such

crime or offence shall by competent evidence other than the single and unconfirmed evidence of such accomplice be proved to the satisfaction of such Court or jury respectively to have been actually committed.

Ord. 72—1830.

13. And be it further enacted and declared, that no person shall in any case be incompetent to give evidence in respect of any relation, either by consanguinity or affinity subsisting between such person and the person for or against whom he shall be produced to give evidence.

Competency notwithstanding consanguinity or affinity.

14. (1) And be it further enacted and declared, that no person shall, in any case be competent or admitted to give evidence for or against the husband or wife of such person, or to give evidence in any case in which the husband or wife of such person shall be tried for any crime or offence together with any other person.

Incompetency of husband for or against wife, and of wife for or against husband.

15. Provided always, and be it further enacted and declared that no husband or wife shall by reason of their marriage be incompetent to give evidence in any case in which either of them shall be prosecuted for any offence committed against the person of the other.

Except in offences by either against the other's person.

16. And be it further enacted and declared, that in all cases of prosecution for bigamy, no person, after proof of the first marriage of the person so prosecuted, shall be incompetent to give evidence by reason of any marriage contracted between the witness and the said party so prosecuted during the continuance of the said first marriage.

Competency in prosecution for bigamy, after proof of first marriage, of person married to prisoner, during its subsistence.

17. And be it further enacted and declared, that no person shall in any case be bound, or be legally compellable, to answer any question, or to give any evidence, which question or evidence the husband or wife of such person, if under examination as a witness in such case, might lawfully refuse, and could not legally be compelled to answer or give.

No witness compellable to answer questions which the witness's husband or wife might decline.

18. And be it further enacted and declared, that in every case in which any person shall, by virtue of any of the provisions of this Ordinance, be incompetent to give evidence by reason of the interest which such person may have in the event of such case, the husband or wife of such person shall in like manner be incompetent to give evidence in such case.

A witness incompetent where the husband or wife of such witness would be incompetent.

19. And be it further enacted and declared, that no husband or wife, after the dissolution of their marriage for adultery, or any other lawful cause, shall in any case be competent, or admitted, or bound, or legally compellable to give evidence, as to any matter or thing which occurred during the subsistence of their said marriage, and as to which such husband or wife would not have been competent, or admitted, or bound, or legally compellable to give evidence, if their said marriage had still continued to subsist at the time when such case is tried.

Husband and wife incompetent after divorce as to matters occurring during the subsistence of the marriage, as to which they would have been incompetent during the marriage.

<sup>1</sup> As to §§ 14-19, see §§ 2, 3 and 4 of Act 4 of 1861, and §§ 6 and 7, Act 13 of 1886.

Ord. 72—1830.

Competency of in-  
formers.

20. Repealed by § 3 Ord. 14 of 1846.

21. Provided always, and be it further enacted and declared, that no person shall be incompetent to give evidence in any case by reason that by virtue of any law or ordinance now in force or which shall hereafter be made, or of any proclamation which has been or shall be lawfully made by any competent authority within this Colony, or any other part of the British dominions; or of any offer or promise made by any private party, such person shall or may in consequence of any information which he may have given respecting such case, or of any conviction which may be obtained in such case, acquire right or become entitled to the whole or any part of any penalty, forfeiture, or reward; or to any indemnity against, or discharge or privilege, from prosecution for any crime, offence, or act, committed or done by such person.

22. Superseded by § 3 Ord. 14 of 1846 and § 2, Act 4, of 1861.

23. Superseded by § 3 Ord. 14 of 1846 and § 2, Act 4, of 1861.

24. Superseded by § 5, Ord. 14, 1846 and § 2, Act 4, 1861.

Privilege of pro-  
fessional advisers.

25. And be it further enacted and declared, that no advocate, barrister, attorney, solicitor, or proctor duly admitted to practise in any Court within this Colony, or elsewhere, shall in any case be competent or legally compellable to give evidence against any person by whom he has been professionally employed or consulted, without the consent of such person, as to any fact, matter, or thing as to which such advocate, barrister, attorney, solicitor, or proctor by reason of such employment or consultation, and without such consent, would not be competent nor legally compellable to give evidence in any similar case depending in any of His Majesty's Courts of Record at Westminster: Provided always, that no such advocate, barrister, attorney, solicitor, or proctor, shall in any case by reason of any such employment or consultation be incompetent or not legally compellable to give evidence as to any fact, matter, or thing relative to or connected with the commission of any crime or offence for which the person by whom such advocate, barrister, attorney, solicitor, or proctor has been so employed or consulted is in such case prosecuted; and which fact, matter, or thing has come to the knowledge of such advocate, barrister, attorney, solicitor, or proctor before he shall have been professionally employed or consulted for or with reference to the defence of such person against such prosecution.

26. Superseded by § 4 Ord. 14 of 1846 and § 2 Act 4 of 1861.

Reference to oath  
of opposite party.

Supplemental oath.

27. (1) Provided always, and be it further enacted and declared, that nothing herein contained shall extend or be construed to take away the right of either party to any suit, of referring the matter in dispute therein to the oath of the other party to the said suit, or to take away from any Court within this Colony the power of

<sup>1</sup> See § 6, Act 4 of 1861.

taking or requiring from either party the supplemental oath of such party when the same may by law be offered, taken, or required; or to take away the power of any Court to examine on oath the parties to any suit, or either of them, in any case where such power has or may hereafter be given to such Court by any law or ordinance.

Ord. 72—1830.

Judicial imposition of oath.

28. And be it further enacted and declared, that any confession of the commission of any crime or offence, which shall be proved by competent evidence to have been made by any person, accused of such crime or offence, whether before or after his apprehension, whether on a judicial examination or after commitment, and whether reduced into writing or not, shall in every case be admissible evidence against such person; Provided always, that such confession shall be proved to have been freely and voluntarily made by such person, in his sound and sober senses, and without having been unduly influenced thereby; and provided also, that when such confession shall have been made on a judicial examination before any Magistrate on any criminal charge, such person shall previously, according to law, have been cautioned by the said Magistrate that he is not obliged, in answer to the charge against him, to make any statement which may criminate himself, and that what he shall then say may be used in evidence against him: (1) Provided always, and be it further enacted and declared, that no confession made on oath, and that no deposition made by any person, on any judicial examination, under the provisions of the sixty-first or sixty-fourth sections of the Ordinance No. 64 (2) shall be admissible evidence in any prosecution of such person, for any crime or offence other than perjury committed by him on such examination.

Admissibility of confessions by accused.

if freely and voluntarily made without undue influence;

and, if judicial, after due caution.

29. And be it further enacted and declared, that it shall be lawful and competent for any Court or jury by which any person prosecuted for any crime or offence, shall and may lawfully be tried, respectively, to convict such person of any crime or offence charged in the indictment, information, or complaint under trial, in respect and by reason of any such confession of the commission of such crime or offence, which shall be proved to the satisfaction of such Court or jury, respectively, to have been made as aforesaid, although not confirmed by any other evidence: Provided always, that such crime or offence shall by competent evidence other than the single and unconfirmed evidence of such confession be proved to the satisfaction of such Court or jury, respectively, to have been actually committed.

Conviction on confession,—if the crime have been proved *aitunde*.

30. And be it further enacted and declared, that it shall in every case be competent to admit evidence of any fact, otherwise

Admissibility of facts discovered by means of inadmissible confession.

<sup>1</sup> See § 34, Ord. 40 (Crim. Procedure), and § 4, Act 17 of 1874, *infra*.

<sup>2</sup> For 61st and 64th Sections of Ord. 64 read 62nd and 65th Sections of Ord. 6 of 1843. See § 134, Ord. 6 of 1843 (Estates).



- Ord. 72—1830. admissible in evidence, notwithstanding that such fact has been discovered and come to the knowledge of the witness who shall give evidence respecting it only in consequence of information given by the person under trial, in any confession or deposition which by law shall not be admissible in evidence against him in such trial.
- Confession not admissible against other persons. 31. And be it further enacted and declared, that no confession which may be made by any person shall in any case be admissible as evidence against any other person.
32. And be it further enacted and declared, that it shall and may be lawful for the Court by which any civil suit shall be tried to find on any issue of fact, and in respect of such finding to give judgment for or against any party to such suit, on the evidence of any single, competent, and credible witness.
- Sufficiency of one witness in criminal cases, 33. And be it further enacted and declared, that it shall be competent for the Court or jury, by which any person prosecuted for any crime or offence, shall and may lawfully be tried, except in so far as has been or shall be herein excepted, enacted, and declared, respectively, to convict such person of any crime or offence charged in the indictment, information, or complaint under trial on the single evidence of any competent and credible witness: Provided always that it shall not be competent for any such Court or jury to convict any person of the crime of perjury on the evidence of any one witness, except in addition to and independent of the testimony of such witness some other competent and credible evidence as to the guilt of such person shall be given to such Court or jury.
- Except in prosecutions for perjury. 34. And be it further enacted and declared that no evidence as to any fact, matter, or thing shall in any case be admissible which is irrelevant or immaterial and cannot conduce to prove or to disprove any point or fact in issue in such case.
- Inadmissibility of irrelevant evidence. 35. And be it further enacted and declared, that no evidence as to the character of any of the parties to any case, civil or criminal, or as to the character of any woman on whose person any rape or assault with intent to commit a rape, shall in any prosecution for rape or for assault with intent to commit a rape, be charged to have been committed, shall in any such case be admissible or inadmissible which would be inadmissible or admissible in any similar case depending in any of His Majesty's Courts of Record at Westminster.
- Evidence of character when admissible. 36. And be it further enacted and declared, that it shall not be necessary for any party in any case to give evidence to prove, or competent for any such party to give evidence to disprove, any fact or point admitted on the record of such case.
- Admission of facts or points in issue on the record. 37. And be it further enacted and declared, that every party on whom in any case it shall be incumbent to prove any fact, matter, or thing, shall be bound to give the best evidence of which from its nature such fact, matter, or thing shall be capable; and that
- Necessity of best evidence of fact to be proved:

no evidence as to any such fact, matter, or thing, shall be admissible in any case in which it was in the power of the party who proposes to give such evidence to produce, or cause to be produced, better evidence as to such fact, matter, or thing, except by consent of the adverse party to the suit, or when such adverse party shall by law be precluded from disputing any such fact, matter, or thing, by reason of any admission proved to have been made by such party.

Ord. 72—1830.

unless waived by consent or admission of opposite party.

38. And be it further enacted and declared, that any evidence which would be admissible, and if credible, would be deemed in any case depending in any of His Majesty's Courts of Record at Westminster to be in law sufficient proof of the appointment of any person to any public office, or of the authority of any person to act as a public officer, shall be admissible, and if credible shall be deemed to be in law sufficient proof of such appointment or authority.

Proof of appointment to public office.

39. And be it further enacted and declared, that nothing herein contained shall extend, or be construed to affect, alter, or repeal any law or ordinance now in force within this Colony, respecting the proof of any record, act, deed, instrument, or writing, or the effect thereof, or of any copy or extract thereof, as evidence (1).

Proof of records and instruments in writing.

40. And be it further enacted and declared, that nothing herein contained shall extend, or be construed to prevent the Supreme Court, or any Circuit Court, from allowing the deposition of any witness who, by virtue of any rule or order of such Court, has been examined *de bene esse*, to be admitted as evidence at the trial of any civil case in which such rule or order shall have been made.

Examination of witnesses *de bene esse*.

41. And be it further enacted and declared, that the deposition of any witness taken upon oath, before any Magistrate, in the manner directed and required by the thirty-first section of the Ordinance No. 40, in the presence of any person who has been brought before such Magistrate, on a charge of having committed any crime or offence, shall be admissible in evidence on the trial of such person for such crime or offence; provided it shall be proved on oath, to the satisfaction of the Court, that the informant is dead (2); or that he has been kept away from the trial, by the means and contrivance of the prisoner, and that the deposition offered in evidence is the same which was sworn before the Magistrate without any alteration.

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

42. And be it further enacted and declared, that the testimony of a deceased or absent witness, who has been examined on oath, on the trial of any former civil action, between the same parties shall be admissible in every case in which, and may be proved and given in evidence in the same manner in which, the testimony of such deceased or absent witness would be admissible, and might be proved and given in evidence in any similar case depending in any of His Majesty's Courts of Record at Westminster.

Admissibility, in civil cases,

of testimony of absent or deceased witness.

<sup>1</sup> § 15, Act 4, 1861.

<sup>2</sup> Or is too ill to travel; See Act 17 of 1874, § 5.

43. And be it further enacted and declared, that the declaration made by any deceased person under the apprehension of death shall be admissible in evidence in every case, and shall not be admissible in evidence in any case, in which such declaration would be admissible or inadmissible in any similar case depending in any of His Majesty's Courts of Record at Westminster.
44. And be it further enacted and declared, that no evidence which is of the nature of hear-say evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in any of His Majesty's Courts of Record at Westminster.
45. And be it further enacted and declared, that every witness may refuse, and shall not be legally compellable, to answer any question, which such witness, if he were under examination in any similar case depending in any of His Majesty's Courts of Record at Westminster, might refuse and would not be legally compellable to answer by reason that the answer of such witness might have a tendency to expose him to any pains, penalty, punishment, or forfeiture, or to a criminal charge, or to degrade the character of such witness. <sup>(1)</sup>
46. And be it further enacted and declared, that a witness cannot by law refuse to answer a question relevant to the matter at issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish, or tend to establish, that he owes a debt, or is otherwise subject to a civil suit, either at the instance of His Majesty, or of any other person or persons.
47. And be it further enacted and declared, that no witness shall in any case be legally compellable or permitted to give evidence as to any fact, matter, or thing, or as to any communication made to or by such witness, as to which, if the case were depending in any of His Majesty's Courts of Record at Westminster, such witness would not be legally compellable or permitted to give evidence, by reason that such fact, matter, or thing, or communication, on a principle of public policy, and from regard to public interest, ought not to be disclosed, and is privileged from disclosure.
48. And be it further enacted and declared, that it shall in every case be competent for any party to impeach or support the credibility of any witness produced against or for such party, in any manner and by any evidence in and by which, if the case were depending in any of His Majesty's Courts of Record at Westminster the credibility of such witness might be impeached or supported by such person, and in no other manner and by no other evidence whatever.

Crd. 72—1830.  
Admissibility of dying declarations.

Hear-say evidence.

Witness excused from answering questions, the answers to which would expose him to penalties, or degrade his character.

Witness not excused from answering question by reason that the answer would establish a civil claim against him.

Privilege from disclosure of facts on the ground of

public policy, or from regard to the public interest.

Impeachment and support of witness' credibility.

<sup>1</sup> See § 7, Act 13 of 1886.

49. And be it further enacted and declared, that in every case in which any person shall be prosecuted within this Colony for the crime of treason, or misprision of treason, no witness shall be competent, nor any evidence admissible or sufficient to convict the person so prosecuted, who would not be competent or which would not be admissible or sufficient to convict such person, if prosecuted for any such crime in any of His Majesty's Courts of Record at Westminster; and that in every such case every witness shall be competent, and any evidence shall be admissible and sufficient to convict any person so prosecuted as aforesaid, who would be competent, or which would be admissible and sufficient to convict, if such person were prosecuted as aforesaid in any of His Majesty's Courts of Record at Westminster.

Ord. 72—1830.

Evidence in cases of treason and misprision of treason.

50. And be it further enacted and declared, that from and after the passing of this Ordinance, every law, ordinance, custom, usage, and practice heretofore in force within this Colony by reason whereof any witness herein enacted and declared to be competent, and any evidence herein enacted and declared to be admissible or sufficient, was heretofore deemed to be incompetent, inadmissible, or insufficient, or by reason of which any witness herein enacted and declared to be incompetent, and any evidence herein enacted and declared to be inadmissible or insufficient, was heretofore deemed competent, admissible, or sufficient, shall be, and the same are hereby repealed, and declared to be of no force or effect: Provided always, that nothing herein contained shall extend, or be construed to affect, alter or repeal any of the provisions and enactments of the Ordinances Nos. 19, 21, 32, 33, 38, 39, 44, 49, 50, 57, 60, 63, 64, 68.

Repeal of former laws.

No. 14.—Sd. P. Maitland.]

[March 25, 1846.

## Ordinance for improving the Law of Evidence.

WHEREAS the inquiry after truth in Courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue both in criminal and civil cases should be laid before the persons who are appointed to decide upon them and that such persons should exercise their judgment on the credit to be given to the witnesses adduced and on the truth of their testimony: 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 the Ordinance No. 72, 1830, entitled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within this Colony," and of the Ordinance No. 19, 1845, entitled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within the District of Natal," and of any other law or custom heretofore in force in any part of this

Preamble.

Repeal of portions of former laws.

- Ord. 14—1846. Colony as is repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.
- Abolition of incompetency of witness from prior conviction. 2. And be it enacted that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding by reason that such person has been previously convicted of any crime or offence.
- Abolition of incompetency from interest. 3. And be it enacted that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding by reason of any interest which such person may have in the matter in question or in the event of such action, suit, or proceeding. Provided, however, that nothing herein contained shall be construed so as to alter or in anywise affect the law relative to the giving or requiring of the oath or evidence of either party to any suit, action, or proceeding, which oath or evidence shall hereafter be received or required in such cases, and none other as those in which the same might lawfully have been received or required, previously to the passing of this Ordinance. And provided also, that this Ordinance shall not be construed so as to render competent to give evidence, any person though not a party on the record, in whose immediate and individual behalf any action, suit, or proceeding may either wholly or in part be instituted or defended, or the husband or wife of any such person respectively. <sup>(1)</sup>
- Retention of old law as to evidence of parties. 4. [Superseded by § 2 Act 4 of 1861.]
- No change as to actual plaintiffs or defendants. 5. And be it enacted that no person shall hereafter be incompetent to give evidence in any case by reason that in such case he prosecutes at his own instance for any crime or offence. Provided, however, that when any such person shall in any such case seek the recovery or restitution of any money, matter, or thing he shall not by virtue of anything in this Ordinance contained be deemed (if otherwise incompetent to give evidence) to be rendered competent so to do. <sup>(2)</sup>
- Competency of private prosecutor. Exception. 6. [Repealed by § 11, Act 4 of 1861.]
- Affirmation of Separatists. 7. <sup>(3)</sup> And whereas in a session of Parliament holden in the third and fourth years of the reign of His late Majesty King William the Fourth an Act was passed for enabling the sect or people called Separatists, who from conscientious scruples refuse to take an oath in Courts of Justice and other places, to make in lieu and stead of an oath their solemn affirmation and declaration: And whereas it is expedient that the said Act should in substance be extended to this Colony: Be it enacted that every person for the time being belonging to the sect or people called and known in England and Ireland by the name of Separatists who shall be required upon

<sup>1</sup> See §§ 2 and 6, Act 4 of 1861.

<sup>2</sup> See § 2 *ibid.*

<sup>3</sup> See § 7, Ord. 72 and § 10, Act 4 of 1861.

any lawful occasion to take an oath in any case when by law an oath is or may be required shall instead of the usual form be permitted to make his or her solemn affirmation or declaration in the words following *videlicet*, "I, A. B., in the presence of Almighty God solemnly, sincerely, and truly declare and affirm that I am a member of the religious sect called and known in England and Ireland by the name of Separatists, and that the taking of any oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect, and I do also in the same solemn manner affirm and declare," &c. ; which said affirmation and declaration shall be of the same force and effect in all Courts of Justice and other places where by law an oath is or may be required, as if such Separatist had taken an oath in the usual form; and if any person making such affirmation and declaration shall in fact not be one of the sect or people aforesaid, or if he shall wilfully and falsely affirm or declare anything which, if sworn in the usual form would have amounted to the crime of perjury, such person shall be deemed to have committed the crime of perjury and shall upon conviction be subject to such punishment as is or shall be by law provided for or in regard to the said crime.

Ord. 14—1846.

Punishment on false affirmation as for perjury.

[Sections 8 and 9 provide for the taking effect of this Ordinance in Natal.]

10. And be it enacted that nothing in this Ordinance contained shall apply to or affect any suit, action, or proceeding which shall be pending at the time of the commencement of this Ordinance.

Non-application to suits pending.

No. 4—1861.]

[August 14, 1861.]

ACT

For Amending the Law of Evidence.

WHEREAS it is expedient to amend the Law of Evidence in divers particulars: 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 Ordinance No. 72, 1830, entitled "Ordinance for altering, amending and declaring in certain respects the Law of Evidence within this Colony," and of the Ordinance No. 14, 1846, entitled "Ordinance for improving the Law of Evidence," and of any other law or ordinance heretofore in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant laws repealed.

2. On the trial of any issue joined or of any matter or question or in any inquiry arising in any suit, action, or other proceeding in any Court of Justice or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit,

Husbands or wives of parties on the record competent as witnesses.

No. 4—1861.

evidence of the genuineness or otherwise of the writing in dispute. action, or other proceeding may be brought or instituted, or opposed or defended, and the husbands and wives of the said parties and of the said persons, shall, except as hereinafter excepted, be competent and compellable to give evidence either *voçà voçe* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding.

Husband and wife not competent to give evidence for or against each other.

3. Nothing herein shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, in any criminal proceeding. <sup>(1)</sup>

Nor compellable to disclose communications between them.

4. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage. <sup>(1)</sup>

No person competent to give evidence for or against himself.

5. Nothing in this Act contained shall render any person who in any criminal proceeding is charged with the commission of any crime or offence competent or compellable to give evidence for or against himself. <sup>(1)</sup>

Right of reference to oath of adverse party.

6. The adducing of any party as a witness in any cause or proceeding by the adverse party shall not have the effect of a reference to the oath of the party so adduced; Provided always, that it shall not be competent to any party who has called and examined the opposite party as a witness thereafter to refer the cause or any part of it to his oath, and that in all other respects the right of reference to oath shall remain as at present established by the law and practice of this Colony.

Witnesses not compellable to answer certain questions.

7. Nothing in this Act contained shall be construed so as to compel any person whomsoever adduced as a witness to answer any such questions as by law witnesses are not compellable to answer.

Parties to a suit not entitled to expenses when giving evidence in their own behalf.

8. No person being a party to any suit, action, or proceeding, and who shall be adduced as a witness therein in his own behalf, shall (except as hereinafter excepted) be entitled, in the taxation of any costs which may be awarded against the opposite party, to any expenses as a witness: Provided that it shall be competent for the Court upon the application of any such party so adduced as a witness to direct, at its discretion, that such party shall be allowed his expenses in case the said Court shall be of opinion that such party was a necessary witness.

*Except when the Court shall be of opinion that the party to the suit adduced as a witness was a necessary witness*

When adduced by opposite party, expenses receivable.

9. Any party to any suit, action, or proceeding who shall be adduced as a witness by the opposite party shall be entitled to his expenses as a witness in like manner as any other witness.

When affirmation be substituted for oath.

10. If any person called as a witness or required or desiring to make an affidavit or deposition shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for

<sup>1</sup> Amended by §§ 6 and 7, Act 13 of 1886.

the Court or Judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person instead of being sworn to make his or her solemn affirmation or declaration in the words following, viz. :

“I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to my religious belief unlawful; and I do also solemnly, sincerely, and truly affirm and declare,” &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form: Provided that any person professing or admitting himself to be a Quaker, a Moravian, or a Separatist shall make his affirmation in like manner and form as if this Act had not been passed: Provided, also, that any person professing or admitting himself to be a Mennonist shall be allowed in all Courts of Justice to make an affirmation or declaration instead of an oath, which affirmation or declaration shall be of the same force and effect as if an oath. (1)

Affirmation of Quakers, Moravians, Separatists, and Mennonists.

11. The sixth section of the Ordinance aforesaid, No. 14, 1846, is hereby repealed.

Section 6, Ordinance 14, 1846, repealed.

12. Persons produced for the purpose of giving evidence, who from ignorance arising from youth, defective education, or other cause shall be found not to understand the nature or recognize the religious obligation of an oath, shall and may be admissible to give evidence in any Court within this Colony without being sworn or being upon oath: Provided, always, that before any such person shall proceed to give evidence the Judge or Magistrate before whom he shall be offered as a witness shall admonish him to speak the truth, the whole truth, and nothing but the truth, and shall further administer or cause to be administered to such person any form which shall either from his own statement or other source of information appear to be calculated to impress his mind and bind his conscience, and which shall not, as being of an inhuman, immoral, or irreligious nature, be obviously unfit to be administered: And provided, also, that any such person who shall wilfully and falsely state anything which if sworn would have amounted to the crime of perjury shall be deemed to have committed the said crime, and shall, upon conviction be subject to such punishment as is or shall be by law provided for in regard to the said crime.

When unsworn testimony admissible.

13. Comparison of a disputed writing with any writing proved to the satisfaction of the Court to be genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to the Court or jury (as the case may be) in any case, civil or criminal, as

Evidence of the genuineness of disputed writings.

<sup>1</sup> See § 7, Ord. 72, and § 7, Ord. 14 of 1846.



No. 4—1861.

In criminal proceedings certificate of conviction or acquittal of accused sufficient without production of record.

14. And whereas it is expedient as far as possible to reduce the expense attendant upon the proof of criminal proceedings: Be it enacted that whenever in any proceeding whatever it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of the Court or other officer having the custody of the records of the Court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction and judgment or acquittal as the case may be, omitting the formal parts thereof. <sup>(1)</sup>

Certified copies or extracts of documents admissible.

15. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody and no law exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice or before any person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding four pence for every folio of ninety words. <sup>(2)</sup>

Punishment for false certificate.

16. If any officer authorized or required by this Act to furnish any certified copies or extracts shall wilfully certify any document as being a true copy or extract knowing that the same is not a true copy or extract as the case may be, he shall be liable upon conviction to imprisonment with or without hard labour for any term not exceeding eighteen months.

Who empowered to administer oaths.

17. Every Court, Judge, Justice, Officer, Commissioner, Arbitrator, or other person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence is hereby empowered to administer an oath, affirmation, or admonition respectively as aforesaid to all such witnesses as are legally called before them respectively.

Short title of Act.

18. This Act may be cited for all purposes as "The Law of Evidence Amendment Act, 1861."

<sup>1</sup> As to mode of proving previous convictions see §§ 19-24, Act 3 of 1861, and Act 7 of 1867 (Criminal Procedure) and § 8, Act 13 of 1886, *infra*.

<sup>2</sup> See § 31, Act 21, 1804, and § 16, Act 39, 1877 (Ad. of Justice.)

No. 3—1864.]

[July 26, 1864.

No. 3—1864.

ACT

(<sup>1</sup>) For Regulating the Duties upon Stamps and Licences.

(*Production in Evidence of Unstamped Documents.*)

\* \* \* \* \*

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 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 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.

Instruments requiring stamps not to be admitted in court of law without such stamps.

\* \* \* \* \*

No. 17—1874.]

[July 30, 1874.

ACT

To Amend the Criminal Law. (<sup>2</sup>)

\* \* \* \* \*

4. The statement of an accused person purporting to be duly made and subscribed according to the 34th section of the Ordinance No. 40, intituled "An Ordinance for Regulating the manner of proceeding in Criminal Cases in this Colony," shall be received in evidence before any Court or Tribunal upon its mere production without further proof thereof, unless it shall be proved that such statement was not in fact duly made, or that the signatures or marks thereto are not, in fact, the signatures or marks of the persons whose signatures or marks they purport to be.

Prisoners' declarations at preparatory examinations to be received in evidence on mere production

Exceptions.

5. In addition to the cases mentioned in the 41st section of the Ordinance No. 72, intituled "Ordinance for Altering, Amending, and Declaring in certain respects the Law of Evidence within this Colony" where a deposition of an absent witness is admissible in evidence, such deposition shall also be admissible in evidence as in the said section mentioned, if it shall be proved on oath to the satisfaction of the Court, that the deposing witness is too ill to be

Admissibility of deposition at preparatory examination of witness unable to travel.

<sup>1</sup> See § 8 Act 17 of 1874, *infra*, and for full text of this Act see "Stamps and Licences."

<sup>2</sup> For full text see "Criminal Procedure."

No. 17—1874.

able to travel: Provided that in every case mentioned in the forty-first section of the Ordinance No. 72, aforesaid, and in this section of this Act, it shall appear upon the record or be proved to the satisfaction of the Court that the person accused, by himself, his counsel, attorney, or agent, had a full opportunity of cross-examining the witness.

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Unstamped instruments admissible in criminal cases.

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

\* \* \* \* \*

No. 21—1877.]

[August 8, 1877.

ACT

To Amend the Law with reference to Bankers' Books Evidence.

Preamble.

WHEREAS it is a serious inconvenience to bankers, and also to the public, to have the ledgers and other account-books removed from banks for the purpose of being produced in legal proceedings, and whereas it is expedient to facilitate the proof of the transactions recorded in such ledgers and books: 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:—

Entries in certain books admissible in evidence in certain cases.

1. From and after the commencement of this Act the entries in ledgers, day-books, cash-books, and other account-books of any bank shall be admissible in all legal proceedings as *prima facie* evidence of the matters, transactions, and accounts therein recorded, on proof being given by the affidavit in writing of one of the directors, managers, or officers of such bank, or by other evidence, that such ledgers, day-books, cash-books, or other account-books, are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such bank.

Examined copies also admissible.

2. Copies of all entries in any ledgers, day-books, cash-books, or other account-books used by any such bank may be proved in all legal proceedings as evidence of such entries, without production of the originals, by means of the affidavit of a person who has examined the same, stating the fact of the said examination, and that the copies sought to be put in evidence are correct.

Notice that such evidence will be adduced must be given, and liberty given to inspect.

3. Provided always that no ledger, day-book, cash-book, or other account-book, of any such bank, and no copies of entries therein contained, shall be adduced or received in evidence under this Act, unless ten days' notice in writing, or such other notice as

may be ordered by the Court, containing a copy of the entries proposed to be adduced, and of the intention to adduce the same in evidence, shall have been given by the party proposing to adduce the same in evidence to the other party or parties to the said legal proceeding, and that such other party or parties is or are at liberty to inspect the original entries, and the accounts of which such entries form a part.

No. 21—1877.

4. On the application of any party to any legal proceedings who has received such notice, a judge may order that such party be at liberty to inspect and to take copies of any entry or entries in the ledger, day-books, cash-books, or other account-books, of any such bank relating to the matters in question in such legal proceedings, and such orders may be made by such judge, at his discretion, either with or without summoning before him such bank or the other party or parties to such legal proceedings, and shall be intimated to such bank at least three days before such copies are required.

Party receiving notice may apply to a judge for liberty to inspect.

5. On the application of any party to any legal proceedings who has received notice, a judge may order that such entries and copies mentioned in the said notice shall not be admissible as evidence of the matters, transactions, and accounts recorded in such ledgers, day-books, cash-books, and other account-books.

Judge may order that entries and copies shall not be admissible.

6. No bank shall be compelled to produce the ledgers, day-books, cash-books, or other account-books, of such bank in any legal proceedings, unless a judge specially orders that such ledgers, day-books, cash-books, or other account-books should be produced at such legal proceedings.

Bank not compelled to produce any books unless ordered by judge.

7. Nothing in this Act contained shall apply to any legal proceeding to which any bank whose ledgers, day-books, cash-books, or other account-books may be required to be produced in evidence shall be a party.

Act not to apply to proceedings to which bank is a party.

8. The word "bank" in this Act shall mean any joint-stock company trading as bankers in this Colony. The words "legal proceedings" in this Act shall include all proceedings in Courts of Justice, both criminal and civil, and all proceedings by way of arbitration, examination of witnesses, assessment of damages, compensation or otherwise, in which there is power to administer an oath. The words "the Court" in this Act shall mean the Court, Judge, Resident Magistrate, Master of the Supreme Court, Arbitrator, or other person authorized to preside over the said legal proceedings for the time being, and shall include all persons, judges, or officers, having jurisdiction and authorized to preside over to or exercise judicial control over the said legal proceedings or the procedure or any steps therein. The word "Judge" shall mean any Judge of the Court including a Court of Resident Magistrate, in which the legal proceedings are pending.

Interpretation of terms.

9. This Act may be cited for all purposes as the "Bankers' Books Evidence Act, 1877."

Short title.

No. 13—1886.]

[June 18, 1886.

## ACT

To Amend in certain respects the Criminal Law and the  
Law of Evidence. <sup>(1)</sup>

\* \* \* \* \*

Accused person and  
the husband or wife  
competent witnesses  
in criminal cases.

6. In any proceeding against any person for any crime or offence, such person and the wife or husband, as the case may be, of such person may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

Such witness cannot  
refuse to answer  
question on ground  
that it may criminate  
himself.

7. No witness who shall be examined or cross-examined in any proceeding under the last preceding section shall be excused from answering any question relevant to the issue in such proceeding on the ground that the answer thereto may criminate or tend to criminate himself.

If prisoner at pre-  
paratory examina-  
tion admits previous  
conviction his admis-  
sion to be reduced to  
writing.

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

Such written ad-  
mission to be receiv-  
ed in evidence as  
proof of such pre-  
vious conviction.

\* \* \* \* \*

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 EXCISE.

1. Act 11—1884, (Beer).
2. „ 27—1885, (do.).
3. „ 15—1884, (Spirit Duty).

4. Act 20—1885, (Spirit Duty).
5. „ 18—1884, (Excise Spirits Act).
6. „ 19—1886, (do.).

No. 11—1884.]

[July 22, 1884.

## ACT

To Levy and Collect a Duty on Beer brewed within this  
Colony. <sup>(2)</sup>

Preamble.

WHEREAS it is expedient to levy and collect a duty on beer brewed in the Colony: Be it therefore enacted by the Governor

<sup>1</sup> Printed in full under "Administration of Justice."

<sup>2</sup> Act 27, 1885, to be read as one with this Act.

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

No. 11—1884.

1. This Act may be cited as the “Excise Beer Duty Act, 1884.”

Short title.

2. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent therewith.

Interpretation of terms.

“Person” includes a body of persons, whether corporate or otherwise :

“Beer” includes ale, porter, spruce beer and black beer, and any other description of beer, and shall be taken to mean any liquor made from infusion or decoction of malt, grain, or saccharine matter which contains spirit, and to which any bitter flavour has been communicated by the addition of hops, herbs, or other ingredients capable of being used as a bitter ; and any fermented liquor which shall contain not less than three per centum of proof spirit, although the same shall not be included under the foregoing definition, or cannot be regarded as sweets, or made wines, shall, for the purposes of the revenue, be deemed beer, and be subject to all regulations applicable to beer :

“Brewer” means a brewer of beer for sale :

“Sugar” means any saccharine substance, extract, or syrup, and includes any material capable of being used in brewing except malt or corn :

“Sweets” means any home-made wine produced from the juice of fruit and in which spirit is produced by fermentation :

“Chief Inspector” means the Chief Inspector of Excise :

“Civil Commissioner” means the Civil Commissioner for the division in which the premises of a brewer are situate :

“Officer” means officer of Excise :

“Proper Officer” means the officer of the division or place in which the premises of a brewer are situate, and includes a person acting as such officer, and also any officer superior in matters of Excise to such officer :

“Prescribed” and “approved” mean respectively prescribed or approved by the Governor by regulations or otherwise, or by the Chief Inspector :

“This Act” includes any regulations made under the provisions hereinafter contained.

BREWERS AND EXCISE DUTY ON BEER.

3. (1) No person shall brew beer for sale without a licence in the prescribed form : and in respect of every such licence there shall be paid by means of stamps the following sums :—

Brewer's licence.

For a licence paid before the thirtieth June in any year, to expire on the thirty-first day of December. . . . . One Pound.

- No. 11—1884. For such a licence if paid after the thirtieth day of June . . . . . Ten Shillings.
- Penalty and forfeiture for brewing without licence. (2) If any person shall brew beer for sale without having in force such licence, he shall incur the penalty by this Act provided, and all worts, beer, vessels, utensils, and materials for brewing in his possession shall be absolutely forfeited.
- Duty on beer. 4. On and after such date as may be fixed by the Governor in that behalf, there shall be levied, collected and paid, in respect of beer brewed in the Colony, a duty calculated according to the specific gravity of the worts thereof at the rate mentioned in the first schedule to this Act.<sup>(1)</sup>
- Equivalent of "bushel of malt" in corn or sugar, and definition of expression. 5. Forty-two pounds weight of malt or corn of any description or twenty-eight pounds weight of sugar, shall be deemed the equivalent of a bushel of malt; and the expression "bushel of malt" shall include either of its equivalents, or any quantities of malt, corn, and sugar, or any two of those materials, as by relation to such equivalents shall be equal to a bushel of malt.
- Regulations as to charge of duty and allowance for waste. 6. (1) Every brewer shall be deemed to have brewed thirty-six gallons of worts of the gravity of one thousand and fifty-seven degrees for every two bushels of malt entered or used by him in brewing.
- (2) If the amount of worts deemed to have been brewed by relation to materials, exceeds in quantity and gravity by more than four per centum the worts produced from such materials the duty shall be charged in respect to the excess over and above the four per centum.
- (3) In respect of such loss and waste as arises in brewing of beer including sour beer a deduction shall be made from the quantity of wort produced at the rate of ten per cent.
- (4) Where the materials used in brewing are proved to the satisfaction of the Chief Inspector to be of such a description or nature that some deduction from the quantity chargeable by relation to the materials should be made, such a deduction shall be made from that quantity as shall in the opinion of the Chief Inspector afford just relief to the brewer.
- Payment of duty. 7. The duty on beer shall become due immediately on the same being charged by the officer, but the Governor shall have the power to allow the charge to be made up on the last day of each month and in case the last day shall be a Sunday then on the previous Saturday, in respect of all the brewings during that month, and in that case the aggregate of the amounts of worts deemed to be brewed by relation to materials, and the aggregate of the amounts of worts produced, shall be treated as worts deemed to be brewed or produced in one brewing.

<sup>1</sup> See Act 27, 1885, § 1.

8. (1) If any duty be in danger, or if payable by a brewer remains unpaid for a period of fifteen days after the expiry of any month, the Resident Magistrate or Chief Inspector may, by warrant signed by him, empower any person to distrain all beer, malt, or other materials for brewing, vessels and utensils belonging to the brewer, or in any premises in possession of the brewer or of any person on his behalf or in trust for him, and to sell the same by public auction, giving six days' previous notice of the sale, and all such beer, malt, or other materials for brewing, together with the vessels and utensils in any premises in the use or possession of the brewer or of any person in his behalf, or in trust for him, whether the same be the property of the brewer or not, are hereby made chargeable with such duty.
- (2) The proceeds of sale shall be applied in or towards payment of the costs and expenses of the distress and sale, and in or towards payment of the duties due from the brewer, and the surplus, if any, shall be paid to the brewer.
- (3) In the event of any beer, malt, or other materials being so distrained, the brewer may at any time before the day appointed for the sale, release the whole or any part thereof, on paying to the Civil Commissioner, Chief Inspector, or other duly authorized officer, in or towards payment of the duty, the true value of the beer, malt, or other materials.

No. 11—1884.  
Power to distrain  
for duties in arrear.

9. When any materials upon which a charge of duty has been made, or any worts or beer shall be destroyed by accidental fire, or other unavoidable cause, while the same are on the entered premises of a brewer, the Chief Inspector shall, on proof of such to his satisfaction, authorize the remission or re-payment of the duty charged or paid.

Loss by fire, &c.

AS TO BREWERS.

10. Every person who brews beer for sale, whether by wholesale or retail, or for any purpose of trade, shall be deemed to be a brewer within the meaning of this Act, whether the said person be licensed to deal in or retail beer or not.

Who deemed brewers of beer.

11. Every brewer shall keep such books as the Governor may prescribe, setting forth from day to day the nature and quantity of materials used by him in brewing, and an officer duly appointed in that behalf may at all times demand an inspection of any such books, make extracts therefrom, and examine and take account of any materials and worts upon the premises of such brewer, or in any warehouse or store connected therewith.

Books to be kept by brewers; what to contain and how to be examined.

12. All materials for the manufacture of any beer shall be received into and delivered from any building or place used by

Materials to be received and used in accordance with regulations.

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- No 11—1884. any brewer for the purposes of his business as such brewer, in accordance with such rules and regulations as the Governor may prescribe.
- Marking of pre-  
mises and vessels. 13. All premises used by any brewer for the purposes of his business, and all utensils or vessels used by him for or in connection with such business, shall be marked, numbered, or otherwise distinguished in such manner as the Governor may by any regulation in that behalf prescribe.
- Prescribed form of  
entry of premises, &c. 14. (1) Every brewer shall, before he begins to brew, make entry in the prescribed form, of all premises, rooms, places, and vessels, intended to be used by him for his business, specifying the purpose for which each room, place, and vessel is to be used, and the mark by which it is distinguished: Provided that every brewer intending to use sugar in the brewing or making of beer shall keep and store such sugar in a warehouse, storehouse, room or place which shall be entered and used for that purpose, and no other, and any sugar which shall be found in any part of the brewery premises not entered for the purpose of keeping and storing sugar, except such sugar as shall be in the course of removal for mashing or dissolving, under the prescribed notice, shall be absolutely forfeited, and the brewer shall be liable to the penalty by this Act provided.
- (2) The brewer shall sign the entry and deliver it to the proper officer.
- Operations to be  
carried on in accord-  
ance with regulations 15. The period of time allowed for the various operations of brewing, and for removing any material or wort from the several vessels used in such operations, shall be in accordance with such rules and regulations as the Governor may prescribe.
- Provisions for case  
of excess in gravity  
of worts. 16. If the original gravity of any worts contained in the collecting or fermenting vessels shall at any time be found to exceed by five degrees the gravity as entered in the book by the brewer, or as ascertained by the officer, such worts shall be deemed to be the produce of a fresh brewing, and be charged with duty accordingly.
- Officers may take  
samples. 17. (1) An officer may take such samples as he may deem necessary of any worts or beer, or materials for brewing, in the possession of any brewer.
- (2) The brewer, may if he wishes, before any such sample is taken, stir up and mix together all such worts, beer, or materials from which the sample is taken.
- Mode of ascertain-  
ing gravity of wort 18. (1) An approved saccharometer and tables shall be used to ascertain the quantity by relation to gravity of all worts: and, in calculating the gravity, a degree of gravity shall be taken as equal to one-thousandth part of the gravity of distilled water at sixty degrees Fahrenheit.

- (2) The quantity and gravity so ascertained shall be deemed to be the true quantity and gravity of such worts.
- (3) When fermentation has commenced in any worts so that the original gravity cannot be ascertained by the saccharometer, such gravity may be determined in the following manner :
- (a) A sample is to be taken from any part of such worts, and a definite quantity thereof by measure at the temperature of sixty degrees Fahrenheit shall be distilled.
- (b) The distillate and residue shall each be made up with distilled water to the original measure of the quantity before distillation, and the gravity of each shall be ascertained.
- (c) The number of degrees by which the gravity of the distillate is less than the gravity of distilled water shall be deemed the spirit indication of the distillate.
- (d) The degrees of original gravity standing opposite to such indication in the table in the second schedule to this Act added to the specific gravity of the residue shall be deemed to be the original gravity of the worts.

19. If any brewer shall conceal any worts or beer, so as to prevent any officer from taking an account thereof, or shall mix any sugar or other material with any worts or beer so as to increase the quantity or gravity thereof after an account of such worts or beer has been taken by an officer and the duty has been charged thereon, he shall, for every such offence, be liable to the penalty by this Act provided, and the worts or beer in respect of which the offence is committed, together with the vessels containing the same, shall be absolutely forfeited.

Concealing worts or beer, or adding sugar thereto after duty charged.

20. Every brewer shall

- (1) Provide and maintain sufficient and just scales and weights and other necessary and reasonable appliances to enable the officers to take account of, or check by weight, gauge, or measure, all materials and liquids used or produced in brewing, and shall
- (2) Render all necessary assistance to the officers in the taking of such accounts, and shall
- (3) If required by the officer, provide sufficient lights, ladders, and other conveniences.

Brewer to provide scales, weights, ladders, &c.

21. (1) An officer may at any time, either by day or night, enter any part of the entered premises of a brewer, to take an account of the materials used or to be used in brewing, and of the worts and beer produced.

Power of entry and examination by officers.

- (2) If an officer after having demanded admission into the entered premises of a brewer, declares his name and

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Power to enter and search for concealed pipes, &amp;c.

business at any entrance or window thereof, is not immediately admitted, the officer, and any person acting in his aid, may at any time, either by day or night, break open any door or window of the premises, or break through any wall thereof for the purpose of obtaining admission.

22. (1) If any officer has reason to suspect that any private or concealed pipe, or conveyance, or vessel, is kept or made use of by a brewer, he may, either by day or night, break open any part of the premises of such brewer and forcibly enter therein, and may break up the ground in or adjoining such premises, or any wall thereof, to search for such private or concealed pipe, or conveyance, or vessel.
- (2) If such officer shall find any such pipe or conveyance, he may enter any house in the possession of any other person into which such pipe or conveyance may lead, and may break up any part of such house or premises to search for the vessel communicating with such pipe.
- (3) Every such pipe, conveyance, or vessel and all beer, worts, or materials for brewing found therein, shall be absolutely forfeited, and the brewer shall be liable to the penalty by this Act provided.
- (4) If any damage is done in the search, and such search is unsuccessful, the damage shall be made good by the Treasury.
- (5) If any dealer in or retailer of beer shall keep or make use of any molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, as a substitute for malt, or shall mix or put into any beer any such molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, unless in accordance with prescribed regulations, he shall be liable to the penalty by this Act provided, and all such molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, shall be absolutely forfeited.
- (6) It shall be lawful for any officer to enter upon the premises of any dealer in or retailer of beer, to search for, discover and seize any molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, which may be used as a substitute for malt or in the preparation of beer.

Substitutes for malt.

## RULES AND REGULATIONS.

Rules and regulations may be made by Governor,

23. The Governor may make rules and regulations for all or any of the following purposes:—

- (1) For the guidance and conduct of officers and persons employed in carrying this Act into effect.

- (2) For ascertaining the amount of duty payable, and securing and enforcing payment thereof.
- (3) For prescribing all things necessary to be done for effectually carrying the provisions of this Act into effect.

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PENALTIES.

24. Any person who shall

Penalties.

- (1) By himself or by any person in his employ obstruct, hinder, or molest any officer or person in the execution or performance of any duty, which such officer or person is, by this Act or by any regulations made under this Act, required to perform, or aid in performing : or
- (2) Contravene any of the provisions of this Act, or of any regulations made under this Act :

Shall upon conviction be liable to a penalty not exceeding one hundred pounds, in respect of each act or offence (in addition to any penalty or forfeiture by this Act otherwise provided), and in default of payment to imprisonment, with or without hard labour, for any period not exceeding twelve months, unless such penalty be sooner paid.

- (3) All penalties under this Act may be recovered in the name of the Chief Inspector or other duly authorized officer in the Court of the Resident Magistrate of the district in which the offence was committed.

DRAWBACK ON BEER EXPORTED.

25. There shall be allowed and paid in respect of beer which shall be exported from the Colony as merchandise, or shipped for use as ship's stores, a drawback, calculated according to the gravity and rate of duty specified in the schedule, subject to such regulations as shall be prescribed.

Drawback on beer exported.

FIRST SCHEDULE.

Duty payable in respect of beer brewed in the Colony, according to the provisions of the fourth section of the "Excise Beer Duty Act 1884," that is to say : Upon every thirty-six gallons of worts of a specific gravity of one thousand and fifty-seven degrees, the duty of twelve shillings ; and so in proportion for any difference in quantity or gravity. (<sup>1</sup>)

1st Schedule.

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<sup>1</sup> Amended by Act 27, 1885, § 1.

## SECOND SCHEDULE.

TABLE A.

2nd Schedule. TABLE TO BE USED IN DETERMINING THE ORIGINAL SPECIFIC GRAVITY OF WORTS OR WASH.

Degrees of Spirit Indication.	Degrees of original specific-gravity.	Degrees of Spirit Indication.	Degrees of original specific-gravity.	Degrees of Spirit Indication.	Degrees of original specific-gravity.	Degrees of Spirit Indication.	Degrees of original specific-gravity.
.1	.3	4.1	15.5	8.1	34.3	12.1	54.9
.2	.6	4.2	16.0	8.2	34.8	12.2	55.4
.3	.9	4.3	16.4	8.3	35.4	12.3	55.9
.4	1.2	4.4	16.8	8.4	35.9	12.4	56.4
.5	1.5	4.5	17.3	8.5	36.5	12.5	56.9
.6	1.8	4.6	17.7	8.6	37.0	12.6	57.4
.7	2.1	4.7	18.2	8.7	37.5	12.7	57.9
.8	2.4	4.8	18.6	8.8	38.0	12.8	58.4
.9	2.7	4.9	19.1	8.9	38.6	12.9	58.9
1.0	3.0	5.0	19.5	9.0	39.1	13.0	59.4
1.1	3.3	5.1	19.9	9.1	39.7	13.1	60.0
1.2	3.7	5.2	20.4	9.2	40.2	13.2	60.5
1.3	4.1	5.3	20.9	9.3	40.7	13.3	61.1
1.4	4.4	5.4	21.3	9.4	41.2	13.4	61.6
1.5	4.8	5.5	21.8	9.5	41.7	13.5	62.2
1.6	5.1	5.6	22.2	9.6	42.2	13.6	62.7
1.7	5.5	5.7	22.7	9.7	42.7	13.7	63.3
1.8	5.9	5.8	23.1	9.8	43.2	13.8	63.8
1.9	6.2	5.9	23.6	9.9	43.7	13.9	64.3
2.0	6.6	6.0	24.1	10.0	44.2	14.0	64.8
2.1	7.0	6.1	24.6	10.1	44.7	14.1	65.4
2.2	7.4	6.2	25.0	10.2	45.1	14.2	65.9
2.3	7.8	6.3	25.5	10.3	45.6	14.3	66.5
2.4	8.2	6.4	26.0	10.4	46.0	14.4	67.1
2.5	8.6	6.5	26.4	10.5	46.5	14.5	67.6
2.6	9.0	6.6	26.9	10.6	47.0	14.6	68.2
2.7	9.4	6.7	27.4	10.7	47.5	14.7	68.7
2.8	9.8	6.8	27.8	10.8	48.0	14.8	69.3
2.9	10.2	6.9	28.3	10.9	48.5	14.9	69.9
3.0	10.7	7.0	28.8	11.0	49.0	15.0	70.5
3.1	11.1	7.1	29.2	11.1	49.6	15.1	71.1
3.2	11.5	7.2	29.7	11.2	50.1	15.2	71.7
3.3	12.0	7.3	30.2	11.3	50.6	15.3	72.3
3.4	12.4	7.4	30.7	11.4	51.2	15.4	72.9
3.5	12.9	7.5	31.2	11.5	51.7	15.5	73.5
3.6	13.3	7.6	31.7	11.6	52.2	15.6	74.1
3.7	13.8	7.7	32.2	11.7	52.7	15.7	74.7
3.8	14.2	7.8	32.7	11.8	53.3	15.8	75.3
3.9	14.7	7.9	33.2	11.9	53.8	15.9	75.9
4.0	15.1	8.0	33.7	12.0	54.3	16.0	76.5

No. 27—1885.]

[August 11, 1885.

## ACT

To amend the Provisions of the “Excise Beer Duty Act, 1884.”

WHEREAS it is expedient to amend the provisions of the Act No. 11 of 1884, commonly called the “Excise Beer Duty Act, 1884 :” 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 “Excise Beer Duty Act, 1884,” especially in the fourth section and first schedule thereof, there shall be levied, collected, and paid in respect of beer brewed in the Colony from worts of the specific gravity of less than one thousand and forty degrees, a duty of three shillings and no more upon every thirty-six gallons of such worts.

Duty on light colonial beer.

2. This Act shall come into operation on a date to be hereafter proclaimed by the Governor.

Date of operation of Act.

3. This Act may be cited as the “Excise Beer Duty Amendment Act, 1885,” and shall be read and construed as one with the “Excise Beer Duty Act, 1884.”

Short title.

No. 15—1884.]

[July 18, 1884.

## ACT

To Impose an Excise Duty upon Spirits Distilled or Manufactured within the Colony of the Cape of Good Hope. (1)

WHEREAS it is expedient to impose a duty upon spirits, distilled or manufactured 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, as follows :—

Preamble.

1. From and after the passing of this Act there shall be payable to the Colonial Revenue,—

Duties payable on Spirits.

(1) [Repealed by § 2 Act 19, 1886].

(2) Upon every gallon of spirits distilled or manufactured from materials other than wine, grape juice, grapes, husks of grapes, or raisins the produce of this Colony, an excise duty at the rate of four (2) shillings per gallon, if the spirits do not exceed the strength of proof, with a proportionate increase in case the spirit be of greater strength : Provided that upon every gallon of spirits which, having been distilled or manufactured within the Colony, shall be in an approved warehouse, and shall be

<sup>1</sup> Amended by Acts 20, 1885, and 19, 1886.

<sup>2</sup> Printed as amended by Act 20, 1885.

No. 15—1884.

on and after the passing of this Act taken out for consumption, the above mentioned duties shall be respectively charged on every gallon of the strength of proof, and so in proportion for any greater or less degree of strength, or for any greater or less quantity.

Duty payable on existing stocks.

2. For and upon all colonial spirits of the quantity of one hundred gallons or upwards, belonging to any distiller, or dealer in, or retailer of spirits, or other person, and which upon the taking effect of this Act, shall either be in his custody or possession, or in the custody or possession of any other person in trust for him, or for his use, benefit or account in the Colony, there shall be payable to the Colonial Revenue an Excise Duty at the rate of one shilling per gallon of the strength of proof, with a proportionate increase in case the spirits be of greater strength.

Return of existing stocks to be made to Civil Commissioner.

3. (1) Every distiller, or dealer in, or retailer of spirits, or other person who shall have in his custody or possession any such spirits, shall, within fourteen days from the passing of this Act, make, and lodge with the Civil Commissioner of the division within which he carries on his business, or other officer appointed to receive the same, a return in writing, giving a true and particular account of the quantity of such spirits in his custody or possession, and such distiller, or dealer in, or retailer of spirits, or other person, shall within six months thereafter pay to the said Civil Commissioner, or other duly authorized officer, the amount of duty on such spirits.

Right of inspection by excise officers.

(2) An officer may at all reasonable times enter upon the premises of any distiller, or dealer in, or retailer of spirits, or other person, and upon all places where spirits liable to duty under this and the next preceding section of this Act shall be kept or stored, and shall gauge and take an account of all spirits found on such premises or places: Any person contravening the provisions of this section or who shall oppose, hinder, obstruct, or interfere with an officer in the execution of his duty under this section, shall be liable, on conviction, to a penalty not exceeding two hundred pounds. <sup>(1)</sup>

Existing contracts of sale.

4. Whereas contracts or agreements may have been made for the sale or delivery of some of the spirits in the last two preceding sections mentioned on which a duty of excise is by this Act imposed, which contracts or agreements may have been made with no reference to such duty, and thereby the several contractors may be materially affected: For remedy thereof, be it enacted, that every person who shall have made, or entered into such contract or agreement shall be entitled to add so much money as will be equivalent to the duty hereby granted on such spirits to the price

<sup>1</sup> See § 3, Act 19, 1886.

thereof, and to be paid and to sue for and recover the same accordingly.

No. 20—1885.

5. Any penalty for any offence against this Act may be sued for and recovered in the name of the Chief Inspector, or other duly authorized person in the Court of the Resident Magistrate of the district in which the offence was committed, or of any other competent Court, and in default of payment thereof the person convicted may be imprisoned with or without hard labour for any term not exceeding six months, unless such penalty be sooner paid.

How penalties to be recovered.

6. This Act may be cited as the "Excise Spirit Duty Act, 1884," and shall come into operation upon the promulgation thereof.

Short title.

No. 20—1885.]

[August 11, 1885.]

ACT

To Amend the "Excise Spirit Duty Act, 1884."

WHEREAS it is expedient to amend in certain respects the provisions of the Act No. 15 of 1884, commonly called the "Excise Spirit Duty Act, 1884:" Be it enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the passing of this Act the second sub-section of the first section of the Excise Spirit Duty Act, 1884, shall be read and construed as though the word "four" were inserted therein instead of the word "two;" provided that nothing herein contained shall be deemed or taken to increase the amount of duty payable in respect of any spirits distilled before the passing of this Act, but in respect of any such spirits the said sub-section shall continue to operate as if this Act had not been passed.

Duty on spirits distilled from other material than wine, &c., after this Act raised to 4s. per gallon.

2. This Act may be cited as the "Excise Spirit Duty Amendment Act, 1885."

Short title.

Act No. 18—1884.]

[July 21, 1884.]

ACT

To Consolidate and Amend the Law relating to the Manufacture and Sale of Spirits. (1)

WHEREAS it is desirable to consolidate and amend the law relating to the manufacture and sale of spirits within the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

PRELIMINARY.

1. This Act may be cited as the "Excise Spirits Act, 1884."

Short title.

<sup>1</sup> All the provisions of this Act in so far as they may be applicable to wine farmers or to distillers distilling spirits from wine only, are repealed by § 3, Act 19, 1886.



No. 18—1884.  
Definitions.

2. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent with such meaning:—

“ Person ” includes an individual and a body of persons, whether corporate or otherwise :

“ Spirits ” means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits, and wood spirits :

“ Colonial Spirits ” means spirits liable to a duty of Excise :

“ Foreign Spirits ” means all spirits and strong waters liable to a duty of Customs :

Definitions.

“ Low Wines ” means spirits of the first extraction conveyed into a low wines receiver :

“ Feints ” means spirits conveyed into a feints receiver :

“ Spirits of Wine ” means spirits of the strength of not less than forty-three degrees above proof :

“ Compounds ” means spirits re-distilled, or which have had any flavour communicated thereto, or ingredient, or material mixed therewith :

“ Sugar ” includes any saccharine substance or syrup manufactured from any material from which sugar can be manufactured :

“ Chief Inspector ” means Chief Inspector of Excise :

“ Proof Spirits ” means such spirits as at a temperature of fifty-one degrees by Fahrenheit’s thermometer shall weigh twelve-thirteenth parts of an equal measure of distilled water.

“ Proof ” means the strength of proof as ascertained by Sykes’s hydrometer :

“ Gravity ” means the gravity as ascertained by Bates’s saccharometer :

“ Still ” includes any part of a still, and any distilling apparatus whatever for distilling or making spirits :

“ Distiller ” means and includes any person who conducts, works, or carries on any distillery, or who distils or manufactures any spirits, by any process whatsoever, either by himself, or his agent, or servant :

“ A Distillery ” means and includes any place or premises where any process of distillation whatever of spirits is carried on, or where any process of rectification of spirits by redistillation, or other process is carried on, or where any spirits are manufactured, or produced from any substance whatever by any process whatever.

“ Dealer ” and “ retailer ” mean respectively, a person who deals in, or retails spirits :

“ Rectifier ” means a person, other than a licensed distiller, who rectifies or compounds spirits :

“ Excise trader ” means any person carrying on a business subject to any of the regulations of this Act, and includes any proprietor or occupier of an Excise warehouse :

“Vinegar maker” means a person who shall make, prepare, extract, distil, rectify, purify, or sell any liquors prepared or capable of being used or applied for the purposes of making vinegar, or acetous acid for sale :

“Wine” means wine of any description produced within the Colony, and includes grape juice, grapes, husks and stalks of grapes and raisins :

“Wine farmer” means a farmer who cultivates vines on land in his own occupation and who produces wine from grapes grown on such vines :

“Licence” means a licence, in the form prescribed, granted by any distributor of stamps, or by any officer duly authorized, and “licensed,” as applied to any Excise trader, means a person holding a licence so granted for the purpose of his business :

“Premises” when used with reference to an Excise trader means any building or place used by him in the course of his business, and includes all buildings, or places, owned or occupied by, or on behalf, or for the use of, such Excise trader :

“Prescribed” and “approved” mean respectively prescribed or approved by the Governor or Chief Inspector :

“Warehouse” means an Excise warehouse approved as a general warehouse for the deposit of spirits, and includes an approved warehouse on the premises of a distiller, and a Customs warehouse :

“Civil Commissioner,” when used with reference to an Excise trader, means the Civil Commissioner for the division in which the premises of the trader are situate :

“Officer” and “proper officer” mean respectively an officer duly appointed for the purposes of this Act : . . .

“Still maker” means a person who makes or repairs any still, or any distilling apparatus for distilling or making spirits, and includes the importer of any still or distilling apparatus :

“Resident Magistrate” and “Justice” mean respectively a Resident Magistrate or a Justice of the Peace having jurisdiction for the district in which any offence is committed or supposed to have been committed, or any offender is apprehended or found, or any goods, or commodities are seized, or liable to seizure, or suspected to be so liable :

“Schedule” means the schedule to this Act :

“This Act” includes any regulations made under the provisions hereinafter contained.

LICENCES.

3. (1.) On and after the first day of August, one thousand eight hundred and eighty-four, the following duties on licences granted in the Colony shall be paid ; that is to say :

Licences.

(a) On a licence to be taken out by a distiller  
(except as hereinafter provided) .. .. £10 0 0

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- (b) [Repealed by Act 19, 1886].
- (c) On a licence to be taken out by a rectifier or compounder of spirits . . . . . £10 0 0
- (d) On a licence to be taken out by every person, not being a licensed distiller, or rectifier, or compounder of spirits, who keeps or uses any still or retort . . . . . £1 0 0
- (e) On a licence to be taken out by a maker of vinegar or acetous acid for sale (except a maker of vinegar or acetous acid from wine the produce of land in his own occupation) . . . . . £1 0 0
- (f) On a licence to be taken out by a still maker . . . . . £1 0 0

(2) Every such licence shall be in the prescribed form, and shall be paid by means of stamps, and shall expire on the thirty-first day of December in each year, but when any such licence shall be issued on and after the first day of July there shall be payable only one-half the yearly licence.

If any person contravenes this section by carrying on any business hereinbefore mentioned without being duly licensed, or if he fails, or refuses, to produce his licence on the demand of an officer, he shall, for each offence, incur the penalty by this Act provided, and all spirits and vessels, utensils and materials found in his possession for the purposes of such business shall be forfeited.

Distillery to be within half a mile of a town or village except on terms as to lodgings for officers, and licence to be conditional in other cases

4. (1.) No person shall be entitled to a licence as a distiller, or be permitted to make entry of a distillery at which the daily attendance of an officer may be deemed necessary by the Chief Inspector, unless it is situate within half a mile of any town or village.

(2.) The Governor may grant a licence for, and permit entry to be made of a distillery situate at a greater distance than above specified, provided that satisfactory lodgings for the officer or officers to be placed in charge of the distillery are provided by the person making the application for such licence, and provided that the rent to be paid by the Government for such lodgings shall at no time exceed twenty pounds a year.

(3.) If a distiller to whom a licence is granted on said terms fails to provide the lodgings, or to keep them in proper repair, or interrupts or annoys any officer in the enjoyment thereof, he shall incur the penalty by this Act provided.

(4.) No licence shall be granted for distilling spirits in any building or premises which may appear to the Governor, from their situation or otherwise, with reference to surrounding buildings or places of business, to be so constructed or arranged as to endanger the collection of the revenue.

(5.) No licence to distil spirits shall be granted without a certificate from the proper officer that the person applying for such

licence has complied with the prescribed regulations as to the buildings, places, vessels, and utensils to be used by such person in the manufacture or distillation of spirits.

Provided that the provisions of this section shall not apply to any wine farmer who only distils spirits from wine the produce of land in his own occupation.

5. [§§ 5-9 relate solely to wine farmers who distil spirits, and are therefore repealed by § 3, Act 19, 1886.]

DISTILLERS, OTHER THAN WINE FARMERS.

10. All premises used by a distiller, other than a wine farmer, for the purpose of his business, and all utensils and vessels used by him for, or in connection with, such business shall be marked, numbered or otherwise distinguished in such a manner as may be prescribed. Premises, utensils and vessels to be marked.

11. (1.) Such distiller shall, before he begins to distil, make entry in the prescribed form of all premises, rooms, places, vessels, pipes, and utensils intended to be used by him for his business, specifying the purpose for which each room, place, vessel, pipe, and utensil is to be used, and the mark by which it is distinguished, and no room, place, vessel, pipe, or utensil shall be described in the entry as intended to be used for more than one purpose. Prescribed form of entry of premises, &c.

(2.) Such distiller shall sign the entry and deliver it to the proper officer.

(3.) No entry shall be withdrawn whilst there remains in any place mentioned therein any still, or in any room, place, vessel, pipe, or utensil mentioned therein any materials preparing or fit for distillation, or any spirits liable to duty.

(4.) No such distiller shall alter, move, or add to the vessels, utensils, or pipes at his distillery, after entry has been made thereof, except in accordance with the prescribed regulations.

(5.) No such distiller shall without the consent of the Chief Inspector, remove any sugar from the room or place entered as a sugar store except for use in the manufacture of spirits on his distillery premises, under the prescribed regulations.

Any person contravening this section shall for each offence be liable to the penalty by this Act provided, and every vessel or utensil, with its contents, and all spirit or materials for distilling spirits found in any room or place not specified in the entry of such distiller shall be forfeited.

12. The Governor may prescribe the number of vessels and utensils to be fixed and used by such distiller, and no addition shall be made to the number of such vessels or utensils without a certificate from the Chief Inspector that the vessels or utensils required to be added are necessary, and all stills, apparatus, utensils, vessels, and pipes used by any such distiller shall be fixed, placed, secured, and worked in accordance with such regulations as may be in that behalf prescribed. Power of Governor to fix number of vessels.

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Distillers to keep books and to enter therein quantity of materials and spirits produced.

13. (1.) Every such distiller shall keep such books as may be prescribed, setting forth from day to day the nature and quantity of the materials used by him for the purpose of distilling or manufacturing spirits, and the quantity of spirits distilled or manufactured by him, and an officer duly appointed in that behalf, may at all times demand an inspection of any such books, make extracts therefrom, and examine and take an account of any materials and spirits upon the premises of such distiller, or in any store or warehouse connected therewith.

(2.) Every such distiller shall make a return in the prescribed form in the first week of each month, setting forth the quantity of each description of materials used by him in the distillation or manufacture of spirits, and the number of gallons of spirits computed at proof distilled from such materials in the month preceding such return.

Provision and securing of spirit store

14. (1.) Every such distiller shall provide, to the satisfaction of the Chief Inspector, a spirit store on his distillery premises, and cause it to be properly secured, and all spirits distilled by such distiller shall be placed and kept in such store in accordance with the prescribed regulations.

(2.) The spirit store shall be kept locked by the officer in charge of the distillery except when he is in attendance.

Spirits in store.

15. All spirits shall be received into and removed from such distiller's store, in the presence of an officer, and all operations in such store shall be conducted in accordance with the prescribed rules and regulations.

Account of stock and penalty for excess or deficiency.

16. (1.) The proper officer shall, from time to time, take an account in the prescribed manner of the quantity of spirits in such distiller's spirit store.

(2.) If the quantity of spirits computed at proof found in any such store is greater or less than the quantity which should be therein, according to such account, the distiller shall incur a fine, not exceeding double the duty, for every gallon of spirits so in excess or deficient, and such excess shall be forfeited.

(3.) No distiller shall be liable to any penalty under this section in respect of any such excess, as aforesaid, not exceeding one-half per centum, or in respect of any such deficiency, as aforesaid, not exceeding three per centum on the balance struck when such account was last taken, together with the quantity since brought in from the spirit receiver, nor if he satisfy the Chief Inspector that such excess or deficiency does not result from fraud: Provided that in any case all spirits found in excess, as aforesaid, shall be charged with duty.

Regulations for charging duty.

17. (1.) In respect of all feints and spirits made in any distillery the duty shall be charged on the quantity of spirits at proof after deducting the feints (if any) remaining from the previous distillation, and included in the last account taken of feints and spirits.

(2.) In calculating the duty payable on spirits an allowance shall be made for any deficiency occasioned by natural waste in the transfer of spirits from the receiver to the store, subject to the following provisions :

- (a) The allowance shall not exceed one and a half per centum on such spirits :
- (b) If the deficiency exceeds three per centum on such spirits no allowance whatever shall be made.

18. (1.) Spirits may be removed, subject to the prescribed security, from a distiller's spirit store to any warehouse, or from one warehouse to another, or for exportation, or for ship's stores without payment of duty.

Removal of spirits to a distiller's or excise warehouse and for exportation or ship's stores, and regulations as to warehouses.

(2.) The Governor may approve Excise warehouses for warehousing spirits without payment of duty. Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

(3.) The proprietor of spirits in any warehouse may, on giving the prescribed security, remove the spirits for exportation or ship's stores without payment of duty.

(4.) All spirits shall be received into and removed from any warehouse in the presence of an officer, and all operations in any warehouse shall be conducted in accordance with the prescribed rules and regulations.

(5.) The proprietor or occupier of a warehouse shall be alone responsible to the proprietor of any spirits warehoused therein for the safe custody of such spirits, and no action shall be against any person in the employment of the Government for loss or damage occasioned to spirits whilst stored in such warehouse, or on account of any wrong or improper delivery therefrom : Provided that nothing in this sub-section contained shall apply to spirits warehoused in any Government warehouse.

(6.) The proprietor or occupier of any warehouse shall give the prescribed security.

(7.) The Governor may revoke his approval of a warehouse, and upon such revocation all spirits warehoused therein shall be removed, as may be directed, and no abatement of duty, or allowance, shall be made in respect of any such spirits, for deficiency of quantity or strength, after notice of the revocation has been given to the proprietor or occupier of the warehouse.

(8.) Good and effectual delivery of any spirits in any warehouse may be made for all purposes by handing to the officer in charge of such warehouse a written order signed by the owner of such spirits for the delivery thereof to the person named therein ; and thereupon entry of such delivery shall be made in the prescribed books.

19. (1.) Except in the case of spirits removed to a warehouse, or for exportation, or ship's stores, in accordance with the provisions of this Act, the duty upon all spirits shall be paid upon the

In case of deficiency in spirits in a warehouse, duty on quantity warehoused to be paid.

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removal of the same from the distiller's store; and no spirits shall be removed from any warehouse, save as in this Act provided, until the duty chargeable thereon shall have been paid.

(2.) Duty shall be chargeable upon the full quantity of spirits shewn to be in the casks containing the same, according to the entries in the prescribed books, unless the Chief Inspector shall be satisfied that no part of any deficiency that may be found to exist in such quantity shall not have been fraudulently caused; in which latter case duty shall only be charged upon the quantity of spirits actually contained in such casks at the time of removal.

Duty to be paid upon deficiencies.

20. (1.) If at any time any deficiency beyond that which can be accounted for by natural waste, or other legitimate cause, is found in any cask of spirits warehoused, the Chief Inspector may require immediate payment of duty on the quantity of spirits originally warehoused in the cask.

(2.) If the person in whose name the spirits are warehoused refuses, or neglects within two days after written demand by an officer to pay the duty, he shall forfeit double the amount of duty so demanded.

(3.) After demand made in terms of this section for the duty on spirits warehoused, no such spirits shall be transferred or removed until the duty and forfeiture (if any) is paid.

Unlawful hours for brewing and distilling.

21. No such distiller shall mash any materials, or brew, or make wort, or wash, or use a still between ten o'clock in the afternoon of Saturday and one o'clock in the forenoon of Monday.

Penalty where original gravity exceeds gravity as declared.

22. If the original gravity of any wort or wash as ascertained from any sample of wash taken from a fermenting back, or wash charger, exceed by more than five degrees the gravity thereof, as declared by the distiller, he shall incur the penalty by this Act provided.

Mode of ascertaining original gravity.

23. The original gravity of wort or wash shall be ascertained in accordance with the provisions of the eighteenth section of the "Excise Beer Duty Act, 1884."

Office accommodation to be provided.

24. Every such distiller, proprietor, or occupier of any warehouse shall provide to the satisfaction of the Chief Inspector, office accommodation at his distillery, store, or warehouse for the officer in charge thereof.

Power to require water to be drawn off from worm-tub.

25. (1.) An officer may require such distiller at any time, when his still is not at work, to cause the water in any worm tub in his distillery to be drawn off, and the tub and worm to be cleansed.

(2.) In such case the water shall be kept out of the worm tub until the officer has finished his examination.

#### GENERAL PROVISIONS APPLICABLE TO ALL DISTILLERS. (1)

Offence with respect to warehousing

26. If a distiller, or proprietor of spirits, or proprietor or occupier of any warehouse by himself, or by any person in his employ,

<sup>1</sup> See note to title of this Act,

or with his connivance, commits any of the following offences ; (that is to say)—

- (a.) Opens any of the locks or doors of a warehouse, or makes or obtains access into a warehouse, except in the presence of an officer acting in his duty as such ; or,
  - (b.) After the approval of a warehouse makes any alteration therein or addition thereto without the previous consent of the Chief Inspector ; or,
  - (c.) Warehouses spirits in, or removes spirits from a warehouse otherwise than is provided by this Act and the regulations made in accordance therewith ; or,
  - (d.) By any contrivance or device privately removes or conceals any spirits either before or after they are warehoused ;
- he shall incur the penalty by this Act provided, and all spirits warehoused, removed or concealed in contravention of this section shall be forfeited.

27. If on the premises of any distiller any attempt is made, or device used, to prevent or hinder any officer from ascertaining the gravity, quantity, or strength of the wine (<sup>1</sup>) wort, wash, low wines, feints, or spirits in, or running into, or from any vessel, or to deceive him in taking the dip or gauge of any vessel or utensil, or if such distiller causes any cover, fastening, cock, plug, pump, or pipe to be so made, or used that any vessel or utensil may be employed, opened, removed, filled, or emptied in the absence of an officer to avoid or defeat the security intended to be provided by this Act, the distiller shall for each offence incur the penalty by this Act provided.

Penalty for interference with or attempt to defeat gauging.

28. (1.) A distiller may use in the manufacture and distillation of spirits (in addition to wine produced within the Colony) any material of such nature that the gravity of the wort or wash produced therefrom can be ascertained by the prescribed saccharometer : Provided that a wine farmer who distils spirits shall only distil such spirits from wine the produce of vines grown on his farm.

Materials for the manufacture and distillation of spirits

(2.) No distiller shall distil spirits from materials other than wine, except from wort or wash, brewed or made in his distillery from such materials.

(3.) If a distiller has in his possession any wort, wash, low wines, feints, or fermented liquor not brewed, made, or distilled in his own distillery, except as hereinafter provided, the same shall be forfeited, and the distiller shall incur the penalty by this Act provided.

(4.) It shall be lawful in accordance with the prescribed regulations for the distiller to receive from any licensed brewer sour or spoilt beer for use in the manufacture or distillation of spirits. Such distiller shall deliver to the proper officer a solemn declaration, made by such brewer, or his authorized agent, or servant, in the prescribed form, certifying the quantity and original gravity of the beer, and that it is unfit for use in his business as a brewer.

<sup>1</sup> See note to title of this Act.



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Low wines or spirits not to be mixed so as to increase gravity. Mode of calculating quantity of spirits warehoused.

Officer may take samples.

Permits and certificates.

Rules for ascertaining quantity of spirits by weight.

Remission of duty for spirits lost or destroyed.

29. There shall not be mixed with or added to any low wines, feints, or spirits in a distillery any substance which prevents the true strength thereof from being ascertained by Sykes's hydrometer.

30. The bulk quantity of spirits contained in any vat, vessel, cask, or package warehoused in any store or warehouse may be calculated by weight or gauge as may be prescribed.

31. (1.) An officer may take a sample of any wine, wort, wash, low wines, feints, or spirits from any vessel or utensil in any distillery, or in any store, or warehouse, and the gravity, or strength, of any sample so taken shall be deemed the gravity, or strength, of the whole contents of the vessel or utensil from which it is taken.

(2.) A distiller may, if he wishes, before any such sample is taken, stir up and mix together all the liquor contained in the vessel or utensil from which the sample is to be taken.

32. No spirits shall be sent out or delivered from a distiller's store, or any warehouse (except upon the permit or certificate of the proper officer, and except as in the seventh and eighth sections of this Act provided), <sup>(1)</sup> and no spirits shall be received by a rectifier or dealer in, or retailer of spirits, unless accompanied by a permit or certificate in accordance with the prescribed regulations: Provided that every rectifier, dealer in, and retailer of spirits shall keep an account in the prescribed form of all spirits received into his stock, and such stock account shall be open at all times to the inspection of an officer who may make extracts therefrom.

Any person who shall, in any manner use, or cause or suffer to be used, any permit or certificate so as to evade the provisions of this section, or of any regulation made in accordance therewith, shall incur the penalty by this Act provided, and all spirits found to have been so sent out, delivered, removed, or received, shall be forfeited.

33. For the purpose of ascertaining by weighing the quantity of spirits in any cask, Table A in the first schedule shall be used, and the quantity ascertained thereby in accordance with the rates prefixed thereto shall be deemed to be the true quantity: Provided that when the calculation of the quantity of spirits in a cask shall produce a fraction of a gallon less than half a gallon such fraction shall be rejected, and when the fraction amounts to half a gallon, or upwards, the next higher number of gallons is to be taken and entered as the true quantity; and further, that the same method of calculation shall be followed in ascertaining the quantity of spirits at proof in a cask.

34. In the event of the loss or destruction by fire, or other unavoidable accident, of any spirits in a distillery, or of any spirits when deposited in a warehouse, or whilst being received into or delivered from a spirit store, or warehouse, or whilst being

<sup>1</sup> §§ 7 and 8 repealed by Act 19, 1886.

removed under bond on shipboard, or whilst being shipped or landed, or whilst being removed from one warehouse to another, the Treasurer of the Colony shall, on proof to his satisfaction of the loss or destruction, remit the duty payable or paid in respect of the spirits so lost or destroyed.

35. Subject to the prescribed regulations spirits may be delivered from a distiller's store or warehouse to be used for fortifying wines produced within the Colony to be exported by sea, but the quantity of such spirits shall not exceed ten gallons of spirits computed at proof to one hundred gallons of wine: Provided that an officer shall be present when any such spirits are added to such wines for fortifying: Provided further that in case any wine so fortified shall be re-imported within the Colony, the duty on such spirits shall be paid by the exporter. Spirits removed for fortifying wine for exportation.

36. All spirits shall be deemed to be of the strength denoted by Sykes's hydrometer as ascertained by any officer in accordance with the table lodged with the Chief Inspector, and intituled a table of the strength of spirits denoted by Sykes's hydrometer. Strength of spirits to be ascertained by Sykes's hydrometer.

37. Every distiller (except a wine farmer who distils from wine on his own farm) or proprietor of a warehouse, and every rectifier shall, when so required by the Chief Inspector, provide sufficient and just scales and weights, and a set of standard measures for the purpose of weighing, measuring, and taking an account of the spirits, goods, and commodities in his warehouse, stock, or possession, and of any casks or vessels used for the purpose of containing any such spirits, goods, or commodities. Excise traders to provide scales, weights and measures.

38. (1.) Where any warehouse, room, place, vessel, utensil, or fitting belonging to any Excise trader is by this Act directed to be secured or locked, the Excise trader shall to the satisfaction of the proper officer, provide, affix, repair, and renew all fastenings requisite for the purpose of enabling officers to affix locks thereto, or otherwise to secure the same. Locks and fastenings.

(2) All requisite locks, or keys, shall be provided by the Chief Inspector at the expense of the revenue.

(3) No Excise trader, or his servant, shall destroy or damage any fastening, or lock, or key, belonging thereto, or any lock label, or open or remove any lock, fastening, or lock label, or improperly obtain access into any warehouse, room, place, vessel, utensil, or fitting, or shall have any fastening, vessel, utensil, or fitting so constructed that the security intended to be obtained by any lock, or fastening may be defeated.

#### RECTIFIERS, STILL MAKERS, AND VINEGAR MAKERS.

39. (1.) Entry in the prescribed form shall be made by a rectifier before he begins to receive, rectify, or compound spirits, and such rectifier shall rectify or compound spirits according to the prescribed regulations. Rectifiers.

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(2.) An officer shall have power at all times to inspect the stock book of a rectifier, make extracts therefrom, and take account of all spirits in his possession.

(3.) If the quantity of spirits computed at proof found on taking such accounts exceeds the quantity which should be found in his possession according to the stock book of such rectifier the excess shall be forfeited.

Still Makers.

40. (1.) Every still maker shall keep an account, in the prescribed form, of all stills and distilling apparatus made, or repaired, or imported by him, and such account shall be open at all times to the inspection of an officer, and he shall permit any officer at any time to inspect the same and make extracts therefrom.

(2.) An officer shall have power at all times to enter upon the premises of a still maker and to inspect and take account of all stills or distilling apparatus found therein.

Use of stills by unlicensed persons.

41. (1.) Every still, or still head, or worm of a still which is found in the custody or possession of any person not being licensed to keep or use such still, still head, or worm, shall be forfeited, provided that the Chief Inspector may permit, under the prescribed regulations, the keeping and using of any still or stills, for experiments in chemistry, or by any persons carrying on trade, or otherwise, for the manufacture of any articles other than spirits.

(2.) An officer may at any time enter upon the premises of any person who shall be licensed to keep or use any still, or retort, or who shall keep or use any still, or retort, and examine any such still, or retort kept by such person.

Vinegar makers.

42. (1.) Every maker of vinegar or acetous acid, who shall have, possess, or use at or upon his premises for making vinegar, any still for distilling, rectifying, or purifying vinegar, or acetous acid, or any liquor, or materials prepared, or preparing for making vinegar, or acetous acid, shall have and use such still under and subject to the prescribed regulations.

(2.) The premises of a maker of vinegar or acetous acid shall be open at all times to the inspection of an officer.

## POWERS OF OFFICERS.

Powers of officers.

43. An officer may at any time, either by day or by night, enter any part of the premises of, or house or place whatsoever belonging to, or made use of, by a distiller or rectifier, and search for, examine, gauge, and take an account of any still or other vessel, or utensil, and also any spirits or materials for the manufacture of spirits therein.

If a distiller or rectifier, after demand for admission has been made by an officer, shall refuse to admit such officer, he shall, for each offence, incur the penalty by this Act provided.

Officers may enter upon the premises of a dealer in or retailer of spirits and examine and take ac-

44. (1.) An officer may at any reasonable time enter the premises of a dealer in, or retailer of spirits, and inspect his stock book, and examine and take account of all spirits in his stock or possession,

and take samples of any such spirits, paying for any samples so taken the usual price thereof.

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count of stock of spirits.

(2) If the quantity of spirits computed at proof found on taking such account exceeds the quantity which should, according to the stock book of the dealer, or retailer, be found in his possession, the excess shall be forfeited, and the dealer or retailer shall incur the penalty by this Act provided.

45. Every distiller or rectifier shall provide ladders of sufficient length and strength and place them firmly and conveniently to enable the officers to take account of any vessel, utensil, spirits or materials therein, and provide sufficient lights and other conveniences and assist the officers in taking such accounts.

Ladders and lights to be provided.

GENERAL OFFENCES.

46. No person shall remove any wort, wash, low wines, feints, or spirits from the premises of a distiller contrary to the provisions of this Act, or knowingly buy, or receive any wort, wash, low wines, feints, or spirits so removed from the premises of a distiller.

General offences.

47. No person shall knowingly receive, buy, or procure any spirits from a person not having authority to sell or deliver the same.

Receiving spirits from persons not authorized to sell or deliver.

48. If any person knowingly buys, or receives, or has in his possession any spirits after they have been removed from the place where they ought to have been charged with duty, and before the duty payable thereon has been charged and paid, or secured, or if any person shall hawk, sell, or expose for sale any spirits in or about any street, highway, or other place, or in, or from any boat, or other vessel upon the water, or in any other manner or place whatsoever, except in a place duly licensed for that purpose, he shall forfeit such spirits and incur a fine equal to treble the value thereof.

Receiving spirits on which the duty has not been charged.

49. Any person who assaults an officer acting under this Act, or any person acting in his aid, or who shall forcibly oppose the execution of any of the powers given under this Act shall incur the penalty by this Act provided.

Assaulting and opposing officers.

50. (1.) Any spirits or goods forfeited under this Act may be seized by an officer, or an officer of Customs, or by a Resident Magistrate, a Justice of the Peace, Field-cornet, Police Constable, or any Market Master.

Spirits or goods forfeited may be seized.

(2.) If any spirits or materials for making spirits shall be forfeited under this Act, all casks or other utensils containing the same shall also be forfeited.

(3.) Where any spirits are forfeited by an Excise trader, the Chief Inspector may, if he think fit, take from the stock of such Excise trader instead of the spirits forfeited, the same quantity, proof or bulk, of any other spirits.

51. Every person shall incur the penalty by this Act provided who, in or with reference to any matter relating to the laws of Excise :

Misconduct of and collusion with officers

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- (a.) Not being authorized so to do, gives or promises to give, directly or indirectly, any reward to an officer or a person employed by the Government, in respect of the performance or non-performance, by any such officer or person, of his duty or employment; or
- (b.) Agrees with or proposes to any such officer or person to do, or permit anything in contravention or evasion of this Act, or any other Act or Acts, relating to the revenue of Excise or of his duty; or
- (c.) Being an officer or a person employed by the Government.
  - (i.) Demands or receives, except from or through the Government, any reward in respect of the performance or non-performance of his duty or employment; or
  - (ii.) By any wilful act, neglect, or default does, or permits, or agrees to do, or permit anything in contravention or evasion of this Act, or any other Act or Acts, relating to the revenue of Excise.

If any such officer or person is convicted of any of such offences he shall be disqualified from serving the Government in any office or employment.

## SUPPLEMENTAL.

Governor may appoint officers and make rules and regulations.

52. The Governor shall appoint officers for the purpose of carrying out the provisions of this Act, or any other Act or Acts relating to the revenue of Excise, and shall make rules and regulations for all or any of the following purposes:—

(1.) The period of time allowed for the various operations of brewing and distilling, and for removing any material, wort, or spirits from the several vessels used in such operations.

(2.) The guidance and conduct of officers and persons employed in carrying this Act into effect.

(3.) For ascertaining the amount of duty payable, and securing and enforcing payment thereof.

(4.) For prescribing all things necessary to be done for effectually carrying the provisions of this Act into effect.

Penalties.

53. Any person who shall contravene any of the provisions of this Act, or of any regulations made under this Act, shall, upon conviction before the Court of the Resident Magistrate of the district in which the offence was committed, or of any other competent Court, be liable to a penalty not exceeding five hundred pounds sterling in respect of each act or offence (in addition to any penalty or forfeiture by this Act otherwise provided), and in default of payment to imprisonment, with or without hard labour, for any period not exceeding twelve months, unless such penalty be sooner paid.

Goods liable to Customs duty may be warehoused in Excise Warehouse.

54. (1.) Subject to such regulations as may be prescribed goods of any description liable to a duty of Customs may be warehoused in any Excise warehouse approved for the purpose.

(2.) All the powers, provisions, regulations, and penalties contained in or imposed by any Act relating to the Customs as to the warehousing, custody, and delivery out of warehouse of goods liable to a duty of Customs, and as to any deficiencies therein or allowances thereon, shall, when applicable, be observed, applied, enforced, and put in execution with reference to such goods warehoused in Excise warehouses, and further shall, where applicable, be observed, applied, enforced, and put in execution with reference to Colonial spirits warehoused in a Customs warehouse, so far as the same are not superseded by and are consistent with the provisions of this Act.

55. The enactments specified in the second schedule are hereby repealed, from and after the commencement of this Act, to the extent specified in the third column of that schedule. Repeal of Acts in Schedule.

Provided that all existing bonds and securities given under or in pursuance of any enactment hereby repealed shall have the same force and effect as if they had been given under or in pursuance of this Act, and this repeal shall not affect—

- (a.) Anything done or suffered before the commencement of this Act, under any enactment repealed by this Act; nor
- (b.) Any right or privilege acquired or duty or liability imposed or incurred under any enactment so repealed.

FIRST SCHEDULE.

TABLE A.

TABLE FOR DETERMINING THE WEIGHT PER GALLON OF SPIRITS BY SYKES'S HYDROMETER.

1. Spirits which on Sykes's Hydrometer indicate a number in Column A, must be taken to be of the Weight per Gallon in pounds and decimal parts of a pound of Spirits indicated by the corresponding number in Column B.

2. To ascertain the quantity of Spirits in Cask, their net weight must be divided by the number which in Column B indicates their weight per Gallon, and the product will be the quantity of the Spirits and decimal parts of a Gallon.

Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.
0	8·154	4	8·178	8	8·202	2	8·225
2	8·157	6	8·181	3	8·205	4	8·229
4	8·161	8	8·185	2	8·208	6	8·232
6	8·164	2	8·188	4	8·212	8	8·236
8	8·168	2	8·191	6	8·215	5	8·239
1	8·171	4	8·195	8	8·219	2	8·242
2	8·174	6	8·198	4	8·222	4	8·245

## FIRST SCHEDULE—(Continued.)

Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.
6	8·249	8	8·423	26	8·600	2	8·781
8	8·252	16	8·426	2	8·603	4	8·784
6	8·255	2	8·429	4	8·607	6	8·788
2	8·258	4	8·433	6	8·610	8	8·791
4	8·262	6	8·436	8	8·614	37	8·795
6	8·265	8	8·440	27	8·617	2	8·799
8	8·269	17	8·443	2	8·620	4	8·802
7	8·272	2	8·446	4	8·624	6	8·806
2	8·275	4	8·450	6	8·628	8	8·809
4	8·279	6	8·453	8	8·631	38	8·813
6	8·282	8	8·457	28	8·635	2	8·817
8	8·286	18	8·460	2	8·639	4	8·820
8	8·289	2	8·464	4	8·642	6	8·824
2	8·292	4	8·467	6	8·646	8	8·827
4	8·296	6	8·471	8	8·649	39	8·831
6	8·299	8	8·474	29	8·653	2	8·835
8	8·303	19	8·478	2	8·656	4	8·838
9	8·306	2	8·481	4	8·660	6	8·842
2	8·309	4	8·485	6	8·663	8	8·845
4	8·313	6	8·488	8	8·667	40	8·849
6	8·316	8	8·492	30	8·670	2	8·853
8	8·320	20	8·495	2	8·674	4	8·856
10	8·323	2	8·498	4	8·677	6	8·860
2	8·326	4	8·502	6	8·681	8	8·863
4	8·330	6	8·505	8	8·684	41	8·867
6	8·333	8	8·509	31	8·688	2	8·871
8	8·337	21	8·512	2	8·692	4	8·874
11	8·340	2	8·516	4	8·695	6	8·878
2	8·343	4	8·519	6	8·699	8	8·881
4	8·347	6	8·523	8	8·702	42	8·885
6	8·350	8	8·526	32	8·706	2	8·889
8	8·354	22	8·530	2	8·709	4	8·892
12	8·357	2	8·533	4	8·713	6	8·896
2	8·361	4	8·537	6	8·716	8	8·899
4	8·364	6	8·540	8	8·720	43	8·903
6	8·368	8	8·544	33	8·723	2	8·907
8	8·371	23	8·547	2	8·727	4	8·911
13	8·375	2	8·551	4	8·730	6	8·914
2	8·378	4	8·554	6	8·734	8	8·918
4	8·382	6	8·558	8	8·737	44	8·922
6	8·385	8	8·561	34	8·741	2	8·926
8	8·389	24	8·565	2	8·745	4	8·929
14	8·392	2	8·568	4	8·748	6	8·933
2	8·395	4	8·572	6	8·752	8	8·936
4	8·399	6	8·575	8	8·755	45	8·940
6	8·402	8	8·579	35	8·759	2	8·944
8	8·406	25	8·582	2	8·763	4	8·947
15	8·409	2	8·586	4	8·766	6	8·951
2	8·412	4	8·589	6	8·770	8	8·954
4	8·416	6	8·593	8	8·773	46	8·958
6	8·419	8	8·596	36	8·777	2	8·962

FIRST SCHEDULE—(Continued.)

Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.
4	8 965	6	9·154	8	9·348	77	9·545
6	8·969	8	9·158	67	9·352	2	9·549
8	8·972	57	9·162	2	9·356	4	9·553
47	8·976	2	9·166	4	9·360	6	9·557
2	8 980	4	9·170	6	9·363	8	9·561
4	8·984	6	9·173	8	9·367	78	9·565
6	8·987	8	9·177	68	9·371	2	9·569
8	8·991	58	9·181	2	9·375	4	9·573
48	8·995	2	9·185	4	9·379	6	9·576
2	8·999	4	9·189	6	9·382	8	9·580
4	9·002	6	9·192	8	9·386	79	9·584
6	9·006	8	9·196	69	9·390	2	9·588
8	9·009	59	9·200	2	9·394	4	9·592
49	9·013	2	9·204	4	9·398	6	9·596
2	9·017	4	9·207	6	6·401	8	9·600
4	9·021	6	9·211	8	9·405	80	9·604
6	9·024	8	9·214	70	9·409	2	9·608
8	9·028	60	9·218	2	9·413	4	9·612
50	9·032	2	9·222	4	9·417	6	9·615
2	9·036	4	9·226	6	9·420	8	9·619
4	9·039	6	9·229	8	9·424	81	9·623
6	9·043	8	9·233	71	9·428	2	9·627
8	9·046	61	9·237	2	9·432	4	9·631
51	9·050	2	9·241	4	9·436	6	9·635
2	9·054	4	9·245	6	9·440	8	9·639
4	9 058	6	9·248	8	9·444	82	9·643
6	9·061	8	9·252	72	9·448	2	9·647
8	9·065	62	9·256	2	9·452	4	9·651
52	9·069	2	9·260	4	9·456	6	9·655
2	9·073	4	9·264	6	9·459	8	9·659
4	9·076	6	9·267	8	9·463	83	9·663
6	9·080	8	9·271	73	9·467	2	9·667
8	9·083	63	9·275	2	9·471	4	9·671
53	9·087	2	9·279	4	9·475	6	9·674
2	9·091	4	9·283	6	9·479	8	9·678
4	9·095	6	9·286	8	9·483	84	9·682
6	9·098	8	9·290	74	9·487	2	9·686
8	9·102	64	9·294	2	9·491	4	9·690
54	9·106	2	9·298	4	9·495	6	9·694
2	9·110	4	9·302	6	9·498	8	9·698
4	9·114	6	9·305	8	9·502	85	9·702
6	9·117	8	9·309	75	9·506	2	9·706
8	9·121	65	9·313	2	9·510	4	9·710
55	9·125	2	9·317	4	9·514	6	9·714
2	9·129	4	9·321	6	9·517	8	9·718
4	9·132	6	9·324	8	9·521	86	9·722
6	9·136	8	9·328	76	9·525	2	9·726
8	9·139	66	9·332	2	9·529	4	9·730
56	9·143	2	9·336	4	9·533	6	9·733
2	9·147	4	9·340	6	9·537	8	9·737
4	9·151	6	9·344	8	9·541	87	9·741



No. 18—1884.

## FIRST SCHEDULE—(Continued.)

Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.
2	9·745	4	9·808	6	9·872	8	9·938
4	9·749	6	9·812	8	9·876	97	9·942
6	9·753	8	9·816	94	9·880	2	9·646
8	9·757	91	9·820	2	9·884	4	9·950
88	9·761	2	9·824	4	9·888	6	9·955
2	9·765	4	9·828	6	9·892	8	9·959
4	9·769	6	9·832	8	9·896	98	9·963
6	9·773	8	9·836	95	9·900	2	9·967
8	9·777	92	9·840	2	9·904	4	9·972
89	9·781	2	9·844	4	9·908	6	9·976
2	9·785	4	9·848	6	9·912	8	9·981
4	9·789	6	9·852	8	9·917	99	9·985
6	9·792	8	9·856	96	9·921	2	9·989
8	9·796	93	9·860	2	9·925	4	9·994
90	9·800	2	9·864	4	9·929	6	9·998
2	9·804	4	9·868	6	9·934	8	10·003
						100	10·007

## SECOND SCHEDULE.

## ENACTMENTS REPEALED.

Number and Year.	Title of Act.	Extent of Repeal.
No. 2, 1878.	Act to impose an Excise Duty upon Spirits distilled or manufactured within the Colony of the Cape of Good Hope.	The whole Act.
No. 33, 1882.	Act to amend the Act No. 2 of 1878, known as the "Excise Duty Act, 1878."	The whole Act.

## THIRD SCHEDULE.

[Repealed by Act 19, 1886.]

Act No. 19—1886.]

[June 25, 1886.

## ACT

To Amend the Law relating to the Duty on Distilled Spirits and to the Manufacture and Sale thereof, especially the provisions of the "Excise Duty Act, 1884," and the "Excise Spirits Act, 1884."

Preamble.

WHEREAS it is expedient to amend the law relating to the duty on spirits, and especially certain provisions of the "Excise Spirit

Duty Act," No. 15 of 1884, and of the "Excise Spirits Act," No. 18 of 1884, and to relieve from payment of any duty all persons who may distil or manufacture spirits from wine: 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—1886.

1. For the purposes of this Act the words "wine" and "wine-farmers" shall have the meaning attached thereto in the second section of the "Excise Spirits Act, 1884."

Definition of terms.

2. From and after the first day of July, 1886, no excise duty shall be payable upon spirits distilled from wine, anything in the "Excise Spirits Act, 1884," the "Excise Spirit Duty Act, 1884," or any other law, to the contrary, contained notwithstanding.

Excise not payable upon spirits distilled from wine.

3. All the provisions of the "Excise Spirits Act, 1884," and the second sub-section of the third section of the "Excise Spirit Duty Act, 1884," in so far as the said first mentioned Act and the said sub-section may be applicable to wine-farmers, or to distillers distilling spirits from wine only, are hereby repealed.

Excise Spirits Act, 1884, not applicable to wine-farmers or distillers of spirits from wine.

4. There shall be paid or allowed to every holder of duty paid brandy distilled from wine, for all such brandy as aforesaid in his possession at the time of the taking effect of this Act, as his stock, duly taken account of by the proper officers, and for which duty shall have been paid or charged, the sum of one shilling per gallon for every gallon of spirits held by him in excess of one hundred gallons.

Refund for duty paid brandy in stock.

5. This Act may be cited as the "Excise Law Amendment Act, 1886."

Short title.

No. 17—1877.]

[August 8, 1877.

ACT

To Provide for the more Convenient Administration of the Extradition Acts 1870 and 1873 of the Imperial Parliament.

WHEREAS by the Act of the Imperial Parliament, known as "The Extradition Act, 1870," it is amongst other things enacted that the said Act when applied by Order in Council shall, unless it is otherwise provided by such order, extend to every British possession, but with the following among other modifications, namely:

Preamble.

No warrant of a Secretary of State shall be required, and all powers vested in or acts authorized or required to be done under the said Act by the Police Magistrates and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone, and any prison in the British possession may be substituted for a prison in Middlesex.

No. 17—1877.

And whereas by the said Act it is also enacted that

If by any Law or Ordinance made before or after the passing of the said Act, by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may by the Order in Council applying the said Act in the case of any foreign state, or by any subsequent order, either

Suspend the operation within any such British possession of the said Act or any part thereof so far as it relates to any foreign state, and so long as such Law or Ordinance continues in force there and no longer,

Or direct that such Law or Ordinance or any part thereof shall have effect in such British possession with or without modifications and alterations as if it were part of the said Act :

And whereas by another Act of the Imperial Parliament known as "The Extradition Act of 1873," it is enacted that the said Act shall be construed as one with "The Extradition Act of 1870," and that the said two Acts may be cited together as "The Extradition Acts 1870 and 1873 :"

And whereas it is expedient to provide for the more convenient administration within this Colony of "The Extradition Acts 1870 and 1873" by conferring on the Resident Magistrates of the Colony the like powers and authorities in relation to the surrender of fugitive criminals as are by the said Acts vested in Police Magistrates and Justices of the Peace in the United Kingdom: 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 :—

Short title.

1. This Act may be cited as "The Extradition Act, Cape of Good Hope, 1877."

Certain powers vested in resident magistrates.

2. All powers vested in and acts authorized or required to be done by a Police Magistrate or any Justice of the Peace in relation to the surrender of fugitive criminals in the United Kingdom under "The Extradition Acts 1870 and 1873" are hereby vested in and may in this Colony be exercised by any Resident Magistrate in relation to the surrender of fugitive criminals under the said Acts.

Act not to come into force until Her Majesty shall order.

3. This Act shall not come into operation until Her Majesty shall by Order in Council direct that this Act shall have effect within this Colony, as if it were part of "The Extradition Act, 1870," but this Act shall thereafter come into operation as soon as such Order in Council shall have been publicly made known in this Colony. <sup>(1)</sup>

<sup>1</sup> Order in Council published in *Gazette* of 5th April, 1878.

No. 22—1882.]

[June 22, 1882.

## ACT

## To Amend the Law relating to the Extradition of Criminals.

WHEREAS it is expedient to amend the law relating to the surrender to the Transvaal State and the Orange Free State of persons accused or convicted of the commission of certain crimes within the jurisdiction of the said States: 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 "Extradition of Criminals Ordinance (No. 2), 1877," passed by the Legislature of the Province of Griqualand West, is hereby repealed. Repeal of Griqualand Ordinance 2 of 1877.

2. This Act may apply to the offences specified in the first schedule hereto. Offences in Schedule.

3. Where a person accused or convicted of having committed an offence (to which this Act applies) in the Transvaal State or the Orange Free State, has left such state, such person (in this Act referred to as a fugitive criminal) if found in this Colony, shall be liable to be apprehended and returned to the state from which he is a fugitive in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the passing of this Act. Persons convicted or accused of such offences in Transvaal or Free State, and found in this Colony may be extradited.

4. A requisition for the surrender of a fugitive criminal for whose apprehension a warrant has been issued in either of the said states, and who is in or is suspected of being in the Colony, shall be made on behalf of the Government of the state seeking extradition of such criminal to the responsible Minister who shall for the time being be the Prime Minister of this Colony. Upon receipt of such requisition the said Minister may by order under his hand signify to any Resident Magistrate or Justice of the Peace that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal. Requisition for any such extradition to be made to the Prime Minister.

5. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, may be issued Proceedings thereupon.

- (1) By a Resident Magistrate or Justice of the Peace on receipt, or upon the publication in the *Government Gazette* of the said order of the said Minister, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed, or the criminal convicted, in this Colony; and
- (2) By a Resident Magistrate or any Justice of the Peace on such information or complaint and such evidence or after such proceeding as would in the opinion of the person

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issuing the warrant justify the issue of a warrant if a crime had been committed or the criminal convicted in this Colony.

By whom warrants of apprehension to be issued.

Any person issuing a warrant under this section without an order from the said Minister shall forthwith send to the latter a report of the fact of such issue, together with the information or complaint, or certified copies thereof; and the said Minister may, if he think fit, order the warrant to be cancelled, and the person who has been apprehended to be discharged.

When warrants may be cancelled.

6. Every warrant for the apprehension of any fugitive criminal shall command that he be brought before some Resident Magistrate. Where the warrant has been issued without the order of the said Minister, the Resident Magistrate shall order the discharge of the fugitive criminal unless, within such time as having reference to the circumstances of the case he may consider reasonable, the said Resident Magistrate receives from the said Minister the order mentioned in the fourth section of this Act.

What warrants of apprehension shall command.

7. When a fugitive criminal is brought before the Resident Magistrate, the said Magistrate shall hear the case in the same manner, and have the same jurisdiction and powers as near as may be as if the prisoner were brought before him charged with an indictable offence committed in the Colony.

Magistrates to exercise jurisdiction as if offence committed in the Colony.

8. In the case of a fugitive criminal accused of the commission of any crime or offence to which this Act applies, if the warrant of the state making the requisition is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would according to the law of the Colony justify the committal for trial of the prisoner if the crime of which he is accused had been committed in the Colony, the Resident Magistrate shall commit him to prison, but otherwise shall order him to be discharged.

When Magistrates may order committal or discharge.

In the case of a fugitive criminal alleged to have been convicted of the commission of any such crime or offence, if such evidence is produced as (subject to the provisions of this Act) would according to the law of the Colony prove that the prisoner was convicted of such crime, the Resident Magistrate shall commit him to prison, but, otherwise, shall order him to be discharged.

To what gaol committed person to be sent.

9. If the fugitive criminal is committed to prison he shall be committed to the principal gaol of the district, there to await the warrant of the Governor for his surrender. The Resident Magistrate shall forthwith send a certificate of the committal to the said Governor with such report thereon as he may think fit.

Upon committal, Governor may order offenders surrender to state demanding it

10. Upon production of the certificate of committal it shall be lawful for the Governor, by warrant under his hand and the public seal of the Colony, to order the fugitive criminal to be surrendered to such person as may in his opinion be duly authorized by the state from which the requisition for the surrender proceeded, to receive the fugitive criminal, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for the person to whom such warrant is directed to receive, hold in custody, and convey the criminal mentioned in the warrant within the jurisdiction of the state to which he has been surrendered.

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What may be done under Governor's warrant for surrender.

The gaoler, or other chief officer of any gaol, on request of any person having the custody of a fugitive criminal under such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive criminal and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

Expenses of detention.

If the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of the Colony may be retaken.

Escape of prisoner from custody.

11. Where any person who shall have been committed under this Act to remain until delivered up pursuant to requisition, shall not be delivered up pursuant thereto within two months after such committal, it shall in every case be lawful for the Supreme Court of this Colony, or for the Court of the Eastern Districts or the High Court of Griqualand respectively, if such person be imprisoned within the limits of either of such last mentioned Courts, upon application by or on behalf of any person so committed, and after notice of the intention to make such application has been given to the Attorney-General, or in case such application be made either to the Court of the Eastern Districts or to the High Court of Griqualand after such notice has been given to the Solicitor-General or to the Crown Prosecutor as the case may be, to order the person so committed to be discharged out of custody unless sufficient cause is shewn to the contrary.

Proceedings in regard to persons committed but not given up within 2 months.

12. Depositions or statements on oath taken in either of the aforesaid states, whether taken in the presence of the fugitive criminal or not, and copies of such original depositions or statements, and certificates of or judicial documents stating the fact of conviction may, if duly authenticated, be received in evidence in proceedings under this Act.

Depositions, &c., to be received in evidence.

13. Warrants of the said states and depositions or statements on oath and copies thereof shall be deemed duly authenticated for the purposes of this Act, if authenticated in manner provided for the time being by law, or if authenticated as follows:—

How warrants of the states to be authenticated.

- (1). If the warrant purports to be signed by a Judge, Magistrate, or other officer of the state where the same was issued authorized by law to issue warrants;
- (2). If the depositions or statements on oath, or the copies thereof, purport to be certified under the hand of a Judge, Magistrate, or officer of the state where the same were taken, to be the original depositions and statements, or to be true copies thereof, as the case may be;
- (3). If the certificate of or judicial document stating the fact

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of conviction purports to be certified by a Judge, Magistrate, or officer of the state where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of some officer of the Government of the state from which the requisition for surrender proceeded; and all Courts of Justice and Magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Forms of warrants. 14. The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and when used shall be deemed to be valid and sufficient in law.

When Act to take effect. 15. This Act shall take effect so far as concerns the surrender of fugitive criminals to the Transvaal State and the Orange Free State respectively, so soon as the Governor shall by proclamation in the <sup>(1)</sup> *Government Gazette* of the Colony declare and make known that the said states have respectively made due provision for the surrender of fugitive criminals who have escaped to either of the said states from this Colony; and from and after the date of each such proclamation the "Extradition of Criminals Act (No. 19), 1872," shall, as to the state named therein, be and the same is hereby repealed: Provided that such repeal shall not affect any warrant duly granted or issued, or anything done or suffered, or any legal proceeding or remedy in respect of any such warrant, or in respect of any liability or penalty incurred previously to such repeal; and any such warrant may be executed, and any such legal proceeding or remedy may be carried out, as if this Act had not been passed.

Interpretation clause. 16. In the interpretation of this Act the term "Transvaal State," shall mean the territory otherwise known as the "South African Republic," by whatever name the said territory shall now or hereafter be designated.

Short title. 17. This Act may be cited as "The Extradition Act, 1882."

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#### FIRST SCHEDULE.

Abduction.  
Abortion.  
Arson.

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<sup>1</sup> See Proclamation No. 122, 4th August, 1882, notifying that the Free State has made due provision, and Proclamation No. 123, of same date, extending this Act to Basutoland and the Transkei, also *Gazette* 6th August, 1886, extending this Act to Territories annexed under the "Tembuland Annexation Act, 1885," and *Gazette* of 4th Feb., 1887, extending this Act to Territories annexed under the "Transvaal Annexation Act of 1877," and also notifying that the S.A. Republic (Transvaal) has made due provision.

Assault, including indecent assault on the person of a girl under the age of twelve years.

Assault with intent to do grievous bodily harm.

Bigamy.

Child stealing.

Culpable homicide.

Coining, or uttering counterfeit or altered coin.

Deserting from any police or defensive force.

Offences under any law relating to the dealing in diamonds.

Falsity, forgery or uttering a forged document.

Fraud.

Offences under any law relating to the dealing in gunpowder, lead, or firearms.

Housebreaking (including the breaking into any office, store, or hut), with intent to commit any crime.

Incest.

Offences by insolvents against insolvency laws.

Malicious injury to property.

Murder, or attempt to commit murder.

Perjury or subornation of perjury.

Rape and assault to commit rape.

Any act done with intent to do injury to person or property on any railway.

Robbery.

Public violence.

Theft, including theft by means of false pretences, and theft by means of embezzlement.

Being accessory to the commission of any of the aforesaid crimes or offences.

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## SECOND SCHEDULE.

### *Form of Order for issue of Warrant of Apprehension.*

To the Resident Magistrate [or ——— Esquire, Justice of the Peace] for the district of ———

Whereas, a requisition has been made to the Government of the Colony of the Cape of Good Hope by the Government of the ——— State, for the surrender of ———, late of ———, accused [or convicted] of the commission of the crime of ——— within the jurisdiction of the said State: Now I hereby, by this my order, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of the said ———, provided that the conditions of the "Extradition Act, 1882," relating to the issue of such warrant, are in your judgment complied with.

Given under my hand at Cape Town, this ——— day of ——— 18—.

Premier and [Colonial Secretary.]

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No. 22—1882.

*Form of Warrant of Apprehension by order of the Prime Minister.*

To the Field-cornets, Constables, Police Officers, and other Officers of the Law proper to the execution of Criminal Warrants.

Whereas the Honourable the Prime Minister and [Colonial Secretary] by order under his hand has signified to me [or has notified] that requisition has been duly made for the surrender of ——— late of ——— accused [or convicted] of the commission of the crime of ——— within the jurisdiction of the ——— State: This is, therefore, to command you in Her Majesty's name, forthwith to apprehend the said ——— pursuant to "The Extradition Act, 1882," wherever he may be found within the limits of the Colony of the Cape of Good Hope, and bring him, or cause him to be brought, before the Resident Magistrate for the district of ———, to show cause why he should not be surrendered in pursuance of the said Extradition Act: for which this shall be your warrant.

Given under my hand at ——— this ——— day of ——— 18——.

Resident Magistrate  
[or Justice of the Peace] for the District of ———.

*Form of Warrant of Apprehension without order of the Prime Minister.*

To the Field-cornets, Constables, Police Officers, and other Officers of the Law proper to the execution of Criminal Warrants.

Whereas it has been shown to the undersigned ——— Resident Magistrate [or Justice of the Peace] for the district of ——— that ——— late of ——— is accused [or convicted] of the commission of the crime of ——— within the jurisdiction of ———: This is, therefore, to command you in Her Majesty's name, forthwith to apprehend the said ———, and to bring him, or cause him to be brought, before the Resident Magistrate for the district of ———, to be further dealt with according to law: for which this shall be your warrant.

Given under my hand at ———, this ——— day of ——— 18——.

Resident Magistrate  
[or Justice of the Peace] for the District of ———.

*Form of Warrant of Committal.*

To the Gaoler of the ——— Gaol:

Be it remembered that on this ——— day of ——— 188—— late of ———, is brought before me ———, Resident Magistrate for the district of ———, to show cause why he should not be surrendered in pursuance of the Extradition Act, 1882, on the ground of his being accused [or convicted] of the commission of the crime of ——— within the jurisdiction of ——— and forasmuch as no such sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you, the said gaoler, to receive the said — into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

No. 22--1882.

Given under my hand at — this — day of — 18—.

Resident Magistrate  
for the District of —.

*Form of Warrant of the Governor for Surrender of Fugitive Criminal.*

## WARRANT

By His Excellency, &c.

To the Gaoler of the — Gaol and to — (a).

Whereas —, late of —, accused [or convicted] of the commission of the crime of — within the jurisdiction of the — State, was delivered into the custody of you (b) — the said gaoler by warrant dated (c) — pursuant to "Extradition Act, 1882:"

Now, therefore, I, the Governor aforesaid, do hereby, in pursuance of the said Act, order you, the said gaoler, to deliver the body of the said — into the custody of the said (a) —, and I command you the said (a) — to receive the said — into your custody, and to carry him within the jurisdiction of the said State, and there place him in the custody of any person or persons appointed by the said State to receive him: for which this shall be your warrant.

Given under my hand and the Public Seal of the Colony of the Cape of Good Hope, at — this — day of — 18—.

Governor.

By command of His Excellency the Governor,

Premier and [Colonial Secretary.]

(a) Insert name of person authorized by the Foreign State to receive the criminal.

(b) Insert name of gaoler.

(c) Date of warrant of committal.

No. 9—Sd. H. G. Smith.]

[July 4, 1848.

Ordinance for regulating the Duties and Remuneration of Field-cornets. (1)

Preamble.

WHEREAS owing to the various alterations made from time to time in the administration of the country districts of this Colony the functions of Field-cornets have been considerably narrowed; and it is now expedient to define or describe their duties and to

<sup>1</sup> As to witnesses' expenses of Field-cornets, see Act 7, 1857 (Witnesses).

- Ord. 9 - 1848.  
Repeal of former laws.
- substitute for the principle of a fixed annual allowance, a remuneration proportioned to the services performed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the "Instructions for the Field-cornets in the several Country Districts," published by the then Governor and Council of this Colony on the 24th October 1805, shall be repealed, except in so far as the same repeal any former placats, ordinances, or customs, and the same are hereby repealed accordingly: Provided always, that the Field-cornets and assistant Field-cornets shall continue to be appointed as at present.
- Duties of field-cornets.
2. And be it enacted that from and after the commencement and taking effect of this Ordinance, the several duties belonging to the office of Field-cornet shall be the following, that is to say:
- Apprehension of offenders.
- (a) He is by virtue of his office bound to apprehend without warrant every person whom he shall have reasonable grounds to suspect of having committed any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or assault in which a dangerous wound is given, arson, housebreaking, with intent to commit a crime therein; or theft of any cattle, sheep, or goat; or any other crimes of equal guilt with any of those crimes. And he may also take into custody every person whom he shall see engaged in any affray or whom he shall find attempting to commit a crime or clearly manifesting an intention so to do.
- (b) <sup>(1)</sup> [Repealed by § 12, Act 22 of 1875.]
- (c) [Repealed by § 12, Act 22 of 1875.]
- (d) In cases of assault in which any wound supposed to be dangerous has been given, the Field-cornet will repair to and examine the injured party, and apprise the Resident Magistrate of the case and its circumstances.
- (e) When he shall arrest any prisoner he is authorized if need be to appoint any proper person or persons to be a Field-corporal or Field-corporals, special Constable or special Constables for the custody and conveyance of such prisoner to the nearest Field-cornet on the road to the nearest gaol, or in case he himself be the Field-cornet nearest to the gaol then he will send the prisoner to the gaol direct. And every such Field-corporal or special constable will be paid at the rate of sixpence for each mile which he shall convey any prisoner or prisoners and sixpence for each mile which he shall be obliged to return to his own residence, besides being repaid any sum which he may have expended in providing necessary food or lodging for such prisoner or prisoners.
- Examination of injury in cases of assault.
- Appointment of field-corporals and special constables.

<sup>1</sup> As to duties of Field-cornets in regard to Inquests see Act 22, 1875.

- (*f*) Every Field-cornet is bound to receive all prisoners brought to him from any Field-cornet or Justice of the Peace at a greater distance from the gaol and to pass such prisoners on towards the gaol in the same manner as if he had arrested them himself. And any Field-corporal or special Constable appointed by him to convey any such prisoner, whether the same special Constable who brought such prisoner or one appointed anew, shall be entitled to the mileage aforesaid. Ord. 9—1848.  
Obligation to receive and pass on prisoners.
- (*g*) Every Field-cornet whose ward adjoins the sea shall in all cases of ships or vessels wrecked or stranded upon the coast repair to the spot and use every exertion in his power to save life and property; and he may appoint such number of special Constables as may be necessary to protect property and prevent plunder. Proceedings in cases of wrecks.
- (*h*) Every Field-cornet receiving special instructions from the Resident Magistrate or Civil Commissioner respecting any special duty to be performed will duly conform to the same. Special duties.
3. And be it enacted that the remuneration to be received by Field-cornets shall hereafter be as follows, that is to say: Remuneration.
- (*a*) When he shall be from home engaged in any such service as aforesaid, he shall receive an allowance for horse-hire at the rate of one shilling and six pence per hour.
- (*b*) When he shall be from home engaged in any such service as aforesaid, he shall receive an allowance for his time at the rate of seven shillings and six pence per day.
- (*c*) <sup>(1)</sup> Besides any claim which he may have for time and horse-hire he shall receive for every inquest which he may hold the sum of one pound.
- (*d*) For receiving, supplying with necessary food, and forwarding from his residence any person brought to him on his way to gaol he shall be entitled to the sum of one shilling per day.
- (*e*) For any special service required of him by the Resident Magistrate or Civil Commissioner and not adequately repaid by an allowance for time and horse-hire the Field-cornet shall receive such a sum as the Governor of the Colony shall approve of and direct.
4. And be it enacted that from henceforth the Field-cornets shall be deemed and taken to be under the authority of the Resident Magistrate of the district as well as of the Civil Commissioner of the division. Subordination to civil commissioner and resident magistrate.
5. And be it enacted that nothing in this Ordinance contained shall extend to alter or affect any former law or ordinance by which any duty or service has been imposed upon Field-cornets; Duties not under this ordinance.

<sup>1</sup> See Act 22 of 1875, § 19 (Inquests).

Ord. 5—1837.

and every Field-cornet while acting in the performance of any such duty or service not otherwise remunerated shall be entitled to be paid for time and horse-hire at the rate aforesaid.

Time of taking effect.

6. And be it enacted that this Ordinance shall commence and take effect as law from and after the 1st January, 1849.

No. 5.—Sd. B. D'Urban.] [August 23, 1837.

Ordinance for appointing Assistant Field-cornets within the Colony.

WHEREAS within certain Field-cornetcies the duties of the Field-cornets are very burthensome, and it is expedient that persons should be appointed to assist them in performing the duties of their office: 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 passing of this Ordinance it shall be lawful for the Governor and Lieutenant-Governor, and they are hereby authorized to appoint within the Western and Eastern Divisions of the Colony respectively, from time to time as occasion may require, such persons to be called assistant Field-cornets as they may see fit, to aid and assist Field-cornets in the execution of the duties of their office; and the said persons to remove from such office whenever they shall see cause.

2. And be it enacted, that it shall be lawful for the said assistant Field-cornets, acting in assistance of and subject to the directions of their respective Field-cornets, and they are hereby required, to do and perform all such matters and things as their respective Field-cornets might do and perform in the execution of the duties of their office. And the said assistant Field-cornets shall so long as they continue in office be entitled to all such exemptions and immunities as are now enjoyed by Field-cornets.

No. 10—1867.]

[August 16, 1867.

ACT

For Encouraging the Introduction into the Waters of this Colony of Fishes not native to such Waters, respectively.

Preamble.

WHEREAS it is desirable, in many cases in this Colony, that fishes not native to certain waters in the said Colony should be introduced into the same, respectively, for the purpose of being therein propagated: And whereas divers private individuals are or may be willing to introduce the same, or the spawn or fry thereof, into certain rivers or other waters of this Colony, if there be provided by law means for protecting the same fish, spawn, and fry, respectively, when introduced: 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. 10—1867.

1. It shall be lawful for any person to apply in writing to the Governor for leave to introduce into any river or part of any river, or other water in this Colony, to be in each case defined in such application, any fish, or spawn, or fry of fish not native to such river, the name or kind of such fish, spawn, or fry to be also defined in such application, and to state in such application what degree and nature of protection within the provisions of this Act the applicant requires for such fish, spawn, or fry, or all or any of the same, and thereupon it shall be lawful for the Governor, with the advice of the Executive Council, to grant such leave, and to make such provision for the protection of such fish, spawn, and fry, or any of them, as is hereinafter provided, on condition that such fish, spawn, or fry shall be actually introduced into such river, part of river, or other water, within such time as shall be agreed on between such applicant and the Governor. If leave shall be granted, as hereinbefore is provided, it shall be lawful for the Governor, with the advice of the Executive Council, by proclamation, which shall be published in the *Government Gazette*, to order that within the limits to be defined in such proclamation, such limits not being extended beyond the rivers, parts of rivers, or other waters, respectively, for which protection shall have been asked and which it shall be deemed by the Governor in Council necessary or expedient to protect for the purpose of securing the propagation, or a fair chance of the propagation, of the fish, fry, or spawn proposed to be introduced as aforesaid, no person, or no person other than the applicant, or his agents or servants in that behalf, or other persons thereto by him, his heirs, or executors, duly authorized, shall, during such period as shall by the said proclamation be defined, not exceeding six years, otherwise or to any degree than may by such proclamation or any other subsequent proclamation made in that behalf with the like advice, and published in the *Government Gazette*, be expressly permitted, knowingly kill, take, or destroy, or endeavour or attempt to kill, take, or destroy, any such fish, spawn, or fry as aforesaid, or use any net, engine, or instrument other than, or in other ways or times than, may by such proclamation or any subsequent proclamation in that behalf, to be made with the like advice, and published in the *Government Gazette*, expressly be permitted, with intent to, or calculated to, or the probable result of the use whereof would be to kill, take, or destroy such fish, fry, or spawn, or any of them.

Application for leave to introduce and for protection of fish, how to be made.

Governor in Council may grant leave and provide for protection.

Limits of waters protected to be defined, and destruction of fish prohibited by proclamation.

2. After the publication of such proclamation, and so long as the same shall remain in force by reason that the time limited therein shall not have expired, and that the same shall not have been recalled or altered by a new proclamation in that behalf, and if the same shall have been altered as aforesaid, then so long as

Duration of protection.

No. 10—1867.

Penalty for contra-  
vention.Proclamation may  
be altered or repeal-  
ed.

the said new proclamation, or any proclamation altering the same shall in like manner remain in force, the proclamation which shall for the time being be in force as aforesaid shall be considered as having the force and effect of law, as if the terms thereof were inserted in this Act, so far as the same are authorized by this Act; and any person contravening the provisions thereof, so far as the same are so authorized, shall be liable to forfeit any net, engine or instrument which shall have been used by him in contravention of such proclamation as aforesaid, and, further, shall be liable, on conviction, to pay any penalty not exceeding twenty pounds, and to be imprisoned for any period not exceeding three months, unless the fine be sooner paid.

3. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to repeal or alter any such proclamation as aforesaid, and with the like advice, from time to time, if it shall seem right, either to substitute any other provisions authorized by this Act for the provisions thereof, or to repeal and recall the provisions thereof; and such new provisions, if any, or such repeal or recall of the provisions theretofore in force, shall be published in the *Government Gazette* and from the date of such publication shall take effect either to alter or to recall the provisions theretofore in force, according to the tenor of such new proclamation, so far as the same shall be authorized by this Act.

No. 7—1883.]

[September 12, 1883.

## ACT

For the protection of Fish in the Water of the Zwartkops River and its Tidal Creeks, and to prohibit the use of Dynamite and other Explosives for the purpose of catching or destroying Fish in the said River.

Preamble.

WHEREAS it is expedient to make provision for regulating the catching of fish by means of nets in the Zwartkops River, and to prohibit the use of dynamite or other explosives for the purpose of catching or destroying fish in the waters of the said river and its tidal creeks (commonly called "spruits"); 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:—

Close season for  
netting fish.

1. It shall not be lawful for any person to lay down, use or fish with any kind of net in the said Zwartkops River from the sea to the extent of the ebb and flow of the tide, or in any of the tidal creeks thereof, save and except in the months of April, May, and June; and any person committing any such offence shall, upon conviction before the Resident Magistrate of Port Elizabeth or of Uitenhage, either of whom shall be authorized to hear and decide on any charges preferred under this Act, forfeit any net or nets

used by him for the purpose of committing such offence, and shall in addition be subject to payment of a penalty not exceeding twenty pounds, and in default of payment to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment. And the said Resident Magistrate may order such net or nets, or any portion thereof, to be destroyed or sold as he shall direct.

No. 7—1883.

2. Any person who shall at any time use dynamite or other explosive substance with intent or in such manner as to catch or destroy fish in the said river or in any of the tidal creeks thereof, shall be liable on conviction before such Magistrate to a fine not exceeding twenty pounds, or in the discretion of the Court to imprisonment with or without hard labour for a term not exceeding three months, or to both such fine and such imprisonment.

Penalty for using dynamite, &amp;c.

3. Of all penalties or fines recovered under this Act, and of all moneys received through any sale of nets directed under the provisions of this Act, one-half shall be paid to the person or persons upon whose information conviction and forfeiture shall have been obtained, and the remainder shall be paid into the Public Treasury.

Half penalty to go to informer.

4. This Act may be cited for all purposes as the "Zwartkops River Fish Protection Act, 1883."

Short title.

No. 18—1859.]

[July 8, 1859.

## ACT

For more effectually preventing the unlawful cutting down or otherwise destroying the Forests and Herbage in this Colony.

WHEREAS, in various parts of this Colony, persons are in the habit of unlawfully cutting down, carrying away, and disposing of trees growing on crown forests, or on crown or other lands, and of kindling fires, whereby the forests and herbage are destroyed: And whereas it is expedient to put an effectual stop to such practices: 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. Every person who shall, without having a lawful licence or permission or other lawful authority so to do, cut down, or cause to be cut down, any tree growing in any crown forest, or on any crown or other land, in this Colony, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction, be liable to a fine not exceeding one hundred pounds, and in case such fine shall not be paid, to imprisonment with or without hard labour, for any period not exceeding six months, or to such fine and such imprisonment, or to such imprisonment, without such fine.

Penalty for cutting down trees on crown land.



No. 18—1859.

Under what circumstances offender may be acquitted.

2. If any person accused of contravening the last preceding section, shall prove to the satisfaction of the Court or jury by which he shall be tried, that he had reasonable and probable cause for believing that the tree cut down, or caused to be cut down, by him, was standing on the land of such person himself, or of some other private person whose leave and licence for cutting down trees in such land such person, so accused, had obtained, then such person shall be acquitted of the criminal charge aforesaid.

Setting fire to trees brushwood, grass.

3. (1) Every person who shall wilfully or by gross carelessness set fire to, or kindle any fire which by spreading shall set fire to, any tree, bush, brushwood, underwood, or grass, not his property, shall be deemed to be guilty of the crime of contravening this section of this Act; and shall upon conviction, be liable to the like penalties (2) as are contained in the first section.

Action for damages may be instituted.

4. Every such person as aforesaid, whether prosecuted, or not prosecuted, shall be liable in a civil action, to be instituted by the party aggrieved, to pay and make good the amount of all damage done by such cutting down or burning.

Receiving tree or part of tree, knowing it to have been removed from crown land.

5. Every person who shall receive any tree, or part or parts of any such tree, knowing at the time of such receipt, that the same had been cut down in a crown forest, or on crown or other land, without any lawful licence or permission for so doing, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction, be liable to the penalties hereinbefore in the first section of this Act provided.

Penalty.

Contraventions of this Act may be treated as theft, or as receiving stolen goods knowing them to be stolen.

6. Nothing in this Act contained shall extend to alter, in reference to the wrongful and unlawful destroying, carrying away or receiving of trees or timber cut down in any crown forest, or on any crown or other land, the law of this Colony relating to the crime of theft, or to the crime of receiving stolen goods, knowing them to have been stolen, or the crime of maliciously setting fire to or burning any description of property: Provided that no person shall be twice prosecuted for or in regard of the same act of cutting down or of burning.

Employers and servants may both or either of them be prosecuted.

7. If any servant shall, when acting under the direction or command of his employer, by omission or any act of commission, infringe any of the provisions of this Act, then such employer and servant may both or either of them be prosecuted, and, if convicted, be punished under this Act.

Meaning of term "tree."

8. In the construction of this Act, the term "tree" shall mean any tree, whether young or old, of a sort or description ordinarily used in making wagons or other vehicles, or articles of furniture, or for building purposes, or for some other purpose of a like nature, with some one or more of the purposes aforesaid; but not any

<sup>1</sup> See also § 17, Act 27, 1882 (Police Offences).

<sup>2</sup> Amended by § 2, Act 19, 1877, *infra*.

other sort or description of tree, nor brushwood, underwood, or wood only used as firewood.

No. 19—1877.

9. This Act may be cited for all purposes as the “Forest and Herbage Preservation Act, 1859.”

Short title.

No. 19—1877.]

[August 8, 1877.

(<sup>1</sup>) ACT

\* \* \* \* \*

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, 1859, and Act 19, 1861.

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No. 7—1882.]

[June 14, 1882.

ACT

For the Encouragement and Protection of Friendly Societies.

WHEREAS the encouragement and protection of Friendly Societies in this Colony for raising by voluntary subscriptions of the members thereof, with or without the aid of public assistance, donations and funds for the mutual relief and maintenance of the said members, and of their wives and children in sickness, old age and infirmity, and for the funeral and other expenses of the same, is likely to be attended with very beneficial effects, by promoting the happiness of individuals, and at the same time diminishing the public burthens: And whereas certain Friendly Societies, having the aforesaid objects, already exist in this Colony, being either established here, or being branches of societies established elsewhere, and it is desirable that such last-mentioned societies should also have the right to be protected and encouraged: Be it, therefore, enacted by the Governor of the Cape of Good Hope, by and with the consent and advice of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for any number of persons to form and establish a Friendly Society under the provisions of this Act, for the purpose of raising by voluntary subscriptions of the members thereof, without the aid of donations, a fund for any of the following objects:—

Friendly Societies may be established under this Act.

(1) For insuring a sum of money to be paid on the birth of a member's child, or on the death of a member, or for the

Purposes of such societies.

<sup>1</sup> For full text of this Act see Resident Magistrates' Courts.

No. 7—1882.

funeral expenses of the husband, wife or child of a member.

(2) For the relief and maintenance of the members, their husbands, wives, brothers or sisters, nephews or nieces, in old age, sickness or widowhood, or the endowment of members or nominees of members at any age.

(3) For any purpose which shall be authorized by the Governor in Council as a purpose to which the powers and facilities of this Act ought to be extended: Provided that no member shall contract for an annuity exceeding £30 per annum, or any other contingency exceeding £200.

Rules of societies to be transmitted to Attorney-General.

Certificate by him.

2. If such persons so intending to form and establish such society, or if the governing members of any such society which shall already exist in this Colony, shall transmit rules for the government, guidance and regulation of the same to the Attorney-General, and shall obtain his certificate in the form set forth in the schedule to this Act, that the same are in conformity with the provisions of this Act, then the said society shall be deemed to be fully formed and established, or to be entitled to be registered as the case may be, from the date of such certificate.

Trustees to be appointed.

3. Every Friendly Society established or registered under this Act shall, at some meeting of its members, and by a resolution of a majority of the members then present, nominate and appoint one or more person or persons to be a trustee or trustees for the said society, and the like do in any case of vacancy in said office, and a copy of the resolution so appointing such person or persons to the office of trustee, and signed by such trustee or trustees, and by the secretary of the said society, shall be deposited in the office of the Registrar of Deeds.

Property to be vested in Trustees.

4. All property whatsoever, movable and immovable, belonging to any society established or registered under this Act, shall be vested in such trustee or trustees for the time being, for the use and benefit of such society and the members thereof; and the movable or immovable property of any branch of such society shall be vested in the trustees of such branch and be under the control of such trustee or trustees, and, upon the removal, resignation, or death of any such trustee or trustees, the same shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, without any cession, transfer, or assignment whatsoever; and in all actions or suits or indictments in any Court, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in his or their proper name or names as trustees of such society without any further description.

Trustees to bring and defend actions.

5. The trustee or trustees of any such society are hereby authorized to bring or defend, or cause to be brought and defended, any action, suit, or prosecution, in any Court, touching or concerning the property, right, or claim to property of the society for which

he or they are such trustee or trustees as aforesaid. And such trustee or trustees shall or may, in all cases concerning the immovable and movable property of such society, sue and be sued in any Court, in his or their proper name or names as trustee or trustees without any other description; and no such action, suit, or prosecution shall abate or be discontinued by the death of such person, or his resignation or removal from office of trustee, but the same shall and may be proceeded in, by or against the succeeding trustee or trustees, as if such death, resignation, or removal had not taken place: Provided that every such prosecution shall be commenced under and subject to the law in force respecting private prosecutions.

6. No trustee or trustees of any such society shall be liable to make good any deficiency which may arise or happen in the funds of such society, but shall be liable only for the moneys which shall be actually received by him or them on account of such society.

Liability of Trustees.

7. The treasurer of every such society, or any other officer who is required by the rules to give security, shall, before he take upon himself the execution of his office, become bound, with one or more sufficient sureties, in a bond as near as may be to the form set forth in the schedule to this Act, in such penal sum as the society or committee of management shall direct and appoint; and every such bond shall be given to the trustee or trustees of the said society for the time being, and shall be, by him or them, duly registered. And if the said bond shall become forfeited, it shall be lawful for such trustee or trustees to sue upon such bond for the use of such society.

Treasurer to give security.

8. Every such treasurer or other officer, at such time as, by the rules of such society, he should render such account as is hereinafter mentioned, or upon being required so to do by the trustee or trustees of such society, or by a majority of the said committee of management, or by a majority of the members present at a meeting of the said society, within seven days after such requisition, shall render to the trustee or trustees of the society, or the said committee of management, or to the members of such society at a meeting of the society, a just and true account of all moneys received and paid by him since his appointment, or since he last rendered an account, and of the balance then remaining in his hands, and of all bonds or securities of such society, which account the said trustee or trustees, or committee of management, shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, thereunto required, upon said accounts being audited shall forthwith hand over to the said trustee or trustees the balance which on such audit, shall appear to be due from him; and shall also, if required, hand over to such trustee or trustees, all securities and effects, books, papers, and property of the said society in his possession or custody; and if he fail to do so, the trustee or trustees of the said society may sue upon the bond aforesaid, or may sue such treasurer in any Court having jurisdiction, for the

Treasurer to render accounts to Trustees.

No. 7—1882.

balance appearing to have been due from him, and for all moneys received by him on account of the said society and not paid over, and for the securities and effects, books, papers, and properties in his possession or custody, leaving him to set off in such action the sums, if any, which he may have paid on account of the said society, and in such action, the trustee or trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

Prosecution of person misappropriating society's funds.

9. If any officer, member, or other person being or representing himself to be a member of such society, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition, shall obtain possession of any moneys, securities, books, papers, or other effects of such society, or, having the same in his possession, shall withhold or misapply the same, or shall wilfully apply any part of the same to purposes other than those expressed or directed in the rules of the society, or any part thereof, the person so complained of may upon the complaint or information of the trustees, or any officer or member of the society, be prosecuted before the Resident Magistrate's Court, having jurisdiction over the locality where the offence may have been committed: and if the Magistrate presiding shall determine the said complaint proved against such person, he shall order such person to deliver up all such moneys, securities, books, papers, or other effects to the society, or to repay the amount of money applied improperly, and to pay, if he should think fit, a further sum of money, not exceeding twenty pounds sterling, together with the necessary costs, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs, the person so convicted may be imprisoned with or without hard labour, for any period not exceeding three months: provided that nothing herein contained shall prevent the said party from being proceeded against by indictment: Provided, also, that no person shall be proceeded against by indictment, if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Rules to be framed before society registered under this Act.

10. Before any Friendly Society shall be established or registered under this Act, the persons intending to establish the same or the governing members of the same if already established shall agree upon and frame a set of rules for the regulation, government, and management of such society; and in such rules they may, amongst other things, make provision for appointing a general committee of management of such society, and delegating to such committee all or any of the powers given by this Act to the members of Friendly Societies formed, established, or registered under or by virtue of the same; and such rules shall set forth:—

1st. The name of the society, and place of meeting for the business of the society.

2nd. The whole of the objects for which the society is to be

established, or for which it exists, the purposes for which the funds thereof shall be applicable; and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such society.

- 3rd. The manner of making, altering, and rescinding rules.
- 4th. A provision for the appointment and removal of a general committee of management; of a trustee or trustees, treasurer, and other officers.
- 5th. A provision for the investment of the funds, and for periodical audit of accounts to be conducted at least once in every year.
- 6th. The manner in which disputes between the society and any of its members, or any persons claiming by or through any member, or under the rules, shall be settled.

And the rules of every such society shall provide that all moneys received or paid on account of each and every particular fund or benefit assured to the members thereof, their husbands, wives, children, fathers, mothers, brothers, or sisters, nephews, or nieces, for which a separate table of contributions payable shall have been adopted, shall be entered in a separate account, distinct from the moneys received and paid on account of any other benefit or fund; and also that a contribution shall be made to defray the necessary expenses of management, and a separate account shall be kept of such contributions and expenses.

11. After the rules of a Friendly Society shall have been so certified by the Attorney-General as aforesaid, it shall be lawful for such society, by a resolution at a meeting specially called for that purpose, to alter, amend, or rescind the same, or any of them, or make new rules; and if the said Attorney-General shall find that such alterations, amendments, or new rules are in conformity with law, and this Act, he shall give to the society a certificate in the form set forth in the schedule annexed to this Act; and as against any such member or person such certificate shall be conclusive of the validity thereof: and rules, alterations, and amendments, when so certified as aforesaid, shall be binding on the several members of the said society, and all persons claiming on account of a member or on account of the said rules.

12. The Registrar of Deeds, upon production of a copy of such rules or amended rules, as the case may be, signed by three of the members or intended members and secretary or other officer, and the said certificate of the Attorney-General shall file such rules or amended rules in his office, and grant a certificate that the same have been filed, and for every such certificate granted by the Registrar of Deeds there shall be paid the sum of two pounds sterling.

13. If any person shall give to any member of a Friendly Society established or registered under this Act, or to any person

Power to amend rules.

Registrar of Deeds to register rules.

Fee.

Penalty for falsifying rules.

No. 7—1882.

intending or applying to become a member of such society, a copy of any rules, or of any alterations or amendments of the same, other than those certified by the said Attorney-General, with a copy of his certificate appended thereto, under colour that the same are binding upon the members of such society, or shall make any alterations or additions to any of the rules of such society, after they shall have been certified by the Attorney-General, and shall circulate the same, purporting that they have been duly certified under this Act, when they shall not have been so certified, every person so offending shall be guilty of the crime of fraud.

Rules signed by  
Attorney-General to  
be received in evi-  
dence.

14. All rules of any society established or registered under this Act, and all copies thereof, or extracts therefrom, and all writings and documents relating to a Friendly Society, and purporting to be signed by the Attorney-General shall, in the absence of any evidence to the contrary, be received in all courts without proof of his signature thereto.

Investment of socie-  
ty's funds.

15. (1) The trustee or trustees of every Friendly Society established or registered under this Act, shall from time to time, with the consent of the committee of management of such society, or of a majority of the members of such society present, at a general or special meeting thereof, or in accordance with the rules of such society, invest the funds of such society, or any part thereof, to any account in any bank on deposit or current receipts, or in the purchase of the shares of any bank, or in any incorporated company or in mortgage upon immovable property, or on such security as the rules of such society may direct, and not being the purchase of immovable property (save and except the purchase of some house or buildings wherein to hold the meetings or transact the business of such society, and save and except the purchase of land for the purpose of erecting such houses or buildings), and not being personal security, except in the case of a member of one full year's standing at least, and in respect of a sum not exceeding one-half the amount of his assurance on his life; such member providing the bond of himself and two satisfactory sureties for repayment; and in case of such member's death before repayment, the amount of such advance, with interest, may be deducted from the sum so assured, without prejudice, in the mean time, to the operation of such security.

Power of Trustees  
to subscribe to hos-  
pitals, &c.

16. The trustee or trustees of any Friendly Society may, out of the funds thereof, subscribe to any hospital, infirmary, charitable or other provident institution, such annual or other sum as may be agreed upon by the committee of management, or by a majority of the members at a meeting called for that purpose, in consideration of any member of such society, his wife, child, or other persons nominated, being eligible to receive the benefits of such hospital or other institution, according to the rules thereof.

<sup>1</sup> May deposit in Post Office Savings Bank. See Act 6, 1883, § 13 (Printed under *Post Office*.)

17. Every dispute between any member or members of any society established or registered under this Act, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society; and the decision so made shall be binding and conclusive on all parties without appeal.

No. 7—1882.  
Decision of disputes  
between members  
and officers of society

18. In all Friendly Societies established or registered under this Act, all applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may arise or that may have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes, or to enforce the decision of any arbitrators, or to hear or determine any dispute, if no arbitrator shall have been appointed, or if no decision shall be made by the said arbitrator within forty days after application has been made by the member or person claiming through or under a member, or under the rules of the society, may be made to a superior Court, or to the Resident Magistrate's Court of the district within which the usual or principal place of business of the society in this Colony shall be situated; and such superior Court, or Resident Magistrate's Court, shall, upon the application of any person interested in the matter entertain such application; and either of the said Courts, as the case may be, may give such relief, and make such order and directions in relation to the matter of such application as may be necessary, and the circumstances of the case may require.

Arbitration in cer-  
tain cases.

19. The trustees of Friendly Societies established or registered under this Act, or the officer thereof appointed to prepare returns, shall once in every year, in the month of January, transmit to the Registrar of Deeds a general statement of the funds and effects of such society during the past twelve months, and a copy of the last annual report of such society.

Returns to be made  
yearly to the Regis-  
trar of Deeds.

20. Whenever any ten fully qualified members of a Friendly Society, who shall not be in arrear for contributions or payments payable by them according to the rules thereof, shall represent to the Governor that the accounts and affairs of the said society are in a condition which requires further audit and examination, the said Governor may from time to time appoint some person or persons to examine and audit the accounts and affairs of such society; and the treasurer and officers thereof shall, on fourteen days notice in that behalf, produce and lay before such person or persons, all books and accounts under their control relating to the said society, with all vouchers connected therewith; and thereupon the person or persons so appointed shall conduct the examination and audit that may be necessary, and render to the Governor a full report upon such accounts and affairs, upon the assets and liabilities thereof, and generally as to the state and condition of the said society.

When auditors may  
be appointed.



No. 7—1882.

Minors may be members of society.

21. A person under the age of twenty-one may be elected and admitted a member of any society established or registered under this Act, the rules of which do not prohibit such election, and may, and he is hereby empowered, to execute all necessary instruments, and to give all necessary acquittances: Provided that, during minority, he shall not be competent to hold any office of trustee or treasurer of such society.

Funeral expenses of child under 10, medical certificate required before payment of.

22. In any society in which a sum of money may be insured, payable on the death of a child under ten years of age, it shall not be lawful to pay any sum for the funeral expenses of such child, except upon production of a certificate signed by a qualified medical practitioner, stating the probable cause of death; and no trustee or officer of any society, upon an insurance of a sum for the funeral expenses of any child shall knowingly pay a sum which shall raise the whole amount receivable from one, or more than one, society for the funeral expenses of a child under ten years to a sum exceeding ten pounds; and any such trustee or officer who shall make any payment otherwise than as aforesaid, shall be liable to a penalty not exceeding ten pounds upon conviction thereof before the Resident Magistrate of the district in which such death shall have taken place.

Dissolution of society—Powers of members for.

23. It shall be lawful for the members of any society established or registered under this Act, at some meeting of said society, to be specially called in that behalf, to dissolve and determine the said society by consent: Provided that no society established or registered under this Act shall be dissolved or determined, without obtaining the votes or consent of five-sixths in value of the then existing members, and, for the purpose of ascertaining the votes of five-sixths in value of the members as aforesaid, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member of said society; but no one member shall have more than five votes in the whole; and such society shall not be determined and dissolved, unless all persons then receiving or entitled to receive any relief, annuity, or other benefit from the funds thereof, shall first have testified under their hands that such claim is duly satisfied, or unless adequate provision is made for satisfying such claim. And the intended appropriation or division of the funds or other property shall be fairly and distinctly stated in the agreement for dissolution, prior to such consent being given: and the agreement for such dissolution, accompanied with a declaration by one of the trustees, that the provisions of the Act have been complied with, shall be transmitted to the Registrar of Deeds to be by him filed with the rules in the Deeds Registry office: and such agreement shall thereupon be an effectual discharge to the trustees, treasurer, and other officers of such society, and operate as a release from all the members of the society to such trustees, treasurers and other officers: and it shall not be lawful in any society to direct a division or appropriation

of any part of the stock thereof, except for the purposes of carrying out the general objects declared in the rules, as originally certified, unless the claim of every member is duly satisfied, or adequate provision be made for satisfying such claim, and in case any member of any such society shall be dissatisfied with such provision, it shall be lawful for him to apply to any superior Court, upon motion for relief or other order, and such Court shall make such order or direction, in relation thereto as the nature of the case may require.

No. 7—1882.

24. The term “superior Court” in this Act, shall mean, as to any district for which a Circuit Court is appointed to be holden, such Circuit Court; as to the districts over which the Court of the Eastern Districts 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 districts, the Supreme Court.

Meaning of “Superior Court” in this Act.

25. This Act may be cited as the “Friendly Societies’ Act, 1882.”

Short title.

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### SCHEDULE.

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#### FORM OF CERTIFICATE TO RULES OF FRIENDLY SOCIETIES.

I hereby certify that the foregoing rules (or “the alterations and amendments of rules”) of the \_\_\_\_\_ society at \_\_\_\_\_ in the district of \_\_\_\_\_ are in conformity with law, and that the society is duly established (or “is entitled to be registered”) from this date, and is subject to the provisions and entitled to the privileges of the provisions of the “Friendly Societies’ Act, 1882.”

A. B.,  
Attorney-General.

#### FORM OF BOND.

Know all men by these presents, that we A. B. of \_\_\_\_\_ treasurer (or other officer) of the \_\_\_\_\_ society established at \_\_\_\_\_, in the district of \_\_\_\_\_, and C. D. of \_\_\_\_\_ (as surety on behalf of the said A. B.) are jointly and severally held and firmly bound to E. F. of \_\_\_\_\_, and G. H. of \_\_\_\_\_, the trustees of the said society in the sum of \_\_\_\_\_ to be paid to the said E. F. and G. H. as such trustees, or their successors, trustees for the time being, or their certain attorney, for which payment to be well and truly made we jointly and severally bind ourselves, and each of us, our heirs, executors, and administrators as well as our and each of our property according to law, renouncing as we hereby renounce all and every exception which may by any law or custom be made by sureties or otherwise.

This done at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

A. B.  
C. D.

WITNESSES :

I. K.  
L. M.

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No. 7—1882.

Whereas the above bounden A. B. has been duly appointed treasurer (or other officer) of the ———— society, established as aforesaid, and he, together with the above bounded, C. D., as surety and co-principal debtor, have entered into the above-written bond, subject to the conditions hereinafter contained.

Now, therefore, the condition of the above-written bond is such that if the said A. B. shall do and faithfully execute his office of treasurer (or other officer) of the said society, established as aforesaid, and shall make and render a just and true account of the moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer, or deliver all securities and effects, books, papers and property of or belonging to the said society, in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments; and likewise shall and do in all respects well and truly perform and fulfil his office of treasurer (or other officer) to the said society according to the rules thereof, then the above-written bond shall be void and of no effect, but otherwise shall be in full force and effect.

A. B.  
C. D.

WITNESSES :

I. K.  
L. M.

No. 36—1886.]

[July 6, 1886.

## ACT

## For the Better Preservation of Game.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to game: 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:—

Repeal of existing Game Laws.

1. The following Game Law Proclamations are hereby repealed; that is to say, the Proclamation dated 21st March, 1822, entitled "Game Law Proclamation;" the Proclamation dated 23rd August, 1822, entitled "Amendment of Game Law—Elephants;" and the proclamation dated 14th March, 1823, entitled "Amendment of Game Law—Elands."

The word "game" defined.

2. The word "game" shall for the purposes of this Act, be taken and understood to mean and comprehend the several birds and animals of this Colony following, not being domesticated, commonly known as paauw, korhaan, guinea-fowl, pheasant, partridge, grouse, and dikkop, elephant, camelopard, seacow (hippopotamus), buffalo, zebra, quagga, Burchell zebra, buck (comprehending the whole antelope species, with the exception of springbucks actually migrating, but including the gnu or wildebeest), hare and rabbit (not being coney); and the words "game licence" shall, for the

purposes of this Act be taken and understood to mean a game licence duly issued by Government.

No. 33—1886.

Game licence.

3. It shall be lawful for the Governor, by proclamation to be by him issued, to fix and prescribe for each district in this Colony, the close time or fence seasons within which it shall not be lawful to kill, pursue, hunt, or shoot at, the different kinds of game respectively within such district either with or without a game licence respectively, or with or without the landowners' permission.

Governor to have power to proclaim the close season for the several districts of this Colony.

4. No person shall, save as is hereinafter provided, kill, catch, capture, pursue, hunt or shoot at, sell, hawk, or expose for sale, game in any part of this Colony, without having previously obtained a game licence, under the penalty of not exceeding thirty shillings sterling for the first offence, and not exceeding five pounds sterling for every subsequent offence, excepting herefrom any game found injuring crops in cultivated lands or gardens. No person, however, shall be at liberty to pursue, shoot, kill, destroy, or capture any elephant, hippopotamus, buffalo, eland, koodoo, hartebeest, bontebok, blesbok, gemsbok, rietbok, zebra, quagga, Burchell zebra or any gnu or wildebeest of either variety, without having obtained a special permission to that effect from the Governor, under a penalty of not exceeding ten pounds sterling for each offence, or, on failure of payment thereof, not exceeding one month's imprisonment with or without hard labour: Provided, however, that landed proprietors and persons authorized by them shall, without having such special permission, be at liberty to shoot elephant upon the property of such landed proprietors.

Penalty for shooting, killing, capturing, or selling game without a licence.

Except game found in lands, gardens, &c. Special permission of Governor required for destruction of certain game.

Penalty.

5. No person shall kill, pursue, or shoot at game in any district in the Colony during the close time, or shall possess, sell, hawk, or expose for sale game in such district after the expiration of one week from the commencement of the close time which shall be proclaimed for any such district, under a penalty of four pounds sterling for the first offence, and eight pounds sterling for every subsequent offence.

Penalty for shooting or selling game during close season.

6. No person shall, without special permission of the Governor, for purposes to be mentioned in such permission as hereinafter is provided, at any time wilfully take away, disturb or destroy eggs, or sell, hawk, or expose for sale, or shall purchase eggs of any game birds in any part of this Colony, under the penalty of any sum not exceeding four pounds sterling for the first offence, and not less than eight pounds sterling, nor exceeding ten pounds sterling for every subsequent offence; and the said eggs shall be confiscated to Government in whose custody soever the same may at any time be found, and may be seized *brevi manu* by any land-owner, occupier of land, justice of the peace, field-cornet, constable, or police officer: Provided, always, that it shall be lawful for the Governor to permit under his hand any fit or proper person or persons to take, or carry away the eggs of any

Penalty for taking away, &c., eggs of game birds, or for selling or purchasing the same.

Governor may grant permit to take young birds, eggs, &c., for certain purposes.

No. 36—1886.

Number and denomination of birds, eggs, &c., to be stated in permit.

Any one exceeding terms of permit guilty of contravention, &c.

No person to kill, &c., game on any land without landowner's permission

Permission subsequent to commission of the act sufficient.

No penalty unless landowner have given notice personally or in *Gazette*, &c., of intention to preserve game.

Burthen of proof in case of shooting, &c., without a licence to rest with person charged.

Game animals presumed to be wild.

How fines to be recovered, and to whom paid.

game bird, or the young of any game, whether bird or other game, for the purpose of rearing or breeding the same, or for the purpose of acclimatization or scientific investigation; and any person so obtaining the Governor's written permission as aforesaid may himself obtain or take the said eggs, birds, or animals: provided, always, that such writing shall distinctly state the number and denomination of such eggs, birds, or animals, which the holders are employed to obtain or take, which shall collectively not exceed the number specified by the Governor's permission aforesaid. And any person obtaining or taking a greater number or other kinds of such eggs, birds, or animals than those specified in the Governor's permission as aforesaid, or giving or affecting to give any person or persons authority to take or obtain, together with what he shall himself take or obtain in the whole, more than the number or other than the kinds specified in such permission as aforesaid, shall be held guilty of wilfully taking all such young or eggs as he shall have taken or obtained, or shall have given or affected to give authority in the whole to take or obtain.

7. No person shall at any time, either with or without a game licence, kill, catch, capture, pursue, hunt, or shoot at any game on any lands within this Colony, without the permission of the owner of such lands, if private property, under the penalty of any sum not exceeding five pounds sterling for the first offence, and not exceeding ten pounds sterling for every subsequent offence, in addition to any penalty, if any, to which he may be liable under any other section of this Act, the penalty provided by this section to be paid to the owner of the land; but any permission given by such owner after the event with reference to the offence shall be as valid as if given before the offence. But no penalty under this section shall in any case be enforced unless notice and warning shall have been given, either personally or by letter, or in the *Gazette*, or in a local newspaper, by the owner that he is desirous to preserve the game thereon.

8. Whenever any person shall be charged with killing, or capturing, pursuing, hunting, or shooting at, selling, hawking or exposing for sale game, in any part of the Colony without a licence, and shall allege in defence that such game was injuring crops in cultivated lands or gardens, the proof of the truth of such allegation shall be with the person charged.

9. In any case prosecuted under this Act every game animal shall be presumed to have been wild until shown to have been domesticated.

10. The several fines above mentioned 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 twenty-five pounds sterling, in the Court of the Resident Magistrate of the district where the offence may have been committed, and in other cases in the Supreme Court, the Court of the Eastern Districts or the High Court of Griqualand, as the case may be, or the Circuit Court for the district

where the offence may have been committed; and a moiety of any fine imposed upon any offender, on conviction, for contravening any of the provisions of this Act, shall, save as is hereinbefore otherwise specially provided, be paid to the person on whose information such conviction shall have taken place, provided such person be not an accessory.

No. 36-1886.  
Moiety of fine to go to informer.

11. It shall be lawful for the Governor, by proclamation in the *Gazette*, to proclaim and declare as to any parts of this Colony that any bird or animal, to be specified in such proclamation, shall be protected and not destroyed for any number of years not exceeding three, to be mentioned in such proclamation, and also to extend to any such bird or other animal the protection of this Act, as if the same were included among the game animals in this Act defined, or to extend to any such bird or other animal the protection of such of the provisions of this Act as may be specified in such proclamation, as if such bird or other animal were expressly protected by name in such provisions respectively; and also from time to time to revoke, alter, or amend such proclamation.

Governor may by special proclamation protect certain game animals for any time not exceeding three years.

12. It shall be lawful for the Governor, on good cause shown by the Divisional Council of any of the divisions of the Colony to suspend, by proclamation in the *Gazette*, in whole or in part, as may seem right, the operation of this Act, or any part or parts thereof, in the said division, for any time or with regard to any animal, or both, for any time and with regard to any animal to be specified in the said proclamation.

Governor on advice of Divisional Councils may suspend operations of this Act.

13. Any offender being convicted for contravention of any of the provisions of this Act, in default of payment of the fine imposed upon him, and in default of other provision in that behalf in this Act specially provided, shall be liable to imprisonment for any period not exceeding one month, with or without hard labour, unless the fine be sooner paid.

Penalties for contravention of Act not specially provided for.

14. In any prosecution for infringement of any section of this Act, by doing anything without licence, 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 a licence.

What shall be *prima facie* evidence of non-possession of licence

15. Until otherwise proclaimed by the Governor, under the provisions of this Act, the fence or close season at present established by law shall continue to be such fence or close season.

Until otherwise proclaimed, close season to be that by law now existing.

16. No landowner shall require a game licence for the purpose of shooting game on his own land.

No licence required for shooting on own land.

17. This Act may be cited as the "Game Law Amendment Act, 1886."

Short title.

## GAOLS AND CONVICT STATIONS.

- |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Ord. 7—1844, (Convict Stations, discipline).<br>2. „ 10—1844, (Governor's powers, Places of Confinement).<br>3. „ 1—1845, (Visiting Magistrates at Convict Stations).<br>4. „ 24—1847, (Gaol Improvement).<br>5. Act 9—1858, § 19 (Convicts, employment on Public Roads). | 6. Act 5—1866-67, (Discipline of Hard Labour Prisoners).<br>7. „ 1—1876, (Officers' resignation).<br>8. „ 10—1876, § 11, (Lock-up defined).<br>9. „ 13—1886, § 9 (Supplying Prisoners with Liquor). |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

No. 7—Sd. George Napier.] [February 28, 1844.

Ordinance for the Discipline and safe Custody of the Convicts employed upon the Public Roads.

Preamble.

WHEREAS in pursuance of the provisions of Ordinance No. 8, 1843, entitled "An Ordinance for improving the Public Roads of this Colony," certain convicts sentenced to hard labour are to be employed upon the said public roads: And whereas it is expedient for the maintenance of proper order and behaviour amongst the said convicts that certain rules and regulations in that respect should from time to time under due authority be established and that certain visiting magistrates should be appointed to the duty of inspecting such convict gangs and for upholding due regard to discipline under and in virtue of such rules and regulations: And whereas it is also expedient that the jurisdiction hereby vested in any Resident Magistrate should be exercised on the spot where any such convict gang may be stationed: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance it shall and may be lawful for the Governor of this Colony for the time being from time to time as occasion may require to appoint any Resident Magistrate or Justice of the Peace to be the Visiting Magistrate or one of the Visiting Magistrates of any gang of convicts employed as aforesaid upon the public roads, and from time to time to revoke every such appointment; and every such appointment and every revocation of any such appointment shall be notified in the *Government Gazette*.

Visiting magistrates, appointment of.

Duties of visiting magistrates.

2. And be it enacted that it shall and may be lawful for the Governor of this Colony for the time being from time to time to make rules and regulations specifying and prescribing the duties of such Visiting Magistrates as aforesaid, and from time to time to alter, amend, or revoke the said rules and regulations, and it shall be the duty of every such Magistrate and he is hereby required to obey and conform to every such rule and regulation which shall be in force, provided the same be not contrary to law.

Offences specified.

3. And be it enacted that when in the course of any visit to or inspection of any gang of convicts which it shall be the duty of

any such Visiting Magistrate as aforesaid to visit and inspect it shall be proved to the satisfaction of any such Magistrate that any convict belonging to such gang shall have been guilty of misbehaviour in any of the following respects,—1st, of a repetition of any misbehaviour theretofore punished by the superintendent of such gang ; 2nd. of any flagrant act of disorder or breach of prison discipline ; 3rd, of insolence in language or manner towards the superintendent of the gang,—it shall be lawful for every such Magistrate as aforesaid and he is hereby empowered to order any such convict to labour during any number of hours, extra his ordinary hours for labour, not exceeding forty-eight, or to be placed in solitary confinement for any number of nights not exceeding twenty-four, or to be placed in solitary confinement and with or without spare diet for any uninterrupted period not exceeding fourteen days, or to receive personal correction by any number of lashes not exceeding twenty-five.

Ord. 7--1844.

Punishments.

4. And be it enacted that any convict who shall without lawful cause desert from the station where he shall be placed by the authority of the Governor of this Colony for the time being, but who shall voluntarily return to the said station at any time within forty-eight hours from the time of his departure, shall upon due conviction thereof before any Resident Magistrate <sup>(1)</sup> be and become liable to suffer either in lieu of or in addition to any of the punishments in the last preceding section mentioned imprisonment and hard labour for any period not exceeding six calendar months, to commence and be computed from the expiration of the sentence or sentences of imprisonment which such convict was liable to undergo at the time of his desertion as aforesaid.

Desertion with voluntary return, punishment of.

5. And be it enacted that it shall be the duty of the superintendent, overseers, and constables in charge of any such gang of convicts as aforesaid and they are hereby respectively required to cause every convict who shall by any such order as aforesaid of any Visiting Magistrate or Resident Magistrate be ordered to undergo any such punishment as aforesaid to undergo the same in manner and form as by the said Visiting Magistrate or Resident Magistrate directed, and for so doing such order or a copy thereof signed by the said Visiting Magistrate or Resident Magistrate shall be a sufficient warrant to each of the said persons respectively.

Sentences of magistrate to be enforced.

6. And be it enacted that in case any convict belonging to any such convict gang as aforesaid shall wilfully disobey any lawful order, or if he shall exhibit insolence in language or manner to any officer belonging to the station while such officer shall be on duty or to any constable or police officer while on duty, or if he shall be guilty of profane cursing and swearing or of any indecent behaviour, or if he shall without sufficient reason be absent at any hour appointed for muster or school or the services

Offences specified.

<sup>1</sup> Or Visiting Magistrate, Ord. 1 of 1845.



- Ord. 7—1844.  
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- Punishment. of the chapel; or if he shall use to any person intimidating language or threatening acts, or if he shall wilfully mismanage any of his allotted work, or if he shall wantonly destroy or injure any clothing, food, implements of labour, or any other matter or thing intrusted to him to use, the superintendent of the said gang shall be empowered in addition to any other penalties which he may be authorized to inflict to order the convict so offending to labour during any number of hours extra his ordinary hours for labour not exceeding twenty-four in the whole and three in any one day, or to be placed in solitary confinement with or without spare diet for any number of nights not exceeding six, or for any uninterrupted period not exceeding four days, with or without spare diet, or to be kept on spare diet for any period not exceeding three days; Provided always, that the said superintendent, shall make a record in a book to be kept for that purpose of every case in which any punishment as last aforesaid shall be ordered by him, showing the name of the convict, the nature of the misbehaviour, and the punishment ordered; and shall submit such record for the examination of the Magistrate upon the occasion of his then next visit; and if any such superintendent shall wilfully neglect to make such a record as is herein directed or shall not make the same a true and *bonâ fide* record or shall neglect to submit such record for the examination of the Visiting Magistrate upon the occasion of his then next visit such superintendent shall for every such omission of his duty incur and be liable to a penalty not exceeding fifty pounds to be paid to the Colonial Treasury.
- Record of offences and punishment.
- Desertion without return. 7. (1) And be it enacted that any convict who shall desert from the station where he shall be placed and who shall not return thereto voluntarily and within forty-eight hours from the time of his departure shall upon conviction of such offence be liable to imprisonment with hard labour for any period not exceeding two years, to commence from the expiration of any period or periods of imprisonment which he shall have previously been sentenced to undergo and which at the date of such his desertion he shall not have undergone, and also to receive corporal punishment in any number of lashes not exceeding seventy-five.
- Jurisdiction to try cases of desertion. 8. And be it enacted that the Court of the Resident Magistrate for the district in which the convict shall have originally deserted or that of the district in which the gang from which he is so deserted shall be placed when he shall be brought to trial or of any district in which he shall have been after having deserted and before being retaken shall have jurisdiction in every case of the offence in the last preceding section mentioned, and may adjudge and condemn the party offending to such and so much of the punishments in the said section mentioned as such Court shall see cause to adjudge thereon.

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<sup>1</sup> Visiting Magistrate may try offences under this section, Ord. 1 of 1845.

9. And be it enacted that for the purpose of trying any such lastmentioned case or any such case as is in the fourth section of this Ordinance mentioned in the Court of the Resident Magistrate for the district within which the gang to which the offenders belonged as aforesaid shall then be placed, such Court may be held at the spot or station where any such gang shall be stationed at the time of the said trial. And whenever such Court shall be held at such lastmentioned spot or station the superintendent for the time being of the gang aforesaid shall in the absence of the Clerk of the Peace for the district, have the same authority to prosecute for the said crime of desertion from punishment which the said Clerk of the Peace would if present have by law possessed.

Ord. 7—1844.  
Where court for trial of desertion may be held.

Prosecutor in cases of desertion.

10. And be it enacted that every person not being an officer in charge of or belonging to the gang from which the convict shall escape, who shall apprehend and secure any convict who shall have escaped from any such convict gang as aforesaid, and shall cause such convict to be lodged in any of the public gaols or in custody of the superintendent of any convict station, shall be entitled to receive out of the Colonial Treasury (over and above his just and reasonable expenses) such sum not exceeding three pounds sterling for each such convict as the Governor of this Colony for the time being shall consider and authorize such person to have become entitled to by reason of any such apprehension.

Reward for apprehension of deserters.

11. (1) And be it enacted that every superintendent, head-overseer, and sub-overseer duly appointed by authority of the Governor of this Colony for the time being shall be deemed and taken to be a constable, and that it shall and may be lawful for the Governor of this Colony for the time being and for any such Visiting Magistrates as aforesaid from time to time to nominate and appoint so many other persons as the said Governor or the said Visiting Magistrate shall deem necessary to be and act as constables at the several convict stations, and such persons shall be and they are hereby declared to be invested with all powers, authorities, and functions by law belonging to constables or officers of police: Provided always, and it is hereby declared that every appointment made by any such Visiting Magistrate shall be subject to the approval of the said Governor and that every such constable shall be removable at the pleasure of the said Governor for the time being and may be suspended by any such Magistrate until the pleasure of the said Governor for the time being shall be expressed thereon, and that no such Visiting Magistrate shall have any authority to appoint or suspend any such constable as aforesaid to or at any station other than one of which he shall be the Magistrate.

Constables at stations.

12. And be it enacted that all such constables as aforesaid shall be and they are hereby authorized and required to use all lawful

Apprehension of deserters.

<sup>1</sup> See Act 1 of 1876, *infra*.

Ord. 7—1844.

means in their power for retaining the convicts under their charge in safe custody. And that the crime of desertion from punishment as defined in the seventh section of this Ordinance shall with reference to and for the purposes of the provisions of the Ordinances hereinafter mentioned be deemed and taken to be a crime of equal degree of guilt with the crimes specified in the fourteenth section of the Ordinance No. 73, entitled "An Ordinance for explaining, altering, and amending the Ordinance No. 40," and that all and singular the provisions made and contained in the twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and nineteenth sections of the said Ordinance No. 73, and in the first section of the Ordinance No. 2, 1837, entitled "An Ordinance for the more effectual prevention of crimes against Life and Property within the Colony," shall extend and apply and they are hereby extended and made applicable to every person who shall have committed or shall on reasonable grounds be suspected to have committed or shall attempt or clearly manifest an intention to commit the said crime of desertion from punishment.

No. 10.—Sd. P. Maitland.]

[July 4, 1844.]

Ordinance for empowering the Governor to appoint in all cases the places at which Convicts sentenced to be imprisoned shall be confined.

Preamble.

WHEREAS in some cases convicts have from time to time been sentenced to undergo at Robben Island or some other particular place fixed in and by their several sentences, the certain terms of imprisonment with hard labour respectively adjudged against them without any power having been given by the terms of such sentences to the Governor of this Colony to vary the place of such imprisonment: And whereas it may happen that other convicts may hereafter be sentenced in a similar manner: And whereas it will be conducive to the proper management of convict discipline and labour that the said Governor should possess a discretionary power of altering from time to time the places at which all convicts sentenced to undergo imprisonment with hard labour by any of the Colonial Courts shall be confined, and to that end that provision should be made for effectually realizing the removal if the said Governor should see fit of all convicts sentenced or to be sentenced as aforesaid absolutely to Robben Island or some other fixed place: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that as well in regard to the power of the Governor of this Colony for the time being, to remove or cause to be removed from Robben Island or other place of imprisonment within this Colony all convicts sentenced to undergo imprisonment

Place of imprisonment dependent upon appointment of Governor.

with hard labour by any of the Colonial Courts as in regard to all other legal effects and consequences whatsoever, all former sentences still unexpired and all future sentences, pronounced by any Colonial Court for any crime or offence adjudging imprisonment with hard labour against the person convicted, shall be held, taken, and construed precisely. and to all intents and purposes, as if fit and proper words had been originally inserted therein declaring that the place for undergoing such imprisonment with hard labour should be from time to time and at all times dependent upon the appointment of the said Governor.

Ord. 10—1844.

No. 1.—Sd. P. Maitland.] [January 6, 1845.  
Ordinance for creating certain Visiting Magistrates' Courts  
at Convict Stations in this Colony.

WHEREAS by the Ordinance No. 7, 1844, entitled "An Ordinance for the discipline and safe custody of the Convicts employed upon the Public Roads," provision has been made for the appointment of certain Visiting Magistrates to inspect the several gangs of convicts employed upon the public roads of this Colony: And whereas it is expedient for the saving in certain cases, of time, expense, and trouble, that the said Visiting Magistrates shall be empowered to try the respective crimes and offences specified in the fourth and seventh sections of the said Ordinance: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that Courts shall be and the same are hereby declared to be created and established with jurisdiction as hereinafter defined in regard to the crimes and offences in the said fourth and seventh sections of the said Ordinance mentioned and set forth, and such Courts may adjudge and condemn all offenders in that behalf to such and so much of the punishments in the said sentences respectively mentioned as they shall see cause to impose or inflict; and such Courts shall be Courts of Record and shall be holden by and before the Visiting Magistrate or Visiting Magistrates (as the case may be) of every convict gang respectively, and shall be holden respectively at the spot or station where the gang of which the Magistrate or Magistrates holding any such Court shall be the Visiting Magistrate or Visiting Magistrates shall be stationed at the time of the holding of the same.

Preamble.

Creation of courts.

Place and manner  
of holding court.

2. And be it enacted that the Courts aforesaid shall have and exercise jurisdiction in regard to the crimes and offences aforesaid, only in cases in which the convict or alleged convict to be tried shall be in the custody of the superintendent of some gang of convicts at the spot or station where the said gang shall be stationed, and the Court of the Visiting Magistrate or Visiting Magistrates of every such last mentioned gang shall have such

Jurisdiction limited  
to persons in custody  
at a convict station.

Ord. 1—1845.

jurisdiction as aforesaid whether such gang be or be not the gang from which the convict or alleged convict is charged with having originally deserted or escaped.

Authority of superintendent of convict gang to prosecute.

3. And be it enacted that the superintendent for the time being of the convict gang in the last preceding section mentioned shall in the absence of any person specially appointed by the Attorney-General of the Colony for the time being to appear and act for him in the said Court, have the same authority to prosecute in all such cases as aforesaid, as the said Attorney-General would by law if present have possessed.

Jurisdiction without appeal according to rules of courts of resident magistrate in criminal cases.

4. And be it enacted that the said Courts shall have and exercise the jurisdiction aforesaid without appeal, and that the proceedings shall be carried on therein in such manner and form as shall for the time being be lawfully practised by the Courts of the Resident Magistrates of this Colony in regard to the hearing and determination of criminal cases, and that the judgment of the Court of any such Visiting Magistrate or Visiting Magistrates as aforesaid in any such cases as aforesaid shall have and entail the same consequences precisely as if the same had been pronounced by the Court of any Resident Magistrate held at the same spot or station under or in pursuance of the provisions of the said Ordinance No. 7, 1844.

Jurisdiction of court of resident magistrate unaffected.

5. And be it enacted and declared that nothing herein contained shall be deemed or taken to affect or impair any jurisdiction by the said lastmentioned Ordinance or otherwise now belonging to any of the Resident Magistrates' Courts of 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.

No. 24.—Sd. H. G. Smith.]

[December 28, 1847.]

### Ordinance for Improving the Gaols of this Colony.

Preamble.

WHEREAS several of the buildings used as public gaols in this Colony are in a very defective state and condition owing to which it is difficult to prevent prisoners from escaping or to classify prisoners properly or introduce to any extent any uniform or efficient system of management in regard to such gaols: And whereas it is intended as soon as may be to cause the said defective gaols to be improved, and it is therefore expedient to provide for the establishment of an uniform and efficient system of prison discipline: Be it enacted by the Governor 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 aforesaid, with the advice of the Executive Council of the Colony, to make such rules for the government of the several gaols of this Colony respectively and for the duties to be performed by the several officers of the same as the said Governor shall deem expedient, and

Prison regulations to be framed by the Governor with advice of Executive Council.

such rules from time to time to alter and amend; and all such rules so made shall be binding upon the keeper of the gaol and all other persons therein. Provided always, that all such rules shall be consistent with the provisions of this Ordinance, and that no such rule shall except so far as by this Ordinance provided be competent to impose any punishment or penalty for or on account of any breach thereof by any person whomsoever, save only dismissal from office in the case of persons employed in Her Majesty's service.

Ord. 24—1847.

2. And be it enacted that the keeper of every gaol shall be appointed by the Governor aforesaid and shall be under the immediate authority and superintendence of the Resident Magistrate of the district in which the gaol in question shall be situate, and shall, in virtue of his office be a constable and possess all the powers by law belonging to the office of constable; and shall reside within the prison of which he is keeper and shall not employ himself in any other occupation.

Appointment of  
gaoler.

3. And be it enacted that neither the keeper of any prison nor any other officer in any prison shall sell nor shall any person in trust for or employed by him sell or have any benefit or advantage from the sale of any article to any prisoners, nor shall he directly or indirectly have any interest in any contract or agreement for the supply of the prison to which such keeper or other officer shall belong. And any person contravening any of the provisions of this section shall be liable to forfeit any sum not exceeding one hundred and not less than five pounds.

Officers of prisons  
not to furnish supplies under penalty.

4. And be it enacted that male and female prisoners shall be confined in separate parts of the prison so as to prevent them from seeing, conversing, or holding any intercourse with each other, and that the prisoners of each sex shall be divided into distinct classes, care being taken that prisoners of the following classes respectively do not intermix with each other:

Classification of  
prisoners.

- a.* Persons confined under any decree of civil imprisonment.
- b.* Persons committed for want of sureties to keep the peace.
- c.* Persons committed for murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes or in which any dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep or goats, or other crime of equal degree of guilt with any of the said crimes.
- d.* Persons committed for any crime of a lesser degree of guilt than any of the crimes aforesaid.
- e.* Persons convicted of any such crime as is hereinbefore in letter *c* set forth.
- f.* Persons convicted of any such crime as hereinbefore in letter *d* set forth.

Provided always, that it shall be lawful for the Governor aforesaid

Ord. 24—1847.

by any such rule as aforesaid to suspend the execution of all or any of the provisions of this section in regard to any gaol in which the means of carrying the same into effect do not yet exist.

Journal to be kept by gaoler.

5. And be it enacted that the keeper of every prison shall keep a journal in which he shall record all occurrences of importance within the prison in such manner as shall be directed by the rules aforesaid to be made by the Governor aforesaid; which journal shall be produced to the Resident Magistrate of the district upon the occasion of every periodical visit by such Magistrate as hereinafter directed, and shall be signed by him in proof of the same having been so produced.

Supply of food and clothing to be regulated by the Governor.

6. And be it enacted that it shall and may be lawful for the Governor aforesaid by any such rule as aforesaid to regulate the supply of food and clothing and other necessaries of the prisoners in any gaol. Provided always, that prisoners confined before trial for any supposed crime or offence shall be allowed to procure for themselves and to receive at proper hours any food, bedding, clothing, or other necessaries, subject to a strict examination and under such limitations and restrictions to be prescribed by any such rule or rules as aforesaid as may be deemed necessary to prevent extravagance or luxury within the walls of the prison, and to exclude all articles which might possibly communicate infection or facilitate escape.

Proviso with regard to prisoners before trial.

Cleanliness of person and apparel of prisoners.

7. And be it enacted that it shall and may be lawful for the said Governor by any such rule as aforesaid to provide for securing the cleanliness in regard to person and apparel of every prisoner admitted into any prison, in such manner, however, as to resort as little as may be consistent with the end in view to any means of securing cleanliness to which the prisoner shall object. Provided always, that the apparel of every such prisoner after being if requisite fumigated and purified shall be returned to him, and that no prisoner before trial shall be compelled to wear a prison dress unless his own clothes be deemed insufficient or improper or necessary to be preserved for the purposes of justice.

No punishment to be inflicted without magistrate's order.

8. And be it enacted that no keeper of any prison shall without the order of the Resident Magistrate first had and obtained punish any prisoner for any offence or supposed offence under any pretext whatsoever: Provided, however, that when and as often as it shall be urgently and absolutely necessary to secure any refractory prisoner or any prisoner contriving to escape pending the arrival of the Magistrate the keeper may by his own authority place such prisoner in irons; and such keeper shall in every such case make an entry in his journal recording the particulars thereof, and shall without loss of time send notice to the Resident Magistrate of what has taken place.

Refractory prisoners may temporarily be placed in irons by gaoler.

Prison visiting by resident magistrate.

9. And be it enacted that it shall and may be lawful for the Governor aforesaid by any such rules as aforesaid to fix the times and occasions upon which the Resident Magistrate of the district

shall visit and inspect the gaols thereof, to which rules in that behalf such magistrate shall conform.

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10. (1) And be it enacted that when in the course of any visit to or inspection of any gaol which it shall be the duty of any Resident Magistrate to visit and inspect it shall be proved to the satisfaction of such Magistrate that any prisoner has wilfully disobeyed any lawful order, or has shown violence or insolence to the keeper of the prison or any other officer thereof, or has been guilty of profane cursing and swearing or of using indecent words or of any indecent behaviour, or has used to any person intimidating language or threatening acts, or has wantonly destroyed or injured any food, clothing, or other matter or thing intrusted to him to use, or has committed any wilful act of disorder or breach of the prison discipline, such Resident Magistrate may order any such prisoner so offending to be placed in solitary confinement with or without spare diet for any period not exceeding seven days, or to be kept in irons for any period not exceeding seven days, or to receive personal correction by any number of lashes not exceeding twenty-five, or to be kept at hard labour either within or without the prison for any period not exceeding twenty-one days. Provided always, that the name of the offender, the nature of the offence, and the punishment ordered shall be recorded in the journal of the prison-keeper. Provided also that no prisoners save those under sentence of imprisonment with hard labour shall be liable to receive personal correction.

Offences against discipline and good order punishable by visiting magistrate.

Punishments which may be inflicted on certain classes of prisoners.

11. And be it enacted that except for the causes and under the circumstances aforesaid no prisoner before trial shall be put in irons or in the stocks or be fastened or fettered in any manner whatsoever whether by way of security against escape or otherwise, unless for reasons moving him thereto the Resident Magistrate shall in special cases authorize by writing inserted in the keeper's journal a departure from this rule.

No prisoner before trial to be put in irons, &c., except for the causes aforesaid, unless under special written authority from magistrate.

12. And be it enacted that if any prisoner shall make his escape from gaol or attempt to make his escape or conspire or confederate with any other prisoner or other person to make the escape of both or either of them or shall supply any other prisoner with any implements, matter or thing intended to aid such other prisoner in making his escape; such prisoner may be tried for such offence before the Court of Resident Magistrate of the district in which such gaol shall be situated, and upon conviction may be sentenced to undergo any punishment which such Magistrate shall for the time being have power and authority to award. (2)

Prisoners escaping or attempting to escape or assisting others to escape may be tried in courts of resident magistrate.

13. And be it enacted that it shall and may be lawful for the Governor aforesaid by any such rules as aforesaid to fix and prescribe the circumstances under which any spirituous or fermented

Introduction of spirits, &c., into any gaol.

<sup>1</sup> This Section to apply to offences committed outside gaol; see § 2, Act 5, 1866-67, *infra*.

<sup>2</sup> See § 3, Act 5 of 1866-67, *infra*.



Ord. 24—1847.

liquor may be carried or brought into any gaol; and if any person shall in contravention of any such rule carry or bring or attempt to carry or bring into any gaol any spirituous or fermented liquor it shall be lawful for the keeper or any other of the officers of such gaol to apprehend or cause to be apprehended such offender and to bring him before the Court of Resident Magistrate for the district at its next sitting (which Court is hereby empowered to hear and determine such offence in a summary way), and such offender if convicted shall be liable to pay any fine not exceeding twenty pounds and not less than five pounds, and in default of payment shall be liable to be imprisoned for any period not exceeding two months with or without hard labour. <sup>(1)</sup>

Penalty.

Penalty on officers giving or permitting prisoners to receive spirits, &c., contrary to rule.

14. And be it enacted that if any keeper or other officer of or person employed in any gaol shall sell, lend or give away to any prisoner, any spirituous or fermented liquor or knowingly permit or suffer to be received or used by any prisoner any such liquor contrary to any such rule as aforesaid in that behalf such keeper or other officer or other person being convicted of such offence by the Court of Resident Magistrate for the district (which Court is hereby empowered to hear and determine such offence) shall be liable to pay any fine not exceeding forty pounds and not less than ten pounds, and in default of payment shall be liable to be imprisoned with or without hard labour for any period not exceeding three months. <sup>(1)</sup>

Gaming forbidden within the gaol.

15. And be it enacted that no gaming shall be allowed in any gaol and that the keeper and other officers and persons employed in any gaol shall be authorized and he and they are hereby required to seize and destroy all cards, dice, or other instruments of gaming.

No fees to be paid by prisoners to officers of gaol.

16. And be it enacted that no fee or gratuity shall be paid or payable by any prisoner either on his entrance, commitment to, continuance in, or discharge from any gaol either to the keeper or his servants or any officer of or person employed in the gaol, and any keeper or other officer or person receiving or demanding any such fee or gratuity shall for every such offence forfeit any sum not exceeding ten pounds.

Penalty on officer receiving any such fee.

Gaol returns to be prepared by resident magistrate.

17. And be it enacted that the Resident Magistrate of every district shall as often as shall by any such rule as aforesaid be required prepare and transmit to the Governor of this Colony periodical returns showing the name and description of every person confined in the said gaol, by whom such person has been committed, the cause or grounds of his imprisonment, the date of the warrant of committal or other order or authority for such imprisonment, the number and employment of the various officers or other persons employed in the gaols, and all such other matters as by any such rule as aforesaid shall be required to be included in such return.

<sup>1</sup> See also § 9, Act 13, 1886, *infra*.

18. And be it enacted that so much of this Ordinance and so much of any such rules as aforesaid as relates to the treatment and conduct of prisoners shall be printed in legible characters both in the English and Dutch languages and fixed up in conspicuous parts of every prison, so that all persons may have access thereto.

Ord. 24—1847.  
Rules, &c., to be fixed up in every prison.

19. (1) *And be it enacted that in regard to any gaol situate in Cape Town or the District thereof the judge and superintendent of police of Cape Town and not the Resident Magistrate of Cape Town shall be invested with the right and charged with the duty of visiting and inspecting the same, and the keeper of any such gaol shall be under his authority and superintendence; and such judge and superintendent of police shall exercise every power and perform every duty hereinbefore confirmed or imposed upon any Resident Magistrate acting out of Court.*

Cape Town Gaol.

20. And be it enacted that in the interpretation of this Ordinance the term "Governor" shall mean the officer administering the Government of this Colony for the time being, and that whenever mention is made of any public officer the officer so mentioned shall be deemed to be such officer for the time being or the officer for the time being acting as such, and that words importing the singular number shall respectively be understood to include several persons, matters, and things, as well as one person, matter, or thing, and that words importing the masculine gender shall respectively be understood to include females as well as males, unless there be something in the subject or context repugnant to such construction.

Interpretation of terms.

21. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.

Ordinance not to extend to Natal.

22. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

Time of taking effect.

No. 9—1858.]

[June 5, 1858.

Convicts. (2)

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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 numbers 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

Convicts may be employed under chief commissioner or divisional council.

<sup>1</sup> Office of Judge and Supt. of Police abolished by Act 11 of 1860 (Police).

<sup>2</sup> For full text of this Act, see "Roads and Bridges."

No. 9—1858.

Put their discipline to be directed by the Governor.

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.

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No. 5—1866-67.]

[January 12, 1867.

ACT

For the Better Maintenance of Discipline among Persons under Sentence of Imprisonment with Hard Labour.

Preamble.

WHEREAS persons under sentence of imprisonment with hard labour pronounced by the courts of criminal jurisdiction are or may be at times kept to hard labour at places other than at convict stations to which Visiting Magistrates have or shall have been regularly appointed under the provisions of an Ordinance No. 7 of 1844, intituled “ An Ordinance for the Discipline and safe custody of the Convicts employed upon the Public Roads : ” And whereas it is expedient to make more effectual provision than now exists by law for the safe custody and discipline of such persons : 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 :

Provisions of Ordinance 24 of 1847 amended and enlarged.

1. The various provisions of an Ordinance numbered 24 of 1847, and intituled “ An Ordinance for improving the Public Gaols of this Colony, ” shall be amended and enlarged in manner hereinafter appearing, that is to say :—

Power of restraining prisoners in certain cases conferred on constables in charge of party employed at hard labour.

When and so often as it shall be urgently and absolutely necessary to secure any refractory prisoner so kept to hard labour outside the precincts of the gaol of any district in which he may for the time being be, or any such prisoner contriving or endeavouring to escape from custody, the constable in charge of the party to which such prisoner is attached may cause him to be bound or placed in irons until he can be safely remitted to the gaol of the said district, thereafter to be dealt with under the provisions of the said last-mentioned Ordinance.

Offences against discipline committed outside of gaol punishable as if committed within gaol.

2. The tenth section of the same Ordinance shall be held to apply to all offences against good discipline therein mentioned, if committed by any such prisoner as aforesaid while outside the precincts of the gaol, in like manner, in all respects, as if he were within the precincts of such gaol.

Prisoners escaping or attempting to escape, or assisting

3. If any such prisoner shall make his escape from custody, when outside the precincts of the gaol, or shall attempt to make

such escape, or shall, either within or outside the precincts of the gaol as aforesaid, conspire or confederate with any other prisoner or other person to make the escape of both or either of them either from gaol or from custody, or shall, either within or outside the precincts of such gaol, supply any other prisoner with any implement, matter, or thing intended to aid such prisoner in making his escape either from gaol or from custody, every such prisoner who shall do or commit any of the acts or offences in this section before mentioned may be tried for such act or offence before the Court of the Resident Magistrate of the district in which such prisoner shall be in custody, and upon conviction may be sentenced to be imprisoned with hard labour for any term not exceeding one year, to commence from the expiration of the sentence which such prisoner shall then be undergoing, or to receive corporal punishment in any number of lashes not exceeding fifty, or both to be imprisoned as aforesaid and to receive such corporal punishment as aforesaid.

No. 5--1866-67.  
others to escape, may be tried in court of resident magistrate.

4. It shall and may be lawful for the constables who shall be in charge of any party of such prisoners ordered to be kept at hard labour as aforesaid, to be armed with firearms, loaded with powder and ball, or shot; and if any such prisoner shall attempt to escape and it shall be absolutely necessary, in order to prevent such escape, that any of the said constables should fire upon such prisoner, it may be lawful for him so to do, and if in so doing he shall kill or wound such prisoner, he shall not be deemed guilty of any offence in so doing.

Prisoners attempting to escape may be fired upon by constable in charge.

No. 1—1876.]

[July 4, 1876.

### ACT

For the better regulation of Convict Stations and Gaols.

WHEREAS it is expedient that provision should be made for the punishment of gaolers, constables, and the like, who without lawful permission so to do, withdraw from their 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. No officer belonging to any convict station or gaol, shall be at liberty to resign or withdraw himself from his office, unless expressly permitted so to do in writing, signed by the Resident Magistrate of the district in which such convict station or gaol is situate, or the superintendent of such convict station, or unless he shall give to such Resident Magistrate or superintendent one month's notice of his intention to resign such office; and every officer who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then

Officers not to resign or withdraw without permission, or a month's notice given.

Penalty.

No. 1—1876.

due to him, or to a penalty not exceeding £10, or to imprisonment for any term not exceeding one month, as to the Resident Magistrate of the district shall seem best and most expedient.

Interpretation  
clause.

2. The term "officer" shall be construed to mean and include overseer, constable, gaoler, and turnkey.

No. 10—1876.] (1)

[July 4, 1876.

\* \* \* \* \*

Definition of term  
"Lock-up."

11. By "lock-up" in this Act is meant any building or part of a building in which any person lawfully arrested or detained in custody under this Act is placed while in such custody, whether before conviction or committed for trial, or afterwards, and every such lock-up shall, as to such person, be deemed to be a public gaol within the meaning of the Ordinance No. 24, of 1847, intituled "Ordinance for improving the Gaols of this Colony," and the Act No. 5 of 1866-67, intituled "An Act for the better maintenance of discipline among persons under sentence of imprisonment with hard labour;" and the Resident Magistrate of the district in which such lock-up is situate, shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such lock-up or kept to hard labour outside the precincts of such lock-up as by the said lastmentioned Ordinance and Act respectively are given to the Resident Magistrate of the district as to a public gaol within his district, Provided that it shall not be lawful for any such Resident Magistrate for any offence so committed to punish the offender in any higher or more severe manner than 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 corporal punishment not exceeding twelve lashes.

Jurisdiction of resi-  
dent magistrates as  
to escaped prisoners,  
&c.

\* \* \* \* \*

No. 13—1886.] (2)

[June 18, 1886.

\* \* \* \* \*

Penalty for supply-  
ing prisoners or con-  
victs with liquor, to-  
bacco, &c.

9. Any person who shall, without lawful authority, supply or cause to be supplied to any prisoner or convict any intoxicating liquor, tobacco or article of food or drink shall, upon conviction before the Court of the Resident Magistrate having jurisdiction, be liable to a fine not exceeding ten pounds sterling, and in default of payment to imprisonment with or without hard labour and with or without spare diet, for any period not exceeding three months, or to such imprisonment without the option of a fine.

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<sup>1</sup> For full text of this Act, see Justices of the Peace.

<sup>2</sup> For full text of this Act, see "Criminal Procedure."

No. 8—1879.]

[Sept. 11, 1879.

## ACT

To Alter and Amend, in many respects, the General Law of the Colony.

WHEREAS the existing general law of the Colony is in several instances unsuited to the advancing trade and the altered circumstances of the country : And whereas, also, many portions of such law are uncertain, and partly, if not entirely, obsolete : And whereas it is desirable to alter and amend such laws as are in conflict or inconsistent with modern principles of legislation : 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.

## PART I.—MARITIME AND MERCANTILE LAW.

1. In all questions relating to maritime and shipping law in respect of which the Supreme Court has concurrent jurisdiction with the Vice Admiralty Court, the law of this Colony shall hereafter be the same as the law of England, so far as the law of England shall not be repugnant to or inconsistent with any Ordinance, Act of Parliament, or other statute having the force of law in this Colony.

In maritime cases English law to prevail.

2. In every suit, action, and cause having reference to questions of fire, life, and marine assurance, stoppage in transitu, and bills of lading, which shall henceforth be brought in the Supreme Court, or in any other competent Court of this Colony, the law administered by the High Court of Justice in England for the time being so far as the same shall not be repugnant to, or in conflict with, any Ordinance, Act of Parliament, or other statute having the force of law in this Colony, shall be the law to be administered by the said Supreme Court or other competent Court.

Also in cases of assurance, stoppage in transitu, and bills of lading.

3. Nothing in the two preceding sections of this Act contained shall have the effect of giving force in this Colony to any statutory enactment made and passed by the Imperial Parliament after the taking effect of this Act, unless the same shall be re-enacted here.

English statutes passed after this Act not to apply.

4. Nothing in the first and second sections of this Act contained shall have the effect of altering the rules and forms of pleading and procedure, the mode of taking evidence, or the manner of hearing and trying civil suits at present in force or in use in this Colony, or the notarial practice of this Colony, whether in regard to the suits, actions, and causes in the first and second sections mentioned and referred to, or otherwise, or in any way of modifying, altering, or interfering with the character or extent of the jurisdiction now exercised by the several Courts of this Colony, or of imposing any duty imposed or to be imposed in England for the purposes of the revenue.

Form of pleading, procedure, taking evidence, &c., not altered.

No. 8—1879.  
Duties of marshal in admiralty court to be performed by sheriff in other courts.

5. The several duties assigned by the admiralty branch of the Supreme Court of Justice in England to the marshal of the said Court shall, in the case of shipping or maritime suits in the Supreme Court, or the Court of the Eastern Districts, or any Circuit Court of this Colony, be executed by the Sheriff of this Colony or his lawful deputy, or in case any such suit or action shall be brought in the Court of any Resident Magistrate, then by the messenger or other duly authorized officer of such Court.

PART II.—EXECUTION OF PROCESS.

Proof that defendant has property must be given before civil imprisonment decreed.

6. No writ of civil imprisonment for non-payment or non-satisfaction of any judgment or decree shall be granted or issued by the Supreme or any other Court of this Colony in cases in which the defendant, or other party against whom such writ of civil imprisonment is sought to be issued, shall prove to the satisfaction of the Court to which such application is made, that such defendant or other party as aforesaid has not property or means sufficient to satisfy in whole or in part the said judgment or decree.

PART III.—THE LAW OF CONTRACTS.

Leases not void through injury to property by inundation, tempest, &c.

7. In the absence of any special stipulations to the contrary contained in any contract of lease, no lease of land shall become void or voidable, nor shall the rent accruing under such lease be incapable of being recovered on the ground that the property leased has, through inundation, tempest, or such like unavoidable misfortune, produced nothing, or on the ground that the lessor himself has absolute need of the land or other property leased.

Law of *lesio enormis* repealed.

8. No contract shall be void or voidable by reason merely of *lesio enormis*, sustained by either of the parties to such contract.

Short title.

9. This Act may be cited as the "General Law Amendment Act, 1879."

No. 25—1878.]

[August 2, 1878.

AN ACT

To Dispense with the Governor's Signature in certain Cases.

Preamble.

WHEREAS it is expedient that the Governor should be relieved from the necessity of affixing his signature to several of the documents which, by the existing law, require the same for their validity: 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:—

Governor may depute persons to sign documents for him.

1. Whenever by any existing law or custom of this Colony the signature of the Governor is required to be affixed to any warrant, licence, commission, letters patent, or other official document (save as hereinafter in the 3rd section of this Act excepted), it shall be lawful for the Governor from time to time to depute and authorize

some other person or persons to sign such documents, and the documents so signed shall be to all intents and purposes as valid and effectual as if they had been signed by the Governor: Provided that the names of the persons so deputed and authorized, and a description of the nature of the documents to be signed by such persons, shall first be notified in the *Government Gazette* of this Colony: and provided also that a copy of every such notice shall forthwith be laid before both Houses of Parliament, should the same be then in session, or at the earliest sitting of such Houses, if they shall not be in session.

No. 25—1878.

Names of such persons and nature of documents they may sign to be notified in *Gazette* and laid before Parliament.

2. Whenever any such notice shall have been laid before both Houses of Parliament for the space of fourteen days, and no action shall have been taken in either of the said Houses in regard thereto, such notice shall to all intents and purposes be binding and take effect as law: Provided, however, that until so laid before both Houses of Parliament, and until any action shall have been taken in either of such Houses in regard thereto, such notice shall take provisional effect as law.

Notice to have effect of law after having been before Parliament for 14 days.

Meanwhile to have provisional effect.

3. Nothing in this Act contained shall exempt the Governor from the necessity of signing any warrant for execution or any pardon, or commutation of sentence of condemned criminals, or any deed of grant, or from signing the commissions of any military, naval, or civil officers, serving Her Majesty the Queen in her Colonial Government, in any case in which such commissions are now required to be signed by him.

What documents may not be brought under the provisions of this Act.

4. This Act may be cited as the "Governor's Signature Act, 1878."

Short title..

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No. 4.—Sd. P. Maitland.]

[January 30, 1845.

Ordinance for declaring certain Guano to be the Property of Her Majesty the Queen.

WHEREAS considerable quantities of the substance commonly called "guano" have been found in and upon certain islands or rocks in the sea within the limits of this Colony and its dependencies: And whereas it is possible that further quantities of the said substance may exist and be hereafter discovered at other places within the said limits: And whereas doubts exist whether the said substance being merely or mainly the droppings of unreclaimed birds of a base nature can in law, though a merchantable article, be deemed to be property or possessed of legal value: And whereas it is expedient that such doubts should be removed and that all of the said substance lying and being in and upon any place or territory within the limits aforesaid, and not granted or belonging to any private individual, should be declared to be the property of Her Majesty the Queen, and that provision should be made for preventing or punishing the unauthorized removal of the

Preamble.



Ord. 4—1845.

Guano within limits of the colony declared the property of the Queen.

same: Be it therefore enacted and declared by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all of the said substance commonly called guano which may now or at any time hereafter be found lying and being in or upon any island, rock, or other place not being the property of any private person or persons and within the limits of this Colony and its dependencies, shall be deemed and taken to be property and to belong to and be in the lawful possession of Her Majesty the Queen, her heirs and successors.

Penalties on removal of such guano.

2. And be it enacted that if any person or persons shall remove or cause to be removed from any such island, rock, or place as aforesaid any of the property aforesaid without the leave of the Governor of this Colony, for the time being first had and obtained; or if any person or persons shall receive and have any of the said property, knowing the same to have been so removed without such leave as aforesaid, every such person shall for every such offence, besides paying and making good the full value of the property illegally removed, incur and be liable to a penalty not exceeding one hundred pounds sterling, whereof one-half shall be paid to any person who shall have given information touching the commission of the offence and the other half shall be paid to the Colonial Treasury. And in default of immediate payment of such penalty, the person condemned to pay the same may be imprisoned with or without hard labour until he shall pay the same, but so, however, that he shall not be detained for any period exceeding three months. But it shall be competent for the Governor in any case in which it shall appear to him to be just and proper so to do to remit the whole or any part of any such penalty as aforesaid.

Removals constituting separate offences

3. And be it enacted that every trip or voyage in which any vessel, boat, or raft shall receive and remove from any such island, rock, or place as aforesaid any of the said property in order that the same may be put on board any other vessel or delivered or discharged in any other manner whatsoever shall be deemed to be a separate offence on the part of every person manning, navigating, or conducting such vessel, boat, or raft; and in case any such property as aforesaid shall happen to be removable, and shall be removed otherwise than by water carriage, then every separate instance or occasion upon which any of the said property shall have been in any manner carried away shall constitute a separate offence on the part of every person carrying the same away; and in regard to persons receiving the said property knowing the same to have been removed without leave every act of receiving any quantity of the same at any one time shall also constitute a separate offence.

Prosecution of offences.

4. And be it enacted that all offences committed in contravention of this Ordinance may lawfully be prosecuted in the Court of any Resident Magistrate in this Colony.

5. And be it enacted that nothing in this Ordinance contained shall be held or construed so as to impair or affect the right if any which any person or persons may now by law possess or claim in regard to the substance aforesaid and the removal of the same under and by virtue of any lease or contract with the local Government of this Colony relative to any island or other place on which such substance shall be found; but every such lease or contract shall be construed and the rights of the respective parties thereto shall be ascertained and determined precisely as if this Ordinance never had been passed.

Ord. 4—1845.  
Effect of leases.

6. 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.

**GUNPOWDER AND FIREARMS.**

1. Ord. 81—1830, (Trade beyond boundaries).	7. Act 14—1866-'67, (Trade within Colony regulated).
2. ,, 7—1834, (Trade within Colony regulated).	8. ,, 11—1875, ( do. ).
3. ,, 2—1853, ( do. ).	9. ,, 13—1877, ( do. ).
4. Act 19—1856, ( do. ).	10. ,, 29—1879, ( do. ).
5. ,, 14—1857, ( do. ).	11. ,, 7—1886, ( do. ).
6. ,, 28—1864, ( do. ).	12. ,, 13—1878, (Peace Preservation).
	13. ,, 4—1879, ( do. ).

No. 81.—Sd. G. Lowry Cole.] [Dec. 23, 1830.

Ordinance for the better Regulation of the Trade carried on beyond the Land Boundaries of this Colony between the Inhabitants thereof and the Kafirs and other Nations residing in Africa.

WHEREAS the trade carried on beyond the land boundaries of this Colony by the inhabitants of the Colony and the Kafirs and other nations or tribes residing in Africa beyond the said boundaries, has much increased of late years, and the improved relations of peace and commerce existing between them respectively render it expedient to give greater facilities to the commercial operations of persons trading beyond the said boundaries than heretofore, under such regulations as shall provide for the more prompt and effectual punishment of any acts of outrage or misconduct committed by such traders or their servants, which may endanger the continuance of the beneficial intercourse which at present exists with such nations: Be it therefore enacted by His Excellency the Governor in Council, that it shall and may be lawful for the Civil Commissioners of the several districts of the Colony respectively which abut upon the said boundaries, and they are hereby authorized and required, to grant a licence to trade beyond the said boundaries of the Colony, to any of His Majesty's subjects who shall apply for the same, and who shall satisfy the Civil Commissioner that he is a person of good character, and fit to be entrusted with such licence.

Preamble.

Authority of civil commissioners to grant licences to trade beyond the boundaries.

Ord. 81—1830.

Stamp, £3.

2. And be it further enacted that every such licence shall be issued on paper stamped of the value of three pounds, and shall be in force for one whole year commencing from the day of the date thereof.

Licence not to be granted unless two sureties enter into recognizance.

3. Provided always and be it further enacted, that it shall not be lawful for any such Civil Commissioner as aforesaid to grant any such licence, unless the party applying for the same shall produce two sureties, being persons possessed of immovable property situate within this Colony, to the value of one hundred pounds at the least, and who shall enter into the recognizance hereinafter mentioned, or unless the party applying shall produce to the Civil Commissioner to whom application shall be made a like recognizance signed and sealed by any Resident Magistrate by whom the said recognizance is taken.

Form of recognizance.

4. And be it further enacted that the said recognizance shall, as near as may be, be in the words following, that is to say :

Place of residence of  
Resident Magistrate, } Before me,  
Resident Magistrate, } Resident Magistrate (or Civil Commis-  
or Civil Commissioner, } sioner, as the case may be), of the district  
as the case may be. } of                    on the                    day of

A. B. residing at                    and C. D. residing at

severally acknowledge themselves to be indebted to our Sovereign Lord the King in the sum of fifty pounds, to be levied upon their goods and lands and property, of what nature soever the same may be, upon condition that E. F. shall, during the time he shall sojourn in Africa beyond the boundaries of this Colony, by virtue of his licence bearing date the                    day of                    , conduct himself, and cause his servants to conduct themselves, in a quiet and peaceable manner towards all and every person with whom they shall meet beyond the said boundaries; and that he and his servants will, in case of attack or aggression on him or them, only act in defence of themselves and his and their property; and that he will not give, sell, or barter any fire-arms or ammunition to any natives; and that he will not in any manner, direct or indirect, kidnap, purchase, or bring within the boundaries of the Colony any person or persons, without his or their own free will and consent, nor permit his servants or any of them so to do, then this recognizance to be void, or else to remain in full force.

A. B.                    G. H., Civil Commissioner,  
C. D.                    or Resident Magistrate, (as the case may be.)

Record of recognizance by civil commissioner.

5. And be it further enacted that every Civil Commissioner before whom any such recognizance is entered into, or to whom any such recognizance entered into before a Resident Magistrate is produced, shall duly enter and record the same; and if any Civil Commissioner as aforesaid shall grant any such licence without such recognizance having been taken or produced and recorded,

he shall incur and be liable to a penalty of fifty pounds for each offence.

Ord. 81—1830.

6. And be it further enacted that every person to whom such licence has been granted as aforesaid shall either in person or by his attorney duly constituted and appointed, whenever he shall think fit to transport merchandise beyond the said land boundaries, deliver to the Civil Commissioner by whom his licence has been granted a statement of the number and description of fire-arms and the quantity of ammunition which he intends to take beyond the said boundaries for the defence of himself, his servants, and property, together with a statement, as near as may be, of the number and description of persons he intends to take with him, and which statement shall be subject to alteration by the said Civil Commissioner if he shall think fit; and the said statement, when approved of by the said Civil Commissioner, shall be signed by the person to whom the said licence is granted, and shall be kept by the said Civil Commissioner; and the said Civil Commissioner shall give the said licensed trader a certificate or certified copy of the said statement, which shall remain in the possession of the person who is left in charge of the said trader's wagons or other conveyances: and if any licensed trader shall not make such statement, or if he, or other person acting on his behalf, shall refuse to show the certified copy thereof to any Justice of the Peace, Commissioned Officer, or Non-commissioned Officer, Field-commandant, Field-cornet, or Constable, on demand, who are hereby authorized and required to inspect the same, he shall and may be detained and brought before the Resident Magistrate of the district where the offence is committed, and shall on conviction be liable to a fine not exceeding twenty pounds and to forfeiture of his licence.

Statement by licensed person of fire-arms and ammunition which he intends to take beyond the boundary.

Certified copy of statement furnished by civil commissioner for exhibition to justices of the peace and other authorities.

Penalty on omission to make statement, or on non-production of certified copy, £20, and forfeiture of licence.

7. And be it further enacted that all Justices of the Peace, and other persons hereinbefore authorized to inspect certificates, are hereby authorized and required to search the wagons and other conveyances of any such licensed trader which they suspect to contain any fire-arms or ammunition not set forth in the certificate of such trader, and to seize the same if they contain any such arms or ammunition; and every such licensed trader in whose possession a greater number of fire-arms or a greater quantity of ammunition shall be found within the boundaries of the Colony than the number or quantity set forth in his certificate, shall on conviction incur and be liable to a fine not exceeding fifty pounds, and shall forfeit his licence together with the wagons or other conveyances and the effects loaded thereon at the time of their seizure.

Authority of justices and others to search wagons of licensed traders containing firearms or ammunition not set forth in statement.

Penalty, £50 and forfeiture of licence.

8. And be it further enacted that the servants and wagons or other conveyances belonging to any licensed trader, shall on their return within the Colony stop at the first convenient place adjacent to the said boundaries thereof, and the said trader, or some person acting on his behalf, shall immediately report his return to the

Report on return to the colony to nearest field-commandant or field-cornet, or other officer.

Ord. 81—1830.

Inquiry into disposal of firearms and ammunition.

nearest Field-commandant or Field-cornet or to the officer or non-commissioned officer of the nearest military post, who shall forthwith proceed thither, and shall require such trader or other person as aforesaid to produce the certificate and fire-arms of such trader; and if the number of fire-arms produced shall not amount to the number mentioned in the certificate, the person demanding production of the same shall endorse such deficiency upon the certificate and shall report the same to the Civil Commissioner of the district, who shall, if he think fit, institute such inquiry thereupon as he may deem requisite.

Penalty on neglect of report or refusal to produce certificate, or arms, or on giving unsatisfactory account, £50.

9. And be it further enacted that if any such trader or other person as aforesaid shall on his return advance beyond the residence of the nearest Field-commandant or Field-cornet, or beyond the nearest military post, without making such report as aforesaid, or shall refuse to produce his certificate or fire-arms on demand, or shall not render a satisfactory account of the fire-arms found to be deficient, the said trader shall incur and be liable to a fine not exceeding fifty pounds.

Production of natives brought from beyond the boundary and accounting for their absence and that of servants named in certificate.

10. And be it further enacted that the said Field-commandant, Field-cornet, or military officer shall also at the time and place aforesaid, require every such trader or other person as aforesaid to produce all persons belonging to any of the native tribes beyond the land boundaries thereof who have been brought within the said boundaries of the Colony by the said trader or such other person, and to account for the absence of any who have been brought in and are not then present, and for the absence of any of the servants mentioned in his certificate, and shall make such inquiry relative to the matter aforesaid as he shall think proper; and the said Field-commandant, Field-cornet, or military officer shall endorse on the certificate the names and descriptions of those persons who have been produced, and the names and descriptions of those who are absent, if any, together with the alleged cause of their absence; and if any such trader or other person as aforesaid shall not produce all such persons as aforesaid, or shall not truly account for the absence of such as are not produced, he shall incur and be liable to the payment of a fine not exceeding fifty pounds.

Penalty on non-production or untrue account £50.

Report of suspected offences against this ordinance by field-cornet, &c., to civil commissioner.

11. And be it further enacted that if any Field-cornet or other officer as aforesaid shall upon such examination and inquiry as aforesaid have reasonable cause to suspect that any trader or other person as aforesaid has been guilty of any offence against any of the provisions of this Ordinance he shall forthwith transmit to the Civil Commissioner of the district the certificate of such trader, together with a statement of the alleged offence or offences endorsed thereon.

Penalty on bringing natives into the colony against their free will—£100.

12. And be it further enacted that it shall not be lawful for any person whomsoever to bring within this Colony any person from beyond the said boundaries thereof not legally contracted to him within the Colony, against the free will and consent of such

person, under a penalty not exceeding one hundred pounds, and if any such person be brought within the Colony upon any contract or agreement of any nature soever entered into beyond the said boundaries such contract or agreement shall be void and of no effect.

Ord. 81—1830.

Agreement beyond the boundaries of the colony void.

13. Provided always, that nothing herein contained shall extend to prevent any native or other person who may have voluntarily come into the Colony with or been brought by any trader or other person from entering into any legal contract or agreement before a Clerk of the Peace or other person before whom the same may be made.

Legal contract before clerk of the peace of persons coming voluntarily into the colony.

14. And be it further enacted that if any person shall, without having such licence as aforesaid proceed towards the said land boundaries of the Colony for the purpose of trading beyond the same, he shall on conviction thereof incur and be liable to a penalty of fifty pounds.

Penalty on proceeding to the boundary for the purpose of trade beyond, £50.

15. And be it further enacted that it shall and may be lawful for all officers and non-commissioned officers of His Majesty's land service, and all Civil Commissioners, Resident Magistrates, Clerks of the Peace, Field-commandants, Field-cornets, and Constables, and they are hereby required to stop, all wagons or other conveyances proceeding towards the said land boundaries of the Colony which they suspect are intended to be employed in trading beyond the same, and to demand of the person in charge thereof to see his licence, and if the same be not produced and no good reason given for the non-production of the same they shall proceed to search all such wagons or other conveyances; and if they find merchandise which they have reason to suspect is intended to be carried beyond the said boundaries of the Colony they shall detain the wagons, or other conveyances together with their contents, and bring the same with the party in charge thereof before the nearest Resident Magistrate, to be dealt with according to law.

Stoppage of wagons proceeding towards the boundary, suspected to be for the purpose of trade beyond: on non-production of licence.

Detention of wagon and suspected merchandise.

16. [Repealed by Act 13, 1877, § 1.]

17. And be it further enacted that all offences against any of the provisions of this Ordinance shall be cognizable before the Resident Magistrate of the district where the offences are committed respectively; and any proceedings against any surety of any trader, licensed by this Ordinance shall be cognizable and triable at any Circuit Court held in the district where the licence to such trader was granted; and all fines and penalties imposed by this Ordinance shall go one half to the Colonial Treasury and the other half to the informer.

Jurisdiction of resident magistrate, and of circuit court.

Fines—one half to colonial treasury,—one half to informer.

18. <sup>(1)</sup> And be it further enacted that every licence to attend and traffic at the border fairs shall be issued on paper stamped of the value of three pounds, and shall be in force for one whole year commencing from the date thereof.

Licence to traffic at border fairs.

<sup>1</sup> These fairs no longer exist.

Ord. 81—1830. 19. And be it further enacted that such provisions of the Ordinance No. 23 as are at variance with or repugnant to the enactments of this Ordinance shall be null and void, and the remainder of the said Ordinance shall continue in full force and effect.

Repeal of provisions of ordinance No. 23.

No. 7.—Sd. B. D'Urban.] [December 3, 1834.  
Ordinance for regulating the Trade in Gunpowder within this Colony (1).

WHEREAS it is expedient to remove the restrictions which now exist upon the purchase and sale of gunpowder within this Colony, and to render the dealing therein as free as a due regard to the public safety will admit; and also to make provision for the prevention of accidents in storing and transporting 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, the proclamation of the 27th June, 1797, and all other laws, ordinances, and proclamations relating to the trade in gunpowder in so far as they relate thereto, and in so far as they have not been repealed by the Order of His Majesty in Council bearing date the 22nd day of February, 1832, shall be and the same are hereby repealed accordingly.

Repeal of former laws.

Where gunpowder may be landed.

2. And be it further enacted that unless by the special permission of the Governor no gunpowder imported into this Colony shall be landed at any place other than in Table Bay, Simon's Bay, or Algoa Bay, and only at such places in the said bays as the Governor shall from time to time appoint by any proclamation to be by him duly published in that behalf (2).

Store permit to be obtained previous to landing gunpowder.

3. And be it enacted that every importer or consignee of gunpowder imported into this Colony for colonial consumption shall, before applying for or obtaining from any officer of the Customs any warrant or permit to land the same, apply for and obtain from the commissioner or distributor of stamps for the district

<sup>1</sup> By Ordinance No. 5, 1851, the dealing in gunpowder was regulated for one year, and all provisions of Ordinance No. 7, 1834, repugnant to or inconsistent with Ordinance No. 5, 1851, were repealed. Ordinance No. 5, 1851, with Ordinance No. 7, 1852, which amended it, was repealed, except in as far as it repealed former laws, by Ordinance No. 2, 1853, regulating the dealing in gunpowder, firearms, and lead, until the expiration of 1854. Act No. 5, 1854, continued Ordinance No. 2, 1853, in force to the end of 1855; Act No. 7, 1855, to the end of 1856; Act No. 19, 1856, to the end of 1857, with some amendments; Act No. 14, 1857, to the end of 1858, with further amendments; Act No. 8, 1858, to the end of 1859; Act No. 5, 1859, to the end of 1860; and Act No. 20, 1860, to the end of 1861; Act 12, 1861, to the end of 1862; Act 14, 1862, to the end of 1863; Act 6, 1863, to the end of 1864; and Ordinance 2, 1853, as amended by Act 14, 1857, made perpetual by Act 28, 1864. In this Ordinance and in all other laws relating to the dealing in gunpowder, the word "gunpowder" shall include cartridges, § 5, Act 13, 1877.

<sup>2</sup> But see § 5, Act 10, 1872 (Customs),

or place within which such gunpowder is intended to be landed, who are hereby respectively authorized and required to grant the same, a permit to store such gunpowder signed by such collector or distributor of stamps respectively, on paper stamped of the value of threepence for every pound of gunpowder so intended to be landed; and if any officer of Customs shall grant any warrant or permit to land any such gunpowder at any place within this Colony without such stamped permit so signed as aforesaid having been first produced to him he shall for every such offence incur and be liable to a fine of fifty pounds, and every person who shall land, cause to be landed, or attempt to land at any place within this Colony any such gunpowder without having first obtained such stamped permit to store the same as aforesaid, shall for every such offence incur and be liable to a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year, and all such gunpowder landed or attempted to be landed without such stamped permit for storing the same having first been obtained in manner aforesaid shall be forfeited to His Majesty.

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4. And be it further enacted that no officer of Customs shall permit any gunpowder to be delivered from any bonding magazine for colonial consumption unless the proprietor of such gunpowder shall lodge with such officer of Customs a warrant or permit from the commissioner or distributor of stamps for the district or place within which such bonding magazine is situate, who are hereby respectively authorized and required to grant the same on paper stamped of the value of threepence for every pound of gunpowder required to be delivered. And if any officer of Customs shall permit any gunpowder to be delivered from any bonding magazine without such warrant having been lodged with him as aforesaid, he shall for every such offence incur and be liable to a fine of fifty pounds. <sup>(1)</sup>

Transit permit before removal of powder from store.

5. And be it enacted that every importer or consignee of gunpowder imported into this Colony shall give to the Collector of Customs for the place at which any such gunpowder is to be landed twenty-four hours' notice of the time when he intends to land the same, by delivering such notice in writing to such Collector personally or by leaving the same at the Custom-house: and the proper officer of Customs shall thereupon attend at the time and place appointed for landing the same, and shall cause all the regulations for landing gunpowder hereinbefore or hereinafter mentioned to be attended to; and if any person shall land or cause to be landed any gunpowder unless such Custom-house officer as aforesaid be present, or shall break any of the regulations hereinafter mentioned relative to the landing and removing of

No powder to be landed before notice to the customs or without the presence of a customs officer.

<sup>1</sup> See also § 7, Ord. 2, 1853, *infra*.



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gunpowder, he shall for every such offence incur and be liable to a fine not exceeding ten pounds; and all gunpowder illegally landed or removed or attempted to be landed or removed in violation of any such regulations as aforesaid shall be forfeited to His Majesty.

Regulations for the landing and removal of powder.

6. And be it further enacted that all gunpowder shall be landed and removed to and from the powder magazines under the regulations hereinafter mentioned, that is to say:—

- 1st. No gunpowder shall be landed before the hour of nine in the morning nor after three in the afternoon.
- 2d. Before the magazine of the vessel containing any gunpowder is opened all fire and light in the said vessel shall be extinguished.
- 3d. During the removal of the gunpowder from such vessel all other work therein shall be suspended.
- 4th. The bottom of the boat in which any gunpowder is landed shall be covered with hides, sails, cloth, or other proper substance by which the casks containing the gunpowder shall be prevented from coming in contact with the bottom of the boat.
- 5th. If the proper means of conveyance should not be in attendance so that the gunpowder when landed may be removed immediately, the gunpowder shall be carefully placed upon hides, sails, cloth, or other fit substance spread upon the beach, and shall be left in charge of some proper person until the means of conveyance shall arrive.
- 6th. If the gunpowder shall be removed from the place of debarkation in wagons or carts, there shall be spread on such wagons or carts, hides, sails, or cloth, so that the casks containing the powder shall not come in contact with the wood or iron-work of the wagon or cart.
- 7th. Every such wagon or cart shall be driven at a walking pace to and from the powder magazine whilst proceeding through any town or village.

Private magazines permitted.

7. And be it further enacted that it shall be lawful for any person or persons, in any place which he or they shall deem expedient, to erect a private magazine or magazines for the storing of gunpowder for colonial consumption, and to store gunpowder within the same: Provided always, that the site and plan of every such private magazine shall first have been approved of by the Governor on the report of some fit person by him appointed to report thereon. <sup>(1)</sup>

Magazine keeper to be appointed.

8. And be it enacted that the proprietor or proprietors of every such private magazine shall appoint some proper persons, to be remunerated by them, and who shall be approved by the Governor, to be the storekeeper thereof, and who before entering upon his said office shall be sworn duly and honestly to discharge the duties

<sup>1</sup> See Act 19, 1856, *infra*.

thereof, and whose name and appointment shall be thereupon published in the *Government Gazette*.<sup>(1)</sup>

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9. And be it further enacted that the storekeeper of every private magazine shall keep an exact and true account of all gunpowder received into and issued<sup>(2)</sup> from his magazine, and which shall contain the quantities of gunpowder received and the time when and by whom the same was stored, as also the quantities issued and the time when and to whom the same were issued respectively. And whenever any gunpowder shall be so received into or issued from any such magazine, such storekeeper shall within fifteen days transmit to the Resident Magistrate of the district within which such magazine is situate a true copy of such account as aforesaid of all such gunpowder so received or issued; as also all such certificates hereinafter mentioned as shall have been delivered to him under and by virtue of the provisions of the twenty-second section of this Ordinance. And every person hereinbefore required to keep and transmit such accounts and certificates as aforesaid who shall fail so to do in manner hereinbefore provided shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and every person who shall make any false entry in any such account or who shall transmit to the Resident Magistrate any paper purporting to be a true copy of any such account kept by him which shall not be a true copy thereof shall incur and be liable to a fine of fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for a period of six months.

Account of receipts and issues of powder to be kept and transmitted to magistrate.

10. [Repealed by Act 13, 1877.]

11. And be it enacted that it shall and may be lawful for the commissioner of stamps in Cape Town and the distributors of stamps in the several districts of the Colony respectively, and they are hereby authorized and required, to grant to all persons residing within their respective districts who shall apply for the same<sup>(3)</sup> licences in the form set forth in the schedule hereunto annexed, marked A, on paper stamped of the value of three<sup>(4)</sup> pounds, to deal in gunpowder and to sell the same at such places as are mentioned in the said licence: Provided always, that persons in partnership and carrying on business under one firm, and proving such partnership, shall not be required to take out more than one licence to deal in gunpowder at any one place; and provided also, that if any person to whom any such licence as aforesaid shall have been granted, and which shall then be in force for any one place,

Licences for dealing in powder to be granted

<sup>1</sup> See Ord. 6, 1845 (Oaths).

<sup>2</sup> See also § 12, Ord. 2, 1853, *infra*.

<sup>3</sup> But see § 14, Ord. 2, 1853, *infra*.

<sup>4</sup> Five, see Tariff 15, Sched. 2 Act, 20, 1884 (Stamps and Licences).

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shall desire to remove and to deal in gunpowder at any other place, it shall and may be lawful for such person to apply to the commissioner or distributor of stamps for the district in which such last-mentioned place shall be situate, who are hereby respectively on such application authorized and required to make and sign an endorsement on such licences, setting forth that from the date of such endorsement such licence shall no longer be in force for the place or premises originally specified therein, but shall henceforth be in force for the place or premises specified in such endorsement. <sup>(1)</sup>

Transference of licences.

12. And be it further enacted that if any person who shall have obtained any such licence to deal in gunpowder as aforesaid shall die or shall wish to assign the same before the expiration of the period of such licence, it shall and may be lawful for the person authorized to grant any such licence in manner aforesaid to transfer such licence by endorsement to the assignee of such person or to the heirs, executors, or administrators of such person in the case of his death.

Notice to public of the licence.

13. And be it further enacted that every person who shall have obtained any such licence to deal in gunpowder as aforesaid shall cause to be painted on some conspicuous place on the wall or on a board affixed to some such conspicuous place on the wall, outside and over or near the door of the premises specified in his licence in letters publicly visible and legible at least one inch long, his name at full length (or where there are partners the name or style of the firm or partnership), and after such name or style the words "licensed dealers in gunpowder;" and in default of having such name or style and such words as aforesaid so painted as to be publicly visible and legible in manner aforesaid at any time during the continuance of such licence such person shall incur and be liable to a fine not exceeding ten pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding two months.

Penalty for fixing notice without having licence.

14. And be it further enacted that every person who shall not have obtained any such licence to deal in gunpowder as aforesaid and who shall paint on his premises or give any other notice importing that he is a dealer or is licensed to deal in gunpowder shall for every such offence incur and be liable to the pains and penalties imposed on persons convicted of dealing in gunpowder without a licence.

List of holders of licences to be published.

15. And be it further enacted that a list of the names of all persons who shall take out such licences to deal in gunpowder as are hereinbefore mentioned shall from time to time as occasion may require be published in the *Government Gazette*, and the commissioner and distributors of stamps respectively shall upon the taking out of every such licence forthwith transmit the name

<sup>1</sup> But see §§ 7, 8, 9, Act 13, 1870 (Stamps and Licences).

of the person taking out the same to the Colonial Secretary, who shall make publication thereof in the said *Gazette*, and give due information thereof to the respective storekeepers of every powder magazine within the Colony.

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16. And be it further enacted that if any such storekeeper of any such private magazine as aforesaid shall deliver out of such magazine any gunpowder to any person not being at the time of such delivery duly licensed to deal in gunpowder in manner aforesaid, or not having from some person so licensed as aforesaid an order to receive such gunpowder, he shall incur and be liable to a fine not exceeding fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months.

Powder to be issued only to holders of licences.

17. And be it further enacted that if any person who shall not have taken out such licence as aforesaid shall sell, purchase, or barter gunpowder in any quantity exceeding ten pounds in any one day except in such cases as are hereinafter excepted, he shall incur and be liable to pay a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year; and all gunpowder so sold, purchased, or bartered shall be forfeited to His Majesty: Provided, always, and be it enacted that nothing herein contained shall extend or be construed to extend to prevent any person who is the importer or consignee of gunpowder imported into this Colony from selling and transferring the same in bond to any person whatever, or from selling and transferring the same in any quantity whether in bond or not to any such licensed dealer as aforesaid, without taking out the licence hereinbefore mentioned. <sup>(1)</sup>

Powder not to be sold without a licence beyond ten pounds weight.

Exception as to importer.

18. And be it further enacted that from and after the passing of this Ordinance it shall and may be lawful for any person who shall have taken out such licence as aforesaid, to sell gunpowder in any quantity to any other person licensed to deal in gunpowder in manner aforesaid, and in any quantity not exceeding ten pounds in any one day to any person who is not such licensed dealer as aforesaid: Provided always, that if any such licensed dealer shall sell any gunpowder to any person who is not such licensed dealer as aforesaid excepting on the premises specified in his licence or at some such private magazine as aforesaid, or shall sell any gunpowder in any quantity exceeding ten pounds in any one day to any person who is not such licensed dealer as aforesaid, or who is not a field-cornet, to whom is hereby authorized to sell any quantity not exceeding twenty-five pounds, or who is not, as being the agent of any other person or persons, authorized under and by virtue of the provisions of the twenty-second section of this Ordinance to purchase and receive any such quantity of gun-

Extent of sales by persons holding licences.

<sup>1</sup> See § 13, Ord. 2, 1853, *infra*.

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powder, he shall incur and be liable to a fine not exceeding one hundred pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding one year, and shall forfeit his licence. <sup>(1)</sup>

Proceeding for discovery of illegal sales of powder.

19. And be it further enacted that if any person shall make information on oath before any Resident Magistrate, and show probable cause for suspecting that any person has sold purchased or bartered any gunpowder in contravention of any of the provisions of this Ordinance, it shall and may be lawful for such Magistrate within his jurisdiction to summon such suspected person before him, and also to summon any other persons to be examined and give evidence upon the charge against such suspected person; and if such persons so summoned as witnesses shall fail to appear in obedience to such summons or shall refuse to be examined on oath and give evidence as aforesaid, it shall and may be lawful for the said Magistrate to commit every such person so failing or refusing as aforesaid to prison for a period not exceeding one month, or until such person shall no longer refuse to be examined and give evidence as aforesaid.

Storing of powder by unlicensed persons.

20. <sup>(2)</sup> And be it further enacted that if any field-cornet shall store or have any quantity of gunpowder exceeding twenty-five pounds, and if any other person except as is hereinafter excepted shall store or have any quantity of gunpowder exceeding ten pounds in any building of what kind or description soever, not being a public magazine, or a private magazine, approved of by the Governor in manner aforesaid, unless by special permission to that effect given by the Governor, he shall incur and be liable to a fine not exceeding fifty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months: Provided always, that it shall and may be lawful for any licensed dealer in gunpowder to store in the premises specified in his licence any quantity of gunpowder not exceeding fifty pounds where such premises are situated in any of the towns or villages of this Colony, and not exceeding one hundred pounds where such premises are situated elsewhere than in any such town or village: Provided also, that every such dealer so storing in any such premises as aforesaid any quantity of gunpowder exceeding fifty pounds shall keep an exact and true account of all gunpowder received into and issued from the said premises, and which shall contain the quantities in which and the time when the same was so received and the quantities in which and the time when and the person to whom the same was issued; and shall on the first day of each month transmit to the Resident Magistrate of the district in

Storing of powder and deliveries of powder.

Account of receipts and deliveries of powder.

<sup>1</sup> See § 13, Ord. 2, 1853, *infra*.

<sup>2</sup> See § 15, Ord. 2, 1853, and §§ 4 and 5, Act 14, 1857, *infra*.

which such premises shall be situated a true copy of such account as aforesaid of all the gunpowder by him received into or issued from the said premises; as also all such certificates hereinafter mentioned as shall have been delivered to him under and by virtue of the provisions of the twenty-third section of this Ordinance during the preceding month; and every person hereinbefore required to keep and transmit such account and certificates as aforesaid who shall fail so to do in manner hereinbefore provided shall incur and be liable to a fine of twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and every person who shall make any false entry in any such account or who shall transmit to the Resident Magistrate any paper purporting to be a true copy of any such account kept by him which shall not be a true copy thereof shall incur and be liable to a fine of fifty pounds, or in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding six months.

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21. (1) And be it further enacted that if any field-cornet shall convey or cause to be conveyed any quantity of gunpowder exceeding twenty-five pounds, and if any other person shall convey or cause to be conveyed any quantity of gunpowder exceeding ten pounds, at one time in any one wagon, cart, vehicle, or other conveyance from any place to any other place, except in removing gunpowder from the place of landing to some public magazine or to any such private magazine as aforesaid, or from any such public or private magazine to the premises specified in the licence of any such licensed dealer in gunpowder as aforesaid, or from any such last-mentioned premises to any such public or private magazine as aforesaid, or to the premises of any other such licensed dealer, and except where any such person so conveying or causing to be conveyed any quantity of gunpowder exceeding ten pounds shall, as being the agent of any other person or persons, be authorized under and by virtue of the provisions of the twenty-second section of this Ordinance to convey any such quantity exceeding ten pounds at one time in one conveyance, then and in every such case every such offender shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment or satisfaction thereof by legal process shall be subject to imprisonment for any period not exceeding four months; and all such gunpowder so illegally conveyed or caused or attempted to be conveyed, and the wagon, cart, vehicle, or other conveyance used in conveying the same being the property of any person conveying or knowingly causing or suffering such gunpowder to be so conveyed therein, shall be forfeited to His Majesty.

Conveyance of powder by unlicensed persons.

22. Provided always, and be it further enacted that if any

Transmission of powder to purchasers

<sup>1</sup> See § 21, Ord. 2, 1853, *infra*.

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 living at a distance  
 from licensed deal-  
 er's premises.

person who shall reside at a greater distance than can be travelled in an ox wagon at the rate of travelling usual in this Colony in forty-eight hours from the premises of the nearest licensed dealer in gunpowder shall desire to procure gunpowder through the agency of any other person, it shall and may be lawful for every such first-mentioned person to apply for and obtain from the field-cornet of the field-cornetcy in which he resides, who is hereby authorized and required on such application to grant the same, a certificate in the form set forth in the schedule hereunto annexed, marked B, signed by such field-cornet, certifying the name and residence of such person and the distance of his residence from the premises of the nearest licensed dealer in gunpowder, and the quantity of gunpowder required by him, and that no similar certificate has been granted to him within the last six months previous to the date of the certificate; and every such certificate shall authorize any person to whom the same shall be delivered to act as the agent of the person therein named, in procuring gunpowder for him, for a period not exceeding two months from the date thereof; and it shall and may be lawful for every such agent so authorized on production of such certificate or certificates to any licensed dealer in gunpowder to procure and receive from such dealer, by purchase, barter, or otherwise, any such quantity of gunpowder, not exceeding ten pounds on each certificate, as in addition to any gunpowder which such agent shall procure and receive on his own account shall not exceed in the whole the quantity of twenty-five pounds, and it shall and may be lawful for any such agent as aforesaid to remove, transport, convey, and store any such quantity of gunpowder so procured by him as aforesaid in like manner as he might lawfully remove, transport, convey and store any quantity of gunpowder not exceeding ten pounds and every such certificate shall be delivered to the dealer from whom any gunpowder is so procured, or when the same is issued from any private magazine, to the storekeeper thereof, and such dealer or storekeeper shall give to such agent a permit in the form set forth in the schedule hereunto annexed marked C, specifying the amount of gunpowder so procured, and shall note on the certificate the quantity of gunpowder delivered by him in respect of such certificate, and shall transmit the same to the Resident Magistrate together with the copy of the account of gunpowder received and issued by him, which he shall next transmit to such Magistrate. And if any field-cornet shall grant any such certificate to the same person oftener than once within the same period of six months, or if any person shall knowingly use or attempt to use for the purpose of procuring gunpowder or shall knowingly deliver any gunpowder in respect of more than one such certificate for the same person within the same period of six months, every field-cornet or other person so offending shall incur and be liable to a fine not exceeding five pounds.

23. And be it further enacted that nothing contained in this Ordinance shall extend or be construed to extend to require any Sheriff or other officer to take out any licence for the sale of any gunpowder made by such Sheriff or other officer while acting under the authority of any Court, Judge, or Magistrate.

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No licence required for judicial sales.

24. And be it further enacted that nothing in this Ordinance contained shall extend or be construed to extend to any case in which any gunpowder shall within this Colony be landed, bought, sold, bartered, stored, issued from store, removed, transported, or conveyed by the order of the Governor or any officer belonging to His Majesty's naval or military service, or by any officer in the service of the Government of this Colony, while acting in the discharge of his duty, nor to any such officer nor any other person in respect of any thing done by such officer or by such other person under and by virtue of and in obedience to any lawful orders given by any such officer while acting in the discharge of his duty.

Ordinance not to apply to military or government officers acting in discharge of public duty.

25. And be it further enacted that all offences committed in contravention of this Ordinance may lawfully be prosecuted in the Court of the Resident Magistrate for the district within which the same shall have been committed; and that it shall and may 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 or forfeiture 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.

Prosecutions under this Ordinance.

Disposal of fines.

### SCHEDULE A.

#### *Form of Licence to Deal in Gunpowder.*

I, ———, commissioner (or distributor) of stamps in ———, (or in the district of ———), on this ——— day of ———, 18—, do hereby authorize and empower ———, residing at ———, to deal in gunpowder, and to sell or barter the same at any private magazine duly approved of by the Governor of this Colony, and on his premises situate at ———, and not elsewhere, for one whole year from the ——— day of ———, 18—, and no longer.  
(Signed)

*Certificate for <sup>2</sup>  
Pounds of gunpowder.*

### SCHEDULE B.

#### *Form of Certificate of Field-cornet.*

No. <sup>1</sup>—  
I, <sup>3</sup> ———, field-cornet of <sup>4</sup> ———, in the district of <sup>5</sup> ———, hereby certify, that <sup>6</sup> ——— resides at <sup>7</sup> ———, situate within the said field-cornetcy, and that the said place <sup>7</sup> ——— is at the distance of ——— hours' travelling by ox-wagon, from the nearest licensed dealer



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in gunpowder, and that I have granted him no certificate of this kind within the last six months previous to the date hereof.

(Signed)

(Dated)

- (<sup>1</sup>) Here insert number of certificate.      (<sup>2</sup>) Here insert quantity of gunpowder.  
 (<sup>3</sup>) Here insert the name of the field-cornet.  
 (<sup>4</sup>) The name of the field-cornetcy      (<sup>5</sup>) The name of the district.  
 (<sup>6</sup>) The christian name or names at full length and surname of the applicant.  
 (<sup>7</sup>) Name of applicant's residence.

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SCHEDULE C.

*Form of Permit of Dealer or Storekeeper.*

I, <sup>1</sup> \_\_\_\_\_, licensed dealer (or storekeeper, as the case may be), hereby certify that <sup>2</sup> \_\_\_\_\_ has received from me, <sup>3</sup> \_\_\_\_\_ lbs. of gunpowder, on account of the certificate No. <sup>4</sup> —, for <sup>5</sup> —, of <sup>6</sup> —.

- (<sup>1</sup>) Here insert name of dealer or storekeeper.      (<sup>2</sup>) Name of agent.  
 (<sup>3</sup>) Quantity.      (<sup>4</sup>) Number of certificate.  
 (<sup>5</sup>) Person named in the certificate.      (<sup>6</sup>) Residence of ditto.

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No. 2.—Sd. George Cathcart.] [October 10, 1853.

Ordinance to regulate till the expiration of the year 1854  
 the Dealing in Gunpowder, Firearms, and Lead. (<sup>1</sup>)

Preamble.

WHEREAS an Ordinance was duly made and passed in this Colony on the 17th day of November, 1851, and numbered 5, 1851, entitled "Ordinance to regulate for one year the Dealing in Gunpowder and Firearms:" And whereas by the twenty-seventh section of the said Ordinance it was enacted that the said Ordinance should commence from and after promulgation thereof, in manner and form as in the said section set forth, and should remain and continue in force for one year from the commencement thereof but with the provision nevertheless that it should be lawful for the Governor by proclamation in the *Government Gazette* to continue the said Ordinance in force for such further space or term not exceeding one year from and after the year aforesaid as the said Governor should deem necessary and determine. And whereas the said Ordinance was promulgated as aforesaid upon the 29th day of November, 1851, and thereupon took effect as law: And, whereas upon the 16th day of April, 1852, a certain other Ordinance, numbered 7, 1852, was duly made and passed in this Colony, entitled: "Ordinance to amend the Ordinance No. 5, 1851, entitled 'Ordinance to regulate for one year the Dealing in Gunpowder and Firearms,' " by which lastmentioned Ordinance all dealings in lead were placed under the like restrictions and alienations as those which by the Ordinance aforesaid, No. 5, 1851, had been and were provided in regard to firearms; And whereas

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<sup>1</sup> Made perpetual by Act, 28, 1864; see also note to Ord. 7 of 1834, *supra*.

the Governor of this Colony did, upon the 11th day of November, 1852, publish his proclamation bearing date the 8th day of the said month, whereby after reciting as therein is recited he did proclaim, declare, and make known that the said Ordinance No. 5, 1851, would continue and be of force for the space or term of one year, from and after the date upon or at which the said last-mentioned Ordinance would but for the said proclamation have expired and become of no effect: And whereas it is expedient to continue for a further limited term the said Ordinance No. 5, 1851, as amended by the said Ordinance No. 7, 1852, and with some other amendments: and whereas the end in view may be most conveniently and advantageously accomplished by repealing both the Ordinances aforesaid and by re-enacting in this Ordinance the several provisions of the Ordinances aforesaid with all necessary amendments: 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 commencement and taking effect of this Ordinance the Ordinance aforesaid, No. 5, 1851, and the Ordinance aforesaid, No. 7, 1852, shall be and the same are hereby respectively repealed, save and except in so far as either of the said Ordinances repeals any former law or ordinance or any part thereof or relates to the prosecution and punishment of any offences committed before the commencement and taking effect of this Ordinance, in regard to which repeal and which offences the said Ordinances shall respectively remain and be in full force and effect.

Ord. 2—1853.

Repeal of former laws.

Permission of chief officer of customs for shipment of gunpowder, firearms, &amp;c.

2. And be it enacted that no gunpowder and no gun or pistol, or lock, stock, barrel, or other part of any gun or pistol, and no percussion caps such as are used for firing off guns or pistols, and no lead, shall at any port or place within this Colony be shipped or placed on board any ship or vessel or be placed or put on board any boat in order to be conveyed to any ship or vessel being in or near such port or place in order to be carried to any port or place whatsoever, whether in Africa or elsewhere, without the permission in writing of the chief officer of Her Majesty's Customs at or nearest to such port or place of shipment first had and obtained; and if any person shall at any such port or place as aforesaid ship or place or cause to be shipped or placed in or on board any ship or vessel any of the said articles without having previously obtained the permission in writing by this section required, such article or articles shall be forfeited to Her Majesty, and such persons shall for every such shipment in or upon any ship or vessel be liable to a penalty of not exceeding <sup>(1)</sup> five hundred pounds sterling; and any person so offending may be arrested under the warrant of any Resident Magistrate or Justice of the Peace of the Colony and committed to the public prison nearest to the place where such offence shall have been committed, there to

Penalty on contravention.

Arrest of offender.

<sup>1</sup> Printed as amended by Act 11 of 1876, § 2.

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remain until such offender shall enter in a recognizance before such or some other Resident Magistrate or Justice of the Peace with two sufficient persons as sureties and co-principal debtors in the sum of five hundred pounds sterling, conditioned to abide such judgment as may by law be given against such offender in respect of such offence or until such offender shall be liberated in due course of law: Provided always, that nothing in this section contained shall be construed to extend to or affect any of the articles aforesaid the property of Her Majesty the Queen or any of the said articles really and *bonâ fide* intended for the use of the mariners or others navigating the ship or vessel in or on board of which such article or articles may be shipped or for the use of any passenger in or on board of any such ship or vessel not being a ship or vessel clearing out for some port or place in Africa.

Exception as to property of the Queen and as to property of passengers in ships clearing for places not in Africa.

Contents of application for permission to ship.

3. And be it enacted that every person applying for any such permission as aforesaid to such officer of Customs shall do so in writing, which writing shall set forth the place to which and the person to whom it is intended to send, address, or consign the articles described in such application, and the name of the ship or vessel by which it is desired to forward the same: and no such officer of Customs shall grant any such permission as aforesaid to any person to ship any of the articles aforesaid on board any ship or vessel bound to or empowered to touch at any port or place in Africa until he shall have transmitted such written application with his report thereon to His Excellency the Governor, and shall have received the said Governor's authority to grant the permission sought: Provided also, that in case the said Governor should upon the report of such officer of Customs and under the circumstances of the case see fit to authorize such officer of Customs to grant such permission to the person applying for the same, then it shall and may be lawful for such officer of Customs before granting such permission to require such person to enter into a bond or obligation with two sufficient sureties for the payment of such sum as such officer of Customs shall in each particular case fix and determine, conditioned to produce and deliver within such time as the said bond shall specify in that behalf to such officer of Customs or to such other person as shall be named by him in such bond, such proof or evidence as such bond shall specify that the article or articles regarding which such permission is sought and intended to be given have been delivered or dealt with in the particular manner by the applicant for such permission alleged, and by the Governor approved of (which manner shall in and by such bond be described), on failure of the due production of which proof or evidence such bond shall become forfeited: Provided, also, that every such bond or obligation shall in substance correspond with the form marked No. 1, in the schedule to this Ordinance annexed.

Authority of Governor to grant permission for vessels touching at places in Africa.

Bond of shipper.

Bond in certain cases from shippers

4. And be it enacted that when and as often as any such officer of Customs as aforesaid shall see reason so to do it shall and may

be lawful for him before granting any such permission as aforesaid for authorizing the shipment in or on board of any ship or vessel which, though not bound to or empowered to touch at, any such port or place in Africa as aforesaid, might yet contravene the object and intention of this Ordinance, to require the person applying for such permission to enter into a bond or obligation of the like nature *mutatis mutandis* with the bond or obligation in the third section of this Ordinance mentioned.

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in vessels not bound  
to ports in Africa.

5. And be it enacted that the master of every ship or vessel clearing out at any port in this Colony for any port or place in Africa shall furnish in duplicate to the Collector of Customs at the port of clearance a list signed by the said master of all firearms, gunpowder, and lead on board such ship or vessel for ship's use; one copy of which list shall be retained by such Collector and the other copy shall be attached to the vessel's clearance; and any gunpowder, firearms, or lead found on board any such ship or vessel after the time of her clearance not being entered on such list and not being part of her cargo may be seized by any officer of Customs or officer of the law proper for the execution of criminal warrants, and the same shall be forfeited to Her Majesty the Queen, together with a fine of three times the full value of the matter or things so forfeited, such fine to be paid by the said master.

List of firearms,  
&c., for ship's use.

Seizure of arms, &c.,  
not on list.

Penalty thrice the  
value of article seized

6. And be it enacted that a return in writing of all gunpowder, firearms and lead not being cargo brought or had on board of any such ship or vessel as in the last preceding section mentioned by any person proceeding as a passenger thereby shall after being signed by such passenger be by him or by some one on his behalf delivered to such chief officer of Customs as aforesaid, at or before the time of the clearing out of such ship or vessel, who is hereby empowered in case it shall appear to him that the quantity of gunpowder or of lead or the number of firearms stated in such return is not greater than such passenger might reasonably require for the personal defence of himself and his servants, or for sporting, to grant to such person a permission in writing to take or have the same. And if any gunpowder, firearms, or lead in regard to which such a return as aforesaid ought to have been made but in regard to which no such return has been made, shall be found on board any such lastnamed ship or vessel after the same shall have cleared out, then the said gunpowder, firearms, or lead as the case may be may be seized by any such officer as in the last preceding section mentioned, and the same shall be forfeited to Her Majesty the Queen, together with a fine of three times the full value of the matters or things so forfeited, such fine to be paid by such passenger, who may be arrested in manner and form as in the second section provided in regard to the person whose arrest is therein authorized, and may be committed to such prison as in the said section mentioned, there to remain until he shall by some such recognizance as aforesaid, have given security in a sum

Return of arms,  
&c., of passengers.

Seizure of articles  
not in such return.

Penalty, thrice the  
value.

Arrest of passenger  
pending security for  
penalty.

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sufficient to cover and make good such treble value as aforesaid that he will abide such judgment as may by law be given against such passenger in respect of such offence; or until such passenger shall be liberated in due course of law: Provided, also, that such chief officer of Customs may, should he see fit, require such passenger to enter into a bond or obligation of the like nature with the bond or obligation hereinbefore in the third section of this Ordinance described.

Refusal of delivery of gunpowder by officers of customs.

7. <sup>(1)</sup> And be it enacted that every such officer of Customs as is in the Ordinance aforesaid, No. 7, 1834, mentioned, shall be authorized and empowered to refuse to deliver from any bonding magazine for colonial consumption any gunpowder stored therein, until it shall be made to appear to his satisfaction by the person applying to have the same delivered that the object for which such delivery is sought is a safe and proper one, and every such officer of Customs may and he is hereby authorized should he think fit to require the person applying for such delivery to enter into a bond or obligation which shall in substance correspond with the form marked No. 2 in the schedule to this Ordinance annexed: and provided that such officer of Customs shall grant a licence in writing authorizing the removal of any such gunpowder as he shall permit to be delivered.

Bond before delivery.

Issues from private magazine by authority of resident magistrate.

8. <sup>(2)</sup> And be it enacted that no storekeeper of any private magazine situate within this Colony shall, from and after the commencement of this Ordinance, issue any gunpowder in any quantity whatsoever from any such magazine without the previous permission in writing of the Resident Magistrate of the district in which such magazine shall be situated; which permission shall set forth the quantity of gunpowder to be issued and the name of the person to whom it is to be issued, and which permission, which shall in substance correspond with the form marked No. 3 in the schedule to this Ordinance annexed, shall be delivered to and preserved by such storekeeper; and any storekeeper who shall deliver any gunpowder contrary to the provisions of this section shall for every offence be liable upon conviction to be imprisoned and kept at hard labour for any term not exceeding seven years: Provided that if in any case any private magazine shall be situated at a greater distance than twelve miles from the office of the Resident Magistrate of the district in which such magazine shall be situated, then the permission in writing of any Justice of the Peace of the said district (not being the owner of or interested in the gunpowder mentioned in such permission) may be received by such storekeeper in lieu and stead of the permission of the said Resident Magistrate: provided, also, that in any district in which

Form of authority.

Penalty on delivering without authority.

Cases in which justice of the peace may grant authority.

<sup>1</sup> See § 4, Ord. 7, 1834, *supra*.

<sup>2</sup> See § 3, Act 14, 1857, Act 13, 1877, and § 1, Act 29, 1879, *infra*.

there shall not be at the time of the commencement of this Ordinance such safe and fitting private magazines as shall be required for the secure storing of such gunpowder as shall be in or come to such district, every such building, store, or place as the Resident Magistrate of such district shall approve of and appoint to be a private magazine for the time being shall be deemed and taken to be a private magazine within the meaning of this Ordinance: provided, also, that such Resident Magistrate may subject to the confirmation or disallowance of the Governor appoint a fit and proper person to be storekeeper to any such temporary magazine as well as to any private magazine in his district which shall not already have a storekeeper duly appointed: and provided also, that every store or place belonging to Her Majesty's Board of Ordnance in which gunpowder belonging to private persons shall be permitted to be placed shall also so far as such last mentioned gunpowder is concerned but no farther, be deemed to be a private magazine: and provided, also, that no storekeeper of any such magazine shall open or permit to be opened within any such magazine any barrel, keg, or other case containing gunpowder; and any such storekeeper as aforesaid who shall contravene this provision of this section shall upon conviction forfeit not exceeding <sup>(1)</sup> fifty pounds; and provided, also, that in case there shall be in any town or place in which there shall be one private magazine or more private magazines than one any licensed dealers therein at whose premises it shall be deemed to be inadvisable that gunpowder should be retailed in the manner hereinafter contemplated and provided for, it shall and may be lawful for the Resident Magistrate of the district in which any such private magazine shall be situated, by writing under his hand, to authorize and require the storekeeper thereof to remove from and out of such magazine, at the desire of the owner of any of the gunpowder stored therein, any quantity of such owner's gunpowder, not exceeding one hundred pounds weight, at any one time, to some safe and convenient place adjacent to such magazine, and to be mentioned in such written authority, there to be strictly kept by such storekeeper, at which safe place any barrel, keg, or other case containing such removed gunpowder may be opened by such storekeeper, and any quantity of gunpowder mentioned in any such permission as is in this section mentioned may be from time to time delivered by such storekeeper. But no second or subsequent removal as aforesaid of any gunpowder belonging to any one owner shall take place as long as any of that owner's gunpowder first or previously removed shall not have been delivered by such storekeeper under and by virtue of some such permissions as aforesaid, and all gunpowder in any such place as aforesaid and not yet delivered by such storekeeper shall be regarded, deemed, and

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Approval by magistrate of private magazine and appointment of temporary storekeeper.

Penalty on opening barrel, &c., in private magazine.

Appointment by magistrate of place where gunpowder in quantities not more than 100 lbs. may be opened.

<sup>1</sup> Printed as amended by Act 11 of 1875, § 2, *infra*.

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judged of for all purposes of this Ordinance precisely as if such place were actually part and parcel of the private magazine under such storekeeper's control.

Proof of proper purpose for which gunpowder is needed

9. And be it enacted, that no such Resident Magistrate or Justice of the Peace, as is in the last preceding section mentioned shall grant any such permission as in the said section mentioned until it shall have been made to appear to his satisfaction by the person applying for the same that the gunpowder sought to be taken from or out of such private magazine is needed for some necessary and proper purpose ; and every such Resident Magistrate or Justice of the Peace is hereby authorized, in every case in which he shall see reason or think it necessary so to do, to require before granting such permission that the person desiring the same shall enter into a bond or obligation, which shall in substance correspond with the form marked No. 2 in the schedule to this Ordinance annexed, conditioned for the production of such proof or evidence as such bond shall specify that the gunpowder to be mentioned in such permission has been actually delivered or dealt with in the manner proposed by such person and agreed to by such Magistrate or Justice of the Peace.

Transmission of copy of permission from justice of the peace to resident magistrate.

10. And be it enacted that every Justice of the Peace who shall under the circumstances in the said eighth section mentioned grant any such permission as therein authorized shall forthwith transmit to the Resident Magistrate of the district a copy of such permission, in order that the same may by such Resident Magistrate be recorded.

Transmission monthly of tabular statements of permissions by resident magistrate to Secretary to Government.

11. (1) And be it enacted that every Resident Magistrate shall within the first seven days of every calendar month prepare and transmit to the Secretary to Government, for the information of His Excellency the Governor, a tabular statement, showing in regard to every such permission as aforesaid granted by or reported to him during the month next preceding that in which such statement shall be prepared, the date when such permission was issued the name and residence of the person to whom it was issued and the quantity of gunpowder which it authorized to be delivered.

Copy of statement at public offices.

And every such Resident Magistrate shall moreover within the same period of seven days affix a copy of such tabular statement to some conspicuous place at or near his public office for general information.

Tabular statement monthly of storekeeper to magistrate.

12. And be it enacted that every storekeeper of every private magazine shall within the first seven days of every calendar month, prepare a tabular statement of the like nature with that which is in the last preceding section mentioned, showing the date of every issue from such private magazine during the previous month, and the name of the person to whom such issue shall have been made and the quantity delivered to such person ; and to every

<sup>1</sup> But see § 3, Act 29 of 1879, *infra*.

such tabular statement the storekeeper shall subjoin a solemn declaration which shall be in substance as follows that is to say :

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“I, A. B., storekeeper of the private gunpowder magazine situated in ———, do solemnly and sincerely declare that the above statement contains, to the best of my knowledge and belief, a true and correct account of all the gunpowder delivered from or taken out of the said magazine during the month ending the ——— of ——— last. Dated at ——— this ——— day of ——— 18 —.

Storekeeper's declaration.

(Signed) “A. B., Storekeeper.”

And every such storekeeper shall within the said period of seven days deliver such statement and declaration at the office of the Resident Magistrate of the district in which such private magazine shall be situated, to be by him preserved ; and if any such storekeeper shall deliver any wilfully false statement with such a declaration subjoined he shall upon conviction incur the penalties by law provided for the crime of perjury : Provided that in case any storekeeper shall not be able truly to make the said declaration, it shall and may be lawful for him to declare according to the truth ; and provided that any storekeeper who shall neglect to deliver such statement as aforesaid within the term aforesaid shall for every such neglect forfeit upon conviction the sum of not exceeding <sup>(1)</sup> one hundred pounds.

Penalty on neglect to make statement.

13. And be it enacted that no person whomsoever whether licensed or unlicensed shall from or after the commencement of this Ordinance, under or by virtue of any sale, barter, gift, or other transaction, or for any cause or reason whatsoever, deliver (except as hereinafter is excepted) at any shop, store, private dwelling, or other place within this Colony any gun or pistol, or any lock, stock, barrel, or other part of any gun or pistol, or any percussion caps exceeding in any one week one box containing not more than five hundred in number, or any gunpowder or any <sup>(2)</sup> lead : and any person contravening any of the provisions of this section shall upon conviction forfeit the sum of not exceeding <sup>(1)</sup> five hundred pounds ; or such person may instead of being sentenced to forfeit such sum be sentenced to be imprisoned and kept at hard labour for any period not exceeding seven years : Provided that nothing in this section contained shall be deemed or taken to prevent any sale, barter, gift, or loan to any Resident Magistrate or Justice of the Peace nor to any person who shall produce and deposit with the person delivering the gun or other matter or thing mentioned in such certificate, a written certificate signed by either of the last-mentioned <sup>(3)</sup> persons, certifying that the bearer, who must be

Penalty of £500 or seven years' imprisonment on delivery of firearms, &c., by persons licensed or unlicensed, unless to a magistrate or justice of the peace ;

Or unless a certificate from a resident magistrate or justice of the peace shall have been produced ;

<sup>1</sup> Printed as amended by Act 11 of 1875, § 2.

<sup>2</sup> Provisions of this Ord. as to lead restricted to certain divisions see Acts 14 of 1857, and 14 of 1866-67.

<sup>3</sup> Governor may appoint Clerk to R.M. or other person to grant such certificates, Act 29 of 1879. See also Act 13, 1878.

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named in such certificate, is to the knowledge of the person signing such certificate a fit and proper person to obtain such gun or other matter or thing as aforesaid, which certificate shall in substance correspond with the form marked No. 4 in the schedule to this Ordinance annexed <sup>(1)</sup>: Provided, also, that no Justice of the Peace residing or being within twelve miles of the office of the Resident Magistrate of the district shall grant any such certificate as aforesaid: Provided, at the same time, that no certificate granted in contravention of this prohibition shall be deemed to be on that account invalid, so as to subject any person acting upon it to any pains or penalties: And provided, further, that nothing herein contained shall be deemed or taken to prevent one member of any military or burgher force from delivering without the production of any such certificate as aforesaid any of the matters or things aforesaid to any member of the same or any similar force or to prevent any person from delivering any of the matters or things aforesaid to any other person then living with him under the same roof, or being in his service, for the private use of such other person: And provided, lastly, that nothing in this section contained shall extend to any gunpowder duly delivered by any storekeeper from any private magazine under and by virtue of the permission in writing hereinbefore in the eighth section of this Ordinance mentioned, nor to any gunpowder or firearms delivered by any person in the military, naval, or civil service of Her Majesty, acting by or under Her Majesty's authority.

Or unless both party delivering and party receiving be members of military or burgher force, or person receiving be inmate with or servant of person delivering.

Exception as to gunpowder.

Certificate of magistrate before grant of licence.

14. And be it enacted that from and after the commencement of this Ordinance no distributor of stamps or other officer shall grant a licence to any person to deal in gunpowder until there shall be delivered to such distributor or other officer a certificate in writing, signed by the Resident Magistrate of the district, certifying that the licence applied for by such person is one fit and proper to be granted.

Penalties.

15. And be it enacted that if any person not being licensed to deal in gunpowder shall store, keep, or have any gunpowder whatsoever other than such gunpowder as such person shall *bonâ fide* have and keep for his own private use, or if any person licensed to deal in gunpowder shall from or after the commencement of this Ordinance store, keep, or have in any warehouse, shop, or place not being a bonding or private magazine, any quantity of gunpowder exceeding at any one time <sup>(2)</sup> fifty pounds weight thereof, every such person shall for every such offence forfeit upon conviction the sum of not exceeding <sup>(3)</sup> five hundred pounds, or he may instead of forfeiting such sum be imprisoned and kept at hard labour for any term not exceeding seven years. And when and as

<sup>1</sup> As to issue of certificates to natives, see § 13, Act 3 of 1877, *infra*.

<sup>2</sup> One hundred, see § 4, Act 14, 1857. See also § 20, Ord. 7, 1834.

<sup>3</sup> Printed as amended by § 2, Act 11, 1875.

often as it shall be made to appear to any Resident Magistrate or Justice of the Peace, from information taken on oath, that any gunpowder is stored or kept in any dwelling-house or other place in contravention of this section, such Resident Magistrate or Justice of the Peace may in person demand entrance into such dwelling-house or other place, and upon refusal or neglect of any person or persons therein to admit such Resident Magistrate or Justice, such Resident Magistrate or Justice may force an entrance therinto, and remove all gunpowder found therein; and the same shall be forfeited to Her Majesty the Queen. And every person who shall be within, in any such house or place, at the time of demand made for admittance, and refusal or neglect to admit, shall upon conviction of the offence of contravening this section by refusing or neglecting to admit such Magistrate or Justice be imprisoned and kept at hard labour for any period not exceeding seven years.

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Forfeiture.

Penalty of seven years' imprisonment on refusal to admit magistrate or justice.

16. And be it enacted that no such Resident Magistrate or Justice of the Peace as in the eighth section of this Ordinance mentioned shall grant to any licensed dealer any such permission as in the said eighth section mentioned to obtain from any private magazine any quantity of gunpowder to be disposed of by such dealer until such dealer shall make in the presence of such Resident Magistrate or Justice of the Peace his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

Declaration of licensed dealer to obtain gunpowder from magazine.

“I, A. B., of ———, licensed dealer in gunpowder, do solemnly and sincerely declare that there is not now in my possession or at my disposal or under my control, any gunpowder whatsoever,” (or if the fact be that such dealer does possess gunpowder stored in some private magazine, then let him make his declaration as above, adding to it, “save and except such as is stored in”—*here describe the private magazine.*

(Signed) A. B.

Declared before me, this — day of ———, 18—.

C. D.,  
Resident Magistrate, or Justice of the Peace,  
(as the case may be).

17. (1) And be it enacted that when and as often as any Resident Magistrate or Justice of the Peace shall have given to any licensed dealer as aforesaid any one such permission as aforesaid to obtain from any private magazine fifty pounds weight of gunpowder to be by him disposed of, no second such permission shall be granted to him until he shall produce to and deposit with such Resident Magistrate or Justice of the Peace (as the case may be) certificates, such as are in the thirteenth section of this Ordinance

Production of certificates to cover first quantity, before permission for second quantity may be granted.

<sup>1</sup> Amended by § 5, Act 14 of 1857.

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mentioned, covering and accounting for all the gunpowder by such dealer obtained by virtue of the first permission granted to him under this Ordinance; and in like manner, no fresh permission shall at any time be granted to any licensed dealer to obtain a still further supply of fifty pounds weight until he shall have produced and deposited certificates covering and accounting for the whole of the fifty pounds weight last issued to him; and so on as long as this Ordinance shall remain in force; and, moreover, such licensed dealer shall upon the occasion of every second or subsequent application for such a permission as aforesaid make in the presence of the Resident Magistrate or Justice of the Peace (as the case may be) his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

Declaration on application for second and further quantities.

“I, A. B., of ———, licensed dealer in gunpowder, do solemnly and sincerely declare that I have not had in my possession or sold or otherwise disposed of to any person whomsoever, since the ——— day of ———, 18 , [state the date of the “permission” last issued] any other gunpowder than the quantity mentioned in the permission granted to me on the day last mentioned, and which quantity I have disposed of under and by virtue of the certificates now by me produced.”

(Signed) A. B.

Declared before me, this ——— day of ———, 18 ,

C. D.,

Resident Magistrate or Justice of the Peace,  
(as the case may be).

False declarations punishable as perjury.

18. And be it enacted that if any person shall make any wilfully false statement in any declaration required by either of the two immediately preceding sections such person shall upon conviction incur the penalties by law provided for the crime of perjury.

Entry of magistrate into dealer's premises.

19. And be it enacted that in every case in which any such licensed dealer as aforesaid shall have obtained under and by virtue of any such permission as aforesaid, the fifty (<sup>1</sup>) pounds weight of gunpowder mentioned in such permission, it shall and may be lawful for the Resident Magistrate or Justice of the Peace who shall have granted such permission, to enter at all reasonable times, the licensed premises of such dealer, and require the production of such gunpowder, or otherwise the production of certificates covering and accounting for so much thereof as shall not be produced, and in case such dealer shall fail to produce either the whole quantity of gunpowder obtained by him under and by virtue of such permission or certificates covering and accounting for so much thereof as shall not be produced, such dealer shall for such offence incur the like penalty as that which is in the thirteenth section of this Ordinance provided for or in regard to the offence therein described: Provided, also,

Penalties of § 13 on dealers not properly accounting.

<sup>1</sup> But see § 5, Act 14, 1857.

that every such dealer shall on or before the seventh of every month deliver or cause to be delivered to the Resident Magistrate of the district a return or account in writing signed by such dealer, setting forth the several receipts and deliveries of gunpowder (if any) made or received by such dealer during the preceding month and the quantity of gunpowder in his possession at the expiration of such preceding month; and such return or account shall specify in regard to each delivery the quantity delivered, the person to whom delivered, and the granter of the certificate by virtue of which such delivery was made: and any licensed dealer who shall without lawful and sufficient cause neglect to deliver or cause to be delivered in manner aforesaid any such return or account, or who shall deliver or cause to be delivered any such return or account containing anything wilfully erroneous, shall for every such offence forfeit the sum of not exceeding <sup>(1)</sup> five hundred pounds.

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Monthly return of receipts and deliveries.

Penalty on neglect of return—£500.

20. And be it enacted that every Justice of the Peace with whom any such certificates as aforesaid shall be deposited by any licensed dealer as aforesaid when applying under the provisions of the eighth section of this Ordinance for a fresh permission to obtain a further quantity of fifty pounds weight of gunpowder to be by him disposed of at his premises shall forthwith transmit to the Resident Magistrate of the district copies of all such certificates, in order that such Resident Magistrate shall, as he is hereby required to do, include such certificates, as well as all certificates which may have been in like manner deposited with himself, in the monthly <sup>(2)</sup> tabular statements which are hereinbefore in the eleventh section of this Ordinance directed to be transmitted to the Secretary to Government, and affixed at or near such Resident Magistrate's public office.

Transmission by justices of certificates deposited by dealer to resident magistrate.

21. And be it enacted that it shall not be lawful for any person not being in the military or burgher service of Her Majesty to remove or convey, or cause to be removed or conveyed, from any place within the Colony to any other place within the same (except as hereinafter is excepted) any gun or pistol, or lock, stock, or barrel of any gun or pistol, or any percussion caps or any gunpowder (not being arms or ammunition for the defence of the person or persons carrying the same), or any <sup>(3)</sup> lead without having a licence for removing or conveying the same signed by some Resident Magistrate of the Colony, which licence shall in substance correspond with the form marked No. 5 in the schedule to this Ordinance annexed: and it shall be lawful for any two or more of Her Majesty's subjects who shall find or come up with any person or persons or any wagon or other vehicle removing or conveying any matter or

Licence for removal of guns, &c., or gunpowder from place to place.

Seizure on non-production of such licence.

<sup>1</sup> Printed as amended by Act 11 of 1875.

<sup>2</sup> But see § 3, Act 29, 1879.

<sup>3</sup> Provisions of this Ord. as to lead restricted to certain divisions. Acts 14 of 1857 and 14 of 1866-67.

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- Forfeiture of wagon, &c. Penalty, £500 or imprisonment for seven years. Exceptions.
22. And be it enacted that if any person shall within this Colony wilfully deliver or cause to be delivered to any person whomsoever any gunpowder, gun, or pistol, or any lock, stock, barrel, or other part of any gun or pistol, or any percussion caps, or any lead, with the purpose, design, or knowledge that the same should or would be conveyed to and made use of by the Queen's enemies, or by any of her subjects in rebellion against her authority, such person shall whether the gunpowder or other matter or thing shall or shall not come into the hands of such enemies or rebels be deemed and taken to have committed by such delivery an overt act of high treason, and shall upon conviction suffer death as a traitor.
- Delivery, of gunpowder, &c., to Queen's enemies, high treason.
23. And be it enacted that every person dealing in fire-arms within this Colony shall within fourteen days next after the commencement and taking effect of this Ordinance return an account to the Resident Magistrate of the district in which such person shall reside of every gun and pistol and part of any gun or pistol and of all percussion caps and of all lead in his possession, and shall verify such return by a solemn declaration at the foot of
- Return of dealer to resident magistrate within 14 days of promulgation of ordinance.

<sup>1</sup> Printed as amended by Act 11 of 1875.

or attached to such return; and shall provide a book in which the guns and pistols or parts thereof and percussion caps, and lead <sup>(1)</sup> mentioned in such return shall be entered, and shall from time to time in the first week of every calendar month, and also upon receiving any number of guns, pistols, or parts thereof or percussion caps or lead to be sold, make a like return verified as aforesaid and a like entry; and every such dealer shall also enter separately in such book an account of every gun or pistol and of all percussion caps and of all lead sold and delivered or otherwise disposed of, with the time when and the person to whom the same shall have been delivered; and it shall and may be lawful for such Resident Magistrate or any person authorized by him by any writing under his hand at all reasonable times to have access to such book and to examine the stock of guns, pistols, and unconnected parts or portions thereof and of percussion caps and of all lead <sup>(1)</sup> in the possession of such dealer, and compare and balance the same with the account kept in such book, and if it shall appear that any error has been designedly committed, either in regard to any such return as aforesaid or to the non-entry in the said book of any gun, pistol or any unconnected part of any gun or pistol, sold and delivered or otherwise disposed of, or of any percussion caps or of any lead, such dealer shall for every such error forfeit the sum of <sup>(2)</sup> not exceeding five hundred pounds: Provided, also, that every person being the keeper either individually or as one of some number of co-partners in trade of any store, shop, or other place where wares and merchandise are exposed for sale who shall have in his possession any guns, pistols, or unconnected parts thereof, or percussion caps or lead <sup>(1)</sup> other than those used by him for the defence of his person or property or for sporting, shall be deemed and taken until the contrary be proved, to be a dealer in firearms within the meaning of this section; but that no other person shall be deemed to be such dealer: and provided also, that the acts or omissions of any co-partner in trade of any such dealer or of any clerk, agent, or servant of any such dealer in regard to any of the matters by this section required shall be deemed to be the act or omission (as the case may be) of such dealer himself: and provided, also, that any dealer who shall without lawful and sufficient cause neglect to make such return as aforesaid within the time aforesaid shall upon conviction forfeit the sum of <sup>(2)</sup> not exceeding five hundred pounds; provided that nothing in this section contained shall extend to any firearms the property of Her Majesty the Queen.

24. And be it enacted that it shall and may be lawful for His Excellency the Governor should he see reason so to do to remit or mitigate any fine or forfeiture incurred under this Ordinance.

Ord. 2—1853.

Further monthly return.

Access of resident magistrato dealer's book, and right to examine stock.

Penalty on false statement £500.

Definition of dealers.

Liability of dealer for acts of clerk, &c.

Penalty on neglect of dealer's returns £500.

Governor's power to remit fines.

<sup>1</sup> See note (2), page 1125.

<sup>2</sup> Printed as amended by Act 11 of 1875.

- Ord. 2—1853. 25. And be it enacted that of every fine levied or paid under the provisions of this Ordinance there shall be paid to the person who shall have given the information that shall have led to the conviction so much thereof, not in any case exceeding fifty pounds, as His Excellency the Governor shall direct, and the residue shall be paid into the Colonial Treasury.
- Informers's share of penalty.
- Interpretation clause. 26. And be it enacted that in the construction of this Ordinance the word "lead" shall include all pig or bar lead, rolled or sheet lead, pipe lead, and all lead made or capable of being made into balls, shots, slugs, or other forms fit for firearms and that the word "Governor" shall mean the officer for the time being administering the Government of this Colony, and that whenever mention is made of any public officer the officer mentioned shall be deemed to be the officer for the time being acting as such officer; and that unless there shall in the context be something repugnant to such construction, every word importing the singular number only shall extend to several persons or things, every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall apply to a female.
- Time of taking effect. 27. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof, and shall continue and be in force till the expiration of the year 1854, and no longer. (1)

## SCHEDULE No. 1.

*Form of Bond or Obligation in case of Shipment,*

Form of bond in case of shipment.

Know all men by these presents that we [the person about to ship the articles and his sureties] are held and firmly bound unto Her Majesty Queen Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in the sum of [such sum as under the particular circumstances the officer of customs shall fix] of good and lawful money of this Colony, to be paid to her said Majesty, her heirs and successors, to which payment well and truly to be made we bind ourselves, and each of us by himself, *in solidum*, each for the whole, and our heirs, executors, and administrators, and every of them firmly by these presents. Sealed with our seals. Dated this — day — in the year of our Lord, 18—. Whereas the above bounden [the person about to make the shipment] hath, under the Ordinance —, entitled, "Ordinance to regulate till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead," applied for permission to ship on board the [vessel's and master's name] the matters following, that is to say [quantity of gunpowder and lead, and number of firearms intended to be shipped] to be in and by the said ship carried to and landed at [place of destination]: Now the condition of this obligation is such that if the said [the person about to make the shipment] shall within — months from the date hereof, produce and deliver to [the officer of customs at the port of shipment or other functionary, as agreed on], as proof that

<sup>1</sup> Continued by subsequent Acts, see note to Ord. 7, of 1834.

the matters and things aforesaid have been duly disposed of [whatever mode of proof may have been agreed on, as such certificate in writing, signed by — certifying that all and singular the said matters and things have been landed at —, or otherwise according to the circumstances] or if the above bounden [the person about to make the shipment] shall account for the said matters and things to the satisfaction of [the officer of customs at the port of shipment or other functionary, as agreed on], then this obligation to be void, otherwise to remain in full force and virtue.

Ord. 2—1853.

Signed, sealed, and } A. B. L. S.  
 delivered in pre- } C. D. L. S.  
 sence of } E. F. L. S.

SCHEDULE No. 2.

*Form of Bond or Obligation in case of Inland Transport.*

Know all men, &c. [as in form No. 1, down to the condition].  
 Whereas the above bounden [the person about to remove the gun- Form of bond for  
inland transport.  
 powder] hath under the Ordinance —, entitled, “Ordinance to regulate, till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead,” applied for permission to receive from [bonding magazine or private magazine as the case may be]— pounds weight of gunpowder to be conveyed by him to [private magazine or other approved place where the powder is to be deposited]. Now the condition of this obligation is such that if the said [the person about to remove the gunpowder] shall within— from the date hereof, produce and deliver to [the Resident Magistrate granting the permission or other functionary as agreed on] as proof that the gunpowder aforesaid has been duly disposed of [a certificate in writing signed by the Resident Magistrate of the district of — or the officer for the time acting as such, certifying that the gunpowder aforesaid has been deposited in a private magazine at —, or such other proof as shall in every particular case be agreed on], or if the above bounden [the person about to remove the gunpowder] shall account for the said gunpowder to the satisfaction of [the Resident Magistrate granting the permission, or other functionary as agreed on], then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and } A. B. L. S.  
 declared in pre- } C. D. L. S.  
 sence of } E. F. L. S.

NOTE.—This form can, by making the necessary changes, be adapted to every case contemplated by the Ordinance, whether removal from a bonding magazine to a private magazine, or from one private magazine to another private magazine or from a private magazine for private consumption, and whether the permission with which it is connected be granted by an officer of Customs, a Resident Magistrate, or a Justice of the Peace.



Ord. 2—1853.

## SCHEDULE No. 3.

*Form of Permission by Resident Magistrate to authorize issue of Gunpowder from Private Magazine. (1)*

Authority for issue  
from private maga-  
zine.

I, ———, Resident Magistrate of ———, do hereby authorize [the name of the applicant] of [the residence of applicant] to receive from the storekeeper of [describe the magazine] ——— pounds of gunpowder it having been made to appear to my satisfaction that such gunpowder is needed for a necessary and proper purpose.

Dated this ——— day of ——— 185—.

A. B., Resident Magistrate.

## SCHEDULE No. 4.

*Form of a Certificate authorizing the purchase of Guns, Powder, &c.*

Authority for pur-  
chase of guns, &c.

I, ———, do hereby certify that the bearer [the name of the applicant] of [the residence of the applicant] is to my knowledge a fit and proper person to obtain and have ——— pounds of gunpowder [or a gun, or ——— pounds of lead] which he requires for his own use.

Dated this ——— day of ——— 185 —.

A. B., Resident Magistrate

[Or otherwise, as the case may be.]

## SCHEDULE No. 5.

*Form of Licence for removing Gunpowder, &c.*

Licence for remov-  
ing gunpowder, &c.

Know all men to whom these presents shall come that [name of person to whom such licence shall be granted] is hereby authorized to remove from [place from which the thing in question shall be taken] to [place to which the thing in question shall be taken];—[Here describe the number of any kegs or packages in which the gunpowder shall be contained, and the weight of the entire, and firearms and lead, shall be described as accurately as may be]. And all Her Majesty's subjects are required to respect this licence, and allow the abovementioned gunpowder [or firearms or lead] to pass without hindrance from ——— aforesaid to ——— aforesaid. Dated this ——— day of ——— 185 —.

A. B., Resident Magistrate of the District of ———

No. 19—1856.]

[June 4, 1856.

## AN ACT

To Regulate, till the expiration of the Year 1857, the Dealing in Gunpowder, Firearms, and Lead.

Preamble.

WHEREAS the Ordinance No. 2, 1853, entitled "Ordinance to regulate, till the expiration of the year 1854, the dealing in Gunpowder, Firearms, and Lead," was, by the 27th section thereof, limited to continue and be in force till the expiration of the year 1854, and no longer : and whereas, by the Act No. 5, 1854, the

<sup>1</sup> See Act 14, 1857, § 3.

said Ordinance was continued in force until the expiration of the year 1855: and whereas, by the Act No. 7, 1855, the said Ordinance was again continued in force until the expiration of the year 1856; and whereas it is expedient further to continue 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:—

No. 19—1856.

1. The said Ordinance, No. 2, 1853, and every provision thereof, shall continue and be in force until the expiration of the year 1857, anything in the said Ordinance contained to the contrary notwithstanding. <sup>(1)</sup>

Ordinance 2 of 1853  
extended to 1857.

2. And whereas, in some places, private magazines for storing gunpowder, established under the provisions of Ordinance No. 7 of 1834, are built in exposed situations, so as to be in danger of being broken into by enemies or others who might desire to possess themselves of the gunpowder stored therein: and whereas it is necessary for the public safety that such exposed magazines should be guarded at night, or else be, by other means, made secure against attack; and that in case a sufficient protection shall not be provided, no gunpowder should be permitted to remain in such exposed magazines: Be it enacted that it shall and may be lawful for the Governor, or officer for the time being administering the Government, to require the owner or owners of any private magazine, containing gunpowder, placed in such a situation as to be, in the judgment of the said Governor, exposed to be attacked and plundered, to provide a sufficient guard of men for the protection of such magazine during the night, or else to require that such magazine shall, by a wall, fence, or other means, be sufficiently protected from attack without the aid of a guard of men.

Powder magazines  
to be guarded at  
night, or otherwise  
protected.

3. Should the owner or owners of any such magazine as aforesaid refuse or neglect to provide such guard or other protection, after being required so to do, it shall be lawful for the Governor, or other officer as aforesaid, to cause the gunpowder contained in any such magazine to be removed, at the expense of the owner or owners of the magazine, to such neighbouring receptacle, if any there be, as the said Governor or other officer shall deem safe and sufficient; or such Governor or other officer may cause such gunpowder to be destroyed.

In case of refusal  
or neglect.

4. The decision of the Governor or other officer aforesaid, regarding the nature of the situation of any such magazine, and regarding the necessity of providing any such magazine with some such protection as aforesaid, and regarding the sufficiency or otherwise of any protection proposed to be afforded by the owner or owners of any magazine, and regarding the propriety of destroying instead of removing the gunpowder contained in any exposed and unprotected magazine, shall be final and conclusive, and

No appeal from Go-  
vernor's decision.

<sup>1</sup> Made perpetual by Act 28 of 1864.

No. 19—1856. shall not be disputed or questioned in any Court or by any proceeding whatsoever.

Act when to commence. 5. This Act shall commence and take effect from and after the promulgation thereof.

No. 14—1857.]

[June 29, 1857.

### AN ACT

To Regulate, till the expiration of the Year 1858, the Dealing in Gunpowder, Firearms, and Lead. (1)

Preamble.

WHEREAS the Act No. 19, 1856, entitled "An Act to regulate, till the expiration of the year 1857, the dealing in Gunpowder, Firearms, and Lead," is framed so as to expire at the end of this present year, 1857; and whereas it is expedient that the provisions of the said Act, and of the certain Ordinance therein mentioned, should, with the amendment hereinafter specified, be continued down to the expiration of the year 1858: 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:—

Previous laws, excepting the repugnant portions thereof, to continue until end of 1858.

1. The Ordinance No. 2, 1853, and the Act No. 19, 1856, and every provision of the said Ordinance and Act respectively, shall, except as in the next succeeding sections is excepted, continue and be in force till the expiration of the year 1858, anything in the said Ordinance or Act to the contrary notwithstanding.

Restriction on sale of lead confined to certain divisions.

2. From and after the taking effect of this Act, so much of the Ordinance aforesaid, No. 2, 1853, and so much of any former law or ordinance as relate to lead, and place the dealing in that article under the same or similar restrictions with those imposed upon the dealing in gunpowder or firearms, are hereby restricted to the following divisions of this Colony, namely,—Albany, Fort Beaufort, Port Elizabeth, Uitenhage, Somerset, Graaff-Reinet, Colesberg, Cradock, Albert, Victoria, and Queen's Town, and shall not, except as hereinafter excepted, extend to any other divisions (2); Provided, always, that in regard to all lead shipped or placed on board any ship, vessel, or boat, being in or near any port or place within this Colony, the said Act No. 2, 1853, shall remain, in all parts of this Colony, in full force and effect.

Except when shipped.

Resident magistrate or justice of the peace may permit issues of 100 lbs. of gunpowder from private magazines.

3. It shall be lawful for any Resident Magistrate or Justice of the Peace, entitled to grant any such permission as is in the eighth section of the Ordinance aforesaid mentioned, should such Magistrate or Justice, in the exercise of his discretion, think it proper so

<sup>1</sup> Made perpetual by Act 28 of 1864.

<sup>2</sup> Extended to King William's Town and East London by § 4, Act 14 of 1866-67.

to do, to grant to any person licensed to deal in gunpowder, such a permission as is in the eighth section aforesaid mentioned, to obtain, at one and the same time, any quantity of gunpowder not exceeding one hundred pounds weight thereof, and the form of permission set forth in schedule three of the said Ordinance shall be altered accordingly.

No. 14—1857.

Form of permission.

4. It shall be lawful for such licensed dealer, receiving and acting upon such permission as aforesaid, to store at his warehouse or shop any quantity of gunpowder not exceeding one hundred pounds weight thereof, anything in the fifteenth section of the said Ordinance, and in the twentieth section of Ordinance No. 7, 1834, to the contrary notwithstanding: Provided that every licensed dealer shall be bound to satisfy the Resident Magistrate of his district, or some Justice of the Peace named by such Magistrate, that the premises in which such dealer proposes to store or keep any such gunpowder are fit and proper for the purpose, and not dangerous to the public safety.

Licensed dealer receiving such permission, may have 100 lbs. of gunpowder.

Provided it be safely stored.

5. It shall be lawful for any licensed dealer who shall have obtained one permission to obtain, at one and the same time, any quantity of gunpowder not exceeding one hundred pounds weight thereof, to obtain another permission for another quantity of gunpowder, not exceeding one hundred pounds weight thereof, and so on, from time to time, as circumstances shall require; in order that such licensed dealer shall be able,—subject at all times to the discretion of the Resident Magistrate or Justice of the Peace (as the case may be),—to have always on hand, for the purposes of his trade, a moderate supply of both fine gunpowder and coarse gunpowder: Provided that no licensed dealer shall store, keep, or have any quantity of gunpowder, of any description, exceeding, at any one time, one hundred pounds weight thereof; and that all and singular the penalties mentioned in the fifteenth section of the Ordinance aforesaid, No. 2, 1853, shall apply to any licensed dealer who shall store, keep, or have, at any one time, any quantity of gunpowder, exceeding one hundred pounds weight thereof, precisely as if the said fifteenth section, in reference to the largest quantity of gunpowder which any licensed dealer might lawfully store, keep, or have at any one time, had specified one hundred pounds weight thereof, instead of fifty pounds weight thereof: Provided, also, that as often as any licensed dealer shall have obtained one such permission as aforesaid, no second such permission shall be granted to him, until he shall produce to, and deposit with, the Resident Magistrate or Justice of the Peace (as the case may be), certificates granted under the thirteenth section of the said Ordinance, covering and accounting for a quantity of gunpowder equal to the quantity which such dealer shall desire a permission to obtain; and so on, from time to time, in regard to every subsequent permission which may be applied for: And provided that, as often as the licensed dealer applying for any

Licensed dealer having a permission, may receive a further one, to supply his trade in respect of different qualities of powder.

Not to have at any one time more than 100 lbs. Penalty imposed by section 15, ordinance 2, 1853.

No second permission to be given, unless upon production of certificates covering the disposal of an equal quantity under previous permission.

If quantity under any one permission be exhausted, sec. 17,

No. 14—1857.

Ord. 2, 1853, to apply to every fresh application.

Solemn declaration to be made.

such permission as is in this section mentioned, shall have disposed of all gunpowder obtained by him under any previous permission, the provisions of the seventeenth section of the Ordinance aforesaid shall apply to every such application, precisely as if the said seventeenth section, instead of authorizing and relating to no permissions, except permissions for fifty pounds weight of gunpowder, had authorized and related to permissions for any quantity of gunpowder not exceeding one hundred pounds weight thereof: Provided, lastly, that as often as any licensed dealer shall make an application for a further supply of gunpowder, whilst any portion of any gunpowder previously obtained by him shall be still in his possession, such dealer shall make a solemn declaration, which shall be, in substance and effect, as follows, that is to say:—

I, A. B., of \_\_\_\_\_, licensed dealer in gunpowder, do hereby solemnly and sincerely declare that I have not sold, or otherwise disposed of, to any person whomsoever, since the \_\_\_\_\_ day \_\_\_\_\_, 185\_\_\_\_ (state the date of the "permission" last issued to such dealer), any gunpowder whatsoever, except \_\_\_\_\_ pounds weight thereof, which said quantity of \_\_\_\_\_ pounds, I have disposed of under and by virtue of the certificates now by me produced. And I further declare that I have not now in my possession any gunpowder whatever, except \_\_\_\_\_ pounds weight thereof.

(Signed) A. B.

Declared before me, this \_\_\_\_\_ day of \_\_\_\_\_, 185\_\_\_\_.

C. D., Resident Magistrate,

(or Justice of the Peace, as the case may be.)

Penalties of perjury to apply to false declaration.

6. If any person shall make any wilfully false statement in any such declaration as is in the last preceding section mentioned, such person shall, upon conviction, incur the penalties by law provided for the crime of perjury.

Section 8, Ordinance No. 2, 1853, to extend to permissions issued under this Act, and to gunpowder so obtained.

7. All and singular the several provisions of the Ordinance aforesaid, which relate to the permissions in the eighth section of the said Ordinance mentioned, and to the gunpowder obtained by virtue of such permissions, and which provisions are not repugnant to the provisions of this Act, shall extend and apply to the permissions authorized by this Act.

Certificate under section 13 of Ordinance No. 2, 1853, not transferable.

8. No person who shall have received from any Resident Magistrate, or Justice of the Peace, any such certificate as is in the thirteenth section of the Ordinance aforesaid mentioned, shall deliver such certificate to any other person, with intent that the gunpowder mentioned in such certificate should be obtained for the use of any person other than the person named in such certificate; nor shall any person who shall have received any such

All gunpowder mentioned in such

certificate deliver the same to, or leave the same, with any licensed dealer, without, at the time of such delivery, or within three days thereafter, removing from the premises of such dealer, the gunpowder mentioned in such certificate. Any person contravening any of the provisions of this section, shall, upon conviction, be liable to a fine not exceeding £50, or to imprisonment, with or without hard labour, for any period not exceeding six months.

No. 28—1864.  
certificate, to be removed within three days.  
Penalty for contravention.

9. Every offence against the Ordinance aforesaid, No. 2, 1853, as amended by this Act, committed after the commencement and taking effect of this Act, and before the 31st of December, 1858, shall, in any indictment relative thereto, be charged as a contravention of the said Ordinance No. 2, 1853, as amended by this Act; and it shall not be necessary in any such indictment to recite or refer to any of the other Acts by which the said Ordinance has been from time to time continued.

In indictments, not necessary to quote other laws than Ordinance No. 2, 1853, as amended by this Act.

No. 28—1864.]

[July 26, 1864.

AN ACT

To Regulate the Dealing in Gunpowder, Firearms, and Lead.

WHEREAS the Act No. 6 of 1863, entitled "An Act to regulate till the Expiration of the Year 1864 the Dealing in Gunpowder, Firearms, and Lead," will expire with the expiration of the last-mentioned year; and whereas it is expedient that the provisions of the Act No. 14, 1857, which was continued in force by the said Act No. 6 of 1863 until the expiration of the year 1864, 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. 14, 1857, entitled "An Act to regulate until the Expiration of the Year 1858 the Dealing in Gunpowder, Firearms, and Lead," shall continue and be in force and operation from the expiration of the year 1864 till Parliament shall otherwise provide.

Act No. 14, 1857, entitled "Act to regulate until the expiration of the year 1858, the dealing in Gunpowder, Firearms, and Lead," continued.

2. This Act shall commence and take effect at and upon the expiration of the Act aforesaid, No. 6, 1863, and not sooner.

Commencement of Act.

3. Every offence against the Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, committed after the commencement and taking effect of this Act, shall, in any indictment relative thereto, be charged as a contravention of the said Ordinance, No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, and made perpetual by this Act; and it shall not be necessary in any such indictment to recite or refer to any of the other Acts by which the said Ordinance had been from time to time continued.

Offences against this Act—how to be charged in indictments.

No. 14—1866-67.]

[January 12, 1867.

## ACT

To Amend Ordinance No. 2 of 1853, relative to the Issuing of Licences and Permits for the Purchase of Gunpowder, Firearms, and Lead, and to extend the operation of Section 2 of the Act No 14 of 1857.

Preamble.

WHEREAS it is provided by Ordinance No. 2 of 1853 that no Justice of the Peace being or residing within twelve miles of the seat of magistracy shall grant a licence or permit for the purchase of gunpowder, firearms, or lead : and whereas said restriction has been found to act prejudicially and inconveniently to the public interest : And whereas it is desirable to bring the districts of King William's Town and East London within the provisions of section 2 of the Act No. 14 of 1857 : 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 :

Repugnant laws repealed.

1. So much of Ordinance No. 2 of 1853, or of Act No. 14 of 1857, or any subsequent Act, as shall be repugnant to or inconsistent with this Act shall be, and the same is hereby repealed.

2. [Repealed by Act 13, 1877, § 1.]

Form of permit.

3. Every permit or licence for the purchase of gunpowder, firearms, or lead shall be in the form provided by the said Ordinance, No. 2 of 1853, in that behalf.

Restrictions on sale of lead, &amp;c., specified in Act 14, of 1857, extended to divisions of King William's Town and East London.

4. From and after the taking effect of this Act, the restrictions which were placed on the dealing in lead and other articles by certain Ordinances and Act mentioned in the Act No. 14 of 1857, and by the second section of the last-mentioned Act restricted to the districts therein enumerated, shall, as amended by this Act extend and apply to the divisions of King William's Town and East London, as if the said two divisions had been included within the operation of the said Ordinances and Acts, and had been expressly named in the said second section of the said Act No. 14 of 1857 as divisions in which the dealings in lead and the said other articles were thereby restricted.

No. 11—1875.]

[June 30, 1875.

## ACT

To amend in certain respects the law regulating the Dealing in Gunpowder, Firearms, and Lead.

Preamble.

WHEREAS it is expedient to vest in the Judges of the Supreme Court discretionary powers in the infliction of penalties for any contravention of the provisions of the Ordinance No. 2 of 1853 :

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, as follows:—

No. 11—1875.

1. So much of Ordinance No. 2 of 1853, and of any subsequent Act as shall be repugnant to or inconsistent with this Act, shall be and the same is hereby repealed. Repugnant law repealed.

2. Where any fine or other penalty is provided by the said Ordinance for the infringement of any of the provisions thereof, the said Ordinance shall as to every sum payable by way of fine and every term of imprisonment be construed as if the words “not exceeding” were inserted before every such amount of fine and every such term of imprisonment. Penalties under Ordinance 2 of 1853 to be construed as if words “not exceeding” were inserted before the amounts.

3. This Act may be cited for all purposes as the “Gunpowder and Firearms Amendment Act, 1875.” Short title.

No. 13—1877.]

[August 8, 1877.

## ACT

## To Amend the Law relating to the Dealing in Gunpowder and Firearms.

WHEREAS it is expedient that the law relating to the dealing in gunpowder and firearms should be amended as hereinafter 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:— Preamble.

1. From and after the taking effect of this Act the 16th section of the Ordinance No. 81, intituled “Ordinance for the better regulation of the trade carried on beyond the land boundaries of this Colony between the inhabitants thereof and the Kafirs and other natives residing in Africa,” the 10th section of the Ordinance No. 7 of 1834, intituled “Ordinance for regulating the trade in gunpowder within this Colony,” the 2nd section of the Act No. 14 of 1866-67, intituled “An Act to amend Ordinance No. 2 of 1853, relative to the issuing of licences and permits for the purchase of gunpowder, firearms, and lead, and to extend the operation of section 2 of the Act No. 14 of 1857;” so much of the Ordinance No. 2 of 1853, intituled “Ordinance to regulate till the expiration of the year 1854 the dealings in gunpowder, firearms, and lead;” 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 shall be and are hereby repealed: Provided that such repeal shall not affect anything done under any of the said repealed enactments, but the same shall be in the same position as if the said enactments were still in force. Repugnant laws repealed.

AAAA



No. 13—1877.

Governor may prohibit the issue of gunpowder and caps from stores or magazines.

2. It shall be lawful for the Governor, with the advice of the Executive Council, when, and as often as he shall see fit, by proclamation to be issued for that purpose and published in the *Government Gazette*, to prohibit, throughout the whole, or such part or parts of this Colony as he shall see fit, the issue of gunpowder and percussion caps, or either of such articles, from any bonding store or magazine, for such time as may be fixed in that behalf in any such proclamation; or to subject such issue, during such time as aforesaid, to such conditions, to be mentioned in any such proclamation, as may to him, with such advice as aforesaid, seem necessary or expedient; and any person who shall issue any gunpowder or percussion caps from any bonding store or magazine after the issuing of the same shall be prohibited as aforesaid, or who shall issue the same contrary to, or without observing, or performing, the conditions prescribed in any such proclamation, shall, upon conviction thereof, be liable to a fine of not exceeding five hundred pounds, or to be imprisoned with or without hard labour for not exceeding five years, or to both such fine and such imprisonment.

Certificates not to be granted to certain persons without special permission.

3. No person shall give, sell, or barter, or give or grant any permit, licence, or certificate authorizing any gift, sale, or barter within this Colony to any person usually residing beyond the boundaries of the same, and whom such person shall know, or shall have reason to believe, belongs to any of the native tribes beyond the said boundaries, any fire-arm, part of a firearm, gunpowder, or percussion caps, unless with the permission in writing to that effect of the Colonial Secretary or Secretary for Native Affairs, or of some person duly authorized in that behalf by either of such Secretaries, under a penalty for each offence of not exceeding five hundred pounds, or imprisonment with or without hard labour for not exceeding five years, or to both such fine and such imprisonment.

Penalty.

Guns, &c., not to be removed beyond the boundary without licence.

4. No person shall remove or convey, or cause or procure to be removed or conveyed, from any part of this Colony to any place beyond the land boundaries thereof, any fire-arm or part of a fire-arm, or any gunpowder or percussion caps, not being for the private use of such person, without having a licence for conveying or removing the same signed by the Colonial Secretary or the Secretary for Native Affairs, or by some person duly authorized in that behalf by either of such Secretaries; and it shall be lawful, as a condition of the grant of any such licence, for the person granting the same to impose such terms or conditions upon the grant of the same as to him may seem proper; and any person who shall remove or convey, or cause or procure to be removed or conveyed, from any part of this Colony to any place beyond the land boundaries thereof, any fire-arm, part of a fire-arm, gunpowder, or percussion caps, not being for the private use of such person, without having a licence as aforesaid, or who shall fail to perform or who shall break any of the conditions upon which such

licence was granted, shall be liable to a fine of not exceeding five hundred pounds, or to imprisonment with or without hard labour for not exceeding five years, or to both such fine and such imprisonment.

No. 13—1877.  
Penalty.

5. In this Act, and in all other laws relating to the dealing in gunpowder, the word "gunpowder" shall, unless there is something in the context repugnant thereto or inconsistent therewith, be taken and construed to include cartridges containing gunpowder.

Interpretation clause.

6. This Act may be cited as the "Gunpowder and Fire-arms Act, 1877."

Short title.

No. 29—1879.]

[Sept. 11, 1879.

ACT

To Amend the Law relating to the sale of Fire-arms and Gunpowder.

WHEREAS it is expedient to give authority in certain instances, to persons other than Resident Magistrates, to grant permission authorizing the issue of gunpowder from private magazines, and certificates authorizing the purchase of fire-arms and gunpowder: 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, subject to such limitations and conditions as to the said Governor may seem fit, to authorize and empower any clerk to a Resident Magistrate, or any other person whom the Governor may specially appoint for that purpose, to grant and issue under the provisions of the eighth section of the Ordinance No. 2 of 1853, in districts where circumstances may render it necessary, the permission to issue gunpowder from any private magazine therein mentioned in the form and manner, and under the restrictions, contained in such section; and also to authorize and empower in such districts, and subject to such limitations and conditions as aforesaid, any such persons as aforesaid to grant and issue, under the provisions of the thirteenth section of the said Ordinance, certificates authorizing the purchase of fire-arms, gunpowder, or percussion caps, and of lead, in districts where such certificate is by any existing law required for the purchase thereof, and the permissions and certificates which shall be so granted and issued, shall be of the same force and effect as if they had been granted and issued by a Resident Magistrate, and shall be subject to the provisions of any existing law which shall be applicable to such last mentioned permissions and certificates.

Governor may specially appoint persons to issue permits under Ordinance No. 2 of 1853.

2. Any authority under this Act to grant or issue permissions or certificates as aforesaid may at any time be revoked and

May revoke or cancel such appointment

No. 29—1859.

cancelled by the said Governor, and thereupon such authority shall cease and determine.

Register to be kept  
of permits granted.

3. Every Resident Magistrate and Justice of the Peace now authorized to grant or issue permissions or certificates as aforesaid, under any law in that behalf in force, and every person authorized under the provisions of this Act to grant or issue such permissions or certificates, shall be bound to keep a register of the permissions and certificates granted by him, setting forth the names, addresses, and descriptions of the persons to whom such permissions or certificates were granted or issued, and the dates of such permissions or certificates, together with the number and description of fire-arms, and the quantity of gunpowder, percussion caps, or lead represented in every such permission or certificate, and every person granting or issuing permissions or certificates as aforesaid, shall further be bound to transmit to the office of the Colonial Secretary, during the months of January and July in each year, copies of such registries, certified under his hand.

Short title.

4. This Act may be cited as the "Fire-arms and Gunpowder Amendment Act, 1879."

No 7—1886.]

[July 6, 1886.

## ACT

To Repeal the Guns and Ammunition Trade Ordinance No. 29 of 1874, of Griqualand West.

Preamble.

WHEREAS it is desirable to repeal the Ordinance No. 29 of 1874 of Griqualand West, entitled an "Ordinance to regulate the trade in guns and ammunition in the Province of Griqualand West, and the conveyance of guns and ammunition through the said Province to territories beyond its borders": 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:—

Ordinance 29 of  
1874 of Griqualand  
West repealed.

1. The Ordinance in the preamble of this Act mentioned is hereby repealed.

No. 13—1878.]

[August 2, 1878.

## ACT

For the Better Preservation of Peace within the Colony. <sup>(1)</sup>

Preamble.

WHEREAS it is expedient to make further provision for the protection of life and property, and the preservation of peace within this Colony: Be it therefore enacted by the Governor of the Cape

<sup>1</sup> Amended by Act 4, 1879.

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 aforesaid, by and with the advice of the Executive Council of the said Colony, from time to time to proclaim certain districts or portions of districts as areas within which it shall not be lawful for any person (except such persons as are hereinafter excepted) to bear, carry, or have in his or her possession, custody, or power, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition unless such person shall be licensed so to do as hereinafter provided: Provided, always, that any such proclamation may from time to time be revoked or repealed (either as to the whole or any part of any such proclaimed area) by the said Governor, by and with the advice aforesaid, when and as occasion may seem to justify such revocation or repeal.

2. Every such proclamation as aforesaid shall be printed and published in the *Government Gazette* of this Colony, and in such other newspaper or newspapers, if any, published within the proclaimed areas as the Governor aforesaid, with the advice aforesaid, may deem to be desirable, and printed copies of such proclamations shall be affixed to the door of the court-house of the Resident Magistrate of every such proclaimed district or portion of a district, or posted or affixed on some conspicuous place in the vicinity of such court-house, and shall also be posted or affixed on some conspicuous place in the vicinity of every field-cornet's residence within such district or portion of a district.

3. The production of the *Government Gazette* containing any such proclamation shall be deemed and taken by any Court of Justice to be conclusive evidence of the facts and circumstances necessary to authorize the issue of such proclamation, and every such proclamation shall be deemed and taken in all such Courts respectively to all intents and purpose whatsoever to have been issued in conformity with this Act.

4. Every such proclamation shall name a certain day on or before which every person residing or being within the district or area therein specified, and not being a Resident Magistrate, Justice of the Peace, Field-cornet, or person serving in Her Majesty's naval or military forces, or enrolled in any colonial corps, for the time being, whether Burgher or Volunteer, <sup>(1)</sup> or in the Frontier Armed and Mounted Police, or in any other armed police force legally constituted within this Colony, not having a licence as in this Act provided, shall deposit and leave at the office of the Resident Magistrate of such district, or at such other place as may be named in the said proclamation for the deposit thereof, all arms and weapons, or portions of arms and weapons, and all bullets, cartridges, gunpowder, and other ammunition then being in his or her possession,

No. 13—1878.

Governor may by proclamation fix any district within which no arms may be possessed without a licence.

Proclamation may be at any time revoked.

Manner in which notice of such proclamation is to be given.

How proclamation to be proved in courts of law.

Proclamation to fix day before which persons, having arms, and not authorized to have them, shall deposit them with magistrate.

Receipt to be given for arms and ammunition deposited.

<sup>1</sup> Printed as amended by Act 4, 1879, § 1.

No. 13—1878.

custody, or power, and a receipt for the same shall be given by the person authorized to receive them to the person so depositing them.

Governor may authorize persons to grant licences to have arms and ammunition.

5. Notwithstanding anything in the last preceding section contained, it shall and may be lawful for the Governor aforesaid, by and with the advice aforesaid, to authorize and empower the Resident Magistrate of any proclaimed district or portion of a district, or some other person or persons to be by the said Governor, by and with the advice aforesaid, for that purpose specially named and appointed, to issue to fit and proper persons licences to have, keep, bear, and carry arms, weapons, bullets, cartridges, gunpowder, and other ammunition, within such district, or portion of a district. And such licences shall be, as nearly as may be, in the form numbered 1 in the schedule to this Act annexed.

Dealer in arms and ammunition need not deliver up his stock if he receive licence to retain them from proper official.

6. In case any dealer in arms and ammunition, or either of them, shall reside within any district, or portion of a district, proclaimed under the provisions of this Act, it shall not be necessary for such person to deliver up the arms or ammunition in his or her possession as such dealer for the purposes of sale at the time of the issuing of such proclamation, if he or she shall before the day therein named for such delivery have obtained from the Resident Magistrate of such district, or other person authorized to issue licences for such district, or portion of a district, under this Act, a licence to retain the same, which licence shall be, as nearly as may be, in the form numbered 2 in the schedule of this Act annexed.

On receipt of licence in 5th section mentioned, owner of arms, &c., which have been deposited, may obtain them back.

7. In case the person to whom any of such licences shall be so issued as aforesaid shall have actually deposited under the provisions of this Act, the arms, weapons, bullets, cartridges, gunpowder, or other ammunition mentioned in such licence, he or she shall be entitled, on producing such licence as aforesaid, and on production and delivery of the receipt in this Act previously mentioned, but without any right to claim for loss by deterioration, to have such arms, weapons, bullets, cartridges, gunpowder, or other ammunition re-delivered to him or her, unless a period of six months shall have taken place between the said deposit and the issue of such licence, in which event he or she shall be obliged to accept the alternative of receiving the said arms, weapons, bullets, cartridges, gunpowder, or other ammunition, or the appraised value thereof as hereinafter provided.

But if six months have elapsed since deposit, appraised value only may be claimed.

After date fixed by proclamation no person not specially excepted may have arms, &c., without licence.

8. From and after the day named in any proclamation for the deposit of arms, weapons, and ammunition, as in the fourth section of this Act provided, it shall not be lawful for any person, resident or being within the area in such proclamation mentioned, and not being one of the persons in the fourth section specially excepted, to bear, carry, or have in his or her possession any arms or weapons, or any portions of arms or weapons, or any bullets, cartridges, gunpowder, or other ammunition, unless such persons

shall have obtained the necessary licence in that behalf in this Act mentioned; and any person guilty of contravening the provisions of this section shall, upon conviction, be sentenced to imprisonment, with or without hard labour, for a period of not more than seven years or to pay a fine of not more than five hundred pounds sterling, and to imprisonment, with or without hard labour, until such fine be paid, or if not paid, for a period not exceeding two years.

No. 13—1878.

Punishment on conviction.

9. Every person resident or being within any district or area proclaimed as aforesaid, not being one of those excepted in the fourth clause of this Act, who shall be found carrying, or in possession of, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, after the date named in the proclamation for the deposit thereof, may be required by any Resident Magistrate, Justice of the Peace, Field-cornet, or police constable, or by any person producing his or her own licence under this Act, to produce and exhibit his or her licence for having or carrying such arms, weapons, bullets, cartridges, gunpowder, or other ammunition; and upon his or her refusal or inability so to do, such first mentioned person may be forthwith arrested without any warrant issued for that purpose, and upon being so arrested shall be taken with all reasonable speed before the Resident Magistrate of the district in which he shall be so found, or before the nearest Justice of the Peace, to be dealt with according to law.

All persons not specially excepted by 4th section found carrying or having arms may be required to produce licence.

In case of non-production may be arrested.

10. It shall and may be lawful for all Resident Magistrates, Justices of the Peace, Field-cornets, and police constables, and they are hereby required so to do, upon reasonable suspicion that any person within any proclaimed district, or portion of a district, not being one of the persons hereinbefore excepted, and not being licensed under this Act, is in possession of any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, to make diligent search for the same, and to seize any such arms, weapons, bullets, cartridges, gunpowder, or other ammunition, when found, without any warrant being issued or obtained for such search or seizure.

Certain officials to search for arms, &amp;c., without warrant, on reasonable suspicion.

11. It shall and may be lawful for the said Governor, with the advice aforesaid, from time to time, and at any time, to revoke any licence granted under the provisions of this Act, and upon such revocation the holder of such licence shall be obliged, within the space of seven days from the receipt of the notice of such revocation, to deposit and leave at the office of the Resident Magistrate of the district within which he or she resides, or other place named in such notice, all arms, weapons, bullets, cartridges, gunpowder, or other ammunition, then being in his or her possession; and on his or her neglect or refusal so to do, such person shall be liable to the penalties of the 8th section of this Act, precisely as if he or she had never been licensed to have or carry arms, weapons, bullets, cartridges, gunpowder, or other ammunition.

Governor may revoke licence.

Effect of such revocation.

No. 13—1878.

Repugnant portion of section 13 of Ordinance 2 of 1853 repealed.

Restrictions on the sale, repair, or delivery of arms without the production of licence and permit.

Punishment for contravention of this section.

Attorney or Solicitor-General may remit proceedings under this Act to the Resident Magistrate.

Arms deposited by unlicensed owners to be valued within six months by person appointed for that purpose.

Appraised value to be paid to owner on production of receipt mentioned in 4th section.

12. Everything contained in the 13th section of Ordinance No. 2 of 1853, which may be in conflict with, or repugnant to, the provisions of this Act, shall be, and the same hereby is, so far as such conflict or repugnance may exist but not otherwise, repealed.

No person within any district or area proclaimed as aforesaid shall sell to, or make, mend, repair, or keep for any person (not being a person under the 4th section of this Act excepted, or not being a person under the provisions of this Act licensed), any arms or weapons, or any portion of any arms or weapons, or any bullets, cartridges, or other ammunition; and no person within such district or area as aforesaid shall, under or by virtue of any sale, barter, gift, or other transaction, deliver to any person whomsoever unless a Resident Magistrate, Justice of the Peace, or Field-cornet, any arms or weapons or any portions of arms or weapons, or any bullets, cartridges, gunpowder, or other ammunition, without production of his licence under this Act, and without a written permission for that purpose first had and obtained from the Resident Magistrate of the district within which it is proposed that such delivery shall take place, or from some other person authorized to issue licences under this Act for such district, which permission shall be, as nearly as may be, in the form numbered 3 in the schedule to this Act annexed. And any person guilty of contravening any one of the provisions in this section contained shall, upon conviction, be liable to imprisonment, with or without hard labour, for any period not exceeding seven years, or to pay a fine not exceeding five hundred pounds sterling, and to imprisonment with or without hard labour for a period not exceeding two years, unless such fine be sooner paid.

13. Any proceedings which may be taken under any section of this Act and which shall have been transmitted to the Attorney-General or Solicitor-General, may be remitted by the said Attorney-General or Solicitor-General to the Resident Magistrate of the district within which the offence shall have been committed, to be adjudicated upon by him under such jurisdiction as he may possess therein.

14. All such arms, weapons, bullets, cartridges, gunpowder, and other ammunition as shall have been deposited and left at the office of the Resident Magistrate or other place duly named for that purpose under the provisions of this Act, and which shall belong to persons who have not been licensed to have or carry the same, or whose licences have been revoked, shall, within six calendar months from the date of such deposit, be valued by some proper, impartial, and competent person or persons to be appointed for that purpose by the Resident Magistrate of the district in which they shall have been so deposited, and the value fixed by such person or persons on each of such arms, weapons, bullets, cartridges, gunpowder, and other ammunition, shall be paid to the respective owners of the same or their lawful representatives, upon

production of the receipt therefor in the fourth section of this Act mentioned, and upon satisfactory proof of ownership.

No. 13—1878.

15. Every person authorized to issue licences and permits under this Act shall be bound to keep a register of such licences and permits, setting forth the names, addresses, and description of the persons to whom such licences and permits shall have been issued, together with the number of arms and quantity and description of ammunition represented in such licences and permits, which register shall be open for public inspection at all reasonable times, and issuers of licences and permits as aforesaid shall further be bound to transmit to the office of the Colonial Secretary, during the first month of each year, copies certified under their hands of such registries.

Registers of licences and permits to be kept.

And certified copies annually transmitted to Colonial Office.

16. Every person authorized to issue licences under this Act shall have the power to issue permits, in the form No. 4 in the schedule hereto annexed, to dealers in arms and ammunition, who shall require the same to enable them to transport arms and ammunition through the proclaimed district or area for which such person is authorized to issue licences as aforesaid: Provided, always, that every such permit shall state the number of days during which it shall be in force: And provided, also, that such permit shall be of no force or effect except for the purpose of transporting the said arms and ammunition from the place mentioned in the said permit to the place therein mentioned.

Persons authorized to issue licences may also issue permits of removal.

Effect of such permits.

17. Any person enrolled as a burgher, or serving in any yeomanry or volunteer corps as aforesaid, shall be empowered without the production by him of any licence under the Act to require the production or exhibition of licences under the provisions of the ninth section of this Act.

Who may require the production of licences.

18. The words "arms" and "weapons" in this Act shall be deemed and taken to comprise all guns, pistols, swords, bayonets, daggers, pikes, spears, assegais, and the word "ammunition" to comprise all gunpowder or other material capable of being used in the explosion of guns and pistols.

Definition of words "arms," "weapons," and "ammunition."

19. All costs and charges for carrying out this Act shall be paid out of such moneys as Parliament shall provide for the purpose.

Expenses under this Act—how to be met.

20. This Act may be cited for all purposes as "The Peace Preservation Act, 1878."

Short title.

## SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

### 1.

#### *Form of Licence to Carry and have Arms in Proclaimed District.*

I, A. B., having been duly appointed in that behalf under Act No. — of 1878, intituled "The Peace Preservation Act, 1878," do hereby grant to C. D., of (here insert name, description and place of

Licence to carry and have arms—*Vide* section 5.



No. 13—1878. residence), a licence to carry and have — gun (or other arm or arms, or ammunition, as the case may be) within the district of  
 Dated      day of      187      A.B.

## 2.

*Form of Licence to Dealers in Arms and Gunpowder to Retain such Articles in their Possession in Proclaimed Districts.*

Licence to dealers in arms, &c., mentioned in section 2. I, A. B., having been duly appointed in that behalf under Act No. — of 1878, intituled "The Peace Preservation Act, 1878," do hereby grant to C. D., of (here insert the name, description and place of business), a dealer in arms and gunpowder, permission to retain such arms and gunpowder in his possession for sale to persons duly licensed to purchase the same.  
 Dated      day of      187      A.B.

## 3.

*Form of Licence or Permission given to Dealer in Arms, &c., to deliver Arms, &c., to a Purchaser.*

Licence to dealers in arms, &c., mentioned in section 12. I, A. B., having been duly appointed in that behalf under Act No. — of 1878, intituled "The Peace Preservation Act, 1878," do hereby authorize C. D., of (here insert name, description and place of business), dealer in arms, &c., to deliver to E. F. (here insert name, description and place of residence), gun (or other arm or arms or ammunition, as the case may be) on production of his licence in that behalf under the said Act.  
 Dated      day of      187      A.B.

## 4.

*Form of Permit to Transport Arms, &c.*

Permit or removal mentioned in section 16. I, A. B., having been duly appointed in that behalf under Act No. — of 1878, intituled "The Peace Preservation Act," do hereby authorize C. D., of (here insert name and place of business), to transport gun (or other arm or arms, or ammunition, as the case may be) from to  
 This permit to be in force for      days.  
 Dated      day of      187      A.B.

No. 4—1879.]

[Sept. 8, 1879.]

## ACT

To remove Doubts as to the meaning of a certain Section in Act No. 13 of 1878.

Preamble.

WHEREAS an error in punctuation has been made in printing the 4th section of Act No. 31 of 1878, and it is desirable to remove any doubts which may exist as to the true intent and meaning of that section, and to render it clear that persons enrolled as levies under the provisions of Act No. 7 of 1878, are not excepted from liability to deposit all arms and weapons, or portions

of arms and weapons, and all bullets, cartridges, gunpowder, and other ammunition in their possession, custody, or power, as in the said 4th section of Act No. 13 of 1878 is provided, unless such levies shall be licensed to retain 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:—

No. 4—1879.

1. The following words contained in section 4 of Act No. 13 of 1878, namely, “or enrolled in any colonial, burgher, or volunteer corps for the time being,” shall be read and construed as if the same had been written “or enrolled in any colonial corps, for the time being, whether burgher or volunteer.”

Error in Act 13, 1878 corrected.

2. This Act may be cited as the “Peace Preservation Amendment Act, 1879.”

Short title.

### HARBOURS.

GENERAL.	
1. Ord. 21—1847, (Improvement).	20. Act 26—1864, (Wharfage Dues, Bullion and Coin).
2. Act 15—1861, (Commissioners).	21. „ 25—1875, ( do. ).
3. „ 2—1877, (Regulations).	22. „ 16—1859, (Obstructions on Beach).
4. „ 16—1857, (Quarantine and Port Regulations).	23. „ 5—1873, (Breakwater and Wharf Management).
5. „ 46—1885, (Wrecks Removal).	24. „ 21—1882, (Harbour Board).
	25. „ 23—1883, ( do. ).
	26. „ 20—1872, (Sands Preservation).
SPECIAL.	
(EAST LONDON).	
6. Act 18—1869, (Anchors and Cables).	(SIMON'S TOWN).
7. „ 7—1871, (Wharfage dues).	27. Ord. 6—1851, (Wharfage Dues).
8. „ 11—1874, ( do. Bullion and Coin).	28. Act 14—1855, ( do. Whaling Vessels).
9. „ 26—1875, ( do. ).	29. „ 17—1861, § 6 ( do. ).
10. „ 22—1878, ( do. ).	30. „ 26—1885, (Sale of Patent Slip Company to Imperial Government).
(KOWIE).	
11. Ord. 4—1852, (Wharfage Dues, &c).	(TABLE BAY).
12. Act 26—1864, ( do. Bullion and Coin).	31. Ord. 100—1833, (Discharge of Firearms in Table Bay).
13. „ 11—1874, (Wharfage Dues, Bullion and Coin).	32. Act 14—1855, (Wharfage Dues, Whaling Vessels).
14. „ 10—1856-67, ( do. ).	33. „ 4—1857, (Wharf obstruction).
15. „ 16—1869, (Dissolution Kowie Harbour Company).	34. „ 20—1858, (Breakwater Construction).
(MOSSEL BAY).	
16. Act 7—1860, (Wharfage Dues).	35. „ 22—1872, (Docks and Breakwater Management).
17. „ 26—1864, ( do. Bullion and Coin landed).	36. „ 4—1873, ( do. Scale of Tonnage for Dues).
18. „ 20—1886, ( do. Shipped).	37. „ 26—1881, ( do. Harbour Board).
(PORT ELIZABETH).	
19. Act 10—1858, (Wharfage Dues).	

No. 21.—Sd. Henry Pottinger.] [Oct. 29, 1847.  
Ordinance for improving the Ports, Harbours, and Roadsteads of this Colony.

WHEREAS it is expedient in order to facilitate and encourage the export and coasting trade of this Colony that provisions be made by law for increasing the safety and convenience of the several

Preamble.

- Ord. 21—1847. ports, harbours, and roadsteads thereof and generally for improving the same: And whereas such improvement may most fitly and effectively be made by means of local boards of commissioners to be invested with all necessary powers and authorities: 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 thereof, that it shall and may be lawful for the Governor of this Colony to nominate and appoint for or in regard to any port, harbour, or roadstead in this Colony which shall be deemed by him to need improvement a board of commissioners, to be called and known by such style and title as the said Governor when nominating and appointing the same shall bestow or prescribe.
- Appointment of board of commissioners.
- Constitution of board. 2. And be it enacted that every such board of commissioners shall consist of so many fit and proper persons, not less than three nor more than five, <sup>(1)</sup> as the said Governor shall deem sufficient, who shall from time to time be appointed by proclamation to be from time to time issued in the *Government Gazette*, and such persons so appointed shall continue to be members of the board for or in regard to which they shall have been nominated until their respective appointments shall be revoked by some proclamation to be issued as aforesaid; and every person who shall be appointed to be a member of any such board shall before proceeding to act as such take and subscribe before some Resident Magistrate or Justice of the Peace the following declaration, which declaration such Magistrate or Justice is hereby authorized to administer, that is to say: "I, A. B., do declare that I will faithfully execute the duties of a commissioner of (here state the style and title of the particular board) appointed by His Excellency the Governor under and by virtue of the provisions of Ordinance No. 21, 1847." And every such declaration so taken and subscribed shall be forwarded to the Secretary to Government to be preserved in the Colonial Office.
- Declaration of commissioner.
- Nomination of chairman. 3. And be it enacted that the said Governor shall by proclamation as aforesaid from time to time nominate and appoint one of the members of every such board as aforesaid to be the chairman thereof; and the said board shall hold its meetings <sup>(2)</sup> at such times and at such place or places as the members thereof shall find it convenient for the dispatch of business to appoint; and such a number of members as shall by any such proclamation as aforesaid be directed shall form a quorum and shall be competent to exercise the several powers and authorities hereinafter mentioned and granted to every such board; and at any meeting of any such board at which the chairman for the time being shall not be present, some member thereof present shall be chosen by a majority of votes of the members present to take the chair, and whenever
- Quorum.

<sup>1</sup> Seven, see Act 15 of 1861, *infra*.

<sup>2</sup> Every meeting is open to the public, Act 15, of 1861, *infra*.

at any meeting of any such board the votes of the members in regard to any question shall be equally divided the chairman besides his vote as a member shall have a casting vote. And every such board shall be competent to frame all necessary rules and regulations for the due and proper dispatch of business.

Ord. 21—1847.

4. And be it enacted that it shall and may be lawful for every such board and it shall be the duty thereof, so far as a necessity shall appear to exist and the means at its disposal shall permit, to take measures for improving by means of piers, wharfs, landing-places, moorings, engines, and other works of a like nature the port, harbour, roadstead, bay or inlet for or in regard to which such board shall have been appointed. (1)

Powers and duties of board.

5. And be it enacted that it shall and may be lawful for every such board as aforesaid and it is hereby required to frame and transmit to the Governor aforesaid a report setting forth what particular works appear to the said board to be most required for the improvement of the port or place in regard to which such board shall have been appointed, and stating as accurately as may be the probable nature and cost of such preliminary examinations, surveys, plans, and estimates as shall be necessary, in order to determine in regard to the practicability and expense of such proposed works; and thereupon it shall and may be lawful for the said Governor, should he approve of such report, to cause to be issued as a temporary advance from time to time as he shall find necessary from the Colonial Treasury to such board as aforesaid, to be by it applied in procuring and prosecuting in respect of such work or works as the said Governor shall approve of and direct any such examinations, surveys, plans, and estimates as aforesaid; and every such temporary advance as aforesaid shall be repaid to the Colonial Treasury by the board receiving the same from and out of any funds or moneys to be by it received, borrowed, or raised under the provisions and for the purposes of this Ordinance; but in case there shall be no such funds or moneys then such advance shall become a charge upon and be borne by the public revenue.

Report to Governor of intended works.

Advance for preliminary expenses.

6. And be it enacted that when and as soon as the necessary examinations and surveys, plans and estimates shall have been made or caused to be made by any such board in respect of any intended work or works as aforesaid the same shall be sent in by such board for the inspection and approval of the said Governor, and thereupon it shall and may be lawful for the said Governor, with the advice and consent of the Legislative Council (2) of the Colony, to be declared by any vote or resolution of the council, to authorize any such board to borrow and take up from time to time

Authorization of loans on credit of the public revenue.

<sup>1</sup> And to make regulations for the due and proper management of the said Wharves, &c., Act 2 of 1877, *infra*.

<sup>2</sup> The Legislative Council referred to in this Section is extinct. See Preamble to Act 10, 1858, *infra*.

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upon interest such sum or sums of money as may be necessary for the execution of any such work or works, and to engage and pledge the credit and responsibility of the public revenue of this Colony for the repayment of the principal and interest of every such sum as shall be so borrowed.

Mode of effecting loans.

7. And be it enacted that all sums of money which shall be borrowed or taken up by way of loan by any such board as aforesaid shall be borrowed and taken up in such amounts and for such times and at such rate of interest as the Governor aforesaid with such advice and consent as aforesaid to be declared as aforesaid shall approve of, and all such sums shall be a charge upon and payable out of such tolls, charges, fees and revenues as shall under and by virtue of any of the provisions in that behalf hereafter mentioned be claimable and recoverable by such board for or in respect of the use by any person or persons of all or any of the works to be provided and completed by such board; and every bond, hypothecation, or other deed necessary for the securing of the due and punctual repayment of every such loan with interest thereon in the mean time shall be executed by and on behalf of the board borrowing the same by the chairman of such board in his capacity as such chairman, and shall be executed by and on behalf of the Colonial Government by such person as shall by the Secretary to Government in the name of the Governor aforesaid by any writing under his hand be authorized to execute the same, and the execution by any such last-mentioned person of any such bond, hypothecation, or other deed as aforesaid as surety *in solidum* and co-principal debtor for or in respect of the punctual repayment of any principal sum with interest shall have the force and effect of pledging and engaging the public revenue of this Colony for the due fulfilment of the stipulations and provisions in the said deed contained and by the board aforesaid to be performed.

Execution of bonds.

Power of employing engineers, &amp;c.

8. And be it enacted that it shall be lawful for every such board and it is hereby empowered from time to time, to appoint such and so many surveyors, engineers, clerks, officers and other persons as it shall deem necessary to employ in the execution of any of the powers conferred upon such board by this Ordinance, and may from time to time remove such surveyors, engineers, clerks, officers, and other persons or any of them and appoint others in their stead, and fix the respective duties and salaries of such surveyors, engineers, clerks, officers, or other persons, and if it shall think proper so to do take such security from any surveyor, engineer, clerk, officer, or other person appointed by virtue of this Ordinance for the due and faithful execution of his office or employment as the said board shall think fit: but no amount of salary shall be assigned to any person engaged for an indefinite period, or for any definite period longer than six months, until the same shall have been first approved of by the Governor aforesaid.

Power with consent of Governor to use

9. And be it enacted that it shall and may be lawful for every

such board by and with the consent of the Governor aforesaid to enter upon and take possession of so much of any land belonging to the Queen's most excellent Majesty as shall be required for the purpose of any of the works, matters or things aforesaid by such board to be constructed or made or for any other purpose relating to the execution of this Ordinance. And also to enter upon all lands of her said Majesty lying convenient to any such works and there to dig for, excavate, and carry away all such stones, clay or other materials as may be required or serviceable for the making and repairing of any of the said works.

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public lands and excavate materials.

10. And be it enacted that for the purpose of executing any of the objects of this Ordinance it shall be lawful for every such board and it is hereby authorized to take and use any land and to dig out and carry away any materials belonging to or being found in or upon the land of any person or persons whatsoever and which land shall adjoin or lie convenient to any work to be performed or carried on, and that such board shall be and is 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 such land adjacent to the sea and the raising and carrying away such materials for making and repairing roads or harbours and whether such rights shall 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, permitting the conversion of lands on loan into places on perpetual quitrent, or shall have been created by express stipulation or condition in any grant of freehold property, or shall exist in any other way or manner whatsoever.

Vesting in boards of rights of government in regard to private property.

11. And be it enacted that in any case any such board shall require to take or use any land or to dig out or carry away any materials belonging to any person who shall not be bound by law to allow the said board so to do without requiring any recompense or payment by reason of the powers and authorities in the last preceding section delegated to or bestowed upon the said board, and which person shall think proper to require compensation from the said board, it shall be lawful for the said board and it is hereby authorized to treat and agree with every such person for the purchase or hire as the case may be of any such lands or materials as last aforesaid, and generally to enter into such contract or contracts relative to the obtaining of any such land or materials upon such terms and conditions as it shall judge expedient. And if any such person and the said board 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 board 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 board or to some person by it appointed, within

Proceedings where materials are required from lands on which no such rights exist.

Offer of recompense for such materials.

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Arbitration.

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 such person shall refuse to accept the sum offered or shall neglect to reply to said notice then the said board 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 board, and for that purpose to transmit to the said board 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 board 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 board by the secretary of the said board 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, 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 benefit and advantage derived or to be derived by the person claiming recompense or compensation by reason of the formation or improvement of the work in regard to which the question shall have arisen, together with a power to the said arbitrators in case of a difference in 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 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, then it shall be lawful for the said board 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 persons aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said board 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, as if all acts by law required for vesting in the said board a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

Umpirage.

Making award a rule of court.

Proceeding in case of refusal of arbitration.

Proceeding of board when owner of land cannot be found.

12. And be it enacted that in case any such board as aforesaid shall require to take or use any of the land or to dig out 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 board and it is hereby authorized to cause a notice to be inserted in the *Government Gazette* for four successive weeks, describing as accurately as may be the land which is required to be taken or used or from and out of which materials are required to be dug out and carried away, and calling by name upon the owner or owners of the said land or materials if known, or if not known then upon the owner or owners whoever he or they may be, to take notice that the said board 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 or paid by the said board for the said land or materials, and requiring such owner or owners to apply within forty-two days from the date of such notice, which shall be the day of its first publication, to the said board, 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 board within the said period then it shall and may be lawful for the said board to appoint some competent person to appraise the value of the land or materials required (setting off against and deducting from the value of such land or materials the amount at which the appraiser shall estimate any benefit or advantage derived or to be derived by the owner or owners of the said land or materials, by reason of the formation or improvement of the work in regard to which the question shall have arisen), and such person shall make oath before some Justice of the Peace (which oath every Justice of the Peace is hereby empowered to administer) that he hath to the best of his judgment fairly appraised such value, and thereupon it shall and may be lawful for the said board 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 of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony; and the said board upon so paying the said sum shall be authorized and entitled to take or to 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 board a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

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Appraisement of  
land or materials.Payment of sum  
awarded into guar-  
dian's fund.13. And be it enacted that all works constructed, altered, Vesting of property  
in boards

BBBB



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repaired, or improved by any such board as aforesaid shall vest in such board together with all lands reclaimed by any such board from the sea.

Disposal of unnecessary lands.

14. And be it enacted that all lands which shall under and by virtue of any of the provisions of this Ordinance become vested in any such board as aforesaid and which shall be or become unnecessary for the purposes of any of the works under the management or administration of such board, may be sold or alienated by such board, and the moneys arising from the sale or alienation thereof shall be applied by the said board to the purposes thereof: Provided always that no such board shall sell or alienate any such land without the consent of the Governor aforesaid first had and obtained; and provided also that in the application of the proceeds thereof the said board shall conform to such directions in that behalf as the said Governor shall issue.

Imposition of tolls and rates for use of piers, &amp;c.

15. And be it enacted that when and so often as any pier, harbour, quay, landing-place, engine, moorings, or other work shall become vested in any such board as aforesaid under the provisions of this Ordinance it shall and may be lawful for the said board and they are hereby authorized to levy or cause to be levied and paid for the use of such pier, harbour, quay, landing-place, engine, moorings, or other work, such tolls and rates as the Governor aforesaid, with the advice and consent of the Legislative Council <sup>(1)</sup> aforesaid, to be declared as aforesaid, issued from time to time, approve of, and by any proclamation to be by him shall in that behalf from time to time publish and announce: Provided always, that when and so soon as the moneys if any due and owing by any such board in respect of sums by such board borrowed and taken up as aforesaid for the purposes of all or any of the works under the management or administration of such board shall have been by such board paid off and satisfied, then and in that case all tolls and rates payable to such board shall as much as may be be lowered to and fixed at such a scale or tariff as shall yield an amount not exceeding the probable average annual expense of maintaining and repairing the works aforesaid and further improving the port or harbour in or about which such works shall have been made. And such reduction shall be made by the Governor aforesaid by any such proclamation as aforesaid.

Reduction of tolls, &amp;c.

Letting to hire of tolls, &amp;c., by tender or public auction.

16. And be it enacted that every such board may from time to time if it shall deem it to be expedient let or farm the tolls and rates to be payable in regard to the use of any pier, harbour, quay, landing-place, engine, moorings, or other work vested in such board by tender or by public auction to the highest and best bidder, for any time not exceeding one year in any case: Provided always, that previously to every letting of such tolls or rates the said board shall give in some convenient manner public notice of the time and place at which tenders will be received or any such

<sup>1</sup> See Act 2 of 1877, *infra*. See also § 3, Act 5 of 1883 (Constitution).

auction as aforesaid will take place; and that the person who shall at any such auction be declared to be the highest bidder or whose tender shall be accepted will be required to produce two sufficient sureties for the payment of the stipulated hire; and provided also that in every letting of such tolls or rates whether by tender or by auction the said board 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 in case any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same shall have become due then it shall be lawful for the said board to enter into and take possession of the said tolls or rates 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 them may seem fit; and the sum for which the said renter or farmer shall 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 or rates, credit being given to him by the said board for whatever sums they shall receive for or on account of the said tolls in respect of the term for which the said rates or tolls were let to the renter or farmer making default.

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Conditions of tender and auction.

17. And be it enacted that the said board or in case of any letting to hire every renter or farmer of any tolls or rates shall affix or cause to be affixed and continued in a conspicuous place at or near which any rate or toll shall be payable a table of the rates or tolls to be taken thereat plainly and legibly painted or printed in the English language, under a penalty not exceeding five pounds, to be sued for by any person whatever in any competent Court for his own use.

Affixing of tables of tolls.

18. And be it enacted that it shall and may be lawful for the Governor aforesaid, with the advice and consent as aforesaid, to be declared as aforesaid when and as often as he shall with such advice and consent approve of any tolls or rates to be levied and paid for and in respect of any pier, harbour, quay, landing-place, engine, moorings, or other work as aforesaid, to fix and determine and by any such proclamation as aforesaid publish and announce whether such tolls or rates shall be levied and paid upon or in respect of every rated article, matter or thing landed or shipped at or in any part of the port, harbour, or roadstead in question, or only upon or in respect of such rated articles, matters or things as shall voluntarily be brought or taken to the pier, harbour, quay, landing-place, engine, moorings, or other work aforesaid in regard to the use of which such tolls or rates shall be imposed. And when

Decision by Governor and council whether all articles or only articles voluntarily conveyed to the pier, &amp;c., shall be subject to tolls.

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and as often as any tolls or rates shall be imposed upon or in respect of all rated articles, matters and things landed or shipped at or in any part of any port, harbour, or roadstead, the Governor aforesaid with the advice aforesaid shall by any such proclamation as aforesaid publish and announce the limits of such port, harbour, or roadstead, for the objects and purposes of such tolls or rates, and the levy and payment thereof, but not otherwise. Provided always, that no toll or rate in respect of the use of any moorings which shall be put down or fixed by any such board as aforesaid shall be claimed from or be payable by any vessel other than one which shall by the voluntary act of the master or person in charge have made use of the said moorings.

Appointment by board of collectors of tolls with approbation of Governor.

19. And be it enacted that it shall and may be lawful for any such board as aforesaid, in cases in which any tolls or rates as aforesaid shall not be leased or let, or for the lessees or lessee of such tolls or rates if leased or let from time to time to appoint by and with the approbation of the Governor aforesaid sufficient collectors and officers or agents for the purpose of receiving the tolls or rates payable under this Ordinance, and in case any person liable to pay such tolls or rates shall refuse or neglect to pay the same it shall be lawful for such board or for the lessees or lessee of the said tolls or rates or their officer or agent or other person to whom such toll or rate ought to have been paid to seize the vessels, goods, articles, matters, and things in respect of which such tolls or rates ought to have been paid wherever the same may be found, and to detain the same until such tolls or rates together with the reasonable costs and expense of such seizure and detention shall be paid; and if such vessels, goods, articles, matters and things shall not be redeemed within twenty-one days after the seizure thereof the same shall be sold by public sale, and after deducting the costs of such seizure, detention, and sale all such sums as shall be due in respect of such tolls or rates shall be satisfied thereout and the overplus paid to the owner or whomsoever else it may concern.

Wilful injury to piers, &c.

20. And be it enacted that if any person or persons shall wilfully cut, break down, destroy, or injure any pier, harbour, quay, landing-place, engine, moorings, or work of any kind whatever erected or made under the authority of this Ordinance it shall be lawful for any person or persons who shall see the offence

Apprehension of offenders.

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 or them to any field-cornet, constable, or peace officer, who is to keep him or them in safe custody, and with all reasonable dispatch to convey him or them before the Resident Magistrate within whose district the offence shall have been committed; and if the party accused shall 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

Penalty.

such offence, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeit shall be paid to such person or persons apprehending such offender or offenders, and the other moiety shall be paid to the board of commissioners in which the work so injured as aforesaid shall be vested, to be by the said board applied for the purposes of this Ordinance; and in case any such offender shall not upon such conviction pay the said forfeiture and satisfaction such Magistrate is hereby required to commit him to prison, there to be kept to hard labour if such Magistrate shall so order for any time not exceeding three calendar months unless the said forfeiture and satisfaction shall be sooner paid; Provided always, that nothing herein contained shall prevent the said board from bringing any action for damages before the Supreme or any Circuit Court having jurisdiction should they consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.

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Imprisonment on non-payment of penalty.

Action for damages before superior court

21. And be it enacted that if any person shall without lawful cause do damage or injury to any of the matters or things in the last preceding section mentioned it shall be lawful for any Resident Magistrate having jurisdiction, and he is hereby required, upon the application or complaint of the Board of Commissioners in which shall be vested the work to which such damage or injury shall have been done, 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 to award such sum of money by way of satisfaction to the party complaining for such damage, as to such Resident Magistrate shall appear reasonable; and in case of neglect or refusal forthwith to pay such money together with all expenses attending the recovery thereof it shall be lawful for such Resident Magistrate to sentence the party so neglecting or refusing to any period of imprisonment not exceeding fourteen days: Provided however, that nothing herein contained shall prevent any such board 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 they consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.

Damage to works.

Award by magistrate of damage.

Imprisonment on non-payment.

Action before superior court.

22. And be it enacted that every such board shall and it is hereby required to cause a true, exact, and particular account to be kept and yearly made up and balanced, that is to say, on the 31st day of December in each year, of all the moneys raised, collected, or in any manner received by the said board, or by any person on their behalf, by virtue of or for the purposes of this Ordinance and of the charges and expenses incurred by the said board, and a copy of such account together with all necessary vouchers shall be transmitted by the said board to the Governor of the Colony for the time being, in order to the same being audited by such person

Mode of keeping, publishing, and auditing accounts.

- Ord. 21—1847. or persons as the said Governor may from time to time appoint, and afterwards laid by the said Governor before the Legislative Council; and the said board shall also cause an abstract of the said account to be published without delay in the *Government Gazette* for general information.
- Transmission of annual report. 23. And be it enacted that every such board shall and it is hereby required when transmitting such yearly account as aforesaid to transmit also a report made up to the 31st day of December in each year detailing all and singular the particulars of every work which such board shall have commenced, carried on, or completed during the year then ended; which report shall by the Governor aforesaid be laid before the Legislative Council.
- Prohibition to members to receive fees. 24. And be it enacted that no person appointed under and by virtue of this Ordinance to be a member of any such board as aforesaid shall have or receive any salary or allowance or shall exact, accept, or take any fee or reward whatsoever on any account whatsoever relative to carrying this Ordinance into execution; nor shall any such person be eligible to become a contractor with the board of which he shall be a member for the doing of any work or the supplying of any materials, articles, or things contemplated by this Ordinance; nor shall such person directly or indirectly be interested or concerned in any such contract as last aforesaid under a penalty not exceeding one hundred pounds.
- Title under which board may sue or be sued. 25. And be it 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 other matter or thing relating to this Ordinance by or against any such board of commissioners as aforesaid it shall and may be lawful for the said board to sue or be sued by the style or title by or under which such board shall have been appointed by the Governor aforesaid, and in all criminal proceedings the same style may be used. Provided always, that no member of any board shall be deemed or taken to be an incompetent witness in any such suit, action, or proceeding by reason of his holding the said office; and provided also, that the said members shall always be reimbursed 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 any action or suit, unless such action or suit shall arise from their own gross negligence or wilful default.
- Members of board competent witnesses in such actions. 26. And be it enacted that nothing in this Ordinance contained shall extend to the district of Natal.
- Payment of costs. 27. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.
- Ordinance not to extend to Natal.
- Time of taking effect.

No. 15—1861.]

[August 14, 1861.

ACT

To Enable the Governor to increase the Number of Harbour Commissioners appointed under Ordinance 21, 1847; and to cause all Meetings of such Boards of Commissioners to be held with Open Doors.

WHEREAS by the second section of Ordinance No. 21, 1847, Preamble. entitled "Ordinance for improving the Ports, Harbours, and Roadsteads of this Colony," it is provided that every such board of commissioners as is in the said Ordinance mentioned shall consist of not less than three nor more than five persons: And whereas in certain ports and places of this Colony it is expedient that the harbour board thereof should consist of more than five persons; And whereas it is expedient that the meetings of all such boards shall be held with open doors: 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 second section of the Ordinance aforesaid as is repugnant to or inconsistent with the provisions of this Act Repugnant portions of Ordinance 21, 1847, repealed. shall be and the same is hereby repealed.

2. From and after the taking effect of this Act every board of commissioners appointed under and by virtue of the said Ordinance mentioned shall consist of so many fit and proper persons, not less than three nor more than seven, as the Governor shall deem sufficient. Harbour boards to consist of certain number of members.

3. Every meeting of a board of harbour commissioners held after the promulgation of this Act shall be open to the public: Meetings to be open to the public. Provided that the board of commissioners mentioned in the fifth section of the Act No. 6, 1860, shall for the purpose of this section be deemed to be a board of harbour commissioners.

No. 2—1877.]

[August 8, 1877.

ACT

To Provide for the making of Regulations for the Prevention of Obstructions, the Preservation of Order, and other Matters, at certain Ports in this Colony.

WHEREAS it is expedient that powers should be given to make regulations for the due and proper management of and the prevention of obstructions and the preservation of good order on the beach and banks of rivers and on wharfs, jetties, landing-places, and approaches thereto, at ports in this Colony where no special law Preamble.

No. 2—1877.

exists enabling such regulations to be made : 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, or when no board exists, Governor, may make regulations.

1. It shall be lawful for the commissioners of any Harbour Board, or where no such board exists, for the Governor by and with the advice of the Executive Council, from time to time to make all such regulations as may seem fit and proper for the due and proper management of and the prevention of obstructions and the preservation of good order on the beach and banks of rivers and on the wharfs, jetties, landing-places, breakwaters, and other like erections, and on the approaches to such beach, banks of rivers, wharfs, jetties, landing-places, breakwaters, and other like erections in any port or harbour of this Colony where no special law exists enabling such regulations to be made, and from time to time to alter and amend any such regulations : Provided that no regulations made by any such commissicners as aforesaid, shall be of any force, unless and until the same be approved of by the Governor, with such advice as aforesaid : And provided, also, that before such regulations shall be submitted to the Government for confirmation, the same shall be published in the *Government Gazette* for a period of six weeks, so as to enable the public to submit to the Government any objection to such regulations.

Regulations by Harbour Board to be approved by Governor.

Penalty for contravening regulations.

2. It shall be lawful for such regulations to provide that persons contravening any of the same may on conviction be sentenced by the Resident Magistrate of the district to pay a fine not exceeding £10 sterling, and in default of payment of any such fine to be imprisoned with or without hard labour for any period provided by such regulations during which the fine may remain unpaid, not exceeding three months ; and all fines so to be levied shall be paid into the Public Treasury.

Regulations to be published in *Gazette*.

3. All regulations which shall be made as aforesaid, as well as all alterations and amendments of the same, shall be published in the *Government Gazette* and shall thereupon have the force of law for all purposes mentioned therein and allowed thereby.

Short title.

4. This Act may be cited as “The Ports and Harbours Regulations Act, 1877.”

No. 16—1857.]

[June 29, 1857.

## AN ACT

## To Consolidate the Laws relating to Quarantine and Port Regulations.

Preamble.

WHEREAS it is expedient to consolidate the laws relating to the performance of quarantine, and the observance of port regulations, by vessels arriving in the ports of this Colony : Be it enacted by

## HARBOURS (QUARANTINE AND PORT REGULATIONS). 1161

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. 16- 1857.

1. The Ordinance No. 65, dated 6th August, 1829, entitled "An Ordinance for establishing certain regulations for the protection of the public health, in cases of arrival of vessels from foreign countries in the ports of this Colony, with malignant diseases on board, of an infectious or contagious nature," and the Ordinance No. 4, of 1844, entitled "An Ordinance relating to merchant vessels arriving in the ports of this Colony," are hereby repealed, excepting so far as the said Ordinances repeal or revoke any former Ordinance or proclamation, or any part thereof.

Ordinance 65, and Ordinance 4, 1844 repealed.

2. In the interpretation of this Act, whenever the terms or expressions following shall occur, the same shall be construed respectively in the manner hereinafter directed, that is to say,— the term ship and the term vessel shall be construed to mean ship or vessel generally: the term commander or master of any ship or vessel shall be construed to mean the person having or taking the charge or command of such ship; the term seaman, shall be construed to mean alike seaman, mariner, sailor, or landsman, being one of the crew of any ship; and the term port captain shall extend to and embrace the deputy port captain or harbour master, or any other person authorized to perform the particular duty, or act in the particular matter referred to, or in question, in the section in which the said term port captain is used; and whenever mention is made of any public officer, the officer mentioned shall be deemed to be such officer for the time being, or the officer acting as such.

Interpretation of terms.

### QUARANTINE REGULATIONS.

[Sections 3 to 18 inclusive and the Schedule A to this Act repealed by Act 4 of 1883 (Public Health Act). Part II of the latter Act containing the existing law as to Quarantine is inserted at end of this Act. For full text see under "Public Health."]

### PORT REGULATIONS.

19. The master of every merchant vessel arriving in a port of this Colony, shall, upon demand, produce and show the ship's register and ship's papers to the Port Captain, or Resident Magistrate, or Justice of the Peace, as the case may be, for his inspection; and shall deliver a list of his passengers, with a description of their rank, sex, and occupation, together with a list of any deaths or removals that may have occurred during the voyage, and shall report in writing if any person or persons should have stowed themselves away, or concealed themselves on board of such vessel without his knowledge or consent; and any master not duly accounting for every individual aforesaid, or

Ship's papers, &c., to be produced.

Penalty.



- No. 16—1857. falsely accounting for any of them, or refusing to deliver the list when thereunto required as aforesaid, shall forfeit for every such offence the sum of £50.
- Public mails, &c., to be delivered. 20. <sup>(1)</sup> The master of every merchant vessel arriving as aforesaid, shall deliver all public mails entrusted to him for delivery in the Colony to the Port Captain, Resident Magistrate, or Justice of the Peace, at the time of his vessel being boarded by such officer, under a penalty of £20 for every mail, box, bag, or parcel, which he may neglect or refuse so to deliver; and he shall at the same time deliver, in order that they may be transmitted to the post office, all letters, placed in his charge for delivery in this Colony, whether in packages or loose, with the exception only of letters addressed to owners, freighters, or consignees of the vessel, and of letters addressed to be delivered with goods brought by the vessel to the consignees of such goods; and in case he neglect or refuse so to do, he shall forfeit for every such letter so unlawfully retained a sum not exceeding £2.
- Penalty. 21. <sup>(2)</sup> The respective Port Captains of the 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.
- Vessels arriving at certain ports to be boarded, and have berths assigned to them. 22. Upon the arrival in any of the ports of this Colony of any of Her Majesty's ships or of any vessel in the employment of Her Majesty, or of any national ship belonging to any foreign state, the Port Captain shall go off on board such ship as speedily as practicable, and offer to the commander thereof every assistance or service in his power; and if he be thereunto requested by the commander, he shall point out a proper berth for such vessel.
- Penalty on vessels changing berths. 23. Upon the Port Captain boarding any such vessel as aforesaid, or going alongside of her, as the case may be, he shall deliver to the commander or master a copy of this Act, and of such port instructions as may be in force in such port.
- Port captain to offer his services to her Majesty's ships and national vessels of foreign states.
- Commander of such vessels to be supplied with a copy of this Act and port instructions.

<sup>1</sup> See also §§ 38, 39, Act 4 of 1882 (Post Office Act.)

<sup>2</sup> Printed as amended by Act 13 of 1874, § 6 (Merchant Shipping.)

24. The Port Captains, respectively, shall immediately upon coming on shore, after having boarded or communicated with any vessel arriving in the ports of this Colony, make out and transmit a report of such arrival to the Governor, the Colonial Secretary, and the Collector or Sub-Collector of Customs, in the port of arrival; and further, as regards arrivals in the ports of Cape Town and Simon's Town, to the Senior Officer of Her Majesty's ships and vessels in Simon's Bay; and, as regards arrivals at Port Elizabeth, to the Lieutenant-Governor.

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Port captain to transmit report of arrival to certain civil and naval authorities.

25. The master of every merchant vessel arriving at either of the ports of Cape Town, Simon's Town, or Port Elizabeth, shall within twenty-four hours after anchoring, unless prevented by sickness or stress of weather from coming on shore, give bond at the Port Office, with one approved surety, in the sum of £100, for the due fulfilment of the provisions of this Act; and if he omit or refuse to give such bond as is hereby required, he shall forfeit the sum of £100: Provided, always, that if no suit be commenced in respect of the said bond within one calendar month after the departure of the master of the vessel entering into such security, the said bond shall be null and void, so far as regards the surety mentioned therein, but shall remain in full force and effect as against the master.

Bond with security to be given by master at Cape Town, Simon's Town, and Port Elizabeth.

26. The master of any vessel arriving at any port or place in this Colony, other than the ports aforesaid, shall, if required thereunto by the Resident Magistrate, Justice of the Peace, or other local officer as aforesaid, or by any person duly authorized by him, give like bond at the respective office or residence of said officers, in the like sum, and shall, in case of refusal, be subject to the like forfeiture as is provided in respect of the ports of Cape Town, Simon's Town, and Port Elizabeth respectively.

The like bond at other ports.

27. The master of every merchant vessel entering any of the ports of this Colony shall cause all guns on board to be immediately unloaded, and shall not suffer them to be reloaded until the vessel is clear of the anchorage, under a penalty of £5; and any such master firing any gun or rocket, or burning any blue-light, on board of his vessel, while within a port of this Colony, without having previously obtained permission from the Port Captain, except when such vessel may be in actual distress or want of assistance, shall be liable to a penalty not exceeding £20 for every such offence; and any person discharging a musket or other firearm loaded with ball or shot from any vessel or boat within the anchorage, or on the beach, shall be liable to a penalty not exceeding £2, or in default of payment, to imprisonment for a period not exceeding eight days. <sup>(1)</sup>

On entering port, vessel's guns to be unloaded.

No firearms or rockets to be discharged, or blue lights burned, except in distress, or with the permission of the port captain.

28. The master of every merchant vessel shall, whilst shipping or unshipping any gunpowder in any port of this Colony, keep a red flag hoisted at the fore, and suspend all other work on board

Regulations to be observed when shipping or unshipping gunpowder.

<sup>1</sup> See, however, Ord. 100, 1833, as to Table Bay, *infra*.

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his vessel during the removal of such gunpowder into or out of his vessel, under a penalty of not exceeding £50; and shall, before the magazine of the vessel containing any gunpowder is opened, extinguish all fire and light in the said vessel, under a like penalty of not exceeding £50. And all boats carrying gunpowder to or from any vessel in any port of this Colony shall keep hoisted a red flag, under a like penalty.

No ballast, &c., to be cast into the harbour below high water mark.

29. If any stones, gravel, or ballast, be cast into the water below high-water mark, within the bays, rivers, or harbours of this Colony, from any merchant vessel, or from any boat, hired or employed by or on behalf of the owner or master of such vessel, unless with the permission of the Port Captain, Resident Magistrate, or other person duly authorized, as the case may be, then the master of such vessel shall, for every such offence, forfeit a sum of not exceeding £50.

Deaths on board to be reported.

30. In the event of the death of any of the crew, passengers, or other persons, occurring on board of any merchant vessel, whilst remaining in any of the ports of this Colony, the master of such vessel shall forthwith report the same, in writing, to the Resident Magistrate, if in the ports of Cape Town, Simon's Town, or Port Elizabeth, or to the Justice of the Peace at other ports, as the case may be; and any master failing so to do, shall forfeit the sum of £5 for every death which may not have been so reported.

No vessel to shift her berth without permission.

31. Any master of a merchant vessel shifting or changing the berth of his vessel, after he has come to anchor in the anchorage ground of any port in this Colony, by direction of the Port Captain without obtaining the previous sanction of such Port Captain, excepting in case of emergency, when he shall report his having done so as early as possible to the Port Captain, shall be liable to a penalty not exceeding £10.

32 to 35. [Section 32 to 35 repealed by Act 46 of 1885, *infra*.]

Port captains shall not sell anchors or cables, or supply ships with anything for profit.

36. (1) It shall not be lawful for any Port Captain, or for any of the crew of his boat, or for any person whatsoever belonging to his department, to supply, by way of sale or for profit, any anchor or cable, or to keep any boat or launch for the purpose of sending off anchors or cables to vessels, or to employ the boats or crews provided by the Government for that purpose, or to own or use any private boat or launch for the purpose of conveying water or ballast to ships, or for any purpose of trade, profit, or emolument whatever, excepting for the recovery of anchors or cables which may have been parted with, or for the removal of any article or thing whatever which may be deemed necessary for the sole purpose of keeping the anchorage ground clear and free from obstructions, as hereinbefore mentioned: Provided, always, that nothing herein contained shall be construed to extend to preclude or prevent any Port Captain from procuring, taking, or sending off in the Govern-

Except in cases of distress.

<sup>1</sup> This section not to apply to sale or contract effected under Act 45 of 1885 (Wrecks Removal, *infra*.)

ment or any other boat, any anchor or cable to any vessel in distress, or from rendering any other assistance in such cases, or from being duly and properly remunerated for the same according to law.

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37. It shall not be lawful for any Port Captain, or for any of the crew under his authority, or for any other person belonging to his department, to take off in the Government boat any merchant, agent, dealer, or other person connected with the shipping interests, or to recommend, directly or indirectly, to the master of any vessel arriving in the ports of this Colony, or to any passenger, or any other person on board thereof, any merchant, agent, dealer, hotel-keeper, lodginghouse-keeper, tradesman, boatman, or other person whatever, for employment in any capacity, or to be dealt with for the shipping of stores, provisions, or supplies of any kind.

No person in the port department to recommend agents, &c., to any ship.

## PILOTAGE.

38. It shall not be lawful for any Port Captain to make any charge, or to receive from the master of any vessel any sum of money, as pilotage, or for acting as a pilot.

Port captain not to receive anything for pilotage.

39. It shall not be lawful for any person to act as, or exercise the employment of, a pilot to vessels entering into, or departing from, any of the ports in this Colony, unless he has been duly licensed by the Governor <sup>(1)</sup> for that purpose; and any unlicensed person taking charge of any such vessel as a pilot, unless such vessel be in distress, shall be liable to a penalty not exceeding £50.

Pilots must be licensed.

40. Before any person may be so licensed as a pilot, he shall be required to undergo an examination, touching his fitness and qualification to perform the duties of that employment, before two competent persons, to be nominated by the Governor; and if the persons so nominated shall report to the Governor that the person who is a candidate for the pilot's licence has been duly examined by them, and that they are of opinion that he is qualified to receive such licence, the Governor may, if he see fit, grant him a licence to act as, and exercise the employment of, a pilot in such port or ports of this Colony as are named in such licence; and upon the granting of any such licence, the same shall be notified in the *Government Gazette*: Provided, always, that if at any time afterwards the Governor should see reason to annul or suspend such licence, it shall be lawful for him so to do.

Mode of licensing pilots.

41. It shall be optional with the master to employ a pilot; and it is hereby declared that the Government shall incur no risk or responsibility whatever, in respect of any licensed pilot whom the master shall, at his option, think fit to employ.

Governor may cancel licence.

Employment of pilot optional with the master.

42. Although it has been deemed expedient, by this Act, to require that persons acting as pilots to vessels entering into the ports of this Colony shall be licensed, in order the better to provide

No specific rates of pilotage established.

<sup>1</sup> Licences may be signed by Colonial or Under Colonial Secretary. Act 25 of 1878, and Govt. Notice, August 23, 1878 (Governor's Signature Act.)

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for the competency and good conduct of such persons, it has not been deemed expedient to establish or fix any rates of pilotage or remuneration to pilots when so employed, but to leave such remuneration for such service to be agreed upon or regulated between the master and pilot themselves; and nothing in this Act contained shall be deemed to have established or fixed any specific rates of pilotage.

Pilots may board before pratique received.

43. In consideration of the nature of the services required of a pilot, it shall be lawful for any licensed pilot to proceed to any distance in the offing of any ports of this Colony, and to board any vessel, if the master think fit to receive him or to accept his services, notwithstanding that the vessel may not have been previously boarded by a Port Captain or Health Officer, as hereinbefore provided. But in every such case, neither the pilot nor any of his crew shall communicate with persons on or from the shore, or with any other vessel lying at anchor, until the vessel boarded by such pilot has received pratique; nor shall the pilot take any person with him in his boat, excepting the regular and usual crew of and belonging to his boat, when boarding a vessel before the Port Captain or his crew, under a penalty of £10, in respect of each person taken off contrary to the provisions of this section; nor shall any pilot, or any of his crew so boarding as aforesaid, recommend, directly or indirectly, to the master of any such vessel, or to any passenger, or any other person on board thereof, any merchant, agent, dealer, hotel-keeper, lodginghouse-keeper, tradesman, boatman, or other person whatever, for employment in any capacity, or to be dealt with for the supply of stores, provisions, or supplies of any kind.

But may not communicate with the shore, or other vessel at anchor.

Pilots not to recommend agents, &c. to ships.

Moorings not to laid down without permission of port captain.

44. <sup>(1)</sup> It shall not be lawful to keep a hulk moored in any of the ports of this Colony, or to lay down moorings in the anchorage ground thereof, without a licence having been previously obtained from the Port Captain of the port; and if any hulk be moored, or any moorings laid down, contrary to the provisions of this section, the Port Captain of the port shall, and he is hereby authorized and required to, remove the same; and the person or persons so offending shall be liable to, and chargeable with, all costs and charges attending such removal, and shall also forfeit the sum of £50.

Boats to be licensed annually.

45. <sup>(2)</sup> Every owner of a boat in this Colony, whether used in the transport of merchandise, or for fishing, or for any other purpose of hire or profit whatsoever, is hereby bound to obtain a licence for the employment of such boat, from the Port Captain, or the Resident Magistrate, and in case there be none such, from some other person duly authorized, at the port to which such boat belongs; and every such licence shall be renewed annually, between the 1st and 15th of January, in each year; and every

<sup>1</sup> For amount of licence see Act 20 of 1884, Tariff 15. (Stamps and Licences).

<sup>2</sup> See also Tariff 15, Act 20 of 1884, for annual licences to be taken out for certain classes of boats (Stamps and Licences).

licence granted at any time during the year, shall expire on the 31st December of that year; and the proprietor of any boat employed without such licence, or without having had a licence duly renewed at the expiration thereof, shall be subject to a penalty not exceeding £5; and in case of the proprietor not being forthcoming, such boat so employed without a licence shall be confiscated.

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Penalty on boat without licence.

46. No licence shall be granted for any boat as aforesaid, until the owner thereof has given bond, in the penal sum of £20 sterling, for his good and regular conduct, and for the due observance of these regulations, or such other as may hereafter be established by law on this head, and has produced a certificate of tonnage of the said boat, signed by a master shipwright or other competent person.

Bond to be passed before licence is granted.

47. All boats so licensed shall be numbered, and their numbers painted legibly on their sterns, in figures of not less than three inches in length, with black paint on a white ground, and shall be duly registered at the office at which the licence shall be granted.

Licensed boats to be numbered and registered.

48. If the owner of any boat, licensed as aforesaid, or if any boatman or other person on board thereof, should sell, supply, or convey any wine or spirituous liquors to any of the crew, or to any other person on board of any vessel lying at anchor in any of the ports of this Colony, without the consent of the master of such vessel, the owner of such boat shall forfeit the sum of £2 for the first offence, the sum of £5 for the second offence, and the sum of £10 for the third, or any further like offence.

Penalty for carrying wines or spirits to a ship at anchor.

49. Whenever the owner of any licensed boat has been convicted of the offence in the last preceding section mentioned, three or more times within the space of twelve calendar months, then the licence for the boat by means of which the last offence has been committed shall thereupon, *ipso facto*, become null and void.

Three convictions within twelve months to forfeit licence.

50. On the transfer, by sale or otherwise, of any licensed boat, as aforesaid, the licence for such boat shall become null and void, and the party to whom the boat is transferred shall be required to take out a new licence, and enter into the security required by this Act.

On transfer of boat, licence becomes void.

51. In case any fine imposed by any section of this Act shall not be paid upon conviction, then, in case no other punishment shall be provided in the section imposing the said fine, the offender shall be liable to be imprisoned, with or without hard labour, for any period not exceeding three months.

How if fine be not paid on conviction.

52. The Governor, if he shall see reason so to do, may remit or mitigate any fine or forfeiture incurred under this Act.

Governor may remit fine.

53. All contraventions of the present Act shall be cognizable in Cape Town before the Resident Magistrate or the Judge of Police, and in any other port, before the Resident Magistrate thereof, or of the district to which such port shall belong; and all fines and forfeitures incurred under any of the provisions of this Act, shall be sued for in the said courts respectively; and all penalties and

Offences against the Act where cognizable.

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How fines to be applied.

forfeitures recovered under this Act, shall be divided and applied as follows, that is to say,—one moiety of the proceeds to be paid to the person informing and suing for the same, and the other moiety to be paid into the Colonial Treasury, and to be applied to the general revenue of the Colony: Provided, always, that the Governor may, if he should deem it expedient, pay the whole amount of the penalty or forfeiture, or such part thereof as may have been recovered, to the person informing and suing for the same.

SCHEDULE A.

[Repealed by Act 4 of 1883. Public Health.]

SCHEDULE B.

[Repealed by Act 46 of 1885 (*infra*).]

Act 4—1883.]

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(1) PART II.—QUARANTINE.

Vessels of every kind subject to provisions of this Act.

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.

Notification of infectious disease by Governor and the consequences.

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

- (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.

Ships which have had infectious diseases during voyage.

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.

Vessels, &c., arriving from infected places to be quarantined.

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)

<sup>1</sup> For full text of this Act see "Public Health."

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.

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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 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.

Nothing to be landed till ship discharged from 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.

Penalties for breach of quarantine.

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

Port Officers and others boarding vessels to remain on board till pratique granted.

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Masters of ships to furnish declaration of health, &amp;c.

quarantine by a competent authority, the said port officer, or boat's crew, shall remain in and be liable to quarantine.

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.

Penalty for false statement.

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.

If clean bill of health cannot be given inquiry to be made.

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.

In case of quarantine, duty of Port Officer.

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 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.

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.

In what cases Port Officer may give pratique.

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.

Powers of magistrates and Justices of the Peace where no Health or Port Officer.

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.

Power to quarantine.

No. 4—1883.

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.

Guards, and power to use force.

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.

Powers to be exercised by the Governor.

26. The Governor may do all or any of the following things:

- (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 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.

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 :

Penalties for offences against this Act.

- (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

No. 4—1883.

- 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.

Powers to arrest  
persons breaking  
quarantine.

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.

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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, purifying 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.

Provisions for cleansing and disinfecting.

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.

For opening and airing things.

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.

Supplies to crews and passengers of quarantined ships.

## 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.

No. 4—1883.

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.

Act No. 46—1885.]

[August 14, 1885.

ACT

To Facilitate the Removal of Wrecks obstructing Navigation, and to amend in certain respects the Port Regulations enacted by Act No. 16 of 1857.

Preamble.                      WHEREAS it is desirable to amend the law relating to the removal of ships or vessels or the hulls or remains of ships or vessels stranded or abandoned in harbours or tidal waters, and also to amend the law relating to the recovery and disposal of anchors and chains or cables parted with by vessels within harbours or tidal waters: 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:—

Laws repealed.                      1. The Ordinance No. 1 of 1847, intituled an Ordinance for removing vessels stranded in the Ports and Harbours of this Colony, and the Stranded and Sunken Vessels Act No. 21 of 1872, and the thirty-second, thirty-third, thirty-fourth and thirty-fifth sections of Act No. 16 of 1857, together with the schedule B to the said Act, shall be and the same are hereby repealed.

2. In this Act,  
Meaning of term “harbour.”                      The term “harbour” includes harbours and ports properly so-called, whether natural or artificial, roadsteads and anchorages of every description, estuaries, navigable rivers, piers, jetties, and other works, in or at which ships or vessels can obtain shelter or ship and unship goods or passengers;

The term "tidal water" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbour.

No. 46—1885.

"Tidal water."

The term "harbour authority" means

"Harbour authority."

(a) At Port Elizabeth—the Port Elizabeth Harbour Board,

and in respect of all other harbours or tidal waters

(b) The port captain, in case there be such an officer, having authority over the place where any vessel is sunk, stranded, or abandoned ;

(c) In case there be no port captain, all persons or bodies of persons corporate or incorporate entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or protecting any harbour, or of managing, protecting, or regulating the navigation of any tidal water, and

(d) In case there be no port captain, or person or body as aforesaid, the Civil Commissioner having authority over the territorial waters washing the division in which he is Civil Commissioner.

3. When any vessel is sunk, stranded or abandoned in any harbour, tidal or water, or in or near any approach thereto, in such manner as in the opinion of the harbour authority to be or likely to become an obstruction or danger to navigation in that harbour or water or in any approach thereto, it shall and may be lawful for such harbour authority to take possession of and raise, remove, or destroy or cause to be taken possession of, raised, removed or destroyed, the whole or any part of the said vessel and to light or buoy, or cause to be lighted or buoyed any such vessel or part until the raising, removal, or destruction thereof, and to sell, or cause to be sold, in such manner as may be thought fit any vessel or part so raised or removed, and also any other property recovered in the exercise of the powers conferred by this Act, and out of the proceeds to re-imburse such harbour authority for the expenses incurred under this Act including the expenses of sale, and to hold the surplus, if any, of such proceeds in trust for the persons entitled thereto : Provided as follows :

Powers of harbour authority in respect of vessel sunk, &c., and dangerous to navigation.

Power of sale.

(1) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, a sale shall not be made under this Act, until at least seven days' notice of the intended sale has been given by advertisement in some local newspaper circulating in or near the district.

Notice of sale.

(2) At any time before any property is sold under this Act, the owner thereof shall be entitled to have the same delivered to him on making payment of the expenditure incurred by the said harbour authority.

Owner may claim delivery in payment of expenses.



No. 46—1885.

Interested person may give notice of intention to raise, &c., sunk vessel.

4. At any time after the said harbour authority shall have taken possession of any vessel which as is mentioned in the last preceding section shall have been sunk, stranded, or abandoned, the owner, master, or agent of, or other person interested in the said vessel, may give notice to such harbour authority, of his intention forthwith to raise and remove, or to complete the raising or removal of the said vessel, and meanwhile to light or buoy her until so completely raised or removed, and thereupon if such owner, master, agent, or other person shall forthwith pay to such harbour authority the amount of expenses incurred by such authority, and give security to such harbour authority in such amount and with such surety or sureties as the said harbour authority shall deem sufficient, conditioned upon the proper lighting, buoys, and raising, or removal of the sunk, stranded, or abandoned vessel within such time as shall be appointed and determined by the harbour authority receiving such security, the powers hereinbefore conferred upon such authority shall cease unless the said owner, master, agent, or other person shall fail to effect the proper lighting, buoys, raising or removal of the said vessel within the time so appointed and determined by such harbour authority, but in the event of such failure the powers conferred by this Act shall revive and the amount of such security shall immediately become payable.

Security to be given.

Powers of harbour authority stayed pending due and proper raising, &c., of vessel by interested person.

Scope of provisions of Act.

5. The provisions of this Act shall apply to every article or thing, or collection of things being or forming part of the tackle, equipments, stores, or ballast of a vessel in the same manner as if it were included in the term "vessel," and for the purposes of this Act any proceeds of sale arising from a vessel or any property recovered therefrom shall be regarded as a common fund.

Proceeds of sale a common fund.

Deficiency of proceeds to meet reasonable expenses paid by Colonial Treasury

6. Whenever the proceeds of such sale of any vessel as is in the third section of this Act provided for shall fail to meet the expenses mentioned in the said section, the Treasurer of this Colony shall make payment of the amount of such deficiency out of the Colonial Treasury upon satisfactory proof that the deficiency arises upon reasonable expenses incurred in and about the lighting, buoys, raising or removal of such vessel, or in and about the sale thereof.

Powers of harbour authority as to anchors, &c., lost in harbour, &c.

7. Every harbour authority is hereby empowered and required to use his utmost endeavours to recover as speedily as possible all anchors, chains or cables which may have been parted with by merchant vessels riding at anchor in the harbour or tidal water in respect of which such harbour authority has power, and to retain possession of the same until the party rightfully claiming the same pay to him, or give security to his satisfaction, for the immediate payment of the amount of salvage due for the recovery thereof, in conformity with a scale of rates to be from time to time fixed or appointed by the Governor; and no person, except such harbour authority, or the master of any such vessel as aforesaid, or any person duly authorized by either of them, or acting in performance of any contract entered into with any such harbour authority, may

Salvage how calculated.

Penalty on unauthorized person for attempting to recover anchors, &c.

attempt to perform such service, under a penalty not exceeding ten pounds for each offence: Provided, always, that the master of any vessel which has parted from an anchor or chain or cable may recover the same by his own boats or any other means; and every such master shall be allowed five working days for the recovery thereof, and such harbour authority shall not, before the expiration of such period, proceed to recover any such anchor or chains or cable, except at the request of the master or his agent.

No. 46—1885.  
Master of vessel may recover anchor, &c. within five days.

8. If the salvage due in respect of any such anchors or chains or cables be not paid to the harbour authority, by or on behalf of the party claiming or owing the same, within seven days after the recovery thereof, the said harbour authority shall cause a notice to be published in the *Gazette*, notifying the recovery of such article or articles, and stating that if the salvage due on account thereof be not paid within twenty-one days from the date of the publication thereof the same will be sold.

If salvage not paid notice of sale in *Gazette* of articles recovered.

9. If the salvage, together with all necessary expenses incurred, be not paid within the time prescribed in such notice, the harbour authority may either cause such article or articles to be sold by public auction to the highest bidder, or by private sale or tender dispose of the same upon such terms as he may deem to be most advantageous and profitable, and the proceeds of every such sale shall be applied in the following order, that is to say, to the payment of customs dues, if any, of charges of sale and other necessary expenses, and of salvage. The surplus, if any, shall be paid into the Colonial Treasury for the use of the proprietors of the articles or their agents, duly authorized; provided such surplus be claimed within one year after the date of sale, after which time any such surplus shall no longer be recoverable from the Colonial Treasury.

Sale of articles recovered to meet expenses of harbour authority.

Surplus recoverable from Treasury within one year.

10. If the proceeds of any sale effected under the provisions of the last preceding section be not sufficient after payment of the necessary charges and expenses to defray the salvage due in respect thereof, the Treasurer of the Colony shall pay out of the Colonial Treasury to the harbour authority the amount of salvage due, or such portion thereof as such proceeds as aforesaid may not be adequate to cover, and in all cases where proper search has been made by any harbour authority for anchors, chains or cables or other articles or things whatsoever which might obstruct the anchorage ground, the said Treasurer may pay out of the Colonial Treasury such sum as may to him seem reasonable payment for the cost and expense of such search: Provided, however, that no portion shall be claimable from the Colonial Treasury of any charges or expenses incurred in and about recovering or searching for any of the abovementioned articles or things over and above the charges or expenses incident to three days search in any particular case, unless the sanction of the Governor shall first have been obtained to the extension of the said search for such period as he shall deem fit.

Payment of reasonable deficiency after sale by Colonial Treasury, subject to certain restrictions.

No search for more than 3 days without Governor's sanction paid for.

No. 46—1885.

Power to delegate  
by contract powers  
under this Act.

11. The exercise of any of the powers by this Act conferred upon harbour authorities in and about the lighting, buoying, raising, removal and destruction of vessels sunk, stranded or abandoned, and in and about the recovery of and searching for anchors, chains, cables, or other articles or things, may be by any harbour authority lawfully delegated by contract to any person upon such terms as shall seem reasonable, and upon the execution of any such contract the contractor shall be and is hereby authorized to exercise the said powers, and any sum of money paid to or consideration received by such contractor under his contract with such harbour authority shall be deemed for all the purposes of this Act to be an expense incurred in and about the lighting, buoying, raising, removal or destruction of such vessels, or the recovery of such anchors or cables: Provided, however, that no such contractor shall be entitled to claim from the Treasurer of the Colony any sum out of the Colonial Treasury over and above the amount which such harbour authority would be entitled to claim in respect of the matter contracted for by such contractor.

Sale or contract  
under this Act not  
limited by Section 36  
of Act No. 16 of 1857.

12. Nothing contained in the thirty-sixth section of Act No. 16 of 1857 shall be deemed to apply to any sale or contract effected under the provisions of this Act.

Limits of harbours  
and tidal waters.

13. The proclaimed limits of any harbour at the date of the passing of this Act shall continue to be the limits of such harbour for the purposes of this Act, but the Governor, by proclamation from time to time, may declare any harbour or tidal water to be, at and from the date of such proclamation, a harbour or tidal water within the meaning of this Act, and may, at and from the date of any proclamation to that effect, alter the proclaimed limits or fix and define the limits of any harbour or tidal water.

Short title.

14. This Act may be cited for all purposes as the "Wrecks Removal Amendment Act, 1885."

No. 18—1869.]

[October 18, 1869.

## ACT

To make Provision for clearing the Anchorage of the Port of East London of Anchors and Cables left derelict.

Preamble.

WHEREAS the anchorage of the port of East London is rendered to a great degree unsafe by reason of a number of anchors which have from time to time been left derelict therein, and it is expedient that provision should be made for clearing the said anchorage: 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:—

Who may search  
for and recover aban-  
doned anchors.

1. It shall be lawful for such person as shall be thereto appointed by the Governor from time to time to search for and recover as speedily as possible all anchors and cables which may have been

lost and abandoned by any ship or ships in the said anchorage, which anchors and cables, when recovered, shall be taken possession of for and on account of Her Majesty in her colonial revenue, and shall be sold or otherwise disposed of on such terms as to the Governor shall seem fit.

No. 18—1869.  
Disposal of anchors recovered.

2. Every anchor and cable shall be deemed to be abandoned if within twenty-one days from the date of the loss thereof no effective measures shall have been taken by or on behalf of the owners of the ship by which the same shall have been lost to raise or recover the same, or if within six weeks from the date of such loss the same shall not actually have been raised and recovered by or on behalf of such owners.

When anchor shall be deemed to have been abandoned.

3. This Act may be cited for all purposes as the "East London Anchorage Clearance Act, 1869."

Short title.

No. 7—1871.]

[August 11, 1871.

(<sup>1</sup>) 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.

\* \* \* \* \*

11. (<sup>2</sup>) And whereas for the purpose of reimbursing the Government, 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 at 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.

<sup>1</sup> To be cited as "The East London Harbour Act, 1871." See Act 12 of 1876, under "Loans." For full text of this Act see under "Loans."

<sup>2</sup> See §§ 6 and 7, Act 26 of 1875 (*infra*).

No 7—1871.

## EXEMPTIONS. (1)

1. All public stores, naval and military baggage, and personal baggage of passengers.
2. Ship's stores outwards.
3. All goods shipped upon which dues had been paid on importations under this Act.
4. [Repealed by Act 22 of 1878, *infra*].

## 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. 11—1874.]

[July 29, 1874.

## ACT

For Exempting from Wharfage Dues, Bullion and Coin landed at East London and Port Alfred.

Preamble.

WHEREAS by the Act No. 26 of 1864 bullion and coin landed in Algoa Bay, Mossel Bay, and Port Alfred, were exempted from the payment of wharfage dues: And whereas there may be reason to doubt, whether, in consequence of the passing of the Act No. 10 of 1866-1867, the said exemption as to Port Alfred still exists, and it is desirable to remove such doubts: And whereas it is expedient that bullion and coin imported into the port of East London should be exempted from the payment of wharfage dues: 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:—

Bullion and coin exempted from wharfage dues at East London and Kowie.

1. From and after the taking effect of this Act, all bullion and coin landed at or in the harbours of East London and the Kowie, respectively, shall be exempt from the payment of wharfage dues.

<sup>1</sup> Bullion and coin landed also exempted. Act 11 of 1874.

No. 26—1875.]

[June 30, 1875.

ACT <sup>(1)</sup>

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.

\* \* \* \* \*

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.

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. 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.

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

Preamble.

<sup>1</sup>To be cited as “ The East London Harbour Amendment Act, 1875.” See Act 12 of 1876 under “ Loans.” For full text of this Act see under “ Loans.”

No. 22—1878.

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.

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.

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.

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. 4.—Sd. George Cathcart.]

[April 3, 1852.

### Ordinance for Improving the Kowie Harbour.

[This Ordinance provides for the formation and management of the Kowie Harbour Improvement Company, which was dissolved by Proclamation dated 30th June, 1870. The following sections only, viz., §§ 35, 43, 44—46, 50, 51 and 53, require to be re-printed.]

\* \* \* \* \*

Proclamation of levy of wharfage dues.

35. And be it enacted that when and as soon as it shall be made to appear to the Governor aforesaid by the directors for the time being that the works aforesaid have been sufficiently advanced to permit the entrance of ships and vessels into the said harbour it shall and may be lawful for the said Governor, by his proclamation to be issued for that purpose and published in the *Government Gazette*, to announce that from and after some certain day to be specified in such proclamation there shall be levied by and paid to the said directors or such other person or persons as shall be appointed to receive the same for their use upon all goods, articles, matters, and things landed or shipped in or at the said harbour such dues of wharfage not exceeding the several rates of dues respectively set forth in the schedule to this Ordinance as the said Governor shall approve of and appoint, and such dues from time to time by proclamation to alter, but so however as never to exceed

Ord. 4—1852.

the rates mentioned in the said schedule; and the said directors shall be entitled to recover by legal process all such dues from the owners of all goods, articles, matters, and things landed or shipped respectively, and shall moreover have the right of retaining all goods, articles, matters, and things landed in or at such harbour in respect of which wharfage dues shall be payable until the same shall be paid, as well as the right of preventing any goods, articles, matters, or things from being shipped in or at the said harbour until the wharfage dues payable in respect thereof shall have been paid; Provided that the said directors shall erect or provide such cranes and other conveniences as may be necessary for landing and shipping at the said harbour.

\* \* \* \* \*

43. And be it enacted that the right to and property in all and singular the embankments, walls, piers, jetties, wharfs, or other works constructed under the provisions of this Ordinance, as also to and in the said harbour itself, shall vest in the directors of the said company for the time being: Provided that the said harbour when completed shall be taken to extend from the end next the sea of the piers to be constructed at the entrance thereof, up to the spot or place in the Kowie River at which a line drawn parallel to the line of low water along the sea shore and at a distance from such low water line of one mile would cross the said river; and provided, also, that the said directors shall appoint fit and proper landing-places in the said harbour, and that no articles shall be landed or shipped except at some such landing-place unless by permission of the said directors, under the penalty of forfeiting any sum not exceeding fifty pounds and not less than forty shillings, which sum shall be paid to the said directors for the purposes of this Ordinance.

Property in works vested in directors.

Extent of harbour, landing-place, &c.

44. And be it enacted that the directors for the time being may from time to time should they deem it expedient let or farm the wharfage dues payable in or at the said harbour, and all wharfs, cranes, machines, or other conveniences provided by the said directors under this Ordinance at such rents and upon such terms and conditions as shall be agreed upon between the said directors and the person contracting with them: Provided that the said directors shall be bound to take good collateral security for the payment of the stipulated rent and that no such hiring shall be for any term exceeding one year; provided, also, that no such contract of hire shall be entered into before the Governor aforesaid shall have been informed of and shall have approved of the terms and conditions thereof and of the amount of rent proposed to be reserved.

Power in directors to farm out wharfage dues.

Limitation of term of hiring to one year.

45. And be it enacted that it shall and may be lawful for the said directors to make arrangements with any person or persons who shall be willing to provide and keep in or at the harbour aforesaid a steam-vessel of the sort commonly called a steam-tug

Arrangements with persons providing steam-tug.

DDDD



Ord. 4—1852.

for assisting vessels frequenting the said harbour, and such directors shall approve of a reasonable scale of fees or charges to be paid by vessels employing such steam-tug, and no higher fees or charges shall in any case be demandable or payable: Provided that the said directors before approving of any such scale shall submit the same to the Governor aforesaid and obtain his sanction; and provided, also, that no vessel shall be bound to employ or accept the assistance of such steam-tug.

Liability of owners of ships for damage to works.

46. And be it enacted that the owner of every vessel shall be answerable to the said directors for any damage done by such vessel through the wilful act or negligence of any person employed about the same to any of the works aforesaid or to the said harbour; and the master or other person in charge of such vessel by whose wilful act or negligence any such damage is done shall also be liable to make good the same, and the said directors may detain such vessel until sufficient security has been given for the amount of damage done by such vessel: Provided that every such owner who shall be obliged to pay or make good the amount of any damage arising from any wilful or negligent act or omission of any other person shall be entitled to recover from such other person the amount so paid.

\* \* \* \* \*

Period at which works, &c., shall become property of the Queen.

50. And be it enacted that as soon as the shareholders of the said company shall be fully repaid their paid-up capital with all interest or dividends due thereon as well as the certain bonus hereinbefore provided then all and singular the works aforesaid and all land granted to or otherwise vested in the said directors and not sold or otherwise disposed of shall cease to be the property of the said directors and become thenceforth the property of Her Majesty the Queen in Her Colonial Government for public purposes, and this Ordinance shall thereupon cease and determine: Provided that the directors for the time being shall be bound to execute all necessary surrenders or other deeds requisite for vesting the said property in her said Majesty.

Cessation of board under Ordinance No. 21, 1847.

51. And be it enacted that upon the commencement and taking effect of this Ordinance the Board of Commissioners appointed under the Ordinance No. 21, 1847, for the improvement of the port and harbour of the Kowie River shall be dissolved, and no such board shall again be appointed during the existence of this Ordinance.

\* \* \* \* \*

Interpretation clause.

53. 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 whenever any public officer is named by his name of office the person meant shall be deemed to be the person acting as such officer, and that the term "month" shall mean a calendar month, and the term "owner" when used in relation to goods shall be

taken to include any consignor, consignee, shipper, or agent for the sale or custody of such goods as well as the proprietor thereof, and that words importing the singular number only shall include the plural number also and that words importing the plural number only shall include the singular number also and that words importing the masculine gender only shall include females, unless there be something in the subject or context repugnant to such construction.

Ord. 4--1852.

51. 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. 26—1864.]

[July 26, 1864.]

## AN ACT

For Exempting from Wharfage Dues, Bullion and Coin landed in Algoa Bay, Mossel Bay, and Port Alfred.

WHEREAS, by Act No. 10 of 1858, entitled "An Act for enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues," and by Act No. 7 of 1860, entitled "An Act for enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues," and by Ordinance No. 4 of 1852 (1) entitled "Ordinance for improving the Kowie Harbour," certain Wharfage Dues are payable upon the landing or shipping of goods in Algoa Bay, Mossel Bay, and Port Alfred respectively.

Preamble.

And whereas it is expedient to exempt bullion and coin from the payment of such dues on importation: Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, as follows:—

1. From and after the promulgation of this Act, all bullion and coin shall be exempt from payment of wharfage dues upon being landed in Algoa Bay, Mossel Bay, or Port Alfred respectively.

Bullion and coin exempted from wharfage dues.

No. 11—1874.]

[July 29, 1874.]

## ACT

For Exempting from Wharfage Dues, Bullion and Coin landed at East London and Port Alfred.

WHEREAS by the Act No. 26 of 1864 bullion and coin landed in Algoa Bay, Mossel Bay, and Port Alfred, were exempted from the payment of wharfage dues: And whereas there may be reason to doubt whether, in consequence of the passing of the Act No. 10 of 1866-1867, the said exemption as to Port Alfred still exists, and it is desirable to remove such doubts: And whereas it is expedient that bullion and coin imported into the port of East

Preamble.

<sup>1</sup> See Act 10 of 1866-67, *infra*.

No. 11—1874.

London should be exempted from the payment of wharfage dues : 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 :—

Bullion and coin  
exempted from  
wharfage dues at  
East London and  
Kowie.

1. From and after the taking effect of this Act, all bullion and coin landed at or in the harbours of East London and the Kowie, respectively, shall be exempt from the payment of wharfage dues.

No. 10—1866-67.]

[January 12, 1867.

## ACT

To Amend the Ordinance No. 4 of 1852, and make Provision for different Rates of Wharfage and Cranage to be levied on Matters shipped or landed in the Kowie Harbour.

Preamble.

WHEREAS it is desirable that the tolls or dues of wharfage and cranage payable under or by virtue of the Ordinance No. 4 of 1852 at the Kowie harbour, on goods, articles, matters, and things landed or shipped in the said harbour, should be altered, and certain new rates of tolls or dues should be established : 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 :—

Rates of dues payable.

1. From and after the passing of this Act the dues set forth in the schedule to said Ordinance No. 4 of 1852, shall cease to be payable, so far as the same are different from the dues set forth in the first schedule hereunto annexed, and the dues set forth in the first schedule hereunto annexed shall be payable in lieu thereof.

Person landing or  
shipping goods to  
state to principal  
Customs officer the  
value thereof.

2. The person by whom any goods, articles, matters, or things chargeable according to the schedule aforesaid upon the value thereof, shall be or be about to be landed or shipped in Kowie harbour, or his known agent, shall be bound to state to the principal officer of Customs at Kowie harbour, who shall be entitled to demand and receive the dues or rates 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, then 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 this 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 in Kowie harbour cannot be declared at or

Declaration as to  
value may be re-  
quired.

Bond to be taken  
if wharfage not paid  
forthwith.

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. 10—1866-7.

3. 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.

Penalty for false declaration.

4. The principal officer of Customs as aforesaid shall periodically, and at such periods as shall be agreed upon between him and the directors of the Kowie Harbour Improvement Company, pay over to the said directors all sums received by him under this Act, and shall allow the said directors access at all reasonable times to all such accounts, books, and papers as may be required for checking or auditing the accounts of such sums: Provided, also, that it shall be lawful for the said directors to employ, and pay out of the sums receivable under this Act, a wharf or other clerk, who shall be under the superintendence and control of the said officer of Customs.

Sums collected under this Act to be paid over to Kowie Harbour Improvement Company.

Employment of clerk authorized.

#### SCHEDULE No. 1.

Upon all wool shipped or landed at the Kowie 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 importation under this Act.
4. All goods shipped to or landed from any place within the Colony. <sup>(1)</sup>

#### 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 Kowie harbour, namely

<sup>1</sup> And all bullion and coin landed, Acts 26, of 1864, and 11 of 1874, *supra*.

No. 10—1866-7. (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 \_\_\_\_\_, 186—, 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. 16—1869.]

[Oct. 18, 1869.

### ACT

## For the Dissolution of the Kowie Harbour Improvement Company.

Preamble.

WHEREAS, by a resolution of the House of Assembly, under date the 27th day of August, in the year 1868, the Governor was requested to ascertain if the Kowie Harbour Improvement Company would make over their works and property to the Government on the terms proposed by a select committee of the said House, under date the 26th August, 1868: And whereas it is expedient that the Governor should be authorized to carry into effect the arrangement proposed in manner 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:—

Repugnant clauses of Ordinance No. 4 of 1852 repealed.

1. So much of the Ordinance No. 4 of the year 1852, intituled “An Ordinance for improving the Kowie Harbour,” as is repugnant to or inconsistent with the provisions hereof, shall be and the same is hereby repealed.

Governor to call upon shareholders to state whether they are willing to surrender shares.

2. The Governor shall, as soon as may be convenient, by notice to be published in the *Government Gazette*, call upon all persons having claims against the Kowie Harbour Improvement Company, or against the directors of the same, to transmit to the Colonial Secretary, on or before a day to be named in such notice, a statement setting forth the nature and amount of such claim.

Governor to call upon shareholders to state whether they are willing to surrender shares.

3. The Governor shall likewise and in like manner call upon all persons holding shares in the Kowie Harbour Improvement Company to declare, on or before some day to be named in the notice, not being earlier than forty-two days from the date of publication of such notice, whether they are severally willing to surrender to the Government of this Colony all rights, titles, and privileges which they may possess as such shareholders.

4. It shall be lawful for the Governor, as soon as he shall have received from shareholders in the said Company owning not less than four-fifths of the paid-up capital of the said Company the surrender of their rights, titles, and privileges as aforesaid, to apply any sum or sums of money, not exceeding twenty-five thousand pounds in all, to the extinction and satisfaction of all the claims against the said Company of which notice shall have been given to the Colonial Secretary, in terms of the second section hereof. And when and so soon as all such claims shall have been extinguished and satisfied, the Governor shall, by proclamation, <sup>(1)</sup> to be published in the *Government Gazette*, declare the said Kowie Harbour Improvement Company to be dissolved, and the same shall thereupon be deemed and taken to have been dissolved accordingly: Provided that if just and lawful claims against the said Company, or against the directors of the same, exceeding the sum of twenty-five thousand pounds, shall have been transmitted as aforesaid to the Colonial Secretary, then the said proclamation shall not be issued, unless and until the said directors shall pay over to the Colonial Government such a sum as shall, together with the aforesaid sum of twenty-five thousand pounds, be sufficient to discharge, in full, all just and lawful claims against the said Company, or against the directors of the same.

No. 16—1869.

On surrender of shares, Governor may liquidate claims against company;

And declare company dissolved.

If claims exceed £25,000, directors to pay excess.

5. From and after the publication of the said proclamation, the liabilities of the shareholders in, and the directors of, the said Company shall cease and determine; but nothing in this Act contained shall be construed to impose upon the Colonial Government any liability on account of the past transactions of the said Company over and above any guarantee which may have been given according to law for the payment of any sums that may have been borrowed for the use of the said Company, and of the interest falling due thereupon.

On dissolution of company, liabilities of shareholders and directors to cease.  
But Colonial Government not liable for past transactions

6. From and after the publication of the said proclamation all the property, powers, rights, and privileges heretofore possessed and exercised by the shareholders and directors of the said Company in or in respect of the said Company or undertaking shall be deemed to be transferred to and vested in the Government of the Colony, and the Company shall be thereupon discharged from all liabilities to the Colonial Government in respect of moneys heretofore advanced to or incurred for the said Company by the Government and of all interest thereon. And it shall be lawful for the Governor, with the advice of the Executive Council, to make such regulations for the management of the affairs of the said Company as to him shall appear necessary, and which regulations shall have the force of law until an Act shall have been passed by the Parliament to alter or confirm the same.

On dissolution of company, all property, rights, &c., to be vested in the Government.

And liability of company for moneys advanced by Government to cease.

Governor to make regulations for managing affairs of company.

7. [Repealed by Act 13 of 1876. See "Loans."]

<sup>1</sup> See Proclamation of June 30, 1870.

No. 16—1869.

## SCHEDULE.

- |                                                                                                                                                                                                                     |         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1. To be applied to or towards the extinction or satisfaction of the certain claims in the second section of this Act mentioned, a sum not exceeding . . . . .                                                      | £25,000 |
| 2. For repaying to the Colonial Government certain moneys heretofore advanced by the said Government to the Kowie Harbour Improvement Company for carrying on the works at the Kowie, a sum not exceeding . . . . . | 15,000  |
|                                                                                                                                                                                                                     | £40,000 |

No. 7—1860.]

[July 17, 1860.

## ACT

For Enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues.

Preamble.

WHEREAS the Board of Commissioners for the Harbour of Mossel Bay, appointed under and by virtue of the Ordinance No. 21, 1847, entitled "Ordinance for Improving the Ports, Harbours, and Roadsteads of this Colony," have caused an estimate to be made of the cost of constructing certain works calculated to promote the safe and convenient anchorage of ships and landing and shipping of goods in the said harbour: And whereas it is estimated by the said board, and by the engineers and others who have by desire of the said board considered the subject of the said works, that a sum not exceeding seven thousand pounds will be sufficient to defray the cost of constructing or completing the said works and also any expense which the said board may incur in taking over (should it see fit so to do) a certain jetty already existing in the said harbour, which sum, together with all interest to become due thereon when borrowed, will, as it is estimated, be paid off within fifteen years out of the wharfage dues to be levied under this 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:—

Harbour board may raise money on debentures.

1. It shall be lawful for the said board to borrow and take up from time to time, upon interest, such sum or sums of money, not exceeding seven thousand pounds in the whole, as may be necessary for constructing such works in or at Mossel Bay as the said board shall judge fit to be constructed; and the provisions of the sixth and seventh sections of the Ordinance No. 21, 1847, shall, except as hereinafter excepted, apply to all such sums of money as aforesaid, precisely as if this Act were the vote or resolution of the former Legislative Council of this Colony in the said sections mentioned: Provided that the Governor aforesaid shall, in regard to the matters in the said seventh section of the said Ordinance

mentioned, act with the advice of the Executive Council of the Colony, instead of with the advice and consent of the Legislative Council in the said section mentioned: And provided, also, that the word "deed" in the said section mentioned shall include the sort of security or engagement commonly called a debenture.

No. 7—1860.

2. It shall be lawful for the said board, and it is hereby authorized, to levy or cause to be levied upon goods, articles, matters, or things landed or shipped in Mossel Bay, the several dues or rates set forth in the tariff contained in the schedule to this Act; and the fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections of the Ordinance aforesaid, No. 21, 1847, shall apply to such dues or rates precisely as if the said dues or rates had been tolls or rates approved of and proclaimed by the Governor of the Colony, with the advice and consent of the former Legislative Council, whilst it existed, and had been by the said Governor, with the said last mentioned advice and consent, declared to be payable in regard to every article, matter, or thing landed or shipped in any part of Mossel Bay.

Harbour board may levy wharfage dues on goods landed or shipped.

3. The person by whom any goods, articles, matters, or things chargeable by the tariff aforesaid, upon the value thereof, shall be or be about to be landed or shipped in Mossel Bay, or his known agent, shall be bound to state to the principal officer of Customs at Mossel Bay, who shall be entitled to demand and receive the dues or rates 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, then the said officer may require the person who shall have landed or shipped, or be about to land or to 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 this 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 in Mossel Bay 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.

Value of articles landed or shipped to be stated to principal officer of customs, who shall receive dues.

How, if value cannot be declared.

4. 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.

Penalty for false declaration.

5. The principal officer of Customs as aforesaid shall periodically, and at such periods as shall be agreed upon between him and the board aforesaid, pay over to the said board all sums received

Principal officer of customs to pay over to harbour board all dues collected.



No. 7—1860.

by him under this Act, and shall allow the said board access at all reasonable times to all such accounts, books, and papers as may be required for checking or auditing the accounts of such sums: Provided, also, that it shall be lawful for the said board to employ and pay out of the sums receivable under this Act a wharf or other clerk, who shall be under the superintendence and control of the said officer of Customs.

Board may appoint clerk, to be paid out of wharfage dues.

Act when to commence.

6. This Act shall commence and take effect from and after the first of August, 1860.

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SCHEDULE No. 1.

Dues chargeable on wool.

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

On other articles.

2. Upon all goods, articles, matters, or things, except wool, shipped or landed in Mossel 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.

EXEMPTIONS.

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

All ship's stores outwards.

All goods exported upon which wharfage has been paid upon importation.

All surplus stores or provisions for the use of whaling vessels. <sup>(1)</sup>

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SCHEDULE No. 2.

Form of declaration of the value of articles.

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 Mossel Bay, viz. :— (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—, 18—, 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.

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<sup>1</sup> And all bullion and coin landed or shipped, as also all articles of Colonial produce shipped to any place in this Colony. Acts 26 of 1864 and 20 of 1886, *infra*.

No. 26—1864.]

[July 26, 1864.

## AN ACT

For Exempting from Wharfage Dues, Bullion and Coin landed in Algoa Bay, Mossel Bay, and Port Alfred.

WHEREAS, by Act No. 10 of 1858, entitled “An Act for enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues,” and by Act No. 7 of 1860, entitled “An Act for enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues,” and by Ordinance No. 4 of 1852, entitled “Ordinance for improving the Kowie Harbour,” certain Wharfage Dues are payable upon the landing or shipping of goods in Algoa Bay, Mossel Bay, and Port Alfred respectively. Preamble.

And whereas it is expedient to exempt bullion and coin from the payment of such dues on importation: Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, as follows:—

1. From and after the promulgation of this Act, all bullion and coin shall be exempt from payment of wharfage dues upon being landed in Algoa Bay, Mossel Bay, or Port Alfred respectively. Bullion and coin exempted from wharfage dues.

No. 20—1886.]

[July 6, 1886.

## ACT

To Amend the “Mossel Bay Wharfage Act, 1860.”

WHEREAS it is desirable to amend in some respects the “Mossel Bay Wharfage Act, No. 7 of 1860,” so as to exempt certain goods from being charged with wharfage dues at that port: 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. Notwithstanding anything contained in the Act in the preamble mentioned, it shall not be lawful for the Mossel Bay Harbour Board, after the taking effect of this Act, to levy or cause to be levied any wharfage dues or rates upon the following articles, that is to say: Certain goods exempted from wharfage dues.

- (1) All articles of Colonial produce shipped to any place within the Colony;
- (2) Bullion and coin shipped from the port of Mossel Bay to any place whatever.

2. This Act may be cited as the “Mossel Bay Wharfage Act Amendment Act, 1886.” Short title.

No. 10—1858.]

[June 5, 1858.

## AN ACT

For Enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues.

Preamble.

WHEREAS the board of commissioners for the harbour of Port Elizabeth, appointed under and by virtue of the Ordinance No. 21, 1847, entitled " Ordinance for improving the ports, harbours, and roadsteads of this Colony," have caused an estimate to be made of the cost of constructing certain works, calculated to promote the safe and convenient anchorage of ships and landing and shipping of goods in the said harbor : And whereas it is estimated by the said board, and by the engineers and others who have, by desire of the said board, considered the subject of the said works, that a sum not exceeding thirty thousand pounds will be sufficient to defray the cost of constructing the said works, of which sum it will not be necessary that the said board should raise, by way of loan, more than twenty-one thousand and five hundred pounds : And whereas it is computed that an annual revenue of three thousand pounds, or thereabouts, will be sufficient for paying the annual interest upon such loan or loans as may be raised for the purpose aforesaid, and for paying off, within a term not exceeding ten years, the capital of such loan or loans : And whereas the said board, having deliberated, in conjunction with the merchants of Port Elizabeth, and with other parties interested in the improvement of its harbour, upon the most expedient mode of raising the annual revenue required, have come to the conclusion that the said revenue may most expediently be raised by dues upon goods landed and shipped in Algoa Bay : And whereas, owing to the extinction of the former Legislative Council of this Colony, the provisions of the Ordinance aforesaid, No. 21, 1847, relative to the borrowing of money by the said harbour board, and to the imposition of tolls or rates, can no longer operate, and it is therefore necessary that provision for the purposes aforesaid should be made 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 :—

1. [The loan authorized to be raised under this section is paid off.]

2. [Superseded by § 3, Act 25, 1875.]

Person landing or shipping goods to state to principal customs officer the value thereof.

3. The person by whom any goods, articles, matters, or things, chargeable by the tariff aforesaid, upon the value thereof, shall be, or be about to be landed or shipped in Algoa Bay, or his known agent, shall be bound to state to the principal officer of Customs at Algoa Bay, who shall be entitled to demand and receive the dues or rates 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, then the said officer may require the person who shall have landed or shipped, or be about to land or to 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 this 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 in Algoa Bay cannot be declared at or immediately after the time of such landing, to permit the same to be taken away without the payment of wharfrage; but in every such case such officer shall take a bond or obligation for the payment of such wharfrage at or before such time as shall in that behalf be specified in such bond or obligation.

No. 10—1858.

Bond to be taken if wharfrage not paid forthwith.

4. 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.

Penalty for false declaration.

5. The principal officer of Customs as aforesaid shall periodically, and at such periods as shall be agreed upon between him and the board aforesaid, pay over to the said board all sums received by him under this Act, and shall allow the said board access at all reasonable times to all such accounts, books, and papers as may be required for checking or auditing the accounts of such sums: Provided, also, that it shall be lawful for the said board to employ and pay out of the sums receivable under this Act, a wharf or other clerk, who shall be under the superintendence and control of the said officer of Customs.

Sums collected under this Act to be paid over to harbour board.

Clerk or other person may be employed, and paid out of dues collected.

6. This Act shall commence and take effect from and after the first of July, 1858.

Act, when to commence.

## SCHEDULE No. 1. (1)

## 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 Algoa Bay, viz. :—  
(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 \_\_\_\_\_  
18 \_\_\_\_\_ 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.

<sup>1</sup> Repealed by Act 14 of 1867, in its turn repealed by Act 25 of 1875, *infra*.

No. 26—1864.]

[July 26, 1864.

## AN ACT

For Exempting from Wharfage Dues, Bullion and Coin landed in Algoa Bay, Mossel Bay, and Port Alfred.

Preamble.

WHEREAS by Act No. 10 of 1858, entitled "An Act for enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues," and by Act No. 7 of 1860, entitled "An Act for enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues," and by Ordinance No. 4 of 1852, entitled "Ordinance for improving the Kowie Harbour," certain wharfage dues are payable upon the landing or shipping of goods in Algoa Bay, Mossel Bay, and Port Alfred respectively: And whereas it is expedient to exempt bullion and coin from the payment of such dues on importation: Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, as follows:—

Bullion and coin exempted from wharfage dues.

1. From and after the promulgation of this Act, all bullion and coin shall be exempt from payment of wharfage dues upon being landed in Algoa Bay, Mossel Bay, or Port Alfred respectively.

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.

Preamble.

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 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:—

No. 25—1875.

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.

Further borrowing powers.

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

3. (1) 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.

Dues which may be levied.

#### SCHEDULE.

1. Upon all wool shipped or landed in Algoa Bay there shall be payable, and be paid four pence half penny 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 six pence 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 within the Colony.

5. Bullion and coin.

<sup>1</sup> See also Act 23, 1883, *infra*.

No. 16—1859.]

[July 8, 1859.

## (1) ACT

For Preventing Obstructions, and for preserving Good Order on the Beach of Algoa Bay, and on the Breakwater Wharfs and Jetties belonging thereto.

Preamble.

WHEREAS it is expedient that the commissioners for improving the port and harbour of Algoa Bay should be empowered to prevent obstructions and preserve good order on the beach of Algoa Bay, and on the breakwater, wharfs and jetties belonging thereto: 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:—

Beach, wharfs, &c., to be under direction of a beachmaster appointed by harbour commissioners, with sanction of Governor, and paid out of wharfage dues.

1. The management of the beach and of the breakwater wharfs and jetties thereon shall be under the direction of an officer, who shall be denominated the beachmaster, and who shall be appointed by the commissioners for the time being for improving the port and harbour of Algoa Bay, with the sanction of the said Governor, and be paid by the said commissioners out of the collection of wharfage dues, and the said commissioners shall have power to remove any such officer and appoint another, with the like sanction, in his stead.

Duties of beachmaster.

2. The duty of the beachmaster shall be to cause all persons making use of the beach and the breakwater wharfs and public jetties thereon, for the landing and shipping of goods or otherwise, to remove all goods therefrom, and from the approaches thereto, as speedily as possible, so as to prevent the said beach and the breakwater wharfs and public jetties thereon, together with the said approaches, being encumbered with goods, or be otherwise obstructed, and to keep the said beach and the breakwater wharfs and public jetties thereon open, for the convenience of all persons requiring the use of the same.

Persons failing to remove goods, after due notice from beachmaster, liable to fine of ten pounds.

3. If any person or persons depositing goods, on the beach or the breakwater wharfs and public jetties thereon, or on any of the approaches thereto, shall not forthwith remove such goods, when directed and required so to do by the beachmaster, or within such reasonable time as shall be notified to the person or persons depositing the goods, according to the discretion of the beachmaster, then the person or persons so offending shall be liable, on conviction, to a penalty not exceeding ten pounds for every such offence.

<sup>1</sup> By Act 5 of 1873, Commissioners may make regulations for preservation of good order, &c. By Act 21 of 1882, the powers vested in the Commissioners under Ord. 21 of 1847, are vested in Board therein provided for. By Act 23 of 1883, such Board is authorized to make regulations for general management, and to pay all costs and charges for enforcing the same, *infra*.

4. If any person or persons shall refuse or neglect to remove any goods from the said beach, or from the breakwater wharfs and public jetties thereon, or from the approaches thereto, according to the requirement of the beachmaster, made by him as aforesaid, then the beachmaster shall be empowered to cause such goods to be removed, and the person or persons so refusing or neglecting shall, besides being liable to the penalty in the last preceding section mentioned, pay and make good the expense of such removal, which expense shall be adjudged by the Court in which the penalty aforesaid shall be prosecuted for, by way of additional fine or penalty: Provided, always, that the beachmaster shall be authorized to remove such goods, either to the store or residence of the owner or owners, consignee or consignees thereof, or, in case there be none such found, or be open to receive the said goods, then to some other safe store or place, in which lastmentioned place the said beachmaster shall have a right of retaining such goods, until the expense of removing and storing, or keeping the same at the store or place to which they shall have been removed, shall have been paid.

No. 16—1859.

Beachmaster may remove goods at the expense of parties neglecting to do so.

Such expense to form an additional penalty.

Such goods to be removed to store or residence of owner or consignee, or other safe place, and be retained until expenses are paid.

5. The beachmaster shall have the right to prevent all wagons and other vehicles employed in bringing goods or ballast, to the beach or the breakwater wharfs or jetties thereon, or removing them therefrom, from unnecessarily obstructing the approaches thereto, and all drivers of wagons or other vehicles, shall place them, after loading, or when waiting to be loaded, in such position or place as shall be pointed out by the beachmaster as proper and convenient. Any person in charge of any wagon or other vehicle neglecting or refusing to comply with any direction of the beachmaster in respect of the matter aforesaid, shall be liable to a penalty not exceeding five pounds.

Beachmaster to give directions regarding position of wagons and other vehicles on wharfs, or approaches thereto.

Fine for disobeying such directions, five pounds.

6. The beachmaster shall have the right to regulate the position of the ballast, anchors and cables required to be placed on the beach for the use of the shipping, and of all passage or other boats lying thereon, and to cause to be removed all boats lying an unreasonable time at the breakwater or at any public wharf, jetty, or other place, to the hindrance of others waiting to be loaded or discharged. Any person refusing or neglecting to obey the lawful order of the beachmaster in regard to the subject-matter of this section shall be liable to a penalty not exceeding five pounds.

To regulate the position of ballast, anchors, cables, &c., and of boats alongside.

Penalty for disobeying orders, five pounds.

7. The beachmaster shall be empowered, as often as the state of the beach shall appear to him to require, to prevent any boat from landing cargo on the breakwater wharfs or public jetties thereon, or on the approaches thereto, unless the owner or owners of that boat shall have removed therefrom all goods previously deposited by him or them thereon, and which goods shall then remain on the breakwater wharfs or jetties thereon, or on the approaches thereto, in contravention of the third section of this Act. Any person or persons landing any such cargo which the beachmaster

Beachmaster may prevent landing of goods until the removal of those already landed—penalty for disobeying ten pounds.

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No. 16—1859.

shall have directed not to be landed shall be liable to a penalty not exceeding ten pounds.

No boat to be made fast to wharf-steps, nor to be hauled up on space allotted to fishing-boats.

8. No person shall make fast any boat to the steps attached to the breakwater or to the steps attached to any wharf or jetty belonging to the harbour board of Algoa Bay, nor shall any boat be hauled up for repair at or upon the space, from time to time, appointed by the beachmaster to the passage and fishing boats.

Penalties recoverable in court of resident magistrate, Port Elizabeth.

9. All penalties incurred under this Act shall be recoverable in the Court of the Resident Magistrate of the district of Port Elizabeth. And in case of non-payment, upon conviction of any penalty imposed by such Court under this Act, any person offending may be imprisoned with or without hard labour for any period during which the penalty may remain unpaid not exceeding one month; and all penalties recovered under this Act shall be and become the property of, and be paid over to, the said commissioners for improving the port and harbour of Algoa Bay.

In case of non-payment, offender to be imprisoned.

Penalties to be paid over to harbour commissioners.

Servant and employer may both, or either of them, be prosecuted for the same act.

10. If any servant, *bonâ fide* obeying the orders of his employer, shall, when acting under the directions or command of such employer, by omission, or any acts of commission, infringe any of the provisions of this Act, then such employer and the servant may both or either of them be prosecuted for the penalty incurred by such omission or commission.

No. 5—1873.]

[June 26, 1873.]

## ACT

To amend Act No. 16 of 1859, by enabling the Commissioners for Improving the Port and Harbour of Algoa Bay to make Regulations for the better Management of the Breakwater and the Wharfs, Jetties, and Approaches belonging thereto.

Preamble.

WHEREAS it is expedient that the Commissioners for improving the Port and Harbour of Algoa Bay should be enabled from time to time to make regulations for the preservation of good order on the beach of Algoa Bay and on the breakwater, wharfs, jetties, and approaches belonging thereto: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Commissioners for improving the port and harbour of Algoa Bay to make certain regulations subject to approval of the Governor and publication in *Gazette*, &c.

1. Subject to the provisions contained in the Act No. 16 of 1859, it shall be lawful for the said commissioners from time to time, with the approval of the Governor, to make all such necessary regulations to preserve good order on the beach of Algoa Bay and on the breakwater, wharfs, jetties, and approaches belonging thereto, as to the said commissioners shall appear proper; and with the like approval to alter and amend any such regulations:

Provided, however, that all such regulations so approved of shall after the approval of the Governor be forthwith published in the *Government Gazette* and in one or more newspapers published in Port Elizabeth.

No. 5—1873.

2. Any person contravening any such regulation as aforesaid shall be liable on conviction to such and the like penalty as in the said Act No. 16 of 1859 is provided.

Penalties for contravening such regulations.

No. 21—1882.]

[June 22, 1882.

## ACT

For the Management of the Harbour of Port Elizabeth.

WHEREAS it is desirable to provide for the better management of the Harbour of Port Elizabeth: 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. So much of any Act of Parliament, Ordinance, or other statutory enactment, having the force of law as is inconsistent with or repugnant to, the provisions of this Act, is hereby repealed, so far as such inconsistency or repugnance may exist, but not otherwise.

Repeal of repugnant laws.

2. The commissioners appointed under the provisions of the Ordinance No. 21 of 1847, who 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 now exercised and performed by them, until the first meeting of the board of commissioners appointed and elected under the provisions of this Act.

Existing commissioners to retain office *pro tem*.

3. The management of the harbour of Port Elizabeth as well as of any works of construction or maintenance connected therewith, shall be vested in a board of commissioners, to be appointed and elected under this Act, from and after the date of the first meeting of such board.

Management of harbour to be vested in Board of Commissioners.

4. The board of commissioners in the last preceding section mentioned shall consist of seven persons, one of whom shall be the Mayor of Port Elizabeth for the time being, three of whom shall be elected by the constituency hereinafter provided, one of whom shall be nominated and chosen annually by the Port Elizabeth Chamber of Commerce, if such body shall be incorporated but not otherwise, and two of whom, or in case the said Chamber of Commerce shall not be incorporated, three of whom, shall be appointed by the Governor by proclamation: Provided that the persons so appointed by the Governor may be removed as if they had been appointed under the provision of the 2nd section of the said Ordinance No. 21 of 1847.

Constitution of the board.

5. The existing board of commissioners shall, as soon as may be after the 30th day of June next, and the board by this Act

Lists to be made yearly of all persons who have in previous

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No. 21—1882.  
 twelve months paid  
 wharfage dues to the  
 amount of £10.

constituted shall, as soon as may be after the 30th day of June in every succeeding year, cause a true list to be made, in alphabetical order, of all persons being inhabitants of, or having their places of business in, Port Elizabeth, who shall during the last preceding twelve months have paid, to the amount of not less than ten pounds sterling, such wharfage dues as are provided by the third section of the Act No. 25 of 1875, and setting forth the Christian and surname of such person at full length, or the name of the firm (in case the said wharfage dues shall have been paid by a firm and not by a single individual), the place of his or their business and the amount of such wharfage dues which such person or firm shall have paid during the period aforesaid, and such person or persons shall be entitled to a vote for the commissioners to be elected under this Act, in proportion to the amount of wharfage dues paid by them severally, according to the schedule of this Act.

Such persons to be  
 voters.

Sub-collector of  
 customs to post lists.

6. As soon as the list in the last preceding section shall be complete the said board shall cause the same to be transmitted to the Sub-Collector of Customs, who shall cause copies thereof to be posted in some convenient place, heading such list with the words "List of persons and firms entitled to vote at the election of Commissioners of the Port Elizabeth Harbour Board."

How lists may be  
 corrected

7. In case within one month after the posting of such list, as in the last preceding section mentioned, any complaint shall be made to the Sub-Collector of Customs of the omission therefrom of the name of any person or firm whose name ought to have appeared upon such list, or of the insertion therein of the name of any person or firm which name ought to be expunged from such list, it shall be the duty of the said Sub-Collector of Customs to investigate such complaint, and to add, or remove, any such name to or from such list as to him shall seem just.

When lists com-  
 plete persons named  
 therein to be voters.

8. The persons and firms named in such list, after the additions to or alterations of the same (if any) have been made by the said Sub-Collector of Customs as aforesaid, shall be the voters entitled to vote at the election of the commissioners as hereinafter provided, and as often as a firm shall be named in such list of voters, such firm shall be entitled to vote by one member thereof, and no more, or may by an authority in writing appoint some person to appear and vote for such firm.

Qualification of a  
 Commissioner.

9. Every person being a voter as in the last preceding section provided, and whether he be so individually or as a member of a firm, shall be qualified to be elected a commissioner of the said harbour board: Provided, however, that no such voter shall be competent to be a candidate for the said office unless he shall have received and accepted a requisition to become such candidate signed by not less than five duly qualified voters, and shall have transmitted such requisition, with his acceptance thereof, to the Sub-Collector of Customs at least ten days before any election is appointed to take place.

10. The Sub-Collector of Customs shall, at least seven 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 requisitions, to be published in the *Government Gazette* and one or more newspapers published in Port Elizabeth.

No. 21—1882.

Lists of candidates and of requisitionists to be published.

11. Every election under this Act shall take place before the Sub-Collector of Customs, who shall be the returning officer for that purpose, on such day and at such place as he shall appoint, and the poll shall be kept open from nine o'clock a.m. until one o'clock p.m.

Sub-Collector of Customs to be returning officer.

12. The poll shall be taken by some officer to be appointed for that purpose by the Sub-Collector of Customs, and the voting at such poll shall be by voting papers.

How poll to be taken.

13. Every candidate may, if he thinks fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

14. 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.

Who to be declared elected.

15. At the first election of commissioners under this Act, the voters shall elect, in manner by this Act provided, three commissioners, who shall be deemed to enter upon their office on the first Monday following, in conjunction with the commissioners appointed by the Governor, the commissioner, if any, nominated by the Chamber of Commerce, and the mayor of Port Elizabeth for the time being.

When and how elected Commissioners to enter on office.

16. Of the persons so elected as in the last preceding section mentioned the commissioner who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the date of entering upon his office; and in case from any cause 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 two elected commissioners shall vacate their seats in like manner at the expiration of two years and three years respectively, and upon the retirement from office of such commissioners respectively, they shall be succeeded by commissioners who shall be elected as hereinbefore provided, so that at every annual election after the first there shall be elected one commissioner who shall enter upon his office on the first Monday after his election, and continue therein for three years, and every retiring commissioner shall be eligible for re-election.

How seats vacated by lapse of time.

17. If any elected commissioner shall die, resign, become insolvent, or assign his estate for the benefit of his creditors, or shall be absent from the ordinary meetings of the board for a period of three calendar months, his office shall become vacant and a commissioner shall be elected in his place and stead, in manner

Resignation, &amp;c. of Commissioners.

- No. 21—1882. hereinbefore provided, who shall hold office for the remainder of the term for which the commissioner who has vacated office and whom he shall succeed would otherwise have remained in office.
- In case of equality of votes at election. 18. In case of an equality of votes at any election of a commissioner under this Act, 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 elected.
- Chairman to be chosen. 19. The commissioners present at the first meeting of the board constituted under the provisions of this Act, and at the first meeting held after every annual election respectively, shall elect from amongst themselves a chairman, who shall hold such office for the space of one year, and who shall, when present, preside at all the meetings of the board: Provided that if at any meeting such chairman shall not be present, the members attending such meeting shall elect from among themselves a chairman to preside at such meeting: and provided also, that in case at any election of a chairman under the provisions of this section any two or more commissioners shall have an equal number of votes, it shall be decided by lot which of such commissioners shall be the chairman.
- In case of his absence. 20. At every meeting of the board three commissioners shall form a quorum; and in case the votes of the commissioners upon any question before them shall be equally divided, the presiding member shall, in addition to his original or deliberative vote, have a casting vote: Provided, however, that no commissioner shall vote on any question in which he shall have any personal or pecuniary interest, directly or indirectly, under a penalty not exceeding one hundred pounds sterling, to be sued for by the Attorney-General.
- Quorum. 21. Every commissioner appointed or elected under the provisions of this Act shall be entitled to receive the sum of twenty shillings for each attendance at the meetings of the board: Provided, however, that no commissioner shall receive more than one hundred pounds sterling in any one year in respect of such attendances.
- Payment of Commissioners. 22. All the rights, powers, duties, privileges, and authority conferred upon, assigned to, and at present enjoyed or received by, the existing board of commissioners for the management of the harbour of Port Elizabeth otherwise designated Algoa Bay by virtue of any Ordinance Act of Parliament or other statutory enactment having the force of law, and not repugnant to or inconsistent with the provisions of this Act, shall be, and the same are hereby, conferred upon, assigned to, and continued in, the board of commissioners to be appointed and elected under this Act; and such commissioners shall be designated the "Port Elizabeth Harbour Board," and may by such title sue and be sued and be described in all legal proceedings, and shall have power to take, purchase, and hold, or to sell and transfer, lands, buildings, hereditaments, and possessions, and all other property, chattels, or effects whatsoever.
- Powers and duties.

ever, and such lands or other property, subject to any engagement affecting the same, shall be vested in the said board by such name of the "Port Elizabeth Harbour Board," and without the necessity of any individual member of such board being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.

No. 21—1882.

23. In addition to all such existing rights, powers, duties, privileges and authority, it shall be lawful for the board of commissioners under this Act to land, warehouse, and deliver goods and merchandize by themselves or by their duly constituted agents in that behalf; and for the purposes of such landing, warehousing, and delivery to construct or hire such railways, tramways, sheds, or warehouses as they may deem necessary, and to enter into contracts or make arrangements with any public company or private individuals for any such construction or hiring.

Board may land, warehouse and deliver goods.

May construct or hire railways, &c., for the purpose.

24. The several powers vested in the Governor by the Act No. 21 of 1872, and the Ordinance No. 1 of 1847, shall, so far as concerns the harbour of Port Elizabeth, be transferred to, vested in, and exercised by, the said "Port Elizabeth Harbour Board" by this Act created.

Certain powers vested in Governor transferred to the Board.

25. This Act may be cited as the "Port Elizabeth Harbour Board Act, 1882."

Short title.

SCHEDULE.

Votes according to Dues paid in respect of every Commissioner to be elected:—

Not less than	£10 and not exceeding	£100, one Vote.
Exceeding	100	200, two Votes.
"	200	300, three Votes.
"	300	400, four Votes.
"	400	500, five Votes.
"	500	600, six Votes.
"	600	700, seven Votes.
"	700	800, eight Votes.
"	800	900, nine Votes.
"	900 and upwards	ten Votes.

No. 23—1883.]

[September 27, 1883.

ACT

To Enable the Port Elizabeth Harbour Board to make Regulations for the better Management of the Port and Harbour of Port Elizabeth.

WHEREAS no sufficient power is vested in the Port Elizabeth Harbour Board to make regulations for the general management of the said harbour and the quays and jetties thereof, or regulations having for their object the imposition of certain duties and charges

Preamble.

No. 23—1883.

upon the landing and shipping of goods at wharves and jetties, and to fix the rate of tonnage by measurement or weight of such goods, and to impose charges upon steam tugs, steam launches, passenger, cargo and other boats plying for hire within the said harbour, and for regulating the rates which the owners thereof shall be entitled to charge, and for the inspection of such tugs, launches, or boats, and the machinery and gear thereof, and for regulating the numbers of passengers which may be carried therein, and for imposing penalties for the breach of any such regulations: And whereas it is desirable that such powers should be supplied:

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:—

Commissioners of Port Elizabeth Harbour Board to have power to make regulations.

1. It shall be lawful for the Commissioners of the Port Elizabeth Harbour Board, with the approval of the Governor, to make all regulations necessary for attaining the objects in the preamble to this Act mentioned, and to pay all costs and charges of enforcing the same. Any person contravening any such regulations shall be liable on conviction to such penalties as may be fixed and declared in such regulations not exceeding a fine of ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for contravention of regulations.

Short title.

2. This Act may be cited as the "Port Elizabeth Harbour Board Regulations Act, 1883."

No. 20.—1872.]

[July 31, 1872.

### ACT

For Defining the Limits of and preventing the Mischief arising from cutting, rooting up, and destroying the Trees, Shrubs, Bushes, and Fibrous Rooted Plants within an area bounded on the East and South by the Sea, on the West by the Farm Bushy Park, and including Northwards such portions of the divided Farm Buffels Fontein, the Village and Commonage of Walmer, formerly the Farm Nooitgedacht, and the Farm Paape Biesjesfontein, in the Division of Port Elizabeth, as the Drift Sands have extended or may extend over.

Preamble.

WHEREAS it has become of the utmost importance to the port and harbour of Algoa Bay to preserve from the effects of drifting sands the works already made and to be made for improving the said port and harbour, and for preventing portions of the Crown

lands and other property within the said area from further injury therefrom : And whereas a mischievous and illegal practice prevails of cutting down, rooting up, and carrying away from within the said area for firewood and other purposes, the trees, shrubs, bushes, and fibrous rooted plants growing thereon, by means of which practice the sands are loosened and exposed, and are carried by the wind and deposited along the eastern boundary of the said area, and within the wash of the sea, to the serious detriment of the said port and harbour : And whereas it is expedient that the commissioners for improving the port and harbour of Algoa Bay, should be enabled to purchase land within the said area, and that provision should be made therefor, and for suppressing the said practice within the said area, and for binding and fixing those portions of the said area from which the sands are carried, by causing them to be planted with trees, shrubs, bushes and other fibrous rooted plants, and to erect or cause to be erected fencing mounds or other protection for the same : 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. That the lands within an area bounded by the east and south by the sea, on the west by the farm Bushy Park, and including northwards such portions of the divided farm Buffels Fontein, the village and commonage of Walmer, formerly the farm Nooitgedacht, and the Farm Paape Biesjesfontein, in the Division of Port Elizabeth, as the drift sands have extended or may extend over, shall, for the purposes of this Act, be deemed and taken to be included in the said area.

Area defined.

2. It shall and may be lawful for the said commissioners, and they are hereby authorized to enter upon and take possession of such lands within the said area as may be required for the purposes of this Act : Provided that the proprietors of the said lands shall be paid by the said commissioners the just value by way of compensation for such lands.

Right of entry upon lands within area defined.

Compensation to owners.

3. In the event of the said commissioners 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 commissioners and accepted by such proprietor or proprietors or person or persons claiming compensation, then the said commissioners 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 commissioners 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

How, where difference exists as to amount of compensation.



No. 20—1872.

Arbitration.

the said notice, then the said commissioners 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 commissioners, and for that purpose to transmit to their representative in Port Elizabeth, 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 commissioners, upon receiving the name of the person so elected shall nominate a second arbitrator, and the said arbitrators shall before proceeding in the arbitration choose a third arbitrator, and the said commissioners shall cause a deed of submission to be prepared, which shall be signed by the chairman of the said board of commissioners and by the said proprietor or proprietors or person or persons 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 and are hereby 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 commissioners, and they are hereby authorized, to lodge in some joint-stock bank in Port Elizabeth 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 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 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 and compensation as aforesaid, the said land shall be held and taken to be vested in the said commissioners 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 commissioners according to the law and custom of this Colony, or as if all acts by law required for vesting in the said commissioners a sufficient title thereto had been duly done and performed: Provided, further,

that the costs of the arbitration aforesaid shall be in the discretion of the arbitrators.

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4. It shall be lawful for the said commissioners, and they are hereby authorized and empowered to enter upon and take possession of any land within the said area belonging to Her Majesty the Queen, known as crown lands, for the purpose of binding or fixing those portions of the said land within the said area from which the sands are carried, by causing them to be planted with trees, shrubs, bushes, or other fibrous rooted plants, and to erect or cause to be erected and made, fencings, mounds, or other protections to the same.

Entry upon public lands.

5. If any person shall cut, root up, burn, break, or otherwise injure, destroy, or carry away any tree, shrub, bush, or other fibrous rooted plant growing or being upon any land, whether the same be crown land or land acquired by the commissioners under section two of this Act, or shall trespass upon the same, or shall injure or destroy any fencing, mounds, or other means of protection to the same, such person shall, upon the first conviction for any such offence, forfeit any sum not exceeding five pounds sterling, and upon non-payment thereof, shall be imprisoned for any term not exceeding one calendar month, and upon a second conviction for any such offence shall forfeit a sum not exceeding ten pounds sterling, and upon non-payment thereof shall be imprisoned for any term not exceeding two months, and for a third or any subsequent offence shall forfeit any sum not exceeding twenty pounds sterling, and upon non-payment thereof shall be imprisoned for any term not exceeding six months.

Penalty for cutting &c., bushes, &c.

6. When and so often as any wagon, cart, or other vehicle shall be found within or upon any part of the said area as aforesaid, or upon any road leading from thence having in or upon any such wagon, cart, or vehicle, trees, shrubs, bushes, or other fibrous rooted plants commonly found growing upon the crown lands and upon lands the property of the said commissioners within the said area, it shall be lawful for any person finding the same, and suspecting that the said trees, shrubs, bushes, or other fibrous rooted plants have been cut or taken away from such lands as aforesaid, to forcibly compel the person in charge thereof to proceed forthwith to the nearest Resident Magistrate, there to be dealt with according to law in the exercise of the jurisdiction hereinafter conferred.

Inquiry as to destruction of bushes, shrubs, &c.

7. It shall be lawful for the said commissioners, with the consent of the Governor acting with the advice of the Executive Council of the Colony, out of any moneys which may come to them as such commissioners, to apply such sum or sums as may be necessary for the purpose of fixing the said sands within the said area and maintaining the same.

Funds to be applied to fixing drift sands.

8. The Court of the Resident Magistrate of Port Elizabeth and district thereof, and the Court of the Resident Magistrate of Uitenhage and district thereof, shall have jurisdiction to inquire

Courts having jurisdiction.

No. 30--1872

into and determine all cases and questions of fines, forfeiture, penalties or contraventions of this Act.

Short title.

9. This Act may be cited for all purposes as the "Port Elizabeth Sands Act, 1872."

No. 6.—Sd. H. G. Smith.] [Dec. 5, 1851.

Ordinance for regulating the Rates of Wharfage Dues in Cape Town <sup>(1)</sup> and Simon's Town.

Preamble.

WHEREAS by the Ordinance No. 8, 1834, made and passed in this Colony on the 10th day of December, 1834, entitled "Ordinance to abolish the present Rates of Dues payable at the public Wharfs at Cape Town and Simon's Town and to substitute others in lieu thereof," certain Rates or Dues of wharfage and cranage were imposed upon goods, packages, and articles landed or shipped in Table Bay or Simon's Bay: And whereas by a certain other Ordinance made and passed in this Colony on the 14th day of December, 1846, and numbered 34, 1846, entitled "Ordinance for levying Wharfage and other Dues in Cape Town, and for devoting them to the construction of a Harbour of Refuge in Table Bay, and for other purposes," certain rates or dues of wharfage and cranage upon all goods, articles, matters, and things landed or shipped in Table Bay were substituted in room and stead of the rates or dues imposed by the Ordinance aforesaid, No. 8, 1834: And whereas the Ordinance aforesaid, No. 34, 1846, having never received the confirmation of Her Majesty the Queen ceased at and after the expiration of three years next after the date thereof to be of any force or effect in law: And whereas upon the expiration of the said Ordinance No. 34, 1846, which repealed in regard to all goods, articles, matters, and things landed or shipped in Table Bay the Ordinance aforesaid No. 8, 1834, the said lastmentioned Ordinance revived: And whereas after the enactment but before the expiration of the said Ordinance No. 34, 1846, it became known to the then Governor of the Colony, the Right Honourable Sir Henry Pottinger, Baronet, G.C.B., &c., &c., that the construction of a harbour of refuge in Table Bay as previously contemplated, and for the construction of which harbour of refuge other and for the most part higher dues of wharfage and cranage had been imposed by the said lastmentioned Ordinance than but for such harbour of refuge would have been imposed, must be postponed; whereupon the said Governor, by and with the advice of the Executive Council, did by letter bearing date the 24th day of April, 1847, authorize the Collector of Customs at Cape Town to levy and receive in lieu and stead of the dues and rates claimable and payable under the said last-mentioned Ordinance certain other rates and dues less by one third than such

<sup>1</sup> Repealed as regards Cape Town by Act 22 of 1872 (Harbours, Table Bay).

former rates and dues respectively, which lowered scale or tariff of rates and dues the said Collector of Customs has since continued to levy and receive: And whereas it is necessary to sanction and render valid all wharfage and cranage dues received by said Collector of Customs during the existence of the said Ordinance No. 34, 1846, but not in accordance with its provisions, and all such dues received by him since the expiration of the said last-mentioned Ordinance but not in accordance with the provisions of the said Ordinance No. 8, 1834; as also to make provision for levying wharfage and cranage dues at the port of Cape Town in time to come; and moreover to establish in regard to the port of Simon's Town the same rate of wharfage and cranage dues established in regard to the port of Cape Town: Be it therefore enacted by the Governor of Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that upon and after the sixth day of January, 1852, the Ordinance aforesaid, No. 8, 1834, except so far as the same repeals any former law or ordinance, shall be repealed, and the same is hereby repealed accordingly.

Ord. 6—1851.

Repeal of Ordinance  
No. 8, 1834.

2. And be it enacted that all sums of money not exceeding in amount the dues of wharfage and cranage specified in the schedule to the Ordinance aforesaid, No. 34, 1846, which have at any time since the passing of the said Ordinance been paid to the Collector of Customs at Cape Town as and for dues of wharfage and cranage payable upon goods, articles, matters, and things landed or shipped in Table Bay shall from and after the taking effect of this Ordinance be held and taken to have been legally levied and received, and every such payment shall be deemed to be as legal, rightful, and effectual as if the same had been made under and by virtue of some valid and subsisting law especially authorizing and requiring such payment to be made.

Legalization of  
dues taken not ex-  
ceeding dues under  
Ordinance No. 34,  
1846.

3. And be it enacted that the said Collector of Customs shall be and he is hereby declared to be acquitted and indemnified from and against all actions, suits, penalties, and proceedings whatsoever in respect of the levying or receiving by him of any of the payments or sums of money in the last preceding section mentioned and therein ratified and rendered valid.

Indemnification of  
collector of customs.

4. And be it enacted that upon and after the sixth day of January, 1852, there shall be levied and paid to the officers respectively in that behalf in the schedule to this Ordinance mentioned upon all goods, articles, matters, and things landed or shipped in Table Bay or in Simon's Bay the several dues of wharfage and cranage respectively set forth in the said schedule.

Levy of dues after  
6th January, 1852.

5. [Repealed by Act 20 of 1858.]

6. [Repealed by Act 22 of 1872.]

7. And be it enacted that no goods, ballast, matters, or things shall be suffered to remain upon any public wharf at <sup>(1)</sup> Cape Town or Simon's Town so as to create obstruction or incon-

Obstruction on pub-  
lic wharves.

<sup>1</sup> See note to Preamble.

Ord. 6—1851.

venience; and if any person who shall have laid down or caused or procured to be laid down on any such public wharf any goods, ballast, matters, or things shall not remove the same within twelve hours after he shall by any wharf clerk or officer of Customs be required in writing so to do, such person shall upon conviction forfeit any sum not exceeding ten pounds and shall moreover be adjudged by the Court by which he shall be tried for such offence to pay all costs and charges which may have been incurred in removing the goods, ballast, matters, or things which such person shall have neglected to remove. And provided that if such person shall not upon conviction forthwith pay any such fine with all such costs and charges as he shall have been condemned to pay he shall be liable to be imprisoned with or without hard labour for any period not exceeding fourteen days. <sup>(1)</sup>

Time of taking effect.

8. And be it enacted that this Ordinance shall commence and take effect from and after the promulgation thereof.

## SCHEDULE.

Schedule of dues. Table of Dues of Wharfage and Cranage payable to the Collector of Customs at Cape Town <sup>(2)</sup> and the Sub-collector <sup>(3)</sup> of Customs at Simon's Town respectively on goods, articles, matters, or things landed or shipped in Table Bay or in Simon's Bay respectively, under Ordinance No. 6 of 1851.

	LANDED.	s.	d.
Liquids.—On every pipe, puncheon, butt, or other cask of the capacity of 80 gallons imperial or upwards, and containing wine, spirits, or other liquids, the cask .....		1	4
On every hogshead, half puncheon, tierce, or other cask of the capacity of 40 imperial gallons and under 80 gallons, containing wine, spirits, or other liquids, the cask .....		1	0
On every quarter or other such cask of the capacity of 20 imperial gallons and under 40 gallons, containing wine, spirits, or other liquids, the cask .....		0	8
On every barrel, anker, keg, or other cask of less capacity than 20 imperial gallons, containing wine, spirits, or other liquids, the cask.....		0	6
In jars, bottles, and other packages (not in bulk) each of the content of one imperial gallon or upwards, the imperial gallon .....		0	1
In jars, bottles, and other packages (not in bulk) each of less content than one imperial gallon, the imperial gallon.....		0	1
Tea, in all packages, per 100 lbs.....		0	10
Coffee, sugar, pepper, sago, saltpetre, turmeric, tamarinds, spices, dates, rice, gram, paddy, and drugs, in bags, the bag.....		0	2

<sup>1</sup> This section is, in as far as repugnant, repealed by Act No. 4, 1857.

<sup>2</sup> Repealed as regards Cape Town by Act 22 of 1872.

<sup>3</sup> Dues payable to such person as Governor may appoint, see Act 17 of 1861, *infra*.

	s.	d.	Ord. 6—1851. Schedule of dues.
Wheat, barley, oats, rye, and other grain and bran in bags or bulk, the imperial quarter . . . . .	0	4	
Flour, the 196 lbs. . . . .	0	4	
Tobacco, manufactured (except cigars), the cwt. . . . .	0	4	
Tobacco, leaf, the cwt. . . . .	0	3	
Cigars, the 1,000 . . . . .	0	2	
Manufactures and all dry goods in cases, bales, or other packages, not otherwise described, measuring 60 cubic feet or upwards the package . . . . .	4	0	
40 cubic feet and under 60 do . . . . .	3	0	
30 do. and under 40 do. . . . .	2	4	
20 do. and under 30 do. . . . .	2	0	
10 do. and under 20 do. . . . .	1	4	
5 do. and under 10 do. . . . .	1	0	
2 do. and under 5 do. . . . .	0	6	
under 2 do. . . . .	0	3	
Hams or cheeses, when not in packages containing more than one of either, the ham or cheese. . . . .	0	1	
Paint, the ton. . . . .	4	0	
Earthenware, in crates, the crate. . . . .	1	4	
Glass bottles, empty, the gross. . . . .	0	4	
Bricks, tiles, or slates, the 1,000. . . . .	2	0	
Paving stones, the ton . . . . .	1	0	
Cocoanuts, the 1,000 . . . . .	2	0	
Rattans, the 100 bundles . . . . .	1	8	
Tar, pitch, and rosin, the cask . . . . .	0	4	
Salt and coals, the ton . . . . .	1	0	
Mill stones, the stone . . . . .	1	8	
Fir and teak timber, the load of 50 cubic feet . . . . .	1	4	
Mahogany and timber, not being fir or teak, the load of 50 cubic feet . . . . .	2	0	
Deals, planks, boards, battens, and all wood cut from the log (except staves), the load of 50 cubic feet. . . . .	2	0	
Staves, viz., crown pipe, the 1,000 . . . . .	5	0	
Do. crown hogshead, do . . . . .	3	4	
Do. other pipe, do . . . . .	3	4	
Do. other hogshead, do . . . . .	2	4	
Do. barrel and heading do . . . . .	1	8	
Masts or spars, under 5 inches diameter, each . . . . .	0	1	
Do. 5 to 8 inches diameter, each. . . . .	0	6	
Do. above 8 inches do . . . . .	2	4	
Heavy goods, not otherwise described, the ton . . . . .	1	8	
Horses, mules, or asses, each. . . . .	3	4	
Calves, sheep, or pigs, each . . . . .	0	2	
Horned cattle, cows, bulls, and oxen, each. . . . .	1	8	
Ivory, per 100 lbs . . . . .	1	0	
Oars, per 100 . . . . .	5	0	
SHIPPED.			
Wine, spirits, limejuice, oil, or other liquids, the 100 imperial gallons . . . . .	0	8	
Beef, pork, butter, candles, tallow, flour, meal, fruits, (dried and green), buchu leaves, biscuit, fish (dried and pickled), and preserves, the cwt. . . . .	0	2	

Ord. 6—1851.			s.	d.
Schedule of dues.	Wheat, barley, rye, oats, bran, pease, beans, and lentils, the imperial quarter .....		0	4
	Hay, the 100 lbs. ....		0	2
	Hides, of horses or horned cattle, the 100 .....		3	0
	Skins, calf, goat, seal, or wild animal, the 100 .....		0	4
	Sheep skins, the 100 .....		0	2
	Bones, hoofs, or glue pieces, the ton .....		0	8
	Horns, the 1,000 .....		1	4
	Ivory, the 100 lbs. ....		0	4
	Ostrich feathers, the package .....		1	8
	Wool, the 100 lbs. ....		0	4
	Argol, aloes, gum, or wax, the ton .....		1	0
	All other articles not enumerated or otherwise described, the ton .....		0	8
	If measurement goods not otherwise enumerated or described, the 40 cubic feet .....		1	0
	Horses, mules, or asses, each .....		3	0
	Horned cattle, each .....		1	0
	Sheep, goats, or pigs, each .....		0	2

## EXEMPTIONS.

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

2nd.—All goods coastwise, whether shipped or landed, except imported goods upon which wharfage has not been once paid.

3rd.—Ships' stores outwards.

4th.—All goods exported, upon which wharfage had been paid upon importation.

No. 14—1855.]

[June 8, 1855.]

## AN ACT

For Exempting from Wharfage and Cranage Dues certain Articles landed from or shipped on board Whaling Vessels.

Preamble.

WHEREAS, by Ordinance No. 6, of 1851, entitled an Ordinance "For regulating the rates of Wharfage Dues in Cape Town and Simon's Town," certain wharfage and cranage dues are payable upon the landing or shipping of the several articles set forth in the schedule to the said Ordinance: And whereas it is expedient to exempt certain articles from the payment of such dues:

Certain articles connected with whaling ships to be free from wharfage dues.

1. Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, that the following articles shall be exempt from the payment of wharfage and cranage dues, upon being landed or shipped in Table Bay or Simon's Bay respectively, that is to say:—

All surplus stores or provisions, for the use of whaling vessels.

All whale-bone, whale-head matter, and whale or fish oil landed

or shipped from or on board of whaling vessels, or from or on board of any other vessel conveying such whale-bone, whale-head matter, or oil from or to any whaling vessel; provided that such whale-bone, whale-head matter, or oil be not entered for colonial consumption.

No. 14—1855.

2. This Act shall commence and take effect from and after the promulgation thereof.

Act, when to commence.

No. 17—1861.]

[August 14, 1861.

## ACT

To Remove Doubts regarding the Claims of the Simon's Bay Dock or Patent Slip Company, in reference to the Cranage and Wharfage Dues payable in Simon's Bay.

\* \* \* \* \*

6. (1) The dues of wharfage and cranage payable in Simon's Bay, shall be payable to and be collected by such person or persons as shall for that purpose be appointed by the Governor aforesaid, anything in any former law or ordinance directing that the said dues should be paid to and collected by the Collector of Customs at Simon's Town, to the contrary notwithstanding.

Wharfage dues to be collected by person appointed by Governor.

No. 26—1885.]

[August 11, 1885.

## ACT

To Authorize the Cancellation of certain Existing Titles to certain Properties vested in "The Simon's Bay Dock and Patent Slip Company," and to re-vest the said Properties in the Colonial Government, and further to authorize the Grant of the said Properties by the Governor to "The Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland."

WHEREAS by certain deeds of transfer and title-deeds, issued under certain laws of the Colony, the Simon's Bay Dock and Patent Slip Company stands invested and possessed of certain properties subject to the conditions, restrictions, or servitudes contained in the said title-deeds and laws: and whereas it is expedient to annul and cancel the said transfers and title-deeds, and to re-vest in the Colonial Government the said properties, and

Preamble.

<sup>1</sup> The previous sections of this Act having references only to the Patent Slip Company, which has been dissolved, are not printed.

FFFF



No. 26--1885.

further to give title to and to authorize and empower the conveyance of the said properties by the Governor to "the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland," free and unburdened by any of the conditions, restrictions, or servitudes contained in the said transfer and title-deeds or the said laws: 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:—

Cancellation of title deeds of certain properties held by Simon's Bay Dock & Patent Slip Company

1. Notwithstanding anything to the contrary contained in the law of this Colony, and especially in the Act No. 13 of 1859, the Act No. 17 of 1861, and the Act No. 18 of 1862, the transfer and title-deeds relating to the immovable properties specified in the agreement set forth in the schedule to this Act and vesting the said properties in "The Simon's Bay Dock and Patent Ship Company," shall be, and are hereby annulled and cancelled from the date of the passing of this Act, and the said properties shall on the said date become vested in the Colonial Government for the purposes set forth in the second section of this Act.

Property to vest in Colonial Government for certain purposes.

2. The Governor is hereby authorized forthwith, upon the passing of this Act, to grant the said properties to and in favour of "The Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland."

Conveyance of properties to be made to Admiralty Commissioners, and title registered free of servitude, etc.

Costs, &c., and transfer duty to be paid by Company.

3. All costs, charges, and expenses incurred or payable in respect of the grant provided for in the second section of this Act shall be borne and paid by the "Simon's Bay Dock and Patent Slip Company."

#### SCHEDULE TO THIS ACT.

Schedule to this Act.

An Agreement made this fifth day of May, one thousand eight hundred and eighty-five, between James Murison, Charles John Manuel, Henry Mathew Arderne, Patrick Dugald Martin, Petrus Jacobus Hugo, Heinrich Peter Hablutzel, George Willett, and William George Anderson, junior, all residing in the Colony of the Cape of Good Hope, and being all the directors of the Simon's Bay Dock or Patent Slip Company, acting by William James Anderson, of London, in England, their attorney and agent, duly constituted in that behalf by a power of attorney dated the ninth day of July, one thousand eight hundred and eighty-four (hereinafter called the vendors), of the one part, and the commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland (hereinafter called the purchasers) of the other part, whereby it is agreed as follows:—

1. The vendors will sell and the purchasers will purchase at the price of sixteen thousand pounds, first: the freehold in a certain piece of ground, with the buildings and erections thereon, being the lot marked No. 165, situated in Simon's Bay, in the Cape

Division of the said Colouy, and known by the name of "Sober Island," measuring three hundred square roods, extending, as a certain title deed with a diagram thereon granted to Henry Diedrich Jenken, on the ninth January, one thousand eight hundred and forty-five, and four subsequent deeds of transfer, the last of which made in favour of the said company on the twenty-first of February, one thousand eight hundred and sixty, will more fully point out, but subject to such conditions as in the said title deed of the ninth January, one thousand eight hundred and forty-five, and certain memoranda written at foot thereof, and respectively dated the fourteenth of October, one thousand eight hundred and fifty-nine and the twenty-first day of August, one thousand eight hundred and sixty mentioned. Second, the freehold in a piece of land with the buildings and erections thereon, being the piece of land situate in the Cape division in Simon's Bay aforesaid, adjoining the so-called "Sober Island" granted in freehold to the then directors of the said company and to the directors of the said company for the time being on the second day of October, one thousand eight hundred and sixty, containing one morgen three hundred and twenty-one square roods and twelve and a half square feet, extending as will more fully appear from the title deed thereof, with a diagram annexed, made in favour of the vendors on the said second day of October, one thousand eight hundred and sixty, subject, however, to the conditions contained in the said title deed. Third, all the buildings, sheds, erections, piers, wharves and slip for refitting and repairing vessels now standing or being in or upon the said lands or any part of them or any adjoining land but used or occupied by the said company, together with the said slip, or as part of their property there. Fourth, all the plant, gear, articles and things specified in the schedule hereunder written, and fifth all other the plant, gear, articles and things belonging to the directors or the said company now used or being upon or about the said lands and buildings, and all the rights and privileges of the vendors or of the said company in the said land, buildings, slip, property and premises.

2. The said purchase money of sixteen thousand pounds shall be paid in sterling money of Great Britain or Bank of England notes or by bills on the Accountant-General of the Navy, as may be arranged by the purchasers to the vendors at Cape Town or Simon's Town so soon as the transfer and delivery to the purchasers of the property purchased shall have been completed to the satisfaction of the Commander-in-Chief of Her Majesty's Naval Forces at the Cape of Good Hope, and a certificate to that effect signed by him, shall have been produced by the vendors to the purchasers in England, or to any agent or official at Cape Town or Simon's Town, who may have been empowered by the purchasers to act on such certificate and complete the purchase on behalf of the purchasers.

No. 26—1885.

3. The vendors shall show and deduce a good title according to the law of Cape Colony to the whole of the real and personal property hereby agreed to be sold, and in particular, shall show to the satisfaction of the purchasers that the vendors as representing the said company, or the said company, now have power to sell the said property, and that the vendors have power to appoint the said William James Anderson their attorney, to act for them in selling the said property and to delegate to him the sale thereof, and that the whole of the said property, both real and personal, is free from incumbrances; and if the purchasers shall be advised by competent legal authority at Cape Town that it is not certain that the vendors as representing the said company, or the said company, can sell the property, the vendors on behalf of the company will, or the company will obtain, at the expense of the company, an Act of the Colonial Legislature, or such other authority as shall be sufficient to enable the vendors or the company to make a good title to the property, and to sell and convey the same to the purchasers.

4. If any of the plant, gear, goods, chattels and effects hereby agreed to be sold shall for any reason not be handed over to the purchasers, the vendors shall make compensation for such of the said premises as shall not be handed over in the amount assessed by some independent person to be nominated by the Commander-in-Chief for that purpose.

5. If by reason of any neglect or default of the vendors the purchase shall not be completed on or before the thirty-first day of December, one thousand eight hundred and eighty-five (and in this respect time shall be of the essence of the contract), it shall be lawful for the purchasers by notice to the vendors signed by their secretary to determine the contract.

6. The vendors shall bear, pay, and discharge all their own law and other costs for or in connection with the sale and attending the completion thereof, and shall produce all deeds and other documents to the purchasers without expense to the purchasers. In witness whereof the said parties of this agreement have hereunto set their hands the day and year first before written.

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SCHEDULE.

Cradle and donkey piece	Dwelling-house and Engine room
Hauling bars, links and pins	Engine and multiplying gear
Launching chain	Spare tubes for boiler
Chairs and rollers	Spare links for chain
Smith's shop, bellows and anvil	Ditto for bars
Work shop with tubular boiler.	Spare cheeks for connecting to chain
	Spare chairs and rollers.

Signed by Admiral Lord ALCESTER, G.C.B., and Rear-Admiral (Sig.) ALCESTER.  
 Sir FREDERICK WILLIAM RICHARDS, K.C.B., two of the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, in the presence of "ARTHUR J. CLAYTON,"

Ord. 100—1833.

Admiralty, Whitehall.

No. 100.—Sd. T. F. Wade.] [November 4, 1833.  
 Ordinance for the Prevention of the Discharge of Firearms within certain limits in Table Bay. (1)

WHEREAS it is expedient that the persons engaged in the fisheries in Table Bay should have every facility afforded them of pursuing their avocations free from molestation; and whereas they are oftentimes disturbed and hindered, and their lives endangered by persons discharging fire-arms on the beach and in Table Bay; Be it enacted by His Excellency the Acting Governor in Council that from and after the passing of this Ordinance any person who shall discharge any musket or other fire-arm within two hundred yards of high-water mark on the sea shore extending between Three Anchor Bay and the mouth of the Salt River, or in the waters of Table Bay within two miles of such high-water mark as aforesaid, shall on conviction thereof pay a fine of not less than five shillings, and not exceeding one pound: Provided always, and be it enacted, that nothing herein contained shall be construed to prevent His Majesty's land and sea forces from discharging fire-arms in the execution of their duty.

Preamble.

Prohibition of discharge of firearms within certain limits.

No. 14—1855.] [June 8, 1855.

## AN ACT

For Exempting from Wharfage and Cranage Dues certain Articles landed from or shipped on board Whaling Vessels.

WHEREAS, by Ordinance No 6, of 1851, entitled an Ordinance "For regulating the rates of Wharfage Dues in Cape Town and Simon's Town," certain wharfage and cranage dues are payable upon the landing or shipping of the several articles set forth in the schedule to the said Ordinance: And whereas it is expedient to exempt certain articles from the payment of such dues:

Preamble.

1. Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly,

Certain articles connected with whaling

<sup>1</sup> See also § 27, Act 16, 1857, *supra*.

No. 14--1855.  
ships to be free from  
wharfage dues.

that the following articles shall be exempt from the payment of wharfage and cranage dues, upon being landed or shipped in Table Bay or Simon's Bay respectively, that is to say:

All surplus stores or provisions for the use of whaling vessels.  
All whalebone, whale head-matter, and whale or fish oil, landed or shipped from or on board of whaling vessels, or from or on board of any other vessel conveying such whalebone, whale head-matter, or oil from or to any whaling vessel; provided that such whalebone, whale head-matter, or oil be not entered for colonial consumption.

Act when to com-  
mence.

2. This Act shall commence and take effect from and after the promulgation thereof.

No. 4—1857.]

[June 29, 1857.

AN ACT

For Preventing Obstructions and for preserving Good Order on the Wharfs in Table Bay.

Preamble.

WHEREAS it is expedient that the Governor of this Colony for the time being should be empowered to prevent obstructions and preserve good order on the wharfs 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:—

Management of the  
wharfs in Table Bay  
to be under wharf-  
master, appointed by  
Governor, and paid  
out of the wharfage  
dues.

1. The management of the wharfs in Table Bay shall be under the direction of an officer, who shall be denominated the wharfmaster, and who shall be appointed by the Governor, and be paid out of the collections of wharfage dues; and the Governor shall have power to remove any such officer for the time being, and to appoint another in his room and stead.

Duties of wharf-  
master.

2. The duty of the wharfmaster shall be to cause all persons making use of the wharfs for the landing or shipping of goods, to remove them from the wharfs and the approaches thereto as speedily as possible, so as to prevent the wharfs being encumbered with goods; and to keep the said wharfs and approaches open for the convenience of all persons requiring to use the same.

Persons failing to  
remove goods after  
due notice from  
wharfmaster, liable  
to fine of £10.

3. If any person depositing goods on any of the wharfs in Table Bay, or on any of the approaches to any of the said wharfs, shall not forthwith remove such goods when directed and required so to do by the wharfmaster, or within such reasonable time as shall be notified to the person depositing the goods by the wharfmaster, according to his discretion, then the person so offending shall be liable, on conviction, to a penalty not exceeding £10 for every such offence.

Wharfmaster may  
remove goods at the

4. If any person shall refuse or neglect to remove any goods from any of the wharfs aforesaid, or from any of the approaches

to any of the said wharfs, according to the requirement of the wharfmaster, made by him as aforesaid, then the wharfmaster shall be empowered to cause such goods to be removed, and the person so refusing or neglecting shall, besides being liable to the penalty in the last preceding section mentioned, pay and make good the expense of such removal, which expense shall be adjudged by the Court in which the penalty aforesaid shall be prosecuted for, by way of additional fine or penalty: Provided, always, that the wharfmaster shall be authorized to remove such goods either to the store or residence of the owner or consignee thereof, or, in case there be none such known, or be open to receive the said goods, then to any other safe store or place; in which last-mentioned case the said wharfmaster shall have a right of retaining such goods until the expense of removing and storing, or keeping the same at the store or place to which they shall have been removed, shall be paid.

5. All wagons or other vehicles employed in bringing goods to the wharfs, or removing them therefrom, shall, while on the wharfs or any of the approaches thereto, be under the direction and control of the wharfmaster, and all drivers of wagons shall place their wagons after unloading, or when waiting for a load, in such position or place as shall be pointed out by the wharfmaster as proper and convenient. Any person in charge of any wagon or other vehicle, neglecting or refusing to comply with any directions of the wharfmaster in respect of the matter aforesaid, shall be liable to a penalty not exceeding £5.

6. The wharfmaster shall have the right to regulate the position of all boats lying at the respective wharfs. No boat waiting for a cargo not actually at the place of shipment shall be allowed to remain in possession of the berth commonly called the crane-berth, but shall, if required so to do by the wharfmaster, give place to any other boat, the cargo of which is ready at the place of shipment, or to any boat arriving with a cargo to be landed. Any person refusing or neglecting to obey any lawful order of the wharfmaster, in regard to the subject-matter of this section, shall be liable to a penalty not exceeding £10.

7. The wharfmaster shall be empowered, as often as the state of any wharf shall appear to him to require, to prevent any boat from landing cargo at the said wharf, unless the owner of that boat shall have removed from the said wharf all goods already deposited thereon by him, and which goods shall then remain upon the said wharf, in contravention of the 3rd section of this Act. Any person landing any such cargo which the wharfmaster shall have directed not to be landed shall be liable to a penalty not exceeding £10.

8. No person shall make fast any boat to the steps attached to any wharf, nor shall any boat be hauled up for repair at or upon the space allowed to the fishermen at the Central Wharf, upon which to haul up their boats; nor shall any timber be landed or

No. 4--1857.

expense of parties neglecting to do so. Such expense to form an addition to the penalty in the last section mentioned.

Such goods to be removed to store or residence of owner or consignee, or other safe place, and may be retained until expenses of removal be paid.

Wagons and other vehicles to be under direction and control of wharfmaster.

Persons disregarding orders of wharfmaster liable to a fine of £5.

Wharfmaster to regulate position of boats.

Boats to vacate the crane-berth when, for certain reasons, directed by wharfmaster to do so.

Penalty for disregarding directions of wharfmaster.

Wharfmaster may, under certain circumstances, prevent landing of goods,—penalty £10.

No boat to be made fast to steps of wharf nor to encumber the space allotted to fishermen's boats,—penalty £5.

No. 4—1857.

placed upon the aforesaid space which must at all times be kept clear for fishing boats. Any person contravening any of the provisions of this section shall be liable to a penalty not exceeding £5.

Penalties how recoverable.

9. All penalties incurred under this Act shall be recoverable in the Court of the Resident Magistrate of Cape Town, or in the Court of the Judge and Superintendent of Police <sup>(1)</sup> of Cape Town; and in case of non-payment, upon conviction of any penalty imposed by any such Court, under this Act, the person offending may be imprisoned, with or without hard labour, for any period not exceeding one month.

Repugnant section of Ordinance No. 6, 1851, repealed.

10. The seventh section of Ordinance No. 6, of 1851, <sup>(2)</sup> in so far as it is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

No. 20—1858.]

[June 5, 1858.

## AN ACT

For Constructing a Breakwater to form a Harbour of Refuge in Table Bay, and otherwise Improving the said Harbour.

Preamble.

WHEREAS, it is expedient to repeal the Act No. 11 of 1857, entitled "An Act for promoting the construction of a harbour of refuge in Table Bay," and to make other provision for improving the said harbour: And whereas the improvement of the said harbour will be best effected by taking, as a basis, the plan of Captain James Vetch, referred to in the preamble to the Act aforesaid, which said plan, signed by the Colonial Secretary, is now deposited in the office of the Registrar of Deeds at Cape Town, and by carrying out the said plan, or some plan of the same nature, gradually, and by degrees, as circumstances will permit: And whereas it will be desirable to commence the construction, in the first place, of such an outer pier or breakwater as is laid down upon the said plan, and called the North Pier, and to enlarge and improve, at the same time, the existing wharfs: 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 11, 1857, repealed.

Governor may direct the construction of breakwater.

1. The Act aforesaid, No. 11 of 1857, is hereby repealed.

2. The Governor of this Colony, for the time being, shall, after the passing of this Act, direct a competent engineer or engineers to construct, and cause to be constructed, such an outer pier or breakwater as is described on the said plan, or such part or parts thereof, or other necessary works in connection therewith, as he

<sup>1</sup> This Court is abolished now.

<sup>2</sup> So much of this Ord. as relates to Cape Town is repealed by Act 22 of 1872, *infra*.

may think fit; and also to enlarge and improve the existing wharfs; and shall also appoint all proper officers necessary for carrying the aforesaid works into execution, and for controlling the expenditure incurred thereby. And a half-yearly account of such expenditure, made up to the 31st day of December and 30th day of June, in every year, shall be printed and laid before both Houses of Parliament, within fourteen days after such last-mentioned days, if Parliament shall be then sitting, and if not, then within fourteen days after the meeting of Parliament.

No. 20—1858.  
And the improvement of existing wharfs, &c.  
Accounts of expenditure to be laid before Parliament.

3. [Repealed by Act 22 of 1872.]

4. The Ordinance No. 1, of 1848, entitled "An Ordinance for improving the port of Table Bay," is hereby repealed, and all and singular the lands and grounds which were, by the second and third sections of the said Ordinance, or by any other title whatsoever, vested in the Board of Commissioners (<sup>1</sup>) in the said Ordinance mentioned, at the time of the taking effect of the Act aforesaid, No. 11, of 1857, are hereby vested in Her Majesty the Queen in her Colonial Government.

Ordinance 1, 1848, repealed.

Lands vested in harbour board transferred to colonial government.

5. So much of the shore of Table Bay, and of any waste land as may lie between the northern and the southern piers of the harbour of refuge, proposed by Captain James Vetch, and laid down upon his aforesaid plan, and which shore or land was vested in the Commissioners of the Municipality of Cape Town, at the time of the taking effect of the Act aforesaid, No. 11 of 1857, is hereby vested in Her Majesty the Queen, in her said Colonial Government.

Certain beach and other lands vested in the colonial government.

6. All moneys which shall have arisen from the accumulations of dues of wharfage and cranage, which shall be in the Colonial Treasury, or other depositories, at the time of the taking effect of this Act; and all moneys arising from dues of wharfage and cranage to be levied under this Act, and all purchase moneys, rents, or other revenues arising, or to arise, from or out of any of the lands or grounds in the third and fourth sections of this Act mentioned; or from or out of any land or ground which may be created or reclaimed from the sea by means of any of the works or improvements contemplated by this Act, shall vest, and the same are hereby vested, in her said Majesty in her said local Executive Government, for the purposes of the said harbour: Provided that it shall and may be lawful to expend, during the construction of the said breakwater, and other improvements of the said harbour, so much of the moneys arising from wharfage and cranage dues, for the time being, as shall be needful for enlarging any of the present wharfs in Table Bay, or for keeping them in sufficient repair.

Accumulated wharfage dues, and other revenues, vested in the government

7. Correct accounts shall be kept of all moneys arising from or out of the respective sources of revenue aforesaid, distinguishing the proceeds of the dues of wharfage and cranage from the proceeds of the sales or leases of land.

Separate accounts of such revenues to be kept.

<sup>1</sup> See Act 26 of 1881, *infra*.



No. 20--1858.

8. The fifth section of the Ordinance No. 6 of 1851 <sup>(1)</sup> is hereby repealed, and the management of the wharfs in Table Bay, and of the dues of wharfage and cranage levied in Table Bay, and to be applied to the construction of the breakwater aforesaid, and to the making of the other improvements aforesaid, are hereby vested in the Colonial Government.

Superintending engineer may treat for lands and materials.

9. In case the Colonial Government shall require, for the purpose of the works contemplated by this Act, or of any of them, to take or use any land, or to dig out or quarry any stones or other materials, being private property, then the engineer, or other person charged with the conduct of such works, acting under the authority of the Governor, may treat and agree with the owner of any such land or materials, 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 upon such terms and conditions as he shall judge expedient. And if

Arbitration clause.

not agree upon the purchase money, or hire, or other recompense, to be respectively given and accepted, then the engineer or other person aforesaid 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 engineer or other person aforesaid, 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 the said notice, then the engineer or other person aforesaid 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 engineer or other person aforesaid, and for that purpose to transmit to the engineer or other person aforesaid, 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 engineer or other person aforesaid, 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 engineer 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 shall contain, amongst other things, a power to the said arbitrators, in case of 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

Arbitrators may choose an umpire.

<sup>1</sup> Repealed as regards Cape Town by Act 22 of 1872, *infra*.

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 engineer or other person aforesaid 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 engineer 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 arbitrators or an umpire, under the provisions of this section, and as if all acts by law required for vesting in the engineer 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. 20—1858.  
How, in case of failure, to appoint arbitrator.

10. In case the engineer 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 and curator, to treat and agree with the engineer 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 engineer or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the engineer 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 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 lands 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 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 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,

If property treated for belong to minors.

No. 20—1858.

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.

Certain moneys may be raised on debentures.

11. It shall be lawful for the Governor to raise and take up upon debentures, or such other form of loan as he shall consider preferable, such sum or sums of money, not exceeding in the whole two hundred thousand pounds, as may be required for defraying the costs of the pier or breakwater aforesaid, or any other of the harbour works contemplated by this Act.

Debentures charged upon the revenues described in this Act.

12. All such debentures or other loans are hereby charged upon all and singular the revenues and moneys described in this Act and shall from and out of such revenues and moneys be paid off as speedily as circumstances will permit.

Debentures, for what amounts, and how to be issued.

13. Should any debentures be issued under this Act, they shall be issued for sums not exceeding one hundred pounds nor less than fifty pounds each, and shall be signed by the Treasurer and Auditor of the Colony, and shall bear interest at a rate not exceeding six per cent. per annum.

Loans otherwise than by debentures.

14. In case any loans should be effected under this Act, otherwise than by means of debentures, the deed or instrument attesting such loan, and hypothecating the revenues and moneys aforesaid for the repayment of the same, with the stipulated interest, shall be signed, on the part of the Colonial Government, by the Treasurer and Auditor aforesaid.

No. 22—1872.]

[July 31, 1872.

## ACT

For the Management of the Docks and Breakwater of Table Bay.

Preamble.

WHEREAS it is necessary and expedient that due and proper provision should be made for the management of the Docks and Breakwater 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:—

Laws repealed.

1. So much of the Ordinance No. 6 of 1851, intituled "Ordinance for Regulating the Rates of Wharfage Dues in Cape Town and Simon's Town," as applies to the port of Cape Town; Section III of Act No. 20 of 1858, intituled an Act "For Constructing a Breakwater to form a Harbour of Refuge in Table Bay and otherwise improving the said Harbour;" and the Act No. 18 of

1868, intituled an Act "To provide for the Management of the Docks in Table Bay," shall be and the same are hereby repealed: Provided, however, that notwithstanding the repeal of Act No. 18, 1868, all regulations duly made under the provisions thereof, and in force at the time of taking effect of this Act, shall remain and continue in force in the same way as if they had been made under the provisions of this Act.

No. 22—1872.

2. [Sections 2 to 5 repealed by Act 26 of 1881.]

6. [Superseded by section 17, Act 26, 1881.]

7. Save as hereinafter excepted, all goods of whatever kind or nature that may be brought into the port of Cape Town for importation from any part within or beyond the limits of the Colony, and all goods intended for exportation from the port of Cape Town to any part within or beyond such limits, shall be landed or shipped, as the case may be, at the dock known as the Alfred Dock, and at no other place in the said bay; but it shall be lawful for the Collector or other principal officer of Customs of the port to grant permission, on such terms as he may think fit, for the landing and shipping of any such goods at some other place in the said port.

Where goods may be landed or shipped

Power of collector.

8. All goods which may be landed or shipped otherwise than in conformity with the preceding section shall be deemed and taken to have been illegally landed or shipped, and may be seized by any officer of the Customs, and shall be forfeited; and all such goods shall be dealt with in like manner as by the Ordinance No. 6 of the year 1853, or any Act for the time being in force for the regulation and management of the Customs of the Cape of Good Hope in lieu thereof, it is or shall be directed that goods forfeited thereunder shall be dealt with.

Penalty on contra-vention.

9. No goods brought to the dock on importation or for exportation shall be landed or shipped except by persons authorized by the commissioners in the second section of this Act mentioned.

Who may land or ship goods.

10. It shall be lawful for the said commissioners to charge for and in respect of any goods that may be warehoused by the owners thereof in any warehouse under the management of the said commissioners, warehouse rent at such rates as may from time to time be fixed by the said commissioners and approved by the Governor, and published in the *Government Gazette*.

Warehouse rent chargeable.

11. It shall be lawful for the said commissioners to demand and receive from any owner or master of any vessel that may enter the dock, dock dues at such rates as may from time to time be fixed by the said commissioners and approved by the Governor, and published in the *Government Gazette*.

Dock dues chargeable.

12. It shall be lawful for the said commissioners, with the approval of the Governor, to employ for the construction, maintenance, and management of such docks, breakwater, and other works in connection therewith, and for the conduct of the business thereof, so many officers, and to pay them such salaries, and

Employment of officers.

No. 22—1872.  
Officers not to engage in trade or accept fees, &c.

impose upon their appointments such conditions as may be deemed expedient, and it shall not be competent for any officer who may be employed under the authority of this Act under pain of immediate dismissal, to be directly or indirectly engaged or concerned in any business or trade whatsoever, nor shall any such officer accept any fees or emoluments other than his salary or allowance paid by the said commissioners without the previous sanction of the said commissioners and the approval of the Governor.

Dues fixed in schedule chargeable.

13. From and after the taking effect of this Act the said commissioners shall be entitled to demand and receive from the importers, exporters, or transhippers, as the case may be, of all such goods, articles, matters, or things imported, exported, or transhipped in Table Bay, save as hereinafter excepted in the schedule hereto, as dock dues, such sums as are in the said schedule respectively set forth, or such lesser sums, respectively, as may be appointed by the said commissioners, and approved of by the Governor from time to time, and published in the *Government Gazette*: Provided that in every case in which any lesser sums shall be so appointed and approved of as aforesaid, goods landed from or shipped to ports or places within this Colony shall not be charged more than one half of the rates for goods landed from or shipped to ports or places beyond the limits of this Colony: Provided, also that transhipment shall, for the purposes of this Act, mean the act of removing goods direct by boat or otherwise from one ship into another without touching the shore, as also the act of removing goods from one ship to another by carrying them along the shore directly and continuously from the one ship to the other.

Transshipment defined.

Dues, by whom to be collected.

14. All sums accruing to the said commissioners under the provisions of this or any other Act shall (unless it shall be otherwise arranged between the said commissioners and the Governor) be collected by the Collector of Customs, and shall be paid into the Treasury to a separate account, and all moneys received under this Act shall in the first place be applied to the payment of interest upon the money borrowed or to be borrowed for the construction of the breakwater and dock and other works connected therewith, and next to the payment of the expenses of collecting the moneys aforesaid, and of managing and maintaining the said works, as well as to the construction of any further works connected with the works aforesaid, which shall be deemed by the said board to be necessary to render the said lastmentioned works more serviceable and efficient: Provided that no such further work which shall be estimated to cost £500 or upwards shall be commenced without the previous sanction of the Governor: Provided, also, that any surplus which may exist after defraying the charges aforesaid, shall be applied to the extinction of the money borrowed as aforesaid, in such manner as the Parliament shall hereafter direct.

Application of moneys.

Previous sanction of Governor to commencement of further works required.

Application of surplus moneys.

Annual accounts to be laid before Parliament.

15. The commissioners aforesaid shall, at the close of every half-year reckoned from the first day of January, 1873, prepare and

transmit to the Governor, an account or statement showing the receipts and disbursements of the said commissioners during the past half-year, and every such account shall by the Governor be laid before both Houses of Parliament, if then sitting, or if not sitting, then within ten days from the commencement of the Session of Parliament which shall be held next after the receipt of such account.

No. 22—1872.

16. It shall be lawful for the Collector or other principal officer of Customs at the port to refuse to any master of any ship in the said port of Cape Town or Table Bay clearance outward until he shall have paid the dock dues of all kinds which may be due from him or his ship, and have in other matters complied with the regulations of the port.

Clearance outwards may be refused until regulations have been complied with and dues paid.

17. (1) Subject to the provisions hereinbefore contained, it shall be lawful for the said commissioners, with the approval of the Governor, to make all necessary regulations for the management of the said dock, and of the landing, shipping, transshipping and warehousing of goods, and for the proper control of all vessels entering the same; and from time to time, as to them may appear proper and with the like approval, to alter and amend any such regulations; and all such regulations shall be published in the *Government Gazette*, and any person violating the same shall be liable on conviction to a fine not exceeding five hundred pounds sterling, or to imprisonment with or without hard labour for any period not exceeding six months, unless the fine be sooner paid.

Framing of regulations.

Penalty.

18. [Repealed by Act 4 of 1873.]

19. This Act shall take effect upon and from the first day of January, 1873.

SCHEDULE.

TARIFF OF RATES.

	s.	d.	
Upon all goods landed from or shipped to ports or places beyond the limits of this Colony, or transhipped .. .. .	5	0	per ton.
Upon engines, plant, machinery, coals, and other articles required for the construction or working of the Cape Town and Wellington Railway during the term of years during which the Cape Railway Company has the privilege by its contract with the Colonial Government of having the said articles admitted into the Colony free of dues of wharfage .. .. .	2	6	„
Upon all goods landed from or shipped to ports or places within the limits of this Colony .. .. .	2	6	„
On horses, mules, asses, and horned cattle, landed, shipped, or transhipped .. .. .	5	0	each.
On calves, sheep, pigs, and goats, landed, shipped, or transhipped .. .. .	0	3	„

<sup>1</sup> Additional powers conferred by § 23, Act 26 of 1881.

No. 22—1872.

Upon goods less than a ton, proportions of the above respective rates shall be payable, as follows:—

Upon one-fifth of a ton and under,—one-fifth of the above rates.

Over one-fifth and not exceeding two-fifths,—two-fifths of the above rates.

Over two-fifths and not exceeding three fifths,—three-fifths of the above rates.

Over three-fifths and not exceeding four-fifths,—four-fifths of the above rates.

Over four-fifths of a ton and under a ton shall be charged as one ton; and any fraction of a ton over one ton or over any greater number of tons shall be charged as a ton.

## EXEMPTIONS.

1. All Naval and Military Stores for the use of Her Majesty's Naval and Military Forces, or for the use of Her Majesty's Civil Departments.
2. All stores for the use of Her Majesty in her Local Executive Government.
3. Such reasonable personal baggage of passengers and of masters and seamen as Customs duties shall not be levied on.
4. All such Military and Naval baggage as Customs duties shall not be levied on.
5. All provisions and stores, not liable to Customs duties, shipped at this port, for daily consumption on board the ship while in harbour.
6. All animals, living, not specified in the above tariff.
7. Coals shipped, on which the dock dues were paid when landed.

No. 4—1873.]

[June 26, 1873.]

## ACT

To Repeal the Eighteenth Section of Act No. 22 of 1872, and to enable the Commissioners of Table Bay Docks to fix the Tonnage of Goods subject to Dues.

Preamble.

WHEREAS it is expedient to repeal the eighteenth section of Act No. 22 of 1872, and to substitute certain 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, as follows:—

Section 18 of Act No. 22 of 1872 repealed.

1. The eighteenth section of Act No. 22 of 1872, intituled "An Act for the Management of the Docks and Breakwater of Table Bay," is hereby repealed.

Commissioners of Table Bay Docks to fix the scale of tonnage subject to certain provisions.

2. It shall be lawful for the commissioners provided for by the said Act from time to time to fix the scale of tonnage, either by weight or by measurement, of any goods, being solids, whereon dock dues shall be payable under and by virtue of the provisions of the said Act: Provided, however, that such scale of tonnage shall not be valid or binding unless and until it shall have been approved of by the Governor with the advice of the Executive

Council, and published in the *Government Gazette*: Provided, further, that of solids in regard to which no scale of tonnage shall have been fixed, approved of, and published in manner aforesaid, two thousand pounds by weight or forty cubic feet by measurement, whichever shall be of least bulk, and of all liquids, two hundred gallons, shall for the purposes of the said Act be deemed to be a ton.

No. 4—1873.

No. 26—1881.]

[June 25, 1881.]

## ACT

## For the Management of the Docks and Breakwater of Table Bay.

WHEREAS it is desirable to provide for the better management of the docks and breakwater 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. The second, third, fourth, and fifth sections of Act No. 22 of 1872, and so much of any other sections of the said Act, or of any other Act of Parliament, ordinance, or other statutory enactment having the force of law, as may be inconsistent with, or repugnant to, the provisions of this Act are hereby repealed, so far as such inconsistency or repugnance may exist, but not otherwise.

Certain sections of previous Acts repealed.

2. The commissioners appointed under the provisions of the said Act No. 22 of 1872, who 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 now exercised and performed by them, until the first meeting of the Board of Commissioners appointed and elected under the provisions of this Act.

Present Commissioners to act till new ones appointed.

3. The management of the docks and breakwater in Table Bay, as well as of any further works of construction or maintenance, shall be vested in a Board of Commissioners to be appointed and elected under this Act, from and after the date of the first meeting of such board.

Management of Docks and Breakwater vested in board to be appointed under this Act.

4. The Board of Commissioners, in the last preceding section mentioned, shall consist of seven persons, of whom four shall be appointed by the Governor by proclamation: Provided that the persons so appointed by the Governor may be removed as in the sixth section of the said Act No. 22 of 1872 is provided, and that not more than two of such persons shall be officers holding office of profit under Her Majesty the Queen; and three shall be elected by the constituency, and in the manner hereinafter provided.

Constitution of the Board.

5. The existing Board of Commissioners shall, as soon as may be after the thirtieth day of June next, and the board by this Act constituted shall as soon as may be after the thirtieth day of June in every succeeding year, cause a true list to be made, in

List to be made of persons paying Dock Dues.

GGGG



No. 26—1881.

alphabetical order, of all persons being inhabitants of or having their places of business in Cape Town, who shall during the last preceding twelve months have paid such dock dues as are provided by the thirteenth section of the said Act No. 22 of 1872, and setting forth the christian and surname of such person at full length, or the name of the firm (in case the said dock dues shall have been paid by a firm and not by a single individual), the place of his or their business, and the amount of such dock dues which such person or such firm shall have paid during the period aforesaid, and such person or persons shall be entitled to vote in proportion to the amount of dock dues paid by them severally according to the schedule to this Act.

When such list complete a voters' list to be framed.

6. As soon as the list in the last preceding section shall be complete the said board shall cause the same to be transmitted to the Collector of Customs, who shall cause copies thereof to be posted in some convenient place, heading such list with the words "List of persons and firms entitled to vote at the election of commissioners of the Table Bay Harbour Board."

Complaints against such list to be investigated by Collector of Customs.

7. In case within one month after the posting of such list, as in the last preceding section mentioned, any complaint shall be made to the Collector of Customs of the omission therefrom of the name of any person or firm whose name ought to have appeared upon such list, or of the insertion therein of the name of any person or firm which name ought to be expunged from such list, it shall be the duty of the said Collector of Customs to investigate such complaint, and to add, or remove, any such name to or from such list as to him shall seem just.

List when settled to be list of voters for Commissioners.

8. The persons and firms named in such list, after the additions to or alterations of the same (if any) have been made by the said Collector of Customs as aforesaid, shall be the voters entitled to vote at the election of the commissioners as hereinafter provided, and as often as a firm shall be named in such list of voters, such firm shall be entitled to vote by one member thereof, and no more, or may by an authority in writing appoint some person to appear and vote for such firm.

Every Voter qualified to be Commissioner.

9. Every person being a voter, as in the last preceding section provided, and whether he be so individually or as a member of a firm, shall be qualified to be elected a commissioner of the said Harbour Board: Provided, however, that no such voter shall be competent to be a candidate for the said office unless he shall have received and accepted a requisition to become such candidate signed by not less than five duly qualified voters, and shall have transmitted such requisition, with his acceptance thereof, to the Collector of Customs at least ten days before any election is appointed to take place.

On Requisition.

Names of Candidates to be published.

10. The Collector of Customs shall at least seven 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 requisitions, to be published in the *Government Gazette* and one or more newspapers published in Cape Town.

11. Every election under this Act shall take place before the Collector of Customs, who shall be the returning officer for that purpose, on such day and at such place as he shall appoint, and the poll shall be kept open from nine o'clock a.m. until one o'clock p.m.

Election to be before Collector of Customs.

12. The poll shall be taken by some officer to be appointed for that purpose by the Collector of Customs, and the voting at such poll shall be by voting papers.

Polling Officer.

13. Every candidate may, if he thinks fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

14. 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.

15. At the first election of commissioners under this Act, the voters shall elect, in manner by this Act provided, three commissioners, who shall be deemed to enter upon their office on the first Monday following, in conjunction with the four other commissioners appointed by the Governor.

Three Commissioners to be elected.

16. Of the persons so elected as in the last preceding section, the commissioner who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the date of entering upon his office; and in case from any cause 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 two elected commissioners shall vacate their seats in like manner at the expiration of two years and three years respectively; and upon the retirement from office of such commissioners respectively, they shall be succeeded by commissioners who shall be elected as hereinbefore provided, so that at every annual election after the first there shall be elected one commissioner who shall enter upon his office on the first Monday after his election, and continue therein for three years, and every retiring commissioner shall be eligible for re-election.

Rotation of retirement of Commissioners.

17. If any elected commissioner shall die, resign, become insolvent, or assign his estate for the benefit of his creditors, or shall be absent from the ordinary meetings of the board for a period of three calendar months, his office shall become vacant and a commissioner 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 commissioner who has vacated office and whom he shall succeed would otherwise have remained in office.

How office to become vacant.

18. In case of an equality of votes at any election of a commissioner under this Act, the returning officer shall determine

Provision in case of equality of votes.

- No. 26 - 1881. 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.
- Chairman to be chosen annually. 19. The commissioners present at the first meeting of the board constituted under the provisions of this Act, and at the first meeting held after every annual election respectively, shall elect from amongst themselves a chairman who shall hold such office for the space of one year and who shall, when present, preside at all the meetings of the board: Provided that if at any meeting such chairman shall not be present, the members attending such meeting shall elect from among themselves a chairman to preside at such meeting: And provided also that in case at any election of a chairman under the provisions of this section any two or more commissioners shall have an equal number of votes, it shall be decided by lot which of such commissioners shall be the chairman.
- Quorum. 20. At every meeting of the board three commissioners shall form a quorum; and in case the votes of the commissioners upon any question before them shall be equally divided, the presiding member shall, in addition to his original or deliberative vote, have a casting vote: Provided, however, that no commissioner shall vote on any question in which he shall have any personal or pecuniary interest, directly or indirectly, under a penalty not exceeding one hundred pounds sterling, to be sued for by the Attorney-General.
- Payment of Commissioners. 21. Every commissioner appointed or elected under the provisions of this Act shall be entitled to receive the sum of twenty shillings for each attendance at the meetings of the board: Provided, however, that no commissioner shall receive more than one hundred pounds sterling in any one year in respect of such attendances.
- Rights, powers, &c. of present Commissioners conferred on new Board. 22. All the rights, powers, duties, privileges and authority conferred upon, assigned to, and at present enjoyed or received by, the existing board of commissioners for the management of the dock and breakwater of Table Bay by virtue of any Ordinance, Act of Parliament or other statutory enactment having the force of law, and not repugnant to or inconsistent with the provisions of this Act, shall be, and the same are hereby, conferred upon, assigned to, and continued in, the board of commissioners to be appointed and elected under this Act; and such commissioners shall be designated the "Table Bay Harbour Board," and may by such title sue and be sued and be described in all legal proceedings.
- Board may land, warehouse, and deliver goods. 23. In addition to all such existing rights, powers, duties, privileges and authority, it shall be lawful for the board of commissioners under this Act to land, warehouse, and deliver goods and merchandize by themselves or by their duly constituted agents in that behalf; and for the purposes of such landing, warehousing and delivery to construct or hire such railways, tramways, sheds,

or warehouses as they may deem necessary, and to enter into contracts or make arrangements with any public company or private individuals for any such construction or hiring.

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24. The words “dock” or “docks” in this or any other Act relating to the harbour of Table Bay shall be taken to mean the docks, basins, and other works connected therewith, which as the Governor shall from time to time by proclamation declare to be a dock for the purposes of such Act.

Interpretation of “Dock” or “Docks.”

25. This Act may be cited for all purposes as the “Table Bay Harbour Board Act, 1881.”

Short title.

SCHEDULE TO THIS ACT.

VOTES ACCORDING TO DUES PAID IN RESPECT OF EVERY COMMISSIONER TO BE ELECTED.

Not less than £10, and not exceeding £100,	One Vote.
Exceeding £100,     ”     ”     £200,	Two Votes.
”     £200,     ”     ”     £300,	Three     ”
”     £300,     ”     ”     £400,	Four     ”
”     £400,     ”     ”     £500,	Five     ”
”     £500,     ”     ”     £600,	Six     ”
”     £600,     ”     ”     £700,	Seven     ”
”     £700,     ”     ”     £800,	Eight     ”
”     £800,     ”     ”     £900,	Nine     ”
”     £900 and upwards	Ten     ”

No. 20—1878.]

[August 2, 1878.

ACT

To Impose certain Duties on Houses.

WHEREAS it is expedient that the public revenue of this Colony be increased by the imposition of certain duties on houses as hereinafter is 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:—

Preamble.

1. For the purposes of this Act the word “house” shall be construed to mean every distinct and separate habitation occupied by human beings, and also every house, warehouse, counting-house, shop, mill, factory, workshop, engine-house, store, or office, used as a place of business, although not occupied as a habitation. This definition of the word “house” shall be subject to and modified by the rules in the next succeeding section set forth.

Word “house” defined.

2. In reference to what shall be deemed to be houses liable to duty under this Act, and in reference to the valuation of such houses, the following rules shall be observed, that is to say—

Definition restricted by following rules:

A. No store upon any wine farm, used only for storing the wine or spirits made upon such farm, and no store upon any farm used only for storing the produce of such

As to store on wine farm.

No. 20—1878.

farm shall, although such wines, spirits, or produce may be sold at such store, be deemed to be a place of business, so as to be liable to duty as such; but every such store shall be valued as if part and parcel of the dwelling-house of the occupier of such farm.

Stable, coach-house,  
&c.

B. Every stable, coach-house, and outbuilding, no part of which shall be occupied by human beings as a dwelling, or be occupied as a place of business, shall be valued as if part and parcel of the dwelling-house to which it belongs.

How as to building  
occupied by servant.

C. As often as a servant of the occupier of any dwelling-house, or any other person, shall reside in part of any stable, coach-house, or outbuilding belonging to such dwelling-house, and such part shall be divided off from the remainder of the building by a wall or other partition, then, whether there shall or shall not be a door, doorway, or other opening in such wall or partition, communicating internally with the remainder of the building, the part so divided off as a residence shall be deemed to be a house liable to duty, and the same shall be valued according to its value considered as separate from the remainder of the building, and the remainder of the building, if not liable to duty under this Act as a place of business, shall be valued as if part and parcel of the dwelling-house to which it belongs; should the remainder of such building be liable to duty under this Act as a place of business, then, if there be no such internal communication as aforesaid, both the residence and the place of business shall be liable to duty, and each shall be separately valued for such duty; but should such an internal communication exist, the whole building, including the part used as a residence, shall be valued for duty as if one single and undivided place of business; and such duty shall be payable by the occupier of the remainder of the building occupied as a place of business, and not by the occupier of the residence.

As to buildings  
close to principal  
building and occu-  
pied by one family.

D. If two or more buildings, within a radius of fifty yards from the centre of the principal building, be together occupied by one family as a dwelling, then, whether such buildings do or do not communicate with each other by one or more enclosed and covered passages leading from one into the other, those buildings shall, for the purpose of this Act, be valued together, and their united value shall be regarded as the value of one house, and shall be liable to duty as the value of one house. The term "family" shall, for the purpose of this rule, embrace the persons following, and the servants of any of them, viz. :

Who are included  
in term "family."

1. Husband and wife, and the ascendants and descendants of both or either of them, living with them, and paying no rent for any of the said buildings.
  2. Widower or widow, and the ascendants and descendants of such widower or widow, or of any deceased spouse of such widower or widow, living with such widower or widow, and paying no rent for any of the said buildings.
  3. No descendant, being or having been married, and who shall reside as the head, or as the wife of the head, of a distinct family in any building separate from the principal dwelling-house (although within the radius aforesaid), shall be deemed to live with or belong to the family occupying the principal dwelling-house, and such separate building shall be liable to duty as a separate house, although such descendant may pay no rent for such building.
- E. If two or more buildings within a radius of fifty yards from the centre of the principal building shall all be occupied as places of business by the same person, whether such person shall carry on in each such building the same description of business or not, then all such buildings, whether they do or do not communicate with each other internally, or by enclosed and covered passages leading from one into the other or others, shall pay duty as one house upon the united values of such buildings. Places of business close to principal building and occupied by same person.
- F. What shall be deemed to be the "principal building" for the purpose of this Act shall be determined by general repute; and failing any such general repute, then the building of the greatest value shall be deemed to be the principal building. What shall be deemed "principal building."
- G. When one building shall be partitioned and divided into parts, so that there shall not be, by means of any door or opening, any internal communication between such parts, and each or any of such parts shall be occupied as a dwelling by a person or family other than the person or family, or persons or families, occupying the other part or parts, then each part of such building shall be regarded as a separate house, and be liable to duty as such. In case one or more of the parts of any such divided building as aforesaid shall be occupied as a dwelling, and any other part as a place of business (whether such business be that of the occupier of the part or parts used as a dwelling or not), then the part or parts occupied as a dwelling shall be valued for duty as a separate house, or as separate houses (as the case may be), and the part or parts occupied as a place of business shall also be valued for duty If separate parts of same building be occupied by persons of different families.  
Or be used as dwelling-house and place of business respectively.

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How if there be internal or covered communication between separate parts.

From whom duty to be recovered in this case, and how as to contribution.

How as to room rented separately and not communicating with rest of house.

How house to be valued if land annexed.

Temporary huts of 40s. value not liable to duty.

Duty payable yearly on every house occupied for 90 days during previous twelve months.

as a separate house or as separate houses (as the case may be).

- H. Should there be between the parts of any building such as is described in letter G, an internal communication by means of a door or opening, or enclosed and covered passage leading from one part into the other or others, then the whole building shall be valued as one house, no matter whether the parts be occupied by one person or by different persons. But the duty upon such house shall be recoverable from that occupier of any of the parts, who, if distinct in interest from the other occupier or occupiers, shall, in the absence of any agreement to the contrary, be entitled to claim contribution from the other occupier or occupiers, such contribution to bear the same proportion to the duty paid as the value of the part or parts called on to contribute bears or bear to the whole value of the building.
- I. When any room of any house, whether such room be on the ground floor or on an upper storey, shall not communicate by any internal opening with the rest of the house, and can only be entered from without, such room shall, if occupied by a person paying rent for the same as a separate apartment, be deemed to be a separate house, and be liable to duty as such, but if not so occupied, it shall be valued as part and parcel of the house of which it is a room, and not separately from such house.
- J. In valuing for the purpose of this Act, any house occupied together with a farm, or garden, or other land, the valuator will, as a general rule, first take into account the fair marketable value of the house and land together, should such value be known to him, and then estimate, according to the best of his skill and knowledge, what proportion of such value justly belongs to or arises from the house, regarded as distinct from the land.
- K. No hut, not exceeding in value the sum of forty shillings, situated on any part of any farm, and occupied temporarily as a place of shelter by any servant in charge of stock when grazing at a distance from the homestead, or in charge of growing crops, shall, in case such servant shall have a permanent residence at some other part of such farm, be deemed to be a habitation liable to duty.
3. Upon every house within this Colony wherever situated which shall have been occupied as a dwelling-house or place of business for not less than ninety days, whether consecutive or otherwise, within the space of twelve months next before the day of the service upon the occupier or owner of such house (as the case may be) of such notice as is in the ninth section of this Act mentioned, there shall be payable to the colonial revenue upon

the day which shall in that behalf be specified in such notice, and afterwards on the first day of July of every year during the subsistence of this Act, except as in the next succeeding section, a duty according to the value of such house, upon the following scale, that is to say:—

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- On every house not exceeding in value £100 the sum of 10s.  
 On every house exceeding in value £100, and not exceeding £500, the sum of £1.  
 On every house exceeding in value £500, and not exceeding £750, the sum of £1 10s.  
 On every house exceeding in value £750, and not exceeding in value £1,000, the sum of £2.  
 On every house exceeding in value £1,000, and not exceeding £1,250, the sum of £3.  
 On every house exceeding in value £1,250, and not exceeding in value £1,500, the sum of £4.  
 On every house exceeding in value £1,500, and not exceeding in value £1,750 the sum of £5.  
 On every house exceeding in value £1,750 and not exceeding in value £2,000, the sum of £6.  
 Then, for every additional £250 and fraction of £250 of such excess, an additional duty of £1: Provided that in no case shall the duty exceed £10.

Scale of duty.

4. Every house shall *prima facie* be held to have been occupied for the space of ninety days as in the last preceding section mentioned, unless the contrary be proved by the person liable to the duty on such house.

Occupation of 90 days presumed, unless contrary proved.

5. If during any year any house which shall have been valued for assessment to the house duty under this Act shall not have been occupied during ninety days in all, counting from the 1st day of July in one year to the 1st day of July in the succeeding year, it shall be lawful for the owner of the said house, and if the said house no longer exists, then for the late owner thereof, or the owner of the site thereof, to object before the Civil Commissioner at any time within sixty days after the first day of July, upon which day the duty, if due, would become payable, that such house has not been occupied during the space of ninety days in all during the year ending on the 1st day of July theretofore, and if the said house no longer exists, then that it does no longer exist; and on proof to the satisfaction of the Civil Commissioner of the first of such facts, such owner shall be exempted from duty in respect of such house for the year ending the said 1st day of July theretofore; and if proof be made that the said house no longer exists, then the said house may be struck off from the valuation roll for the future. And it shall be lawful for the Civil Commissioner to direct such inquiries as he shall think fit to verify either of such facts, and he need not be satisfied with the evidence which shall be brought before him by the objecting owner, and he may adjourn

If house not occupied for 90 days, or if it be destroyed, objections may be made within 60 days after duty payable.

Steps to be taken if objection established. Civil commissioner may inquire into the case.



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the inquiry from time to time, if he shall think fit to do so, until he shall be satisfied.

By whom duty payable.

6. The duty by this Act imposed shall be due and payable by the occupier of the house upon which such duty is charged, in case such house shall, in the year in which this Act shall first take effect, be occupied on the day of the valuation of such house for the purpose of this Act, and in case, in regard to each succeeding year, it shall be occupied on the first day of July in such year: And every person shall be deemed to be the occupier on any such day as aforesaid who shall then be entitled to the possession of the house in question, although such person may not then be in actual possession of such house. As often as there shall not be on any such day any person other than the owner of such house then entitled to the possession of such house, the owner of such house shall be the person liable for the payment of the duty upon such house. But nothing in this Act contained shall make any person liable for duty upon any house which shall not have been occupied for the space of ninety days, as in the third section of this Act specified.

Who to be deemed occupier.

When duty payable by owner.

Appointment of valuers.

7. It shall be lawful for the Governor, acting by and with the advice of the Executive Council, to appoint, by notice in the *Government Gazette*, fit and proper persons to value the houses in each division of the Colony for the purposes of this Act, and for that purpose to call for tenders from persons willing to value the same. But the Governor, acting as aforesaid, shall not be bound to appoint the persons who shall tender to perform such duty at the lowest rate of payment, and shall be at liberty to appoint the same valuator for more divisions than one, or to appoint different valuers for different parts of the same division, if the Governor, acting as aforesaid, shall deem it advisable so to do. The municipalities of Cape Town and Green Point shall be deemed for the purposes of this Act to be within the division of the Cape: Provided, that if during the interval between any two valuations any house liable to duty within the meaning of this Act shall be built in any division, or if it shall be discovered that any house liable to duty has been omitted to be valued in any division, it shall be lawful for the Governor, acting as aforesaid, by notice as aforesaid, to appoint a valuator or valuers as aforesaid, to value such house or houses, so as to keep the valuation roll in every division as complete as possible, and such valuation shall for the purposes of this Act be considered to be a valuation of a part of a division: Provided further, that a fresh valuation or revision of the valuation roll shall take place before or at the expiration <sup>(1)</sup> of three years from the date of the previous valuation or revision, as the case may be, under such regulations as the Governor, acting as aforesaid, may declare by proclamation in the *Government Gazette*.

Municipalities of Cape Town and Green Point.

As to houses built at intervals between valuations or omitted to be valued.

Fresh valuation every three years.

<sup>1</sup> Printed as amended by Act 29, 1882, *infra*.

8. It shall be the duty of the valuator for every division, or any part thereof, to value for the duty imposed by this Act the houses situated in such division or any part thereof; and for the purpose of making such valuation it shall be lawful for such valuator or any person authorized by him, in writing, to make such valuation, to enter at all reasonable hours upon any working day, upon any lands in order to value any house situated on such lands, but he shall not be entitled, except by permission, to enter such house; and any person who shall by force and violence, or by threats of force or violence, resist, molest, oppose, hinder, or obstruct such valuator or any person authorized by him as aforesaid whilst lawfully employed in and about assessing the value of any house, shall upon conviction be liable to a fine not exceeding ten pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding one month, without prejudice to the prosecution of such person in ordinary form of law, for the crime of assault, or for any greater crime which such person may have committed in the course of such resistance and obstruction as aforesaid. But no person prosecuted for a contravention of this section shall be afterwards prosecuted for any other crime alleged to have been committed by means of the same act constituting such contravention: and, conversely, no person prosecuted for such other crime shall be afterwards prosecuted for any contravention of this section and alleged to have been committed by means of the same act constituting such other crime. Should the valuator, or any person authorized by him, in writing, to value any house, request permission to enter such house for the purpose of better ascertaining its value, and the occupier of such house, or the inmates thereof, refuse such permission, it shall not be lawful for such occupier to object to the valuation of such house: Provided such valuation have been made *bonâ fide*, and that it be not grossly excessive: Provided, also, that every person authorized as aforesaid shall be bound, upon demand made by the owner or occupier of any lands upon which such person shall have entered or shall be about to enter, to show his written authority for so doing; and failing the production of such authority, it shall be lawful for such owner or occupier to prevent such person from entering upon such lands, or continuing thereon, as the case may be: Provided, also, that where any house shall be situated within the boundaries of any Municipality, the valuation of such house for municipal purposes may be taken to be the valuation for the purposes of this Act.

No. 20—1878.

Duty of valuator; power of entry.

Penalty for obstructing or molesting valuator.

How if valuator be refused permission to enter.

Any person authorized by valuator to show written authority.

Municipal valuations may be used for purposes of this Act.

9. It shall be the duty of every valuator, as soon as possible after his appointment, to value each house liable to duty within the division, or any part thereof, for which he shall have been appointed, and to serve, or cause to be served, on the occupier of every such house, if any person other than the owner thereof shall then be in occupation thereof, and if not then on the owner thereof, a notice,

Valuator to serve notice on owner or occupier.

No. 20—1878. written or printed, or partly written and partly printed, which notice shall be in substance as follows:—

Division of—

To—

Form of notice  
above mentioned.

Take notice that the house (or if the building be not a dwelling-house say “the premises”) in your occupation, and at which this notice is delivered, has been valued for house duty at the sum of £—, and that such duty, being £—, must be paid to the Civil Commissioner of this division on or before the — day of — 18— (here insert some day being as near as may be ninety days from the day of the service of the notice). Should you deem the above valuation too high, you will be at liberty to appear before the Civil Commissioner of the division, either in person or by some person authorized by you in writing, at the Court-room of the Resident Magistrate, on the — day of —, 18—, at — o’clock in the forenoon, with your witnesses, if you have any, and to prove your objection, failing such appearance and proof, the valuation aforesaid will become fixed.

Dated this — day of —, 18—.

(Signed) A. B., Valuator.

Asto uniformity of  
date inserted in no-  
tices of same divi-  
sion.

As often as any such notice shall be served upon any owner, who is not the occupier, then the form of such notice shall be altered accordingly. The same day shall, if practicable, be inserted in all the notices served in the same division as the day for the appearance of objectors before the Civil Commissioner. If it be impracticable to name the same day in all such notices, and a second day must be inserted in some of such notices, then as many notices as possible shall specify that second day, and so on, in case it shall be necessary to specify a day or days more than two. The day to be inserted in the foregoing notice, for the appearance before the Civil Commissioner, shall be a day not earlier than thirty days nor later than sixty-five days next after the day of the service of such notice.

Within what limits  
date may be fixed.

How service of no-  
tice to be effected.

10. Every such notice on an occupier shall be served on such occupier personally, by showing him the original notice, and leaving with him a copy, and explaining to him the nature of such notice, or if personal service cannot reasonably be effected, then by showing to some inmate of the house so liable to duty the said original notice, and leaving with such inmate a copy thereof, and explaining to him the nature thereof, and if no such service as aforesaid can be reasonably effected, then by leaving a copy of such notice in the said house, or by affixing a copy to the door or other conspicuous part of such house, and the person serving the same shall enter on the back of the original notice a memorandum of the service and of the manner in which the same was effected.

11. Every such notice, if on an owner not being himself in occupation of such house as aforesaid, shall be served in like manner as in the last foregoing section is provided, in respect of service on an occupier, save that service on the owner, if not personal, shall be made at his usual or last known place of abode, and if no inmate can be found therein, then at the house, the subject of the duty as well as such owner's usual or last known place of abode, if the same can be found, by leaving at each of such places, or affixing to the doors or other conspicuous part thereof, respectively, a copy of such notice as aforesaid, and in case the usual or last known place of abode of such owner cannot be found, then service at the house, the subject of the duty, made as aforesaid, shall be sufficient service; in every case the person making the service shall enter on the back of the original notice a memorandum of the service and of the manner in which the same was effected.

No. 20—1878.  
How notice to be served on owner not himself in occupation

Memorandum service to be endorsed on notice.

12. The valuator aforesaid shall give notice to the Civil Commissioner of his division of the day named in the notices aforesaid for the appearance of objectors, and when the same day shall not be named in all such notices, then of the other day or days named in any such notices, and upon the day or days named in all or any of such notices, the Civil Commissioner, if a Resident Magistrate, shall attend in the Court-room used by him as a Resident Magistrate, for the purpose of hearing and deciding upon objections to the valuations made by the valuator, and the said Civil Commissioner shall hear what shall be urged by or on behalf of the person objecting, and by or on behalf of the valuator, and may, if necessary, take evidence upon oath (which oath such Civil Commissioner is hereby authorized to administer), and shall confirm or reduce such valuation as justice shall require; and the valuation as fixed by such Civil Commissioner shall, for the time being, be binding and conclusive: Provided that the Civil Commissioner may adjourn the hearing upon any objection or objections as circumstances may require. And such valuator shall, before the day or days specified in such notices as aforesaid for the appearance of objectors before the Civil Commissioner of the division, frame an assessment roll showing the value of the several houses valued by such valuator, and the names of the occupiers and owners thereof respectively, and transmit such roll to such Civil Commissioner, at whose office it shall remain for the inspection of all persons whom such valuation may concern. The Civil Commissioner of the Cape division shall, for the purposes of this section, attend in the Court-room of the Resident Magistrate of Cape Town.

On day appointed civil commissioner to hear objections to valuations.

Hearing may be adjourned.

Valuator to frame assessment roll.

13. The occupier of any house liable to the payment of duty under this Act, and the owner of any such house who, not being the occupier of such house, shall be liable to pay the duty upon such house by reason that such house shall have been occupied for not less than the number of days in the third section of this Act

When duty to be paid.

- No. 20 - 1878. mentioned, shall be and is hereby required to pay, or caused to be paid, to the Civil Commissioner of the division in which such house is situated, the duty for the year in which this Act shall first take effect on or before the day in that behalf specified in the notice served as aforesaid, upon such occupier or owner, and to pay the duty for every succeeding year on or before the first day of July in such year, without fresh valuation or notice.
- Appointment of "collectors." 14. It shall be lawful for the Civil Commissioner of any division, with the previous sanction of the Governor acting as aforesaid, to appoint by notice in the *Government Gazette* some fit and proper person hereinafter termed "collector" to collect the duties payable under this Act, and from time to time, any such appointment, to cancel and annul, and make a fresh appointment, as circumstances may require. One person may be appointed collector for the whole of a division or for only a part thereof, and different persons for different parts. And every such collector shall, after the expiration of any such space of ninety days as in the next succeeding section mentioned, but not sooner, enter upon his duties as such collector, and exercise the powers hereinafter conferred upon him : And such collectors shall, respectively, be remunerated in such manner as the Governor acting as aforesaid, shall, in regard to such division in which any collector shall be appointed, deem reasonable and approve of.
- Entry upon their duties. Their remuneration 15. Should any person liable for the payment of duty under this Act make default in the payment thereof to the Civil Commissioner as aforesaid, in the year in which this Act shall first take effect, for the space of ninety days next after the day specified for payment in the notice in the ninth section mentioned, or in any subsequent year for the space of ninety days next after the first day of July in such year, then such persons shall be liable to pay in addition to the duty in regard to which he shall have made default, an additional sum equal to one-fifth of such duty ; and such additional sum shall, together with the original duty, be deemed to be the duty payable under this Act, and be recoverable as such by any of the means provided by this Act for the recovery of duties.
- Penalty for non-payment of duty within 90 days of date when due. 16. Every such duty as aforesaid may be enforced by the collector entitled to collect the same, either by action in the ordinary way, or by seizing in a summary way, to answer the amount of the duties as aforesaid, and the costs of levy and seizure and subsequent proceedings, a sufficient amount of the cattle, stock, and other movable property of the person or persons 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 or persons claiming such cattle, stock, and movable property shall commence in some
- Duty may be enforced by action. By distress.
- Attached property may be sold unless action be commenced for its recovery and security found.

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 to abide by and perform the judgment of the Court in the premises, which judgment, if adverse to the plaintiff, may be not only for the amount of the duties as aforesaid for which such seizure 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.

17. Upon such security as in the last clause mentioned being given and approved 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.

18. Upon default made in the year in which this Act shall first take effect by the occupier of any house, not being the owner thereof in the payment within ninety days next after such time as shall be specified in the notice in the ninth section set forth for the payment of the duty payable upon such house, or, in any succeeding year, within ninety days from the first day of July in such year, the collector may serve upon the owner of such house a notice informing him of such default as aforesaid, and calling upon him to pay to the said collector such duty as shall be payable in respect of such house at such time and place as shall be specified in such lastmentioned notice; and every such owner who shall, after such lastmentioned notice shall have been served upon him, leave such duty unpaid for the space of sixty days after the service of such notice, shall be liable to be sued for such duty in any competent Court, service of such lastmentioned notice shall be made in like manner as that in the eleventh section provided in regard to the notice therein mentioned. But no such owner shall be liable for any payment under the provisions of this section unless such lastmentioned notice shall be served upon him before the first day of July in the year next succeeding the year in which the occupier shall have made default, nor shall such owner be liable for any such payment unless the collector suing for the same shall prove to the satisfaction of the Court in which such action shall be brought, that the duty sued for could not by reasonable diligence have been recovered from the occupier in default. And no owner who shall under this Act be liable for the payment of the house duty which any occupier shall have failed to pay shall be liable for the costs of any action which may have been brought against such occupier, or of any seizure of the property of such occupier, made or attempted, unless such owner shall, in writing, have authorized such action or seizure, in which case, such owner shall be liable for such costs in case they have not been recovered from such occupier; and no owner shall be liable for the additional duty in the fifteenth section mentioned which

No. 20—1878.

When security given attached property may be restored to owner.

If occupier fail to pay duty collector may within 90 days call upon owner to pay it.

If owner do not pay within 60 days he may be sued.

When owner not liable under this section.

Owner not liable for costs of actions against occupier, nor for costs of attachment, unless he authorize the action or attachment.

As to penalty mentioned in section 15.

No. 29—1882.

may have accrued from the default of any occupier, provided such owner pay the amount, for which such occupier was originally liable, within sixty days after the service upon him of such notice as aforesaid. The process by seizure of property, as in the sixteenth section mentioned, shall not be capable of being enforced against any owner by reason or on account of any liability created by this section; and every such owner paying any duty under this section, shall be entitled to recover the same from the occupier in default, and shall for the purpose of such recovery possess all the powers conferred upon the collector by the sixteenth section of this Act.

As to distress,—and as to recovery of duty paid under this section from occupier.

19. [Repealed by Act 29, 1882].

Short title.

20. This Act may be cited as the “House Duty Act, 1878.”

No. 29—1882.]

[June 29, 1882.

## ACT

## To Amend the “House Duty Act, 1878.”

Preamble.

WHEREAS by the seventh section of the “House Duty Act, 1878,” it is provided, amongst other things, “That a fresh valuation or revision of the valuation roll shall take place before the lapse of three years from the date of the previous valuation or revision as the case may be:” And whereas from divers causes it has not been possible, in certain districts, to complete such fresh valuation or revision of the valuation roll within the space of three years from the date of the previous valuation or revision: and whereas it is expedient that the said Act should be amended in regard to the said provision 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 House of Assembly thereof, as follows:—

Repeal of certain laws.

1. The nineteenth section of the “House Duty Act, 1878,” and the “House Duty Act, 1878, Amendment Act, 1879,” are hereby repealed.

Amendment of 7th Section of “House Duty Act, 1878.”

2. The last proviso to the said seventh section shall be read and construed as if the words “the lapse” were omitted, and instead thereof the words “or at the expiration” were therein inserted; and the valuations made or to be made after the lapse of three years from the date of the previous valuation or revision, as the case may be, shall be as valid and effectual for all purposes as if the same had been in strict conformity with the provisions of the said section.

Short title.

3. This Act may be cited as the “House Duty Amendment Act, 1882.”

No. 26—1873.]

[June 26, 1873.

ACT

To Amend the Law of Inheritance in this Colony, and repeal the “Lex Hac Edictali.”

WHEREAS it is expedient to amend in manner hereinafter set forth the law as to the inheritance of the estates of deceased persons in this Colony, and to repeal the “Lex Hac Edictali:” 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 no case shall any heir of any one dying after the taking effect of this Act be entitled to deduct out of the estate of the person so dying any portion under or by virtue of the laws known respectively as the Falcidian and the Trebellianic Laws, which, but for such laws respectively, such heir would not be entitled to claim or deduct.

Heir not entitled to deduct any portion under Falcidian and Trebellianic laws.

2. From and after the taking effect of this Act the sixth law of the ninth title of the fifth book of the Codes of Justinian, commencing with the words “Hac Edictali,” and commonly called or known as the Law or Lex Hac Edictali, shall be and the same is hereby repealed.

Lex Hac Edictali repealed.

3. This Act may be cited for all purposes as “The Law of Inheritance Amendment Act, 1873.”

Short title.

No. 23—1874.]

[July 31, 1874.

ACT

To Amend the Law of Inheritance of this Colony.

WHEREAS it is expedient to remove certain restrictions heretofore existing by the laws of this Colony on the freedom of the disposition of property by the last will or testament of the owner thereof: 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 any law or ordinance heretofore existing in this Colony as shall be repugnant to, or inconsistent with, any of the provisions of this Act shall be repealed, and the same is hereby repealed accordingly.

Repugnant laws repealed.

2. No legitimate portion shall be claimable of right by any one out of the estate of any person who shall die after the taking effect of this Act.

No legitimate portion can be claimed of right.

3. Every person competent to make a will shall have full power by any will executed after the taking effect of this Act to disinherit or omit to mention any child, parent, relative, or descendant

Persons making will may disinherit any child, &c., without assigning reasons.

HHHH



No. 23—1874.

without assigning any reason for such disinheritance or omission, any law, usage, or custom now or heretofore in force in this Colony notwithstanding; and no such will as aforesaid shall be liable to be set aside as invalid, either wholly or in part, by reason of such disinheritance or omission as aforesaid.

Existing Laws of Inheritance *ab intestato* to remain in force.

4. Nothing in this Act contained shall affect or alter the Laws of Inheritance *ab intestato* at present in force in this Colony.

Existing laws of community of property between spouses to remain in force.

5. Nothing in this Act shall extend to or alter or affect the laws of this Colony regarding community of property between spouses when not excluded by antenuptial contract.

Short title.

6. This Act may be cited for all purposes as "The Succession Act of 1874."

No. 22—1875.]

[June 30, 1875.]

## ACT

To provide for the Holding of Inquests in certain Cases of Death.

Preamble.

WHEREAS no adequate provision exists in the law of this Colony for the holding of inquests in cases where persons die suddenly or are found dead, or are supposed or suspected to have come by their death by violence, or otherwise than in a natural way: And whereas it is expedient that such provision should be made: 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:—

Inquests within six miles of seat of magistracy to be held by magistrate.

1. In all cases in which it shall come to the knowledge of any Resident Magistrate that there is at or within the distance of six miles from the seat of his magistracy the dead body of any person who died suddenly or was found dead, or is supposed or suspected to have come by his death by violence, or otherwise than in a natural way, such Magistrate shall, as soon as possible, proceed in person to the spot where the dead body is, and shall inspect the same and hold an inquest thereon, and, if necessary, shall cause the same, if interred, to be disinterred, for the purpose of such inspection and inquest, and shall by the examination of witnesses, necessary, ascertain the cause of death.

Magistrate to inspect body and note appearances.

2. In viewing the dead body, the Resident Magistrate shall take careful note of all appearances, marks, and traces presented by it and about it which shall tend to show whether the deceased did or did not come by his death from violence, and if from violence, whether the same was used by himself or by some other, and, if by some other, who such other was, or how he may be discovered.

To have body examined by a medical man.

3. The Resident Magistrate shall also cause the dead body to be examined as soon as possible by a regularly admitted medical man,

if such can be procured, and, if not, then by the best qualified person or persons that can be obtained.

No. 22—1875.

4. The process for summoning witnesses to attend before any inquests shall be in substance as follows :

Process of summoning witnesses.

Inquest for the district of \_\_\_\_\_

To \_\_\_\_\_, Chief Constable.

You are hereby required, in Her Majesty's name, to summon A. B., of (describe him particularly), that he appear before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 18—, in the forenoon (or afternoon, as the case may be, stating the day and hour according to the fact), then and there to be examined at an inquest touching the death of C.D. (or "of a certain deceased person whose name is unknown"). Herein fail not at your peril.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_, Resident Magistrate.

5. If any person summoned as a witness shall not attend pursuant to such summons, then such person so making default shall, unless some reasonable excuse be proved by oath or affidavit, be liable to be fined by such Magistrate such sum, not exceeding £20, as such Magistrate shall think fit; and such Magistrate may, moreover, issue his warrant for the apprehension of the person so making default, which warrant shall be in substance as follows :

Penalty for non-attendance of witness.

To \_\_\_\_\_, Chief Constable, and other constables and officers of the law, proper to the execution of criminal warrants.

Whereas A. B., of (describe him particularly as in the summons), who was duly summoned to appear before me at (name the place as in the summons), at (state the time as in the summons), then and there to be examined at an inquest touching the death of C. D., or of a certain deceased person whose name is unknown, and hath refused and neglected so to do, to the great delay and hindrance of justice: These are therefore, in Her Majesty's name, to command you, or some of you, to apprehend and bring before me the body of the said A. B., that he shall be dealt with according to law; and for so doing this shall be your warrant.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_, Resident Magistrate.

6. The oath to be taken by witnesses appearing before the inquest shall be administered by the Magistrate, and shall be as follows: "The evidence which you shall give to this inquest touching the death of C.D. (or "of the deceased person, name unknown, regarding whom this inquest is held"), shall be the truth, the whole truth, and nothing but the truth; so help me God."

Oaths of witnesses.

HHHH 2

No. 22—1875.  
Contempts at in-  
quests.

Evidence to be  
taken down in writ-  
ing.

Inquest not to pre-  
vent issue of warrant  
and arrest of offen-  
ders.

Witnesses entitled  
to expenses.

Duty of magistrate.

Sub-sections b and  
c of section 2 of Or-  
dinance 9 of 1848, re-  
pealed.

Field-cornet to re-  
port deaths within  
six miles of magis-  
tracy, and to hold in-  
quest himself in  
those beyond.

Field-cornet to in-  
spect body and note  
appearances.

7. All contempts committed by witnesses or others before or in regard of any inquest shall be visited in like manner, *mutatis mutandis*, as contempts committed by witnesses and others before any Court of Resident Magistrate.

8. The evidence of each witness shall be taken down in writing by the Magistrate or by the Magistrate's clerk, according as the Magistrate shall think proper and direct.

9. Nothing in this Act contained shall prevent any person authorized by law to issue warrants of apprehension, or authorized to apprehend offenders or supposed offenders in that warrant, from acting in all respects as regards such warrants or such offenders, and whether an inquest shall or shall not have been commenced, precisely as if this Act had not been passed.

10. All witnesses, medical or otherwise, summoned or attending to give evidence before any inquest shall be entitled to receive their expenses precisely as if witnesses summoned to give evidence at a criminal trial or preparatory examination.

11. If the Resident Magistrate, upon such inquest, shall see reason to believe that the deceased person came by his death in any way which involved or amounted to some crime or offence upon the part of any person who can be made amenable to justice, the Resident Magistrate shall cause such person to be apprehended, in order that a preparatory examination may be instituted against him. In all other cases the Resident Magistrate shall report to the Attorney-General or Solicitor-General, as the case may be, the particulars of the case, and the conclusion in regard to it at which the Resident Magistrate shall have arrived.

12. The provisions of the sub-sections marked b and c of the second section of Ordinance No. 9 of 1848, intituled an "Ordinance for regulating the duties and remuneration of Field-cornets," are hereby repealed.

13. As often as it shall come to the knowledge of any Field-cornet that there is at any spot within his ward the dead body of any person who died suddenly, or was found dead, or is supposed or suspected to have come by his death by violence or otherwise than in a natural way, such field-cornet shall forthwith, if such spot be at a distance of six miles or less from the seat of any Magistrate, report the fact to the Resident Magistrate of the district, but if such spot shall be more than six miles distant from the seat of any Magistrate, such field-cornet shall himself, with all convenient speed, proceed to the spot where the dead body is, and shall inspect the same, and if necessary shall cause the same, if interred, to be disinterred, for the purpose of such inspection, and shall obtain all such information as shall be procurable for the purpose of ascertaining the cause of death.

14. In viewing the dead body the Field-cornet shall take careful note of all appearances, marks, and traces presented by it, and about it, which shall tend to show whether the deceased did or did

not come by his death from violence, and if from violence, whether the same was used by himself or some other, and if by some other, who such other was, or how he may be discovered.

No. 22—1875.

15. It shall be the duty of the field-cornet, where practicable, to cause the dead body to be examined as soon as possible by a regularly admitted medical man, if such can be procured, and if not, then by the best qualified person or persons that can be obtained, and such medical man or other qualified person shall be entitled to receive from the Civil Commissioner of the division his expenses, precisely as if he had been summoned to give evidence at a criminal trial held at a place where he made such examination as aforesaid.

To have body examined.

16. The Field-cornet shall, without delay, report to the Resident Magistrate, in detail, the circumstances of the case, in order that such Magistrate, or the Clerk of the Peace (should there be such an officer), may take such further steps, if any, as may be needful, either to ascertain the cause of death, or to bring to justice such person or persons as shall appear to have unlawfully caused such death.

To report case to magistrate without delay.

17. Upon receiving such report as is in the last preceding section mentioned, it shall be lawful for the Resident Magistrate, if in his opinion the circumstances of the case require it, to hold an inquest for the purpose of ascertaining the cause of death, and thereupon it shall be competent for the said Magistrate to exercise all such power and functions, and to perform all such duties in regard to the summoning and examination of witnesses and the inspection of the dead body, as are hereinbefore provided in regard to cases occurring at or within a distance of six miles from the seat of his Magistracy.

On receiving report magistrate may hold inquest.

18. As often as any case investigated by any Field-cornet shall be reported by him to any Resident Magistrate, and no inquest shall be held by such Magistrate, and no preparatory examination shall be instituted against any person upon any charge arising from or connected with the death of the deceased person, the Resident Magistrate shall transmit to the Attorney-General, or (as to cases within any of the districts in or over which the Court of the Eastern Districts has jurisdiction) to the Solicitor-General, the report of the Field-cornet, or a copy of it, together with such remarks upon the case, if any, as the Resident Magistrate shall think fit.

Duty of magistrate when no inquest is held or other proceedings taken.

19. The provisions of the sub-section marked c of the third section of the aforesaid Ordinance No. 9 of 1848, in regard to the payment of Field-cornets for any inquest, shall apply *mutatis mutandis* to any inspection made by any Field-cornet under the provisions of this Act.

Sub-section c of section 3 of Ordinance 9 of 1848 to apply to inspectors under this Act.

20. This Act may be cited for all purposes as "The Inquests Act, 1875."

Short title.

No. 33—1883.]

[September 27, 1883.

## ACT

## To Provide for the Holding of Inquests in cases of Fire.

- Preamble.** WHEREAS it is expedient to make provision for conducting investigations and holding inquests in cases of fire: 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 clause.** 1. In the interpretation of this Act, unless repugnant to the context,  
 “Inquest” or “Fire Inquest” shall mean an inquest or enquiry under the provisions of this Act.  
 “Magistrate” shall mean any Resident Magistrate or Justice of the Peace.
- Inquest in case of fire under suspicious circumstances.** 2. If any fire shall occur whereby any house or building or any property shall be destroyed or injured, and such information shall be given as to satisfy any Magistrate that there are reasonable grounds for believing that such fire originated under suspicious circumstances, an inquest shall be held.
- Magistrate to proceed to place of fire and hold inquest.** 3. Any Magistrate receiving such information as in the last preceding section mentioned shall, without unnecessary delay, proceed to the spot where the fire occurred, and shall make an inquest as to the cause or origin of such fire, and as to the nature or extent of the damage and injury which it has occasioned.
- May summon anyone to give evidence.** 4. For the purpose of making such inquest, the Magistrate shall summon and bring before him all such persons as he may think necessary, and whom he deems capable of giving information or evidence concerning such fire, and shall examine such persons on oath, and shall reduce their examinations to writing.
- Penalty for non-attendance of witnesses.** 5. If any person summoned as a witness shall not attend pursuant to such summons, then such person so making default shall, unless some reasonable excuse be proved by oath or affidavit, be liable to be fined by the Magistrate issuing such summons such sum, not exceeding ten pounds, as such Magistrate shall think fit, and such Magistrate may issue his warrant for the apprehension of such person so making default.
- Oaths to be administered.** 6. The Magistrate presiding at any inquest shall administer to the persons appearing to give evidence such oaths or other solemn forms as *mutatis mutandis* are in use in criminal cases; and the forms of summonses and of warrants of apprehension set forth in the schedule to this Act shall, as near as may be, be used in all matters to which such forms refer.
- Contempts.** 7. All contempts committed by witnesses or others before or in regard to any inquest, shall be dealt with in like manner, *mutatis mutandis*, as contempts committed by witnesses and others before any Resident Magistrate’s Court.

8. Nothing in this Act contained shall prevent any person authorized by law to issue warrants of apprehension or authorized to apprehend offenders or supposed offenders from acting in all respects as regards such warrants or such offenders, whether an inquest shall or shall not have been commenced, precisely as if this Act had not been passed.

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Power to issue warrant of apprehension.

9. All witnesses summoned or attending to give evidence before any fire inquest shall be entitled to receive their expenses as if summoned to give evidence at a criminal trial or preparatory examination.

Witnesses' expenses.

10. If the Magistrate upon any such inquest shall see reason to believe that any crime or offence has been committed in connection with such fire by any person who can be made amenable to justice, the Magistrate shall cause such person to be apprehended in order that a preparatory examination may be instituted against him.

Magistrate may commit suspected person for trial.

11. At the close of such inquest the Magistrate shall report in writing to the Attorney-General, or in the districts over which the Court of the Eastern Districts or the High Court of Griqualand exercises jurisdiction, to the Solicitor-General or Crown Prosecutor, as the case may be, as to the cause or origin of the said fire, whether in his opinion it was kindled by design or was the result of accident, or negligence, stating the full particulars of the case and the conclusions at which he shall in regard to it have arrived.

Reports of inquests, &c., to be transmitted to Attorney-General.

12. In case upon any such inquest it shall appear that there were reasonable or probable grounds for suspecting or believing that the fire originated under such circumstances as to tend to the inference that it was wilfully or criminally occasioned the expense of the inquest shall be paid by the Public Treasury; if otherwise such expense shall be paid by the person requiring or demanding the holding of the inquest.

How expenses of inquests to be paid.

The certificate of the Attorney-General, Solicitor-General or Crown Prosecutor, as the case may be, as to the liability for the payment of such expense by the treasury or by any such person shall be final and conclusive.

13. Any Magistrate called upon to hold an inquest may require the person demanding the same to deposit a sum of money or to enter into a recognizance with or without sureties for the due payment of the expense of holding such inquest in case such person shall thereafter be required to pay such expenses.

Magistrate may require deposit from person demanding inquest.

14. In case any action shall be brought upon or in respect of any policy of insurance against risk of fire, and the Court before which such action is tried shall determine that the plaintiff is not entitled to recover upon such policy by reason of fraud or other sufficient ground, it shall be competent for such Court if it shall see fit to order that the expenses incurred in the holding of any inquest into the origin or cause of the fire (if such inquest shall have been held), shall be deemed and taken to be part of the costs

In actions on policies of insurance failing for fraud, &c., costs of inquest may be given against the plaintiff.

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to be paid by the plaintiff against whom costs shall have been adjudged.

Short title.

15. This Act may be cited as the "Fire Inquests Act, 1883."

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SCHEDULE.

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FORM OF PROCESS FOR SUMMONING WITNESSES.

Fire Inquest for the District of . . . . .

To (name of the constable or person to whom the process is directed). You are hereby required in Her Majesty's name to summon A. B. (describe him particularly) that he appear before me at , on the day of , 18—, at the hour of — in the <sup>fore</sup> } noon (as the case may be),  
<sub>after</sub> }  
 then and there to be examined at an inquest concerning a fire which occurred at on (state the place and time). Therein fail not at your peril.

Dated at , this day of , 18 .

Resident Magistrate or Justice of the Peace.

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FORM OF WARRANT FOR APPREHENSION OF A DEFAULTING WITNESS.

Fire Inquest for the district of . . . . .

To (name of person to whom the process is directed), and constables and other officers of the law proper to the execution of criminal warrants.

Whereas A. B., of (describe him particularly as in the summons) who was duly summoned to appear before me at (name the place as in the summons) then and there to be examined at an Inquest concerning a Fire which occurred at , on (state the place and time), hath refused or neglected so to do to the great delay and hindrance of justice, these are therefore in Her Majesty's name to command you to apprehend and bring before me the body of the said A. B., that he be dealt with according to law: and for so doing this shall be your warrant.

Dated at , this day of 18 .

Resident Magistrate or Justice of the Peace.

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[August 8, 1877.]

## ACT

## For the Promotion of Irrigation.

WHEREAS it is expedient to make provision for promoting the irrigation of lands in this Colony and for the preservation and improvement by artificial means of the supply and storage of water, and for the purposes aforesaid to provide for the advance of public money to a limited amount: 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. This Act may be cited for all purposes as “The Irrigation Act, 1877.”

Short title.

## PART I.

## THE CONSTITUTION OF IRRIGATION DISTRICTS.

2. It shall be lawful for any three or more owners of lands situate within any area for which in the opinion of such owners it is expedient that there should be a combined system of irrigation or that recourse should be had to artificial means of storing or supplying water, to present a petition, in writing, to the Governor, praying that such area be constituted an irrigation district: Provided that the persons signing such petition be owners of not less than one-tenth part in acreage of the land proposed to fall within such irrigation district.

Owners of lands may petition Governor to constitute irrigation districts.

3. Every such petition shall state the boundaries and approximate extent of the proposed irrigation district, and the nature of the works (if any) proposed to be executed, and shall be supported by such evidence as the Governor may require; and the fact of such a petition having been presented, together with a copy or a summary thereof, shall be forthwith notified by the petitioners in the *Government Gazette*, and in some newspaper or newspapers published within the fiscal division or divisions in which the proposed district or any part thereof is situate, or, if there be no such newspaper, in some newspaper or newspapers circulating within such division or divisions.

Petition to state boundaries, &c., and to be notified in *Government Gazette*, &c.

4. The Governor may, not later than six months after any such petition has been presented, dispatch an engineer or other competent person to the proposed irrigation district, who shall inquire into the allegations of the petition, ascertain the opinion of the owners of land situated within the proposed district in respect of the said petition, and generally the propriety or otherwise of constituting the said irrigation district, and what should be the boundaries thereof.

Governor may dispatch engineer or other person to proposed irrigation district to make inquiries.

5. The engineer or other person who may be charged with any such inquiry as aforesaid shall, before commencing the same, give such notice as the Governor may direct of his intention to make

Engineer or other person to give notice of time and place of making inquiry.



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the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him on the subject of such inquiry.

Engineer or other person to report result of inquiry to Governor, who may proclaim the district an irrigation district

6. The engineer or other person as aforesaid shall, as soon as may be, report the result of his inquiries to the Governor, who may, if satisfied with the propriety of constituting the area mentioned in the petition, with such alterations of boundaries, if any, as he may think fit, an irrigation district, and that the owners of not less than two-thirds of the land within such district are in favour thereof, by proclamation in the *Government Gazette* declare such district to be duly constituted an irrigation district, and the issue of any such proclamation as aforesaid shall be considered evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the issuing thereof have been complied with; Provided always that it shall be lawful for the Governor after the issue of any such proclamation as aforesaid from time to time as he shall see fit, after causing due inquiry to be made as aforesaid, and with the consent in writing of at least two-thirds of the owners of land as aforesaid, to revoke any such proclamation or alter the boundaries of any such district.

Governor may revoke or alter such proclamation.

## PART II.

### THE CONSTITUTION AND PROCEEDINGS OF IRRIGATION BOARDS.

Management of irrigation districts to be vested in boards.

7. The performance and superintendence of all acts, matters, and things relating to irrigation, and the storage and supply of water within an irrigation district, shall be vested in a board to be called an irrigation board, and such board shall be a body corporate, and shall take and bear such name as may be given to it in and by any proclamation of the Governor published in the *Government Gazette*, and by that name shall sue and be sued, have perpetual succession and a common seal, hold property, and do all acts, and have and enjoy all the rights and privileges which bodies corporate as such may in this Colony do and have.

Number of members to be fixed by proclamation of the Governor.

8. Every such board shall consist of such number of members, not less than three and not more than seven, as the Governor from time to time by proclamation in the *Government Gazette* may fix.

Returning officer to give notice of day and place for election of members.

9. As soon as may be after the issuing of any proclamation constituting any irrigation district, and not later than one month thereafter, the returning officer shall, by notice published in the *Government Gazette*, fix and appoint some day and place to be named in such notice for the election of members of the irrigation board for such district: Provided, always, that every such notice shall be published in the *Government Gazette* and in some newspaper or newspapers as in the third section mentioned for not less than thirty-one days before the day named in the notice for such election.

Who may vote at such election.

10. Every owner of land situated within an irrigation district, and liable to be rated as hereinafter mentioned, shall be entitled

to vote at any election for members of the irrigation board for such district.

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11. Every owner of land situated within an irrigation district, and liable to be rated as hereinafter mentioned, shall be eligible to be elected as a member of the irrigation board for such district: Provided, always, that no person under the age of twenty-one years, and no insolvent who shall not have obtained his rehabilitation, and no person whose estate shall at the time of any election be under assignment for the benefit of his creditors, and no person who is a contractor under any subsisting contract with any irrigation board, shall be eligible to be elected a member of such board.

Qualification of members.

12. Upon the day which shall be appointed as aforesaid for proceeding to the election of a member or members of any irrigation board for any irrigation district, the returning officer shall hold a public court for the nomination of persons proposed as members of the said board; and every such person shall be nominated by some qualified voter for such district and seconded by some other such qualified voter; and if it shall happen that the number of persons so proposed is not greater than the number of members to be elected, the persons so proposed shall forthwith be declared to be duly elected, and their names shall be forthwith published in the *Government Gazette*; but in case the numbers of persons so proposed exceeds the number of members to be elected, and any of the candidates, or any voter acting on behalf of any of the candidates, shall, after the result of a show of hands of the voters present shall have been declared, demand a poll, the returning officer shall, before adjourning such court for the purposes of such poll, fix and announce the place within the district, and the day, not being less than three and not more than seven clear days from the day of holding the said court, where and upon which such poll is to be taken: Provided always that if, after the demand of any poll as aforesaid and before the day fixed for taking the same, such demand shall with the consent of all the candidates in writing under their hands be withdrawn, such poll shall not be taken; and the person or persons who had been declared elected after such show of hands as aforesaid shall be forthwith deemed to have been duly elected a member or members of the said board.

Nomination of candidates and proceedings thereupon.

13. Every person entitled to vote at any election of members of any irrigation board shall be entitled to vote in person or by proxy, and shall vote according to the following scale; that is to say:

Votes may be by proxy.

If the property in respect of which he is entitled to vote be valued for Divisional Council purposes at a sum of not exceeding five hundred pounds, he shall have one vote for each candidate; and for every additional five hundred pounds or fractional part of five hundred pounds, an additional vote for each candidate in respect of each such sum of five hundred pounds or fractional part thereof;

Scale of voting.

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but no elector shall have more than ten votes for each candidate, and no elector shall be entitled to vote whose rates under this Act shall be due and in arrear for three months and upwards.

Mode of voting by proxy.

14. All proxies shall be appointed under the hand of the appointer; but no proxy shall be entitled to vote unless the instrument appointing him be deposited with the returning officer at the time of polling.

Duration of poll.

15. Every poll shall be opened at eight o'clock in the morning of the appointed day, and shall close at five o'clock in the afternoon of the same day, and no vote shall be received before or after the hour fixed for opening and closing the poll respectively.

Mode of taking and publishing result of poll.

16. The returning officer shall enter or cause to be entered in a book or books the name and address of every voter and the manner in which he votes, and at the close of the poll he shall sum up the votes, and as soon as possible publish a list of the names of the successful candidates, together with the number of votes recorded in favour of each, in the *Government Gazette*, and in some newspaper or newspapers as in the third section mentioned, and by affixing a copy of such list to the outer door of the office of the board, and shall duly forward to each successful candidate a notice in writing, informing him that he has been duly elected a member of the irrigation board of the district.

Equality of votes to be decided by lot.

17. If two or more persons, who cannot be both or all elected, shall be found to have each received an equal number of votes, the question as to which of such persons shall be elected shall be determined by lot, to be drawn in the presence of the returning officer and not fewer than five witnesses.

Members to vacate office every three years.

18. The members of the first irrigation board of any district shall go out of office at the end of the third year from the day of the publication of the notice of their election, and in place of such members so going out of office a like number of other members, to be elected in like manner as the first members, shall come into and remain in office for three years, and at the expiration of such last mentioned time of three years shall in like manner go out of office and be succeeded by other members, who shall remain in office for a like term of three years, and so on for ever: Provided always, that every member so going out of office shall be eligible to be re-elected.

Procedure at triennial election.

19. The returning officer shall, in regard to every such triennial election as aforesaid, publish or cause to be published in the *Government Gazette*, and in some newspaper or newspapers as aforesaid, a notice similar in all respects to the notice for the first election of members, for the election of each new board: Provided always that he shall in every such notice fix some day for the election not later than seven days nor earlier than twenty-eight days next before the day on which such term of years shall expire: And provided also that every successive term of three years shall

be reckoned from the day of the publication by the returning officer in the *Government Gazette* of the notice containing the names of the members last elected.

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20. If any member of any irrigation board shall die, or resign, or in writing refuse to act, or become insolvent, or assign his estate for the benefit of his creditors, or cease to be an owner as in the tenth section mentioned, or by reason of some mental or bodily infirmity become incapable of attending to the business of the board, or become a contractor with the board of which he is a member, or for three months from the time of his last attendance at a meeting of the board absent himself without the leave of the board first had and obtained from the meetings, whether ordinary or special, which may have been held within that period, unless he shall have been prevented by sickness or some other lawful and sufficient cause, to be judged of by the board, then the office of such member shall, *ipso facto*, become vacant: Provided that every member prevented from attending such meetings as aforesaid by sickness or other cause shall be bound to report or cause to be reported to such board, not later than twenty-eight days next after the day on which the last of the said meetings shall have been held, the cause of his non-attendance; and if no such report shall have been received, or being received, shall be resolved by the board not to be lawful and sufficient, then the seat of such member shall as aforesaid become vacant: And provided that, in regard to special meetings of the board, absence from the same shall not be reckoned or regarded for the purposes of this section unless notice of the same shall have been given to the member who shall have absented himself in reasonable and customary time.

Members to vacate office in certain cases and for certain causes.

21. As often as any casual vacancy shall occur in any irrigation board upon any of the grounds in the last preceding section mentioned, or upon any other ground mentioned in this Act, all and singular the provisions of the several sections of this Act, from the eleventh to the seventeenth, both inclusive, shall, *mutatis mutandis*, apply to the election of a member to supply such vacancy: Provided that the dates to be fixed for such election shall be, as regards the filling up of casual vacancies, in the discretion of the returning officer: Provided, also, the person elected to fill such vacancy shall be competent to remain in office until the then next general election of members, but no longer.

Mode of supplying casual vacancies.

22. If it shall happen that by reason of any accident or other cause the returning officer of any district shall not, in regard to the election of a new district board for such district, after the first, give within the time in that behalf provided the notice in that behalf mentioned, or shall not give any other notice, or do any other act by any section of this Act required, whereby it shall happen that the names of at least a quorum of members of any new board cannot be published before the day on which the old

In case of failure of returning officer to give any notice or do any act under this Act, Governor may authorize him to do so.

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board ought regularly to go out of office, it shall be lawful for the Governor to authorize such returning officer to publish or cause to be published such a notice as aforesaid, fixing such day or days for publishing any notice or doing any act as may be most convenient, and the members of the old or expiring board shall remain in office until the publication, in manner and form as in the sixteenth section of this Act directed, of the names of the members elected.

Board not to be deemed in complete so long as there is a quorum.

23. No board shall be deemed to be incomplete by reason of the neglect of any district to elect the fixed number of members of such board, nor by reason of any vacancy in such board, so long as there shall be a sufficient number of members of such board to form a quorum.

First meeting of board.

24. Within one month after the publication of the names of the first members of any irrigation board, the returning officer of the district shall appoint a day for the first meeting of the board, and shall cause a notice of the time and place of such meeting to be served on each member of the board and at such first meeting; and afterwards at the first meeting after every general election of members of the board, the board shall appoint one of their number to act as chairman for any period not exceeding that for which such board is elected; Provided always that in the absence of the chairman at any meeting of the board the members present shall, before proceeding to business, elect some one of their number present to be the chairman of such meeting.

Election of chairman.

Casual vacancy of office of chairman.

25. If any casual vacancy occurs in the office of chairman the board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some other member of the board to fill such vacancy, and every such chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.

Secretary and other officers may be appointed.

26. Every irrigation board shall have a secretary and such other officers as shall be deemed necessary by such board, and such officers shall be appointed by such board and shall hold office during the pleasure of the board: Provided that the secretary and other officers appointed by any such board shall remain in office notwithstanding the occurrence of any number of general elections of members of such board, unless removed by such board: Provided also that every such board shall take from every officer employed by it who shall be charged with the receipt or disbursement of any of the funds of such board, such security as the board shall deem sufficient for the due performance of his duty.

Place of meeting of board.

Quorum.

27. Every irrigation board shall meet together for the dispatch of business at such times and places within their district as they may think fit: Provided always that no business shall be transacted at any meeting unless at least one-third of the whole number when the said board shall consist of more than three members, and when

the said board shall consist of three members only, unless two of the members shall be present at the commencement and close of such business: And provided also that no order involving an expenditure of more than one hundred pounds shall be made by the board, unless at the least one month's previous notice, specifying the work to be undertaken, or the other matter to which such order relates, and naming a day upon which a meeting of the board is to be held for considering the matter to be ordered, has been sent by the secretary to each member of the board.

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Notice to be given of consideration of any expenditure exceeding £100.

28. All questions for the consideration of the board at any meeting shall be decided by a majority of the votes of the members of the board who shall be present at such meeting, and in case of an equality of votes at any such meeting the chairman of such meeting shall have a second or casting vote; and the names of the members present, as well as of those voting upon each question at such meeting, shall be recorded in a minute-book to be kept for the purpose by the secretary to the board.

Questions to be decided by majority of votes.

Chairman to have a casting vote.

29. A board may delegate any of their powers to committees consisting of such members of their body as they shall think fit, and any committee so formed may elect a chairman, meet, adjourn, and decide all questions submitted to them in the same manner as if each committee was a board formed under the provisions of this Act: Provided always that all committees formed as aforesaid shall in the exercise of the powers delegated to them conform to any regulation that may be imposed on them by the board.

Committees may be formed.

30. Every board shall cause minutes to be made in books provided for the purpose of all appointments of officers made by the board, of the names of the members present at each meeting of the board and committees of the board, of all orders made by the board and committees of the board, and of all resolutions and proceedings of meetings of the board and of committees of the board, and such minutes as aforesaid shall be signed by the chairman of each meeting of such board or committee; and any such minutes as aforesaid, if signed by any person purporting to be the chairman of any meeting of the board or committee of the board, shall be receivable in evidence without further proof.

Minutes of all proceedings to be kept.

To be signed by chairman.

Admissible in evidence.

31. No member of any irrigation board shall have or receive any salary or allowances, or exact, accept, or receive any fee or reward whatsoever for, on account, or by reason of his office as such member, nor shall any member of an irrigation board become a contractor with the board of which he shall be a member for the doing of any work or the supplying of any materials, articles, or things required by such board; nor shall such member be directly or indirectly interested in any such contract as last aforesaid. Any person contravening this section of this Act shall incur and be liable to a penalty not exceeding one hundred pounds.

Members not to receive any salary, &c.

32. All acts done by any meeting of an irrigation board, or by any committee of an irrigation board, or by any person acting as

Act done by board or committee, or person acting as mem-

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ber, not to be ques-  
tioned for certain de-  
fects.

a member of an irrigation board shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such board, committee, or person, or that the members of the said board or committee or the said person were or was disqualified, be as valid as if any such board, committee, or person had been and was duly appointed and qualified.

### PART III.

#### GENERAL POWERS AND DUTIES OF BOARD.

**Duties of board.** 33. The charge and conservation of every natural river, stream, creek, and watercourse, and of every dam, reservoir, vley, and embankment within the limits of an irrigation district, which is by its nature common to two or more of the owners of land within such district, and the absolute control and regulation (so far as the same can be effected by artificial means) of the supply of water throughout the course of every such river, stream, creek, or watercourse within such limits as aforesaid, shall be vested in the irrigation board of such district.

**Powers of board.** 34. The powers of an irrigation board acting within the area for which the said board is constituted shall extend to the following acts: that is to say—

- (i) To cleansing, repairing, or otherwise maintaining in a due state of efficiency any existing natural river, stream, creek, or watercourse, or any existing dam, reservoir, vley, and embankment, which by its nature is common to two or more of the owners of land within such district, hereinafter referred to under the expression "maintenance of existing works."
- (ii) To deepening, raising, widening, straightening, or otherwise improving any existing natural river, stream, creek, and watercourse, and any existing dam, reservoir, vley, and embankment, which by its nature is common to two or more of the owners of lands within such district, hereinafter referred to under the expression "improvement of existing works."
- (iii) To making or erecting any new dam, reservoir, vley, watercourse, or embankment, erecting any machinery, or doing any other act not hereinbefore referred to which may be required or considered expedient for the storage, drainage, or supply of water, or the irrigation of the area comprised within the limits of the district, or for the use of travellers and travelling stock within the district, hereinafter referred to under the expression the "construction of new works."

Provided always that

- (a) No person shall by virtue of this Act be compelled to execute at his own expense any works which he would

not have been compelled to execute if this Act had not passed.

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- (b) No work shall be deemed to be a new work that is in substitution for an old one in cases where such old work is so much out of repair or so insufficient as to make it expedient to construct a new work in place thereof.
- (c) Full compensation shall be made for all injury sustained by any person by reason of the exercise by the board of the above powers.
- (d) The exercise of the foregoing powers shall be subject to the restrictions hereinafter mentioned.

35. It shall be lawful for the board or their officers or servants, May enter upon and take possession of lands, &c. from time to time, to enter upon and take possession of such lands and premises within their district, covered or uncovered with water, as may be necessary to enable them to carry out the purposes of this Act; to purchase any such lands or premises; and to dig, get, and carry away out of and from any such lands any materials which may be necessary to enable them to carry out the said purposes, paying, however, such recompense or compensation to the owners, lessees, and occupiers of such lands, premises and materials, according to their respective interests therein, as may be agreed upon, or if no agreement, as may be settled by arbitration as hereinafter mentioned.

36. It shall not be lawful for the board to remove or otherwise interfere with any mill-dam, weir, or other like obstruction whereby the level of the water is raised for milling or other purpose of profit so as to injuriously affect the supply of water, otherwise than with the consent of the owner and occupier of such mill-dam, weir, or other like obstruction, until their right to do so has been determined in manner hereinafter mentioned, and until compensation has been made to all parties entitled for the injury which may be caused by such removal or interference.

Restrictions.

37. For the purpose of determining the right of the board to remove or otherwise interfere with any such dam, weir, or other like obstruction, there shall be decided, if the owner and occupier consent, by the nearest or any Resident Magistrate, but if there be no such consent, by arbitration as hereinafter mentioned, the questions following, that is to say :

Questions to be decided by resident magistrate or by arbitration.

- (1) Whether the proposed removal or interference is necessary for the effectual carrying out of the provisions of this Act.
- (2) Whether the proposed removal or interference will cause any injury to the owner or occupier.
- (3) Whether any injury that may be caused by removal or interference is or is not of a nature to admit of being fully compensated for by money.

38. The consequence of any such decision shall be as follows, Consequences of such decision. that is to say :

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- (1) If the decision is that such removal or interference is not necessary for the effectual carrying out of the provisions of this Act, the board shall not be entitled to make the same.
- (2) If the decision is that such removal is necessary for the purposes aforesaid, but that the injury to be caused thereby is not of a nature to be fully compensated for by money, the board shall not be entitled to make the same.
- (3) If the decision is that such removal or interference is necessary, and that any injury that may be caused can be fully compensated by money, the board shall be at liberty to make the same upon making such compensation as may be agreed upon, or if no agreement, as may be decided by such Resident Magistrate, or by arbitration as aforesaid.

Notice must be given by board before entering upon, purchasing, &c., any lands, &c.

39. The board, before entering upon, purchasing, or taking any lands, premises, or materials, or before removing or interfering with any mill-dam, weir, or other like obstruction for the purposes of this Act, shall publish once at least in the *Government Gazette* and once at least in each of three consecutive weeks in some newspaper or newspapers as aforesaid, notice describing shortly the nature of the undertaking in respect of which the lands, premises, or materials are proposed to be entered upon, purchased, or taken, or the mill-dam, weir, or other like obstruction is proposed to be removed or interfered with, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land and specifying the premises, mill-dam, weir, or other like obstruction that they require, and shall serve or cause to be served in manner hereinafter provided a copy of such notice on every mortgagee, if any, of such lands and premises as aforesaid or any part thereof proposed to be entered upon or purchased, and of the lands and premises from which such materials as aforesaid are proposed to be taken, or upon which such mill-dam, weir, or other like obstruction proposed to be removed or interfered with is situate, and shall also serve a notice on every owner or reputed owner and occupier of such lands, premises, mill-dam, weir, or other like obstruction as aforesaid, defining in each case the particular lands, premises, mill-dam, weir, or other like obstruction intended to be entered upon, purchased, taken, removed, or interfered with; and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of the entering upon, purchasing, taking, removing, or interfering with such lands, premises, materials, mill-dam, weir, or other like obstruction, and the amount, if any, claimed as compensation for such entry, purchase, taking, removal or interference: And every such notice as aforesaid shall be served

By delivering the same personally to the person to be served or to his duly authorized agent, or by leaving

the same at the usual or last known place of abode of such person.

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40. It shall be lawful for the board, on receipt of an answer from the owner and occupier of the lands, premises, materials, mill-dam, weir, or other like obstruction, proposed to be entered upon, purchased, taken, removed or interfered with, to proceed as follows, that is to say:

Procedure on receipt of answer of owner and occupier of lands, &c., proposed to be entered upon, &c.

- (1) If the owner consents to the said entry, purchase, taking, removal or interference, and the sum demanded for compensation or recompense therefore appears to the board to be reasonable, the board may pay the said sum, and the owner and occupier shall thereupon execute such transfer, conveyance, or other instrument as may be necessary for vesting such lands, premises, mill-dam, weir or other matter, and all rights therein and thereto, and the possession thereof in such board: Provided that so often as such property as is hereinbefore described shall be under mortgage the payment referred to in this and in the forty-third section shall, to an extent not exceeding the amount of the mortgage and interest due thereon, be made to such mortgagee, or by his consent, to the owner.
- (2) If the owner and occupier do not consent to the said entry, purchase, taking, removal, or interference, or if they shall consent, but the sum demanded for recompense or compensation is in the opinion of the board excessive and unreasonable, the board may thereupon cause to be served upon such owner and occupier, in the same manner as hereinbefore provided for the first notice, a second notice, stating that the board is unable to agree to the terms demanded, and proposing that all matters in dispute shall be referred to the nearest Resident Magistrate to be decided upon by him, and requiring an answer stating whether the owner and occupier as aforesaid consent to the appointment of the said Resident Magistrate as arbitrator in the matter.

41. If the parties interested as aforesaid shall consent to have the matters in dispute relating to the entry, purchase, taking, removal of or interference with the lands, premises, materials, mill-dam, weir or other like obstruction by the board as aforesaid decided by the Resident Magistrate aforesaid, the same shall be referred to such Resident Magistrate, who shall thereupon, within three months from the date of such consent, proceed to adjudicate upon the matters in dispute between such parties and the board, and shall for the purposes aforesaid conduct such inquiry in the same way, and have all the authority, powers, and jurisdiction, as if he were an arbitrator appointed under the provisions of this Act.

Disputes may by consent be referred to resident magistrate as arbitrator.

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If parties will not consent, disputes to be decided by arbitration.

42. If the parties interested shall not consent to have the matters in dispute, relating to the entry, purchase, taking, removal of or interference with the lands, premises, materials, mill-dam, weir, or other like obstruction by the board as aforesaid, decided by the Resident Magistrate as aforesaid, the same shall be referred to arbitration in the manner hereinafter provided.

Mode of carrying out award of resident magistrate or arbitrator.

43. Upon the publication of the award of the Resident Magistrate or arbitrator as aforesaid, or at such other time as shall be fixed in and by any such award, the board shall pay to the person or persons to whom the same may be awarded the sum or sums of money directed to be paid by the said award, as recompense or compensation for the entering upon, purchase, taking, removal of, or interference with any such lands, premises, materials, mill-dam, weir, or other obstruction; and the owner and occupier thereof shall thereupon execute such transfer, conveyance, or other instrument as may be necessary for vesting such lands, premises, mill-dam, weir, or other matter, and all their rights therein and thereto, and the possession thereof in the said board: Provided always that if the Resident Magistrate or arbitrator by his award, shall adjudge that the entering upon, purchase, taking, removal of or interference with such lands, premises, materials, mill-dam, weir, or other like obstruction, shall not be necessary for the purposes for which the board is constituted, or is necessary, but that such entry, purchase, taking, removal, or interference as aforesaid is not of a nature to be fully compensated by money, then and in that case the owner and occupier shall not, nor shall either of them, be called upon to execute any such instrument as aforesaid.

## PART IV.

## RATING POWERS OF BOARD.

Board may levy rates.

44. It shall be lawful for any irrigation board to levy rates to be called irrigation rates, for defraying all costs, charges, and expenses incurred or to be incurred by them under the authority of this Act, upon and in respect of all property situate within the district of such board which is irrigated, or capable of being irrigated by the said board, regard being had to the value to be derived by the owners respectively of such property from the irrigation works.

Rates to be fixed by board at a sum per acre.

45. All rates to be levied in pursuance of this Act shall be fixed from time to time by the board, and such rates shall be charged at a sum per acre.

Owner or occupier may be sued for rates.

46. The board 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 always that any occupier of property on which a rate has been assessed who is not the owner thereof, or who

Occupier may in certain cases recover from owner.

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 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 board for non-payment of any such rate: And provided also 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.

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Occupier liable after ceasing to occupy.

47. It shall be lawful for a board, besides the rates hereinbefore mentioned, to make reasonable charges to be paid by and recoverable from any person buying, receiving, or using any supply of water stored by or belonging to the board in pursuance of and by the authority of this Act.

Board may make reasonable charges for water.

48. Notwithstanding anything in this Act contained, no land within an irrigation district, which land before the taking effect of this Act has been irrigated or improved by any of the means contemplated by this Act, shall be liable to contribute towards the irrigation rate of the district, unless it shall appear to the board that the value of such land has been increased by any works at any time executed, or acts done, by such board under this Act; and thereupon it shall be lawful for the board to assess such lands to the irrigation rate of the district at such increased value but no more: Provided always that the owner of such land so assessed shall at all times have the same rights of appeal against such assessment as he would have if he were an ordinary ratepayer assessed to an irrigation rate under this Act.

Certain land exempted from contributing.

49. Every board shall be bound to supply, free of all rates and charges, to the owner or occupier of any land within its district, who before the taking effect of this Act, by reason of tenure, prescription, or otherwise, shall be possessed of any right to any water from any river, stream, creek, water-course, dam, reservoir or water-channel, within such district as aforesaid, a quantity of water equal to that which he would have been entitled to from any such river, stream, creek, water-course, dam, reservoir, or water-channel, if this Act had not passed, such quantity if not mutually agreed upon between the board and the said owner or occupier, to be decided by arbitration as hereinafter provided; and if any such board shall neglect or refuse to supply such owner or occupier as aforesaid with such quantity of water as aforesaid, the said board shall become liable in respect of the same to an action for damages at the suit of such owner or occupier in any competent Court: Provided always that it shall be lawful for the said board in all cases where, by reason of any works constructed or acts done by the said board in pursuance of this Act, the natural supply or flow of water which such owner or occupier

How rights of owners or occupiers of land to water to be dealt with.

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shall be entitled to participate in as aforesaid shall have been improved or increased, to levy upon such owner or occupier a rate or rates in respect of such improved or increased supply or flow of water, subject always to the right of appeal which is hereby reserved to such owner or occupier in respect of such rate.

Board to appoint collectors and agents to receive rates and charges.

50. The board shall appoint collectors and agents for the purpose of receiving the rates and charges payable under this Act; and in case of refusal or neglect on demand to pay such rates or charges as have accrued due unto the respective persons appointed to receive the same as aforesaid, the said board may sue for and recover the same by action in the Court of the Resident Magistrate of the district in which the defendant resides; or if the amount is beyond the jurisdiction of such Court, in any other competent Court; and may stop or cause to be stopped the water from flowing into the land or premises in respect of which such rates are in arrear by such means as the board shall think fit.

Board may also sue for recovery of.

Persons aggrieved by any order, rate, or act of board, may appeal.

51. When any order or rate has been made by the board, or any act done by them in pursuance of the powers of this Act, any person aggrieved by such order, rate, or act may, in case the amount which such person shall be liable to pay shall not exceed twenty pounds, appeal to the Court of the Resident Magistrate, and in case the amount shall exceed twenty pounds, may appeal to the Supreme Court, or when the land is situate within any district over which the Eastern Districts Court has jurisdiction, to the Supreme Court or to the said Court of the Eastern Districts, or to the Circuit Court having jurisdiction in the matter, against any such order, rate, or act; and the said Court of Appeal may confirm, annul, or modify the same accordingly; but no such appeal shall be entertained unless it be made within three months next after the making of such order or rate or the doing of such act, nor unless notice in writing of such appeal, stating the nature and ground thereof, is served on the board twenty-one days at least previously to the day fixed for hearing such appeal, nor unless the appellants within ten days after the service of such notice shall enter into recognizances with two sufficient sureties, before a Justice of the Peace, conditioned duly to prosecute such appeal, and to abide by the order of the Court thereof.

## PART V.

### BORROWING POWERS OF A BOARD.

Board may borrow money on credit of rates or on other security.

52. It shall be lawful for a board from time to time to borrow and take up at interest on the credit of any rates to be assessed and levied as hereinafter provided, or on such other security as may be in the power of the board from time to time to offer, any sum or sums of money which may at any time be required by the board for the purpose of carrying into effect any of the objects or purposes of this Act; and for the purpose of securing

the repayment of any sum or sums of moneys so borrowed on the credit of any rate or rates, together with such interest as aforesaid, to mortgage such rates or any part thereof to the person or persons who may advance such money : Provided always that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the board at a meeting at which there shall be present not fewer than two-thirds of the members of such board : And provided also that no meeting of the board shall be competent to pass any such resolution unless each of the members shall have had at least twenty-one days' notice in writing of the day appointed for such meeting, signed by the secretary to the board, and stating that the question of such loan will come under the consideration of such meeting, which notice the secretary shall issue at the instance of any member of the board.

53. Whenever it shall be resolved by any board to raise any such loan as aforesaid, the same shall, except it be made out of funds provided for that purpose by Parliament as hereinafter mentioned, be taken up by public tender, after notice in the *Government Gazette*, and in some one or more newspapers published in or near the district, of not less than two months, calling for tenders for the sum or sums required.

Loan to be raised by public tender except it be made out of funds provided by Parliament.

54. In all cases of moneys to be borrowed and taken up at interest by a board, under the provisions of this Act, it shall be lawful for such board to grant a security in the form of a debenture for such moneys under the seal of the said board to every person who shall advance the same; and every such debenture shall be numbered in the order of its execution, and shall set forth the amount for which it is issued and the rate of interest payable for the same, and the period to expire before the same shall upon notice become payable; and the moneys mentioned in each such debenture, with the interest thereon, shall be charged upon and paid by such board out of the rates to be levied by the board in respect of the provisions of this Act; and any such debentures may be transferred by endorsement thereon; and all persons to whom any such debenture shall be given, or the person entitled thereto by endorsement as aforesaid, shall be entitled to the moneys accruing and payable in respect of such debenture.

Moneys borrowed to be secured by debentures issued by the board.

55. In order to discharge the principal money borrowed under the provisions of the Act on the security of the rates of any district, or otherwise as aforesaid, the board of such district shall every year appropriate and set apart out of such rates respectively a sum not less than one-fortieth part of each of the sums so borrowed respectively as a sinking fund, to be applied to paying off the respective principal moneys so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of Government securities and to be increased by accumulation in the way of compound interest or otherwise, and shall from time to time pay off out of such sinking fund the said

Sinking fund to be formed for the payment of loans.

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principal debts at such times and in such manner as shall have been agreed upon by and between the board and the persons originally advancing such sums.

Board may petition Governor for loan out of funds provided by Parliament.

56. In every case in which it shall be resolved by a board to raise any such loan as aforesaid the board may present a petition to the Governor, setting forth a description of the proposed works and the purposes for which such loan is required, together with maps and plans of the same, the estimated cost of constructing such works, the nature of the security for the proposed loan, and praying that such loan may be advanced to the board out of funds provided for that purpose by Parliament; and thereupon it shall be lawful for the Governor, if he, with the advice of the Executive Council, shall think fit, after having considered the said petition, and caused such steps to be taken and such inquiries instituted for the purpose of ascertaining the correctness of the said petition, the soundness of the securities offered, and otherwise, as may seem expedient, to cause to be advanced out of any such funds as aforesaid such sum or sums of money as he may direct, upon the security set forth in the petition, or such other security as may seem to him desirable or expedient; and all moneys so lent and advanced as aforesaid shall be repaid with interest thereon at such times and in such manner by the said board as the Governor shall direct: Provided always that the Governor shall at all times dismiss such petition if it shall appear to him from any cause proper to do so: And provided, also, that any money advanced in consequence of any such petition shall be a first charge upon the rates, land, or other matter upon the security of which such advance is made, and no such advance shall exceed one-half of the value of the said security, such value to be fixed and ascertained by such competent person or persons as the Governor, with such advice as aforesaid, may appoint for the purpose.

Governor may grant or refuse loan.

Governor may appoint officers to inspect lands and works upon which loan has been made.

57. Whenever any sum or sums of money shall have been advanced by the Governor as aforesaid to any board under the provisions of this Act, it shall be lawful for the Governor from time to time to appoint competent officers to inspect all lands and works in respect of which such advances may have been made; and thereupon it shall be lawful for such officers at all times to enter and inspect such lands and works as aforesaid, and if such lands shall not have been irrigated, or such works executed in a satisfactory and workmanlike manner, the officers shall report the same to the Commissioner of Crown Lands and Public Works, who shall thereupon take such steps as shall to him seem proper.

## PART VI.

### IRRIGATION BY PRIVATE OWNERS.

Owners of lands not within any irrigation district may apply to Governor for loan for

58. It shall be lawful for the owner of any lands within the Colony, not being within the limits of any irrigation district, who may propose to improve the same by works of irrigation or artificial

storage of water, and may be desirous of obtaining an advance by way of loan from the Government for defraying the expense of such works, to make application to the Government for such advance, and such application shall be in writing, and shall contain such particulars of the land so proposed to be improved, the proposed manner of effecting such works, the estimated expense of effecting the same, and the estimated increase of the value of the lands to be produced by such works, as may enable the Governor to judge of the expediency of investigating or further proceeding upon such application, and every such application shall specify the estate or interest of the applicant in the lands to which such application shall relate, and shall state whether the advance applied for is intended to cover the whole or what portion of the expense of such works.

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works of irrigation or storage of water.

59. [Repealed by Act 7, 1880, § 6.]

60. The Governor shall if he shall think fit to entertain such application, cause the land, plans, estimates, and specifications of the proposed works to be inspected by an engineer or other competent person, who shall report his opinion thereon, and on the statements contained in the application, and if such engineer or person shall be of opinion that the proposed works will effect an improvement in the annual value of the land which will exceed the annual amount which can be charged thereon under this Act in respect of the advance applied for, and that the works are proposed to be effected in a substantial and durable manner, he shall annex to his report the plans, estimates, and specifications, or duplicates thereof, and the Governor may make such other inquiries and obtain such other information in relation to such application as he may think fit.

Governor may cause lands, plans, estimates, and specifications of proposed works to be inspected and reported on.

61. Upon receipt of such report and information as aforesaid, it shall be lawful for the Governor, if with the advice of the Executive Council he shall think that an advance in respect of the whole or a proportional part of the cost of such works would be expedient, to cause to be issued to the owner of the lands by whom such application shall have been made, or to the owner for the time being of such lands, a provisional certificate, declaring that upon its being shown to the satisfaction of the Commissioner of Crown Lands and Public Works that the proposed works have been executed according to the plans and specification of the same, in a substantial and durable manner, such Commissioner will authorize the Treasurer-General to make an advance or advances to an amount not exceeding the amount of the whole, or of such proportional part, as in such provisional certificate shall be expressed, of the expenses which shall have actually occurred in the construction of such works as aforesaid, but limited not to exceed a certain sum in such provisional certificate to be expressed; and such provisional certificate may declare that so often as any part of the works as aforesaid expressed to be undertaken

On receipt of report, Governor may grant a provisional certificate in certain cases.



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Provisional certificate not to be issued until notice has been given in *Gazette* of the application.

Copy of notice to be served on certain persons.

Certain persons may dissent to such application within four months.

Commissioner of Crown Lands and Public Works to cause such works to be inspected.

If Commissioner is satisfied by report of such inspector he shall authorize the advance in terms of certificate.

in such certificate shall have been completed to the satisfaction of the said Commissioner, the Treasurer-General may cause an advance on account of such part of such works so executed, to be made, but no such advance on account shall exceed in amount two-thirds of the sum then actually expended: Provided always that no such provisional certificate as aforesaid shall be issued until notice shall have been given by the Commissioner of Crown Lands and Public Works of the application for the advance to which such provisional certificate shall relate by advertisement for four successive weeks in the *Government Gazette* <sup>(1)</sup> and in some one or more newspapers circulating in or near the district within which such land may be situate, and two months shall have elapsed from the publication of the last of such advertisements, nor until a copy of such notice as aforesaid shall have been served upon every mortgagee, if any, of such lands personally, and upon every other person who shall to the knowledge of the Commissioner of Crown Lands and Public Works have any estate in or charge upon such lands as aforesaid.

62. If within four months from the date of such service as aforesaid any person having any estate in or charge upon the land to which any such applications shall relate shall signify in writing to the Commissioner of Crown Lands and Public Works his dissent from such application, and state the nature of his estate in or charge upon such land, the said Commissioner shall give notice of such dissent to the owner of the land by whom such application shall have been made, and such provisional certificate shall not be issued unless or until such dissent shall have been withdrawn.

63. The Commissioner of Crown Lands and Public Works shall from time to time cause the works to which such provisional certificate shall relate to be inspected by an engineer or other competent person to ascertain the due execution of such works, and such engineer or other person as aforesaid may require the production of such vouchers, bills of account, or other documents as may enable him to ascertain such due execution and the amount of the expense which shall have been actually incurred in the execution of such works.

64. When the Commissioner of Crown Lands and Public Works shall be satisfied by the report of such engineer or other person as aforesaid that the works referred to in any provisional certificate as aforesaid have been executed according to the terms and conditions of such certificate, or that such part thereof as under the terms of such certificate would authorize an advance on account has been so executed, and shall be satisfied by such report that such expense has been actually incurred as will justify the advance according to the terms of the said certificate, he shall, by writing under his hand addressed to the Treasurer of the Colony, specifying the sum to be advanced and the person to whom it is to be paid,

<sup>1</sup> Amended by Act 7, 1880, § 1.

and the land by reason of the irrigation whereof or the artificial storage of water whereon such advance is to be made, require the payment of such sum to the said person; and the Treasurer on receipt of such writing as aforesaid shall thereupon advance such sum accordingly, and shall cause the same to be recorded in the books of his office. <sup>(1)</sup>

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65. Before the issue as aforesaid of any advance by virtue of a certificate under this Act, the owner of the land mentioned in such certificate shall pass or cause to be passed an instrument in writing before the Registrar of Deeds (which shall not be chargeable with stamp duty), charging such land with the payment to the Civil Commissioner of the district in which such land is situate, in respect of such advance of a rent-charge after the rate of eight pounds for every one hundred pounds of such advance, and so in proportion for any lesser amount, and to be payable for the term of twenty-four years, to be computed from the issue of such advance, such rent-charge to be paid by equal yearly instalments, commencing from the date of the issue of any such advance as aforesaid to the Civil Commissioner aforesaid, and in case of the non-payment of any such rent-charge as aforesaid the same shall be recoverable by action in any competent Court at the suit of the Treasurer of the Colony. <sup>(2)</sup>

Before any advance is issued the owner shall pass an instrument before registrar of deeds charging such land with a rent charge at the rate of eight per cent.

66. Every such rent-charge as aforesaid shall be a first and preferent charge upon the land in respect of which it is payable, and no transfer of any such land shall be made in the office of the Registrar of Deeds until the receipt of the proper officer for the payment of the last yearly instalment of such rent-charge and the consent of the Commissioner of Crown Lands and Public Works shall have been produced to and deposited with the said Registrar.

Such rent-charge to be preferent.

67. So long as any land shall continue to be charged with any such rent-charge as aforesaid, the persons for the time being bound to pay the same shall be bound to uphold the works on account of which the land shall have been charged therewith, and shall once in every year certify to the Commissioner of Crown Lands and Public Works the state of such works, and in default of so keeping and upholding the said works shall be liable to an action at the suit of the said Commissioner for such default and for any damage thereby occasioned.

So long as rent-charge continues, the person bound to pay shall uphold the works and certify to Commissioner the state of the works, &c.

## PART VII.

### ARBITRATION.

68. In case of dispute as to the amount of compensation to be made under the provisions of this Act (except when the mode of determining the same is specially provided for,) and in case of any

Mode of proceeding to arbitration where not otherwise specially provided under this Act.

<sup>1</sup> See Act 7, 1880, § 2.

<sup>2</sup> See Act 7, 1880, § 3.

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other matter arising or existing which by this Act is authorized or directed to be settled by arbitration, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other, shall appoint an arbitrator to whom the dispute or matter shall be referred; and every such appointment when made on behalf of an irrigation board shall be under the seal of such board and signed by the secretary to such board, and on behalf of any other party, under his hand; and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration by the parties making the same; and after the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute or matter shall have arisen, and after a request in writing in which shall be stated the dispute or matter so required to be referred to arbitration shall have been served by one party upon the other party to appoint an arbitrator, such last named party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and the award or determination of such single arbitrator, or of any arbitrator or arbitrators appointed in pursuance of this Act, shall be binding, final, and conclusive upon all persons and to all intents and purposes whatever.

Procedure in case arbitrator shall die or refuse or become incapable to act.

69. If before the determination of any matter so referred any arbitrator shall die, or refuse, or become incapable to act, the party by whom such arbitrator was appointed may appoint, in writing, another person in his stead, and if he fail so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrators may proceed *ex parte*, and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made; and in case a single arbitrator shall die, or refuse, or become incapable to act before the making of his award, or fail to make his award within twenty-one days after his appointment, or within such extended time, if any, as shall have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act as if no former reference had been made.

If more than one arbitrator is appointed they must appoint an umpire.

70. When more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, refuse or become incapable to act, they shall forthwith, after such death, refusal, or incapacity, appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

71. If the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Resident Magistrate of the district in which the land in respect of which the dispute arises is situate, or if the dispute is not in respect of land, the Resident Magistrate of the district in which the dispute arose shall on the application of either party to such arbitration appoint an umpire, and the decision of such umpire on the matters on which the arbitrators differ shall be final.

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In case of refusal or neglect so to do the resident magistrate may appoint umpire.

72. If when more than one arbitrator shall have been appointed either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been a single arbitrator appointed by both sides.

If one arbitrator refuses or neglects to act, the other may proceed *ex parte*.

73. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid: Provided always that unless by consent of all parties the time for making an award under this Act shall not be extended beyond a period of three months to be computed in the case of an arbitrator or arbitrators from the date of the appointment or last appointment of such arbitrator or arbitrators, or when an umpire has been chosen, from the date of the appointment of such umpire.

If arbitrators neglect to make their award within prescribed time the umpire may determine the matter.

Time of making award limited to three months, unless by consent of parties

74. Any arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession of either party as he may think necessary for determining the matters referred, and may examine the parties or their witnesses upon oath; and the costs of and consequent upon any reference under this Act shall be in the discretion of the arbitrator, arbitrators, or umpire, and any submission to arbitration under the provisions of this Act and any award made thereon may be made a rule of Court on the application of any party thereto.

Arbitrator or umpire may examine witnesses on oath and call for documents.

Award may be made rule of court.

75. Every award under this Act shall be in writing under the hand of the arbitrator, arbitrators, or umpire, as the case may be, and in duplicate, and shall be transmitted by such arbitrator, arbitrators, or umpire to each party or the agent of each party; and where the Government is a party, to the Commissioner of Crown Lands and Public Works, and shall be deposited in his office; and no award made under the provisions of this Act shall be set aside for irregularity or error in matter of form.

Mode of making award.

76. In estimating the purchase-money or compensation to be paid by any irrigation board or private owner under the provisions of this Act, regard shall be had by the arbitrators or umpire as

Mode of estimating purchase money or compensation,

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the case may be, not only to the value of the land, premises, works, or materials, to be purchased, taken, removed, or interfered with, but also the damage, if any, to be sustained by the owner of such lands, premises, or works, by reason of the severing of such lands, premises, or works from the other lands, premises, or works of such owner, or otherwise injuriously affecting such other lands, premises, or works, by the exercise of the powers of this Act.

## PART VIII.

## MISCELLANEOUS.

Notices to be signed  
by secretary.

77. When any notice is required to be given by a board under this Act, such notice shall in all cases be sufficiently executed if signed by the secretary to the board; and every such notice purporting to be signed by such secretary shall be receivable in evidence before all legal tribunals and in all legal proceedings without further proof.

Notices served on  
owner to bind all  
persons claiming  
under him.

78. All notices served by or on behalf of a board or an owner shall, if due service thereof has been made, be binding on all persons claiming by, from, or under such owner to the same extent as if such notice had been served on such last-mentioned persons respectively.

Mode of service of  
notices on owners.

79. Except when a special mode of service is provided by this Act, all notices required to be served by or on behalf of an irrigation board upon any owner of land shall be served personally on such owner, or be left at his last usual place of abode, if any such can after diligent inquiry be found; but in case any such person is absent from this Colony, and his last usual place of abode cannot after diligent inquiry be found, such notices shall be left with the occupier of such land, or if there be no such occupier, shall be affixed upon some conspicuous place of such land.

Mode of service of  
notices on corpora-  
tions, &c.

80. If any owner of land upon whom notice is to be served is a corporation, joint-stock or other company or body of proprietors, such notice shall be left at the principal office of such corporation, company, or body; or if no such office can after diligent inquiry be found, it shall be served on some officer or agent, if any, of such corporation, company, or body; but if no such officer or agent can be found, it shall be left with the occupier of the land, or if there be no such occupier it shall be affixed on some conspicuous place on such land.

Boards may make  
by-laws and regula-  
tions.

81. It shall be competent for every board constituted under this Act, from time to time, to make by-laws and regulations for the regulation of their own proceedings and those of their officers, and for the levying, making, and collection of all rates and charges authorized to be made by this Act; and for determining the times and seasons at which it may be expedient to permit or prevent the flow of water throughout the whole or any portion of any river, stream, creek, watercourse, or water channel in which locks,

dams, or other obstructions or works may have been placed, commenced, or constructed by any board under this Act; and for regulating the use of water in any reservoirs, tanks, or dams constructed or maintained by the board under the provisions of this Act, or touching and concerning the supply and distribution of all water running in a natural river or other course in their district, or in any artificial course or channel common to two or more of the owners of land in their district, or contained or collected in any dam, reservoir, vley, common, as aforesaid; and for enforcing by penalties, not exceeding ten pounds for any breach thereof, the observance of such by-laws and regulations; and from time to time to repeal or alter such by-laws or regulations, and make others: Provided that such by-laws and regulations be not repugnant to the provisions of this Act; and all such by-laws and regulations, on being confirmed by the Governor, with the advice of the Executive Council, and published in the *Government Gazette*, shall have the force of law, and shall be binding upon and observed by all persons, and shall be sufficient to justify all persons acting under the same; and copies of all such by-laws and regulations shall be kept in a conspicuous place in the chief office of the board, and shall be supplied to all officers and servants of the board, and to all persons resident within the district and rated by the board for the purposes of this Act, on their demanding a copy of the same and paying for the same a reasonable sum, not exceeding two shillings for each publication of any such by-laws and regulations.

82. Any person fraudulently taking water from any river, stream, creek, watercourse, water-channel, reservoir, dam, vley, or other place belonging to, or under the charge of, or where water is conserved or stored by a board under this Act, or for which water-rent is leviable by the said board, or fraudulently taking more water than he has engaged to pay for, shall, in addition to any other penalty or punishment, be chargeable with double rates for all water so taken. Penalty for fraudulently taking water.

83. No person shall, without the consent of the board, cause any filthy or unwholesome water or washings of manufactures or mines, or other foul, noxious, or poisonous liquid to flow into any river, stream, creek, watercourse, water-channel, dam, reservoir, vley, well or drain within the district of or belonging to or in charge of such board; and any person so offending against this enactment shall incur a penalty not exceeding twenty pounds, and a further penalty of forty shillings for every day during which the offence is continued: Provided, always, that this section shall not apply to any person having a legal right to cause such water, washing, or liquid as aforesaid, to flow into any existing river, stream, or watercourse; And provided also that neither the liability to nor the payment of any such penalty shall relieve the offender from any civil action to which he would be liable. Penalty for polluting water.

No. 8—1877.

Penalty for obstructing, impeding, or interrupting a board or any officer, &c., inspecting or reporting under this Act.

84. Any person who shall wilfully obstruct, impede, or interrupt a board or any officer thereof, or any person authorized by or on behalf of the Government to inspect or report upon any lands, premises, or works under this Act, in the execution of any duty authorized under this Act, and any person who shall wilfully break down, destroy, or injure any lock, dam, reservoir, vley, embankment, or any other work erected or constructed or in course of erection or construction by or under the direction of a board under this Act, or shall knowingly or wilfully hinder the flow or cause the escape of any water in, or retained, or held by or in any river, stream, creek, or watercourse, water-channel, dam, reservoir, vley, well, or drain within the district of and belonging to or in charge of any such board, or shall, except with the permission of the board, erect any new dam or other work in any such river, stream, creek, watercourse, water-channel, dam, reservoir, vley, well, or drain, shall on conviction be liable to a penalty of not exceeding fifty pounds, and on default of payment thereof, to be imprisoned with or without hard labour for a period not exceeding six months.

Offences to be prosecuted in resident magistrate's court.

85. All offences against any of the provisions of this Act, or against any of the bye-laws or regulations framed by any board, and authorized according to the provisions of this Act, shall be heard and determined by the Resident Magistrate of the district wherein such offences shall have been committed; and all penalties and sums of money directed by this Act to be recovered shall be recovered in the same manner and before such Resident Magistrate as aforesaid; and all costs, charges, and expenses incurred by a board in instituting or defending any legal proceedings whatever, instituted or defended by them by virtue of the provisions of this Act in their character of an irrigation board, may be defrayed out of the rates leviable by them; and no member of a board shall be personally liable in respect of any such costs, charges, and expenses; and all penalties to be recovered under this Act by or at the instance of any irrigation board may be proceeded for by the secretary of the board or by some person appointed by the board, and shall be paid to such board.

Certain leases, &c., not affected by this Act.

86. Nothing in this Act shall alter, interfere with, or affect any lease, contract, or agreement that may have been entered into between any landlord and tenant before the passing of this Act.

Account of revenue and expenditure to be kept.

87. Every board constituted under this Act shall keep true and particular accounts of all moneys received and expended by them in execution of this Act, and shall within one month after the thirty-first day of December in each year render the accounts as aforesaid for such year, signed by the chairman and secretary of the board, to the Auditor-General, who, after examination of the same, shall cause them to be delivered to the Commissioner of Crown Lands and Public Works, by whom the same shall, as soon as may be, be published in the *Government Gazette*, and laid before both Houses of Parliament.

88. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction, that is to say :

No. 8—1877.  
Construction of terms.

The word "lands" shall extend to lands, premises, and tenements of any tenure.

The word "owner" in this Act shall be deemed and taken to mean the person who is registered as the owner in the Deeds Registry, or the person who, claiming through such registered owner, is entitled to be so registered: Provided that where any owner or mortgagee is a minor, or of unsound mind, or has assigned his estate for the benefit of his creditors, the tutor, guardian, curator, trustee, or assignee, as the case may be, of such minor, person of unsound mind, insolvent, or owner who has assigned his estate as aforesaid, shall be deemed to be the owner or mortgagee within the meaning of this Act; and where several persons are jointly appointed executors, tutors, curators, trustees, or assignees, they shall for the purposes of this Act be accounted as one owner. The concurrence of the owners of two-third parts of such land shall be deemed to be the concurrence of the whole.

The word "person" in this Act shall include the Government, Divisional Councils, Municipalities, Corporations, Joint-stock and other companies and partnerships.

89. The returning officer for an Irrigation District under this Act shall be the Resident Magistrate of the Magisterial District in which the Irrigation District is situated, or if an Irrigation District extends to more than one Magisterial District such Resident Magistrate or other person whom the Governor may appoint shall be the returning officer for such Irrigation District.

Returning officer.

90. Every irrigation board constituted under this Act shall be competent to exercise all and singular the powers given to any persons by and under "The Right of Passage of Water Act, 1876." (1)

Board to exercise powers given under Act 24, 1876.

No. 7—1880.]

[July 26, 1880.

### ACT

To Alter and Amend Act No. 8 of 1877, entitled "An Act for the Promotion of Irrigation."

WHEREAS it is expedient to alter and amend in certain respects the Act No. 8 of 1877, entitled "An Act for the Promotion of Irrigation:" Be it therefore enacted by the Governor of the Cape

Preamble.

<sup>1</sup> Act 24, 1876, repealed by Act 26, 1882 (water).

KKKK



No. 7—1880.

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

Notice required by section 61 of Act 8 of 1877 need not be published in *Government Gazette*.

1. It shall not be necessary to publish in the *Government Gazette*, or in any other newspaper, the notice provided for by the 61st section of the said Act No. 8 of 1877, but it shall be sufficient to serve the same upon the mortgagees, if any, of the lands in question, personally, and upon every other person who shall to the knowledge of the Commissioner of Crown Lands and Public Works have any estate in or charge upon such lands, and to deposit with the Commissioner of Crown Lands and Public Works a solemn declaration proving such service.

Instalment not exceeding one-fifth of loan may be advanced to applicant.

2. Notwithstanding the provisions contained in section sixty-four of Act 8, 1877, if the Government should think that a loan, in respect of any application under this Act, should be expedient, it shall be lawful for the Commissioner of Crown Lands and Public Works to advance to the applicant, by way of instalment, a sum not exceeding one-fifth of the entire sum of the approved loan, provided that no second instalment shall be paid on account of the said loan until the Commissioner of Crown Lands and Public Works shall be satisfied that the sum previously advanced has been expended to the approval of the said Commissioner.

Provisions of sec. 65 of Act 8 of 1877 to apply to such advance.

3. The provisions contained in section sixty-five of Act 8 of 1877, regarding the advance by virtue of a certificate under the said Act shall apply to the instalments mentioned in the last preceding section.

Rent-charge may be increased to effect earlier repayment of advance.

4. If any owner shall so desire it, the amount of the rent-charge imposed under the provisions of the said Act No. 8 of 1877 may, with the consent of the Commissioner of Crown Lands and Public Works, be increased to such amount as will repay the sum advanced sooner than the said period of twenty-four years, in the said Act appointed for the payment of such rent-charge; such increased rent-charge to be calculated according to the schedule A hereunto annexed for that purpose.

Provision for earlier redemption of rent-charge.

5. Any person entitled to land and charged with such rent-charge as in the said Act No. 8 of 1877 provided, shall be at liberty at any time before the expiration of twenty-three years after the commencement thereof, to redeem such rent-charge or any part thereof, not being less than eight pounds annual charge, on payment to the Civil Commissioner of the district of the arrears thereof (if any), and of such sum as shall be equal to the value of such rent-charge, to be ascertained according to the table in schedule B hereunto annexed for that purpose; and the said Civil Commissioner shall issue and deliver to such owner a certificate of such redemption.

Repeal of sec. 59 of Act 8 of 1877.

6. The section 59 of Act No. 8 of 1877 is hereby repealed, and the expenses therein mentioned shall henceforth be paid and borne by the Government of this Colony.

Short title.

7. This Act may be cited for all purposes as “The Irrigation Act Amendment Act, 1880.”

## SCHEDULE A.

No. 7—1880.

If the owner shall desire to repay the sum advanced in one					
year, the rent-charge for one year shall be, per centum £106 0 0					
If he shall desire to repay it in two years, the annual rent-					
charge shall be, per centum .. .. . 54 11 0					
If in 3 years, the rent-charge shall be, per centum .. 37 8 6					
„ 4	„	„	„	„	28 17 6
„ 5	„	„	„	„	23 15 0
„ 6	„	„	„	„	20 7 0
„ 7	„	„	„	„	17 19 0
„ 8	„	„	„	„	16 2 6
„ 9	„	„	„	„	14 14 6
„ 10	„	„	„	„	13 12 0
„ 11	„	„	„	„	12 14 0
„ 12	„	„	„	„	11 19 0
„ 13	„	„	„	„	11 6 0
„ 14	„	„	„	„	10 15 6
„ 15	„	„	„	„	10 6 0
„ 16	„	„	„	„	9 18 0
„ 17	„	„	„	„	9 11 0
„ 18	„	„	„	„	9 5 0
„ 19	„	„	„	„	8 19 6
„ 20	„	„	„	„	8 14 6
„ 21	„	„	„	„	8 10 6
„ 22	„	„	„	„	8 6 6
„ 23	„	„	„	„	8 3 0

## SCHEDULE B.

The present value of every £1 per annum rent-charge shall be:—

For 1 year's rent-charge	..	..	..	..	..	£0 18 11
„ 2 year's	„	„	„	„	„	1 16 9
„ 3	„	„	„	„	„	2 13 6
„ 4	„	„	„	„	„	3 9 4
„ 5	„	„	„	„	„	4 4 3
„ 6	„	„	„	„	„	4 18 4
„ 7	„	„	„	„	„	5 11 8
„ 8	„	„	„	„	„	6 4 3
„ 9	„	„	„	„	„	6 16 1
„ 10	„	„	„	„	„	7 7 3
„ 11	„	„	„	„	„	7 17 9
„ 12	„	„	„	„	„	8 7 9
„ 13	„	„	„	„	„	8 17 1
„ 14	„	„	„	„	„	9 5 11
„ 15	„	„	„	„	„	9 14 3
„ 16	„	„	„	„	„	10 2 2
„ 17	„	„	„	„	„	10 9 7
„ 18	„	„	„	„	„	10 16 7
„ 19	„	„	„	„	„	11 3 2
„ 20	„	„	„	„	„	11 9 5
„ 21	„	„	„	„	„	11 15 4
„ 22	„	„	„	„	„	12 0 10
„ 23	„	„	„	„	„	12 6 1

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No. 28—1879.]

[Sept. 11, 1879.

## ACT

## To Assist Municipalities to carry out Irrigation Works.

Preamble.

WHEREAS it is desirable to assist such municipalities as may be desirous of carrying out irrigation works within their respective limits, and to devise better means than at present exist for rendering such assistance: 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:—

Power to Govern-  
ment to advance  
money to municipali-  
ties for irrigation  
works.

1. Nothing in Act No. 8 of 1877 shall be taken to debar the Government from making advances of money by way of loan to any municipality, for the purpose of enabling any such body under the provisions of the said Act to carry out works of irrigation or artificial storage of water, upon the credit and security of any rates which may be assessed or levied by such municipality, with or without such other good and sufficient security as may be in the power of such municipality to offer; and it shall be lawful for any such municipality to which money for the purpose aforesaid shall be advanced by the Government, to mortgage such rates, or any part thereof, or to give such other security as may be approved of by the said Government, for the purpose of securing the repayment of the money so advanced, with the interest thereon, and such mortgage shall constitute and be a first charge upon such rates: Provided that no such loan as aforesaid shall be effected unless the Government shall be satisfied that the previous consent of a majority of the ratepayers of the said municipality, present at a meeting to be convened by the commissioners of the said municipality, under a resolution to that effect passed by the said commissioners, has been obtained, of which said meeting of ratepayers fourteen clear days' notice shall be given by publication in one or more newspapers, if any, published within the said municipality, and by posting or affixing a copy of such notice in some conspicuous place within the said municipality.

Municipalities to  
impose water rate  
to defray annual  
charge.

2. It shall be lawful for any municipality which shall have obtained from the Government any such loan as in the preceding section mentioned, to impose, levy, and collect a special water rate for the purpose of meeting and defraying the annual rent charge payable to the Government under the said Act No. 8 of 1877, and in the event of such water rate not being sufficient for the purpose aforesaid, then to impose, levy, and collect a special annual rate not exceeding twopence in the pound upon the value of the immovable property within its limits liable to be rated, for the purpose of meeting the aforesaid rent charge.

Or a special rate.

Provisions of Act  
1877 to apply.

3. All applications made under this Act to the Government for any advance of money by way of loan, as hereinbefore provided,

shall be subject to the several provisions of the said Act No. 8 of 1877, relating to applications for loans by private owners of land, and all and singular the provisions of the said Act No. 8 of 1877, relating to proceedings consequent upon application for loans by, and to loans made to, and securities given by, such private owners and to the construction and maintenance of works, and to the rights of liabilities generally under the said Act No. 8 of 1877, of the Government and such private owners respectively, shall in all respects, save as to the nature of the security to be given as authorized by this Act, apply *mutatis mutandis* to applications made, loans granted, and securities given under this Act, and to works constructed by municipalities under this Act.

No. 28—1879.

4. The term "municipality" in this Act shall be deemed to designate any board of municipal commissioners or town council established under or by virtue of any Ordinance or Act of Parliament.

Definition.

5. This Act may be cited as the "Municipalities Irrigation Works Loan Act, 1879."

Short title.

## JURORS AND JURY.

1. Ord. 84—1831, (Qualification and Lists). 2. ,, 1—1843, ( do. ). 3. Act 7—1861, ( do. ). 4. ,, 2—1876, ( do. ).	5. Act 17—1885, (Qualification and Lists). 6. ,, 7—1854, (Jury in Civil Cases). 7. ,, 30—1874, ( do. ).
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No. 84—Sd. G. Lowry Cole.]

[May 14, 1831.

Ordinance for altering and amending the Law relative to the Qualification of Persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning Lists of the same.

WHEREAS an Ordinance (No. 83,) was passed by His Excellency the Governor in Council, bearing date the fifth day of this present month of May, for altering and amending the law relative to the qualifications of persons liable to serve on grand and petit juries, and to the mode of making out and returning lists of the same; and whereas the said Ordinance as published in the *Government Gazette* of the thirteenth day of May, 1831, is inaccurate and erroneous in certain respects, and it is expedient that the same should be repealed; and whereas, under and by virtue of the provisions of the Ordinance No. 41, many persons are liable to be summoned to serve on juries who reside at great distances from the towns wherein the Courts which they are respectively summoned to attend are held; and whereas the summoning and

Preamble.

- Ord. 84—1831. attendance of such persons to serve on juries as aforesaid cause not only much hardship and inconvenience to them but also great expense to the public; and whereas it is expedient in this and certain other respects to alter, amend, and declare the law relative to the qualifications and liability of persons to serve on grand and petit juries: Be it therefore enacted by His Excellency the Governor in Council, that the Ordinances No. 41 and No. 83 shall be and the same are hereby repealed; and that from and after the passing of this Ordinance, every free man residing within this Colony, except as is hereinafter excepted, between the ages of twenty-one years and sixty years who shall possess the qualifications <sup>(1)</sup> hereinafter provided, shall be qualified and liable to serve as a juror in the Supreme Court and Circuit Courts of this Colony.
- Repeal of former ordinances. Age of jurors, from 21 to 60 years. Exemptions from service on juries. 2. Provided always, and be it enacted that all Judges of the Supreme Court, all clergymen in holy orders, all persons licensed to teach or preach in any congregation assembled for religious worship, all advocates actually practising, all attorneys and proctors duly admitted by the Supreme Court or Court of Vice-Admiralty and actually practising, all officers of any Courts of superior or inferior jurisdiction exercising the duties of their respective offices, all gaolers, and keepers of houses of correction, all persons duly admitted to practise as physicians, surgeons, surgeon-apothecaries, apothecaries or accoucheurs, and actually practising, all officers in His Majesty's army or navy on full pay or in active employment, all persons employed in the civil service of His Majesty's Government in this Colony, and all Field-commandants, Field-cornets, Sheriff's officers, constables, and church-clerks except as hereinafter excepted, shall be and are hereby absolutely freed and exempted from being returned as jurors and from serving upon any jury whatsoever, and shall not be inserted in the lists to be prepared by virtue of this Ordinance as hereinafter mentioned:
- Disqualifications. Provided further, that no man who has been or shall be attainted of any treason or felony or convicted of any crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry or excommunication shall serve on juries on any account or on any occasion whatsoever.
3. [Repealed by § 3, Act 7 of 1861.]
4. [Repealed by Ord. 85.]
- Jury lists to be made out by the 1st February in every year. 5. And be it enacted that on or before the first day of July next, and on or before the first day of February in every subsequent year, the collector of taxes in Cape Town, and the Civil Commissioner in each district of the Colony shall prepare and make out a true list of every man residing within such part of his district as is hereinafter specified who shall be qualified and liable to serve on juries as aforesaid, with the christian and surnames written at length, the true place of abode, the title, quality, calling

<sup>1</sup> See Ord. 1, 1843.

or business, and the nature of the qualification of every such man in the proper columns of the form of the jury list set forth in the schedule hereunto annexed. <sup>(1)</sup>

Ord. 84 -1831.

6. And be it enacted that the collector of taxes in Cape Town and the district thereof and Civil Commissioner of the Cape district, or such other officer as shall by law be required to make up and return annually to the Sheriff of this Colony, lists of the names of such persons within the places aforesaid as are or shall be by law qualified and liable to serve on petit juries, shall mark the words *grand juror* <sup>(2)</sup> against the names of such persons in the said lists as are by this Ordinance or shall be hereafter declared to be qualified and liable to serve as grand jurors.

Addition of the words 'Grand juror' to the names of persons duly qualified in the jury list for the Cape district.

7. And be it enacted that the said collector of taxes and each Civil Commissioner shall on or before the first day of July next, or as soon after as conveniently may be, and on the first day of February in each subsequent year, cause a true copy of such list to be affixed on the principal door of every church, chapel, or other place of public worship, and <sup>(3)</sup> of every Court-house within such portion of his district as is hereinafter mentioned, having subjoined thereto a notice stating that all objections to the list will be heard by the Resident Magistrate of the district in the present year within twenty-one days after such list shall have been so affixed; and in every subsequent year upon the twenty-first day of the said month of February at the place where such Magistrate usually holds his Court. <sup>(4)</sup> And the said collector of taxes or Civil Commissioner shall sign his name at the foot of such copy, and shall likewise keep the original list or a true copy thereof to be perused by any of the inhabitants of his district at all reasonable times without any fee or reward, to the end that notice may be given of men qualified who are omitted, or of men inserted who ought to be omitted out of such list; and the said collector of taxes or Civil Commissioner shall further transmit to each Field-cornet within such portion of his district as aforesaid a similar list of every man residing within the Field-cornetcy of such Field-cornet, and liable to serve as a juror; and the said Field-cornet shall cause the same to be duly affixed and published therein also.

Copies of lists affixed on church and court house doors, &c.

Publication of lists in field-cornetries.

8. And be it enacted that upon the twenty-first day after the publication of the list in the present year, and upon the twenty-first day of February <sup>(5)</sup> in every subsequent year, the Resident Magistrate in each district shall hold a Court for the purposes of

Court for the examination and purification of lists on 21st February of each year.

<sup>1</sup> By Ord. 2 of 1845, the duties imposed on the collector of taxes by this Ord. were transferred to the Judge and Superintendent of Police; and by § 1, Act 7 of 1861, they were again transferred to the Resident Magistrate of Cape Town; and by § 1, Act 2 of 1876, the duties imposed on the Civil Commissioners under this Ord. were transferred to the Resident Magistrates.

<sup>2</sup> See § 4, Act 7, 1861.

<sup>3</sup> Repealed by Act 17, 1885.

<sup>4</sup> See Act 2 of 1876.

<sup>5</sup> See § 3, Act 2 of 1876.

Ord. 84—1831.

this Ordinance, and the collector of taxes and the Civil Commissioners of each district respectively shall transmit to the Resident Magistrates at the said Courts the said lists; and the said Resident Magistrates respectively shall at the said Courts, upon proof to their satisfaction by the oath or affidavit of the party complaining or of any other person, reform all errors which may have been committed by omission or otherwise in preparing the said lists, by improperly marking any unqualified person, or by omitting to mark any qualified person as grand juror; by improperly inserting the name of any person not qualified or liable, or by improperly omitting the name of any person qualified and liable to serve on juries as aforesaid; and shall also strike out of the said lists the names of all persons therein inserted who shall be proved by oath or affidavit as aforesaid, or who on personal examination by the said Magistrate shall be found to be disabled from serving on juries by mental imbecility, or any permanent bodily infirmity or defect.

Formation of  
"jurors' books,"

9. And be it enacted that after the said lists have been reformed as aforesaid the Resident Magistrates shall respectively return them to the said Civil Commissioners and collector of taxes, who shall forthwith transmit the same to the Sheriff of the Colony at Cape Town, and the said Sheriff shall cause the same respectively to be fairly and truly copied in a book to be called "The jurors' book of the district of \_\_\_\_\_" (inserting the district): and the said lists shall be used until the return of new lists shall be made to the said Sheriff in manner hereinbefore provided: Provided always, that it shall and may be lawful for the Sheriff, and he is hereby required to comprise the lists of Cape Town and the district thereof and of the Cape district in one and the same list, to be entered in one and the same book, to be called "The jurors' book of the Cape district."

Exemption of persons residing more than 25 miles from Cape Town: or more than 6 hours' travelling from the town where a circuit court is held.

10. And be it enacted that no person residing in the Cape district whose place of abode shall be situated at a greater distance from Cape Town than twenty-five miles, or if in any other district shall be situated at a greater distance from the town or place at which the Circuit Court of such district shall be held than the distance of six hours' travelling on horseback, or any other number of hours' distance which shall hereafter be fixed and specified by His Excellency the Governor in any proclamation by him to be issued for such purpose, shall be liable to be returned by the collector of taxes <sup>(1)</sup> or Civil Commissioner as a juror or summoned to serve on any jury: Provided always, that if any person qualified to serve on juries residing beyond such distance as aforesaid shall signify to the collector of taxes or Civil Commissioner respectively his desire to have his name continued on the jury list, it shall be lawful for the collector of taxes or Civil Commissioner so to continue his name, and the Sheriff shall summon such person in his turn.

<sup>1</sup> See Act 2 of 1876.

11. And be it enacted that when it shall be made to appear to the Resident Magistrate at any Court so to be holden as aforesaid that any corn, wine, or cattle farm is cultivated or managed or the cultivation or management thereof superintended jointly by any person and his son or sons, being all qualified and liable to serve on juries and residing on such farm; then and in every such case all the said persons shall not be liable to be summoned to serve on juries at the same session of the Supreme Court or of any Circuit Court; but one of the said persons at all times shall in his turn be left unsummoned, and shall not be liable, if, notwithstanding hereof, he shall be so summoned, to any penalty for failing to attend before any such Court pursuant to such summons.

Ord 84--1831.  
Rotation, in service on juries, of father and son or sons, jointly managing a corn, wine, or cattle farm.

12. And be it enacted that when it shall happen at any session of the Supreme Court or of any Circuit Court for the trial of criminal cases, that nine men qualified and liable to serve on juries in such Court shall not have been summoned or shall not appear <sup>(1)</sup> or shall not remain as fair and indifferent after all just cause of challenge, then and in every such case the Sheriff or his deputy shall when commanded so to do by any order made or writ issued by such Court for that purpose summon and return so many men of those present in or within the precincts of the said Court, or summon and return so many men residing or being at the time in the vicinity of the said Court, or of the town or place in which it is held, being qualified and liable to serve on juries, as shall be necessary to make up the lawful number of jurors; and every such person so summoned and returned shall, notwithstanding of his being employed in the Civil Service of His Majesty's Government, or of his holding the office of field-cornet or church clerk (if he shall consent to serve), be qualified to serve on any jury which shall be impanelled during the said session of such Court.

In case of a deficiency of jurors, return of persons present or in the vicinity of the court, to make up the number.

13. And be it enacted, that if any man having been duly summoned by the said Sheriff or his deputies, under and by virtue of any rule, order, or writ, made or issued by the Supreme Court, or any Circuit Court, to attend before any such Court to serve as a juror shall not attend pursuant to such summons, or being thrice called shall not answer to his name, or after his appearance shall wilfully withdraw himself from the said Court, unless he shall have been adjudged by the said Court to be disabled or disqualified, then and in every such case it shall and may be lawful for the said Court to set such fine upon every man so making default (unless some reasonable excuse shall be proved by oath or affidavit), as the Court shall think meet, not exceeding the sum of ten pounds sterling.

Fine, not exceeding £10, on jurors not attending pursuant to summons.

14. And be it enacted that for the purpose and under the provisions of this Ordinance the former residency and district of Simon's Town shall be deemed and taken to be within the Cape district; and the township of Port Elizabeth shall be deemed and taken to be within the district of Uitenhage.

Simon's Town within Cape district: and Port Elizabeth within Uitenhage.

<sup>1</sup> See § 40, Charter of Justice.



Ord. 1--1843.  
Provision for  
Sundays and holi-  
days.

15. And be it enacted that if any of the days mentioned in this Ordinance shall happen to be a Sunday or holiday, then any thing herein required to be done on any such day shall be done on the first lawful day following.

16. [Repealed by Act 17 of 1885].

17. [Repealed by Act 17 of 1885].

Use of old lists  
until completion of  
lists under this ordi-  
nance.

18. And be it enacted that until the list or jurors hereinbefore provided to be made up and transmitted to the Sheriff of this Colony shall be so made up and transmitted, the said Sheriff shall and may, and he is hereby required, whenever it shall be necessary for him to summon any jury to take the names of the jurors to be summoned from the lists of jurors which have been transmitted to him under the provisions of the said Ordinance, No. 41, any thing to the contrary herein contained notwithstanding.

Form of jury list.

FORM OF JURY LIST.—SCHEDULE.

Christian and Sur- name at full length.	Place of Abode.	Title, Quality, Calling or Business.	Nature of Qualification.

No. 1.—Sd. George Napier.] [April 22, 1843.  
Ordinance for amending the Law relative to the Qualifica-  
tion of Jurors.

Preamble.

WHEREAS the qualifications required for serving upon petit juries as the same are set forth in Ordinance No. 85, entitled "An Ordinance for altering and amending the Ordinance No. 84," have now become in some respects inapplicable, and it is expedient to abolish the same and substitute one uniform qualification in their 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 Ordinance No. 85 shall be and the same is hereby declared to be repealed, except so far as the same repeals any former law or ordinance or any part of any former law or ordinance.

Ordinance No. 85  
repealed.

Qualification of  
petit jurors.

And be it enacted that every man qualified and liable to serve as a juror according to the provisions of any former law or ordinance (save and except the said Ordinance No. 85 hereby repealed) and not being qualified to serve as a grand juror, <sup>(1)</sup> and who

<sup>1</sup> Grand Jurors are liable to serve as Petit Jurors. See § 7, Act 7 of 1861.

shall be the occupier of any immovable property either as owner or renter of the yearly value of fifteen pounds, or who shall be the son of any such occupier as aforesaid, shall be qualified and liable to serve on any petit jury which shall be impanelled in the Supreme Court or in any Circuit Court which shall be held in or for the district in which such person shall reside.

Ord. 1—1843.

And be it enacted that where any immovable property shall be jointly occupied by more persons than one as owners or renters each of such joint occupiers shall be qualified and liable to serve on any such petit jury as is in the last section mentioned in respect of the immovable property so jointly occupied, in case the yearly value of such property shall be of an amount which, when divided by the numbers of such joint occupiers, shall give a sum not less than fifteen pounds for each and every such joint occupier.

Joint property may give several qualifications.

No. 7—1861.]

[August 14, 1861.]

ACT

To Amend the Law relating to Grand and Petit Juries.

WHEREAS by the Ordinance No. 2, of 1845, entitled “ Ordinance for fixing the Mode of making out Jury Lists for Cape Town and the District thereof,” certain duties connected with the preparation of certain jury lists were imposed upon the Judge and Superintendent of Police in Cape Town: And whereas under and by virtue of the Act, No. 11, 1860, the office of the Judge and Superintendent of Police in Cape Town has been abolished: And whereas it is expedient to provide for the performance of the said duties and also to amend in certain other respects the law relating to grand and petit juries: 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 and singular the several duties which under and by virtue of the Ordinance aforesaid, No. 2, 1845, the Judge and Superintendent of Police in Cape Town was charged with and authorized and required to perform shall be charged upon and performed by the Resident Magistrate of Cape Town or such other officer as the Governor shall by proclamation nominate and appoint for that purpose, in like manner as if the Resident Magistrate aforesaid or such other officer were named in the said Ordinance No. 2, 1845, in place and stead of the Judge and Superintendent of Police.

Jury list for Cape Town and district to be made out by Resident Magistrate.

2. [Repealed by § 2, Act 2 of 1876.]

3. The third section of the Ordinance aforesaid, No. 84, is hereby repealed.

Section 3 Ordinance 84 repealed.

4. Every man qualified and liable under or according to the said Ordinance No. 84 to serve as a juror who shall reside in Cape

Who qualified to serve on the grand jury.

No. 7—1861.

Property to be valued according to Act 9, 1858, or by officer preparing list.

Town or in the district thereof or the Cape district, and who shall be the owner of land or buildings of the value of one thousand five hundred pounds sterling, situated within this Colony; or not being such an owner, shall be the occupier or tenant, under any lease or contract of hire originally entered into for any term not less than five years, of land or buildings of the value of two thousand five hundred pounds sterling, shall be qualified and liable to serve on any grand jury which shall be lawfully empannelled in the Supreme Court: Provided that the value of any such property as aforesaid shall for the purposes of this section be the value placed upon such property in and by the valuation for the time being made for road purposes under the Act No. 9, 1858, or under any other Act providing for a valuation of fixed property for road purposes: And provided that if at any time there shall not exist any valuation of such property for road purposes, then the value thereof for the purposes of this section shall be estimated or appraised by the officer or officers charged with the duty of preparing the jury lists for Cape Town and the district thereof and the Cape district: Provided, also, that nothing herein contained shall extend to prevent the owner and the occupier of any property, being different persons, from being both of them qualified by or out of the same property.

How in case of joint proprietorship or occupation.

5. As often as any land or building shall be jointly owned, or shall be jointly occupied without being owned, by more persons than one, then every joint owner or joint occupier shall for the purposes of the last preceding section of this Act be qualified and liable to serve on any such grand jury as aforesaid, in case the total value of such land or buildings when divided by the number of such joint owners or occupiers shall yield, in the case of joint owners, for every joint owner the sum of one thousand five hundred pounds, and in the case of joint occupiers who shall not be owners the sum of two thousand five hundred pounds sterling: Provided that in case such joint owners shall own or such joint occupier shall be interested in such land or buildings in unequal shares or proportions, no such joint owner or joint occupier shall be qualified or liable to serve on such grand jury unless his share or proportion shall regard being had to the total value of the land or buildings yield, if a joint owner, the sum of one thousand five hundred pounds, and if a joint occupier, not being an owner, the sum of two thousand five hundred pounds.

Certain rules of court repealed.

6. So much of the forty-second, eighty-first, and eighty-second of the rules and orders of the Supreme and Circuit Courts, and so much of any other law or ordinance as is repugnant to the provisions of the next succeeding sections of this Act is hereby repealed.

Grand jurors may serve as petit jurors.

7. Persons against whose names the words "grand juror" are marked in the jurors' book shall be liable to be summoned to serve as petit jurors in the Supreme Court.

8. [Repealed by Act 17, 1885.]

9. It shall be lawful for the Chief Justice and the Puisne Judges of the Supreme Court, by any rule or order of the said Court, to make provision for the just apportionment of jurors' duty amongst the various persons qualified to serve as grand jurors, so that as much as may be each of them shall in his turn discharge, as compared with his fellow grand jurors and with persons liable to serve as petit jurors only, his fair share of duty, and no more: Provided that for the purpose of any such rule or order attending, to serve upon a grand jury at any criminal session of the Supreme Court and service for the purpose of the petit jury at the same session shall be considered as equal to each other.

No. 2—1876.  
Provision as to apportionment of duty.

10. This Act may be cited for all purposes as "The Jury Law Amendment Act, 1861."

Short title of Act.

No. 2—1876.]

[July 4, 1876.

ACT

To Amend the Law relating to the making out of Lists of Jurors.

WHEREAS it is expedient that the law relating to the making out of lists of jurors 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:—

Preamble.

1. From and after the taking effect of this Act, the several Resident Magistrates in this Colony shall be charged with and are hereby authorized and required to perform all and singular the several duties which under and by virtue of the Ordinance No. 84, intituled, "Ordinance for altering and amending the law relative to the qualification of persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning lists of the same," were empowered or required to be performed by Civil Commissioners precisely as if the Resident Magistrate of the district was named in the said Ordinance in place and stead of the Civil Commissioner.

Magistrates to perform duties required of civil commissioners under Ordinance 84 of 1831

2. The second section of the Act No. 7 of 1861, intituled, "An Act to amend the law relating to Grand and Petit Juries," is hereby repealed.

Section 2, Act No 7, 1861, repealed.

3. If it shall happen in any district of this Colony, that by reason of any failure or neglect or other cause the jury list mentioned in the fifth and seventh sections of the said Ordinance No. 84 shall not be prepared and made out or affixed, or that the Court in the seventh and eighth sections of the said Ordinance mentioned shall not be held upon the day in that behalf in the said sections respectively directed, it shall be lawful for the

Provision in case of failure or neglect to comply with sections 5, 7, and 8, of Ordinance 84 of 1831.

No. 17—1885.

Governor, by proclamation, to fix and appoint some other convenient day for the preparing and making out or affixing such list, or the holding of such Court (as the case may be), and such day shall thereupon be deemed and taken to be the day appointed by the said Ordinance.

No. 17—1885.]

[August 7, 1885.

## ACT

## To Amend the Law relating to Jurors.

Preamble.

WHEREAS it is provided by the sixteenth section of Ordinance No. 84, that no person shall be put on trial on any indictment at any criminal session of the Supreme Court unless the bill of such indictment shall first have been presented to a Grand Jury, and shall have been returned by them a true bill: and whereas this provision does not extend to criminal trials other than those in the Supreme Court, and has been found in practice to be inconvenient and unnecessary in the Supreme Court: and whereas it is expedient to amend the law relating to giving publicity to jurors' lists: Be it 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:—

Grand Juries abolished.

1. The sixteenth and seventeenth sections of the said Ordinance No. 84 and all other laws or rules of court relating to the attendance and service of grand juries at the criminal sessions of the Supreme Court, are hereby repealed: Provided that nothing herein contained shall be deemed to dispense with the necessity of lists of grand jurors being made out as heretofore for the purpose of selecting juries in civil cases as provided by Act No. 30 of 1874, or to alter the law which renders grand jurors whose names appear in such list liable to serve as petty jurors in the Supreme Court.

Portion of Ordinance No. 84 section 7 requiring jurors' lists to be affixed to doors of churches, &amp;c., repealed.

2. So much of the seventh section of the said Ordinance as requires that a copy of the jurors' list shall annually be affixed to the principal door of every church, chapel, or other place of public worship in a certain portion of such district, shall be and is hereby repealed.

Short title.

3. This Act may be cited as the "Jurors' Law Amendment Act, 1885."

No. 7—1854.]

[July 5, 1855.

## AN ACT

## For Extending Trial by Jury to Civil Cases.

Preamble.

WHEREAS it is expedient that trial by jury in civil cases should be introduced into this Colony: And whereas it is fitting that trial by jury in civil cases should, in the first instance, be limited to civil

cases depending in the Supreme 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:—So much, if any, of the Letters Patent of his late Majesty King William the Fourth, bearing date at Westminster, the fourth day of May, in the second year of his reign, and commonly called the “Charter of Justice,” and so much, if any, of any other law or ordinance heretofore existing in this Colony, as shall be repugnant to or inconsistent with any of the provisions of this Act, shall be repealed, and the same is hereby repealed accordingly.

No 7—1854.  
Repugnant laws repealed.

2. [Repealed by Act 30 of 1874.]

3. No question which shall be a pure and unmixed question of law shall be, at any time, or in any case, referred or submitted to a jury, but every such question shall be reserved for the determination of the Court.

Questions of law to be reserved for the court.

4. [Repealed by Act 30 of 1874.]

5. The issue or issues in any such case as aforesaid, to be tried by jury, shall, as much as may be, be settled and framed, so as to present separately and successively, and in plain and precise language, every matter of fact affirmed by one party in the suit and denied by the other: Provided that no issue shall be settled or framed in regard to any matter or question not arising upon the pleadings as pleaded, unless both parties shall consent thereto, in which case the pleadings shall be thereupon amended in such manner as to put in issue such matter or question.

Form in which issues shall be framed.

6. Whenever, in any matter or question which is in law a matter or question of mixed law and fact, the fact shall, in contemplation of law, be capable of being separated from the law with which it is mixed, and both parties shall desire the separation, in the issues, of the fact from the law; such separation may, should the judge see fit, be made in such manner that the fact alone should be submitted to the jury, and the law connected therewith shall be reserved for the Court.

In mixed questions of law and fact, the law and the fact may, if capable of separation, be separated.

7. As often as any issue shall be settled or framed for trial by jury in any case, in regard to which or the matter of which either party shall claim that the other party may be condemned in damages, then the issues in such a case shall be so settled and framed as to authorize and require the jury, in case they shall find for the party claiming such damages, to assess the said damages.

When damages claimed, the issues shall leave it to the jury to assess the damages.

8. Either party to any such case as aforesaid, who shall, before the judge in chamber, have objected to the form or substance of any issue approved of by the said judge, or who shall, before such judge, have desired the admission of some issue which the said judge shall have refused to admit, may, upon notice to the opposite party, move the Supreme Court to review the decision of the judge in chamber regarding any such issue; and thereupon such Court shall make such order in the matter as justice shall seem to require: Provided that any judge before whom, in chamber, the

Issues approved by judge in chamber may be reviewed by, or referred to, the Supreme Court.

No. 7—1854.

settlement of the issues in any case shall come, may, of his own motion, refer the settlement of such issues, or of any of them, to the Supreme Court, and thereupon such Court shall, after hearing the parties, settle the same.

Issues to be engrossed, and left with registrar.

9. As soon as may be after the issue or issues in any such case as aforesaid shall have been settled and framed, the same shall be fairly and correctly engrossed by the attorney, who shall have served the notice in the fourth section mentioned, to attend before a judge in chamber, and such attorney shall carry the said issue or issues, so engrossed, to the judge before whom, in chamber, the same shall have been settled, and such judge shall sign the engrossment thereof, and thereupon such attorney shall lodge such engrossment with the Registrar of the Supreme Court: Provided that, as often as all or any of the issues in any case shall be finally determined, not by the judge, but by the Court, then all the issues in such case, after being engrossed as aforesaid, shall be signed by the Registrar aforesaid and not by any judge.

10. [Repealed by Act 30 of 1874.]

Jury trials to be had before a judge and a jury of nine men.

11. All trials by jury in the Supreme Court shall be had before the Chief Justice of the said Court, or before any other of the judges thereof, and a jury of nine men.

Cases to be tried by jury to be set down not less than 14 days before day of trial.

12. All cases in which there shall be any issue or issues to be tried by jury shall be set down for trial, not less than fourteen clear days before that one of the days set apart for trials by jury on which it is intended that such issue or issues should be tried.

When any case set down for trial by jury, the registrar shall give notice to the sheriff that a jury will be required.

13. When any such case as in the last preceding section mentioned shall be set down for trial, the Registrar of the Supreme Court shall, as soon as may be, and not later than the next day (not being a Sunday or public holiday) after such case shall have been so set down, give notice in writing to the Sheriff of the Colony that a jury will be required in the Supreme Court, for the dispatch of civil business, on the day for which the said case shall have been set down for trial: Provided that it shall not be necessary for the said Registrar, when he shall have given such notice, in reference to any one case, to give any further or other notice, although other cases should be afterwards set down for the same day for trial by jury.

14. [Repealed by Act 30, 1874.]

Jurors for civil cases to be summoned as if for criminal cases.

15. The jurors who shall be required to attend in the Supreme Court for the trial of civil cases depending therein shall be summoned in manner and form as is or shall be by law provided for the summoning of jurors for the trial of criminal cases in the said Court and the Sheriff aforesaid shall make the like return of the manner of serving every such summons, as if such jurors had been summoned for the trial of criminal cases.

List of jurors summoned to be called over.

16. The Registrar of the Supreme Court shall, on the sitting of the Court upon any day appointed for the trial of civil cases, call

over the list returned by the said Sheriff, and if any man, having been so summoned to attend as a juror, shall not attend pursuant to such summons, or, being thrice called, shall not answer to his name, or, after his appearance, shall wilfully withdraw himself from the said Court, the Court shall set such fine upon every man so making default (unless some reasonable excuse shall be proved by oath or affidavit) as the Court shall think meet, not exceeding twenty-five pounds.

No. 7—1854.  
Penalty for non-attendance.

17. As often as any such fine shall be imposed, and shall not be paid upon demand thereof made by the said Sheriff, then execution may be sued out by Her Majesty's Attorney-General for the recovery of the said fine, precisely as if the order imposing such fine were a judgment of the said Court.

How penalty to be recovered.

18. The names of the men who shall have been summoned and shall appear shall be placed in a list, and from such list each of the parties to the first case standing for trial may, upon the instant, in some convenient place, and in the presence of the Registrar, strike off, if so minded, the names of nine men, and then the name of each man remaining upon the list, with his place of abode and addition, shall be written by the Registrar upon a separate piece of paper (such pieces of paper being all, as nearly as may be, of equal size), and the said pieces of paper shall be put together in a box provided for that purpose, and upon and for the trial of such last-mentioned case, the Registrar shall draw out nine of the said pieces of paper, one after another; and if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then a further number of names shall be, one by one, drawn out, until nine men be drawn who shall appear, and, after all just cause of challenge allowed, shall remain as fair and indifferent between the parties: Provided that, in the striking off of the nine names aforesaid, from the list aforesaid, by each of the parties to the case, the plaintiff shall, if he will, strike off the first name, and the defendant the second, and so on alternately, until the whole number of nine each shall be struck off, or until both or either of the parties shall desist from striking off such names: Provided, also, that one party to such case, by declining to strike off all or any of the nine names aforesaid, shall not thereby prevent the other party to said case from striking off the whole or any lesser number of such nine names.

Each party in the cause may strike off the names of nine jurors from the list of thirty-six.

The remaining names to be placed in a box, and the nine men first drawn to be the jury.

19. If there shall be more cases than one set down for the same day for trial by jury, then each of the parties in each successive case may, from the list of names of men who shall have been summoned and shall have appeared, as aforesaid, strike off, in manner aforesaid, the names of nine men, and thereupon, in each case, the like proceedings as are hereinbefore provided shall take place with respect to each name remaining upon the list of men summoned and appearing, until all the cases set down for trial upon that day shall be disposed of.

How to proceed in case there shall be more cases than one for the same day.

LLLL



No. 7—1854.

When one jury shall be absent, considering its verdict, the residue of the jury list may, by consent, supply a jury to try any other cause standing for trial.

20. If, whilst one jury shall be absent considering their verdict, the parties in the next case set down for trial on that day shall, both of them, consent to take the list of jurors then remaining unsworn, and from it to strike off so many names, not exceeding nine, as shall leave not less than nine men free from challenge and objection, who shall appear to serve upon the trial of such next case, then the names so left shall be placed as aforesaid in a box, and be thence drawn out as aforesaid, and the trial of such next case shall proceed forthwith. And if the parties in the case next to that in which the jury shall be absent, considering their verdict, shall not so consent, as aforesaid, then it shall be competent for the parties to the case next in order so to consent, and so on, from case to case, as long as there shall remain any case set down for trial upon that day.

Jurors who have served on one jury, to be liable to serve again for other causes standing for trial on the same day.

21. As soon as any jury shall have given their verdict, or shall have been discharged by the Court without having given a verdict, the jurors who composed such jury shall be competent and liable (should they be left upon the reduced list remaining for the purpose of forming therefrom a jury, for the trial of any other case set down for trial on the same day) to have their names, as belonging to such reduced list, placed in the box aforesaid, thence to be drawn, in manner aforesaid, so as to form a jury for the trial of such other case, precisely as if such jurors had not served in any previous case.

No challenge except for cause.

22. No challenge to any man, drawn as aforesaid, to serve as a juror, shall be allowed, except a challenge for cause, and that the causes for which any such juror may be challenged, and the manner and form of trying the existence of any cause of challenge alleged against any such juror, shall be the same, in all respects, as would, by law be permitted or prescribed in a civil case depending, and about to be tried, in one of Her Majesty's Courts of Record at Westminster.

Cause of challenge the same as in the courts at Westminster.

The jury to be sworn

23. The judge presiding at any such trial as aforesaid, before proceeding to such trial, shall administer to the jury the following oath, that is to say:—"You, and each of you, do solemnly swear that you will well and truly try these issues (or "this issue," as the case may be), and a true verdict give, according to the evidence, so help you God!"

Form of oath.

The jury, after being sworn, to be kept apart by themselves.

24. After the jury, in any civil case depending in the said Court, shall have been sworn, they shall be kept, in some convenient situation, apart by themselves, until the judge who shall try the case shall have summed up the evidence and left the issues to the said jury, and if any such jury shall desire to withdraw for the purpose of considering their verdict, then they shall be kept by an officer of the Court in some convenient place, apart by themselves, until they shall have agreed upon their verdict, or shall be discharged; and such officer shall be sworn that he will suffer none to have access to them or to speak to them, unless by the

order of the Court, and that he will not himself speak to them except to ask whether they are agreed upon their verdict, or to communicate between them and the Court.

No. 7—1854.

25. It shall not be competent for any such jury to deliver their verdict upon any one or more of the issues left to them, if more than one, unless they shall at the same time deliver their verdict on all the issues so left to them.

Every jury finding upon any one issue left to them in any case, must find upon all the issues left to them in the same case.

26. Not fewer than six jurors of the nine jurors composing the jury must concur in every verdict of such jury, and every verdict in which not fewer than six jurors of the nine jurors, composing the jury shall concur, shall be received and regarded as the verdict of such jury: Provided that no verdict, except one in which the whole of the jurors composing the jury shall concur, shall be capable of being delivered or received until after the jury shall have been in deliberation upon their verdict for not less than one hour.

Six jurors may give the verdict.

No verdict, not unanimous, to be received until the jury shall have been in deliberation for not less than an hour.

27. As often as all the cases set down for trial by jury upon any day shall not be disposed of upon that day, it shall and may be lawful for the judge to adjourn the Court from time to time, as may be found convenient, and to proceed with such trials after any such adjournment. And as often as such judge shall adjourn the Court from any one day till some other day and hour fixed upon by the said judge, then every person bound to attend as a juror upon the day of such adjournment shall be bound, under the like penalty as that hereinbefore in the 16th section provided, to appear again, in the said Court, upon the day and at the hour to which the Court shall have been adjourned: Provided that, whenever the Court shall adjourn from one day to another, during the trial of any cause, the jury trying such cause shall be at liberty to retire to their homes during such adjournment.

The judge may adjourn the court for jury trials.

When during a trial, the court adjourns, the jury may retire to their homes during the adjournment.

28. The verdict of every jury impanelled to try any such issue as aforesaid, may (provided the nature of the issue will so admit) be either a general verdict or a special verdict.

Verdicts may be either general or special.

29. The verdict of every such jury shall be received by the Registrar of the Court, who shall, before recording the same, ask the jury if they are all agreed upon their verdict; and in case they shall answer in the negative, shall then ask the jury how many of them are agreed upon their verdict; and the said Registrar shall record the verdict that shall have been given, and whether the same was an unanimous verdict, or a verdict by a majority; and shall read over to the jury, before they quit their places, the issue or issues left to them, and their finding or findings thereon. Provided that, so long as the verdict shall not have been recorded, it shall be competent for the jury, in case they shall not have quitted their places to reconsider or amend any of their findings.

How verdicts to be received and recorded.

30. No jury impanelled to try any such issue as aforesaid shall be discharged until they shall have delivered their verdict, unless both the parties to the case shall consent to their discharge, or

Jury when to be discharged.

No. 7—1854.

unless the Court shall, upon being satisfied that the jurors in any case are unable to agree, see fit to discharge them: Provided, however, that the Court shall not discharge any jury as being unable to agree, until such jury shall have been closed up to consider their verdict for not less than six hours, except proof be given, before the expiration of such six hours, that longer confinement would probably cause serious bodily harm to one or more of the said jurors; in which case the Court may discharge such jury at once.

When jury discharged without having given a verdict, case may be set down afresh for some future jury trials day, or both parties may agree to refer the case to the court.

31. In every case in which a jury shall be discharged without delivering a verdict, such case may be again set down for trial by jury on some future day appointed for trials by jury,—or should both parties so elect, the case may be set down for trial before the Court adjudicating without a jury: Provided that if such case be set down for trial by jury, it shall be so set down not less than fourteen clear days before the day of trial: And provided that if such case be set down for trial before the Court adjudicating, without a jury, it shall be set down for such time before the day of trial as shall be prescribed by the rules of the said Court.

All issues and findings to be kept of record.

32. The issue or issues tried by any jury, and their finding or findings thereon, shall be preserved, of record, by the Registrar of the Court.

Jurors, how to be paid for serving.

33. Every juror serving on a jury shall be paid, upon the delivery of the verdict, the sum of ten shillings: Provided that if any trial shall be adjourned to a second day, the judge presiding at the trial may allow to each juror any sum not exceeding ten shillings for each day during which such trial shall continue: Provided also, that the attorney for the party who shall have set down the issue or issues for trial shall be personally liable for the payment of whatever sum the jury shall be entitled to receive: And provided that, as often as such party shall be entitled to his costs from the opposite party, he shall recover, as part of such costs, whatever sum he shall have lawfully paid the said jury.

New trials may be applied for, and upon what grounds.

34. Any party to any case tried by jury, who shall be dissatisfied with the finding or findings of the jury, may apply by motion to the Supreme Court to grant a new trial, on the ground of the finding or findings being contrary to evidence, or on the ground of mis-direction of the judge in matter of law, or on the ground of the undue admission or rejection of evidence, or on the ground of excessive damages, or on the ground of *res noviter veniens ad notitiam*, as also on any ground not herein set forth, upon which a new trial may be granted or grantable, according to the law and practice of Her Majesty's Courts of Record at Westminster: Provided that all motions for new trials shall be made at or within such time next after the trial as the Supreme Court shall, from time to time, appoint: And provided that as often as a new trial shall be granted, the case may be set down again for trial, upon some one of the days set apart as aforesaid for trials by jury, in like manner as if such case had never previously been set down

and tried; or, should both parties so elect, such case may be set down for trial before the Court adjudicating without a jury.

No. 7—1854.

35. As often as any issue, left to any such jury as aforesaid, shall contain or involve a question of mixed law and fact, the respective rights, powers, functions, and duties of the judge presiding at such trial, and of the jury, in regard to the determination of the law and of the fact respectively, shall be the same in all respects, as would, by law, belong to, or be imposed upon, the judge and the jury, respectively, in any one of Her Majesty's Courts of Record at Westminster, in regard to the determination of a similar issue in progress of trial in such last-mentioned Courts.

The respective powers of the judge and of the jury, in regard to the determination of questions of mixed law and fact.

36. It shall be competent to the counsel of any party at the trial of any issue or issues, to except to the opinion or direction of the Judge before whom the same shall be tried, either as to the competency of witnesses, the admissibility of evidence, or other matter or thing arising at the trial, and, on such exception being taken, the same shall be put in writing by the counsel for the party objecting, and signed by the Judge; but notwithstanding such exception, the trial shall proceed, and the jury shall give their verdict upon the issue or issues left to them, and shall assess damages when necessary. And, after the trial of such issue or issues, the party excepting as aforesaid may, upon motion, apply to the Supreme Court to allow the said exception, and upon the hearing of such motion, the Registrar of the said Court shall produce the said exception, together with the issue or issues in the case, and the finding or findings of the jury thereon, and in case the said Court shall allow the said exception, then the finding or findings upon such issue or issues shall be set aside, and a new trial granted, but if the said Court shall disallow such exception, and the order of Court disallowing the same shall not be appealed from, then the finding or findings shall be final and conclusive, as hereinafter mentioned.

Exceptions may be taken to the opinion or direction of the judge in matter of law.

Proceeding upon exceptions.

37. The rule or order of the said Court upon any such exception as aforesaid, allowing or disallowing such exception, shall be deemed and taken to be a rule or order of the said Court, having the effect of a final and definitive sentence of the said Court; and the party against whom such rule or order shall be pronounced may apply to the said Court, by petition, for leave to appeal, in manner and form as by the fiftieth section of the "Charter of Justice" aforesaid provided; and thereupon, all and singular the provisions of the said section of the said charter, in regard to the said Court and its proceedings, shall apply to such appeal.

Orders of court allowing or disallowing exceptions to be deemed to be final and definitive orders; so as to be appealed from.

38. If a new trial shall not be applied for or shall be refused, or if the exception taken to the opinion or direction of the Judge shall be disallowed by the said Court, and no appeal from such disallowance shall be prayed for, the finding of the jury shall be final and conclusive, as to the facts so found, and shall not be liable to be brought into further question.

When the finding of the jury shall be considered final and conclusive.

No. 7—1854.

After issues found by the jury, the case may be set down for final judgment.

39. Either party to any case in which any such issue or issues shall have been tried as aforesaid, may set down the cause for hearing before the Supreme Court, and upon such hearing the Registrar of the said Court shall produce the issue or issues left to the jury, and their finding or findings thereupon, and the said Court taking and adopting, as final and conclusive, the fact or facts as found by the jury, shall pronounce such judgment upon the entire case as shall be by law required.

Judgments pronounced upon or after findings by a jury may be appealed from, as being, upon the facts as found, erroneous in law.

40. Nothing in the last preceding section contained shall be construed so as to prevent either of the parties to any such case as aforesaid from appealing to Her Majesty in her Privy Council, as in the said "Charter of Justice" provided, against any such judgment as in the said section mentioned, as being, upon or in reference to the facts found by the jury, and the other circumstances of the case, erroneous in point of law: Provided, however, that the facts as found by the jury shall not be reversed or controverted, or be in any manner or in any place reviewed or questioned, except only for the purpose of considering whether a new trial applied for should or should not be granted.

This Act not to affect the practice in provisional cases, motions, interdicts, or cases by default.

41. Nothing in this Act contained shall be construed so as to alter or affect the practice and proceedings of the Supreme Court in provisional cases, or upon any motions other than those in this Act mentioned, or upon interdicts, or in civil cases set down for trial by default.

Interpretation clause.

42. In the interpretation of this Act, the term "verdict" shall mean the finding or findings of the jury upon any issue or issues tried by such jury, and whenever mention is made of any public officer, the officer mentioned shall be deemed to be such officer for the time being, or the officer acting as such.

Act, when to commence.

43. This Act shall commence and take effect from and after the promulgation thereof.

No. 30—1874.]

[July 31, 1874.

## ACT

To Amend the Act No. 7 of 1854, entitled "An Act for Extending Trial by Jury to Civil Cases."

Preamble.

WHEREAS it is expedient to amend in some respects the Act 7 of 1854, entitled "An Act for extending Trial by Jury to Civil Cases:" 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:—

Second, fourth, tenth, and fourteenth sections of Act No. 7 of 1854, repealed.

What civil cases may be tried by jury.

1. The second, fourth, tenth, and fourteenth sections of the aforesaid Act 7 of 1854, are hereby repealed.

2. From and after the commencement of this Act every question or matter of fact, or of mixed law and fact, in dispute between the parties to any civil case depending in the Supreme Court of this

Colony, shall, if either party to the suit shall claim it in manner hereinafter mentioned, be tried by jury.

No. 30—1874.

3. It shall be competent for the attorney of either of the parties to any civil case depending in the Supreme Court by giving notice in writing to the attorney of the opposite party within forty-eight hours after the pleadings in such case shall have been closed, to claim a trial by jury in the case then pending, and thereafter to serve a notice upon the attorney of the opposite side, calling upon him to attend a judge of the Supreme Court in chambers, at some time to be specified in such notice, not being later than twelve days after the closing of the pleadings, there to settle the issue or issues to be tried by jury: Provided that, where no such notice as first mentioned shall have been given forty-eight hours after the closing of the pleadings, it shall be competent for either party to a suit to apply to the Supreme Court by motion for leave to try such case by jury; and provided that notice given as aforesaid, or leave obtained as aforesaid, shall not be withdrawn except by leave of the Court upon motion; and provided that as often as any facts in dispute in any case shall be tried by jury, then all facts in dispute in the same case shall be tried by jury.

Manner in which trial by jury may be claimed.

4. The last Wednesday in every civil term shall be set apart for trials by jury in the Supreme Court.

Day in civil term to be set apart for the same.

5. The Sheriff of the Colony, after receiving any such notice from the Registrar of the Supreme Court, as is provided in section 13 of Act 7 of 1854, shall, seven clear days at least before the day named in such notice for the attendance of a jury in the said Court, summon thirty-six men, whom he shall take from the list of grand jurors for the time being, from which the names of men summoned to serve as grand jurors in criminal cases in the said Court would then and of right be taken in such manner as shall be directed and prescribed by any such general rule or order of the Supreme Court as may from time to time be duly issued and promulgated by the same Court, for summoning the jurors in civil cases by the Sheriff of the Colony: Provided that until the promulgation of such rule or order as aforesaid, the Sheriff shall take the names of the persons to be summoned in the same manner as is at present prescribed by the rules of the Supreme Court for taking the names of persons to be summoned to serve as grand jurors in criminal cases.

Sheriff to summon jury of thirty-six persons.

6. This Act may be cited for all purposes as the "Trial by Jury in Civil Cases Amendment Act, 1874," and shall be read and construed as part of Act No. 7 of 1854, which may for all purposes be cited as "The Trial by Jury in Civil Cases Act, 1854."

Short title.

No. 32.—Sd. Richard Bourke.]

[Dec. 11, 1827.

## Ordinance for creating Justices of the Peace in this Colony. (1)

Preamble.

WHEREAS it is expedient for the preservation of the public peace, the security of individuals, and the due execution of the laws, that Magistrates be appointed in the several districts of this Colony, with power to apprehend, commit to prison, or hold to bail, all vagrants, rioters, robbers, or other notorious offenders, found within their several jurisdictions, in order that such offenders may be brought to trial, and with power to do all other such matters and things as the said Magistrates may by law be appointed to do: Be it therefore enacted, and it is hereby enacted, that from and after the passing of this Ordinance, it shall and may be lawful for the Governor and Lieutenant-Governor for the time being, from time to time, as occasion may require, to appoint Justices of the Peace under the great seal of the Colony of the Cape of Good Hope, for Cape Town and the district thereof, and the several country districts respectively, who shall take and subscribe the oath of allegiance, and the oath of office, set forth in the schedule hereunto annexed, before the Chief Justice, or any Judge of the Supreme or Circuit Courts, or before the Civil Commissioner or any Magistrate of the district for which such Justice is assigned to act (who are hereby empowered and required to administer the same), and the Clerks of the Peace respectively shall enter in the records of their respective districts that the said oaths were duly administered and taken.

The Governor may appoint justices of the peace.

Oath of office and of allegiance to be taken by justices.

Power and duties of justices.

2. And be it further enacted, that from and after the passing of this Ordinance, the persons who shall be so appointed as aforesaid to act as Justices of the Peace, shall have power, and are hereby required, to preserve the public peace, and for that purpose to call to their aid and assistance all field-cornets, constables, and peace officers, military officers, and others His Majesty's subjects, to quell all riots, brawls, or other disturbances, and to lodge all rioters, brawlers, vagrants, and disturbers of the peace, in any prison within their respective jurisdictions, to be dealt with according to law; and they are hereby authorized and required to inquire of all crimes and offences committed, or alleged to be committed, within their respective jurisdictions, and for that purpose to summon and examine upon oath all witnesses, touching such crimes and offences, and to apprehend and cause to be apprehended, all criminals and offenders, and to deal with them according to law: And the said Justices of the Peace are hereby authorized and required, upon information or complaint in writing upon oath made to them, or any of them, to cause to come before them all

Inquiry into offences

<sup>1</sup> Any J.P. becoming insolvent forfeits his commission, § 12, Act 38 of 1884 (Estates).

those who have used any threats towards any person or persons, whether regarding their bodies or the firing of their houses, and to require of them sufficient security for the peace, or their good behaviour towards His Majesty or his subjects; and if they shall not give such security then to cause them to be safely kept in prison till they shall find such security.

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Power to require security for the peace and for good behaviour.

3. And be it further enacted, that all Justices of the Peace shall cause all informations and complaints made to them in writing upon oath, as aforesaid, and all recognizances or other securities for keeping the peace, or for good behaviour taken by them to be sent to the Clerk of the Peace (<sup>1</sup>) acting for the district or place for which the said Justices are assigned respectively, within twenty-one days after such information or complaint made or security taken; and for every such information or complaint, made as aforesaid and not sent as aforesaid, and for every such recognizance or security taken, and not sent as aforesaid, every Justice so offending shall incur and be liable to the payment of a fine of twenty pounds sterling.

Informations on oath and recognizances, &c., to be transmitted by justices to the clerk of the peace within 21 days.

Penalty on failure, £20.

4. And be it further enacted that all gaolers and keepers of prisons shall receive into their custody, and safely keep, every person committed to their charge by warrant, under the hand and seal of any Justice of the Peace, until they be discharged by due course of law.

Gaolers to receive into custody persons committed by warrant of justices.

5. And be it further enacted, that no process shall be sued out against, nor any copy of any process at the suit of a subject shall be served on, any Justice of the Peace, for anything by him done in the execution of his office, until notice in writing of such intended process shall have been delivered to him, or left at the usual place of his abode by the attorney or agent for the party, who intends to sue or cause the same to be sued out, or served, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party has, or claims to have, against such Justice of the Peace, on the back of which notice shall be endorsed, the name of such attorney or agent, together with the place of his abode.

Notice of action against justices for acts done in execution of their office to be given, at least, one month before process is sued out.

6. And be it further enacted, that no person shall recover any judgment against any Justice of the Peace, in any case where the action shall be grounded upon any act of the defendant as Justice of the Peace, unless it is proved upon the trial of such action, that such notice was given as aforesaid; but in default thereof such Justice shall be entitled to a judgment and his full costs.

On failure of such notice, judgment to be given in favor of justice.

7. And be it further enacted, that it shall and may be lawful for such Justice of the Peace within one calendar month after such notice given as aforesaid, to tender amends to the party complaining, or to the attorney or agent of such party; and in case the

Tender of amends by justice and further proceedings in action.

<sup>1</sup> Clerks of the Peace no longer exist, and these documents are now sent to the Resident Magistrate.



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same is not accepted, to plead such tender to any action to be brought against him grounded on such process, together with the plea of "not guilty," and any other plea with the leave of the Court; and if the Court before which such action is brought shall find the amends so tendered to have been sufficient, then such Court shall give judgment for the defendant, and in such case, or in case the plaintiff shall not proceed in his action, or in case judgment shall be given for the defendant on any proceeding in the nature of a demurrer, such Justice shall be entitled to like costs as he would have been entitled to, in case he had pleaded not guilty, only; and if the Court shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, then the said Court shall give judgment for the plaintiff, and such damages as the said Court shall think proper, together with the costs of suit.

Payment into court, in case of no tender or insufficient tender of amends.

8. And be it further enacted, that in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the Court where such action shall depend, at any time before the hearing of the said cause, to pay into Court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such Court, as in other actions where the defendant is allowed to pay money into Court.

Evidence for plaintiff restricted to the cause of action contained in the notice.

9. And be it further enacted, that no evidence shall be permitted to be given by the plaintiff, on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

No action to be brought against constables, &c., for act in obedience to warrant, until after demand and refusal of warrant.

10. And be it further enacted, that no action shall be brought against any constable, or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any Justice of the Peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, or their, attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case, after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the Justice or Justices who signed or sealed the said warrant, defendant or defendants, that, on producing and proving such warrant at the trial of such action, the Court shall give their judgment for the defendant or defendants, notwithstanding any defect of jurisdiction in such Justice or Justices: and if such action be brought jointly against

If demand of perusal and copy of warrant have been duly complied with, then on production of warrant at the trial, judgment to be given for the defendant.

such justice or justices, and also against such constable, or other officer, or person or persons acting in his or their aid, as aforesaid then on proof of such warrant, the Court shall find for such constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the judgment shall be given against the justice or justices, that in such case, the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such judgment shall be found as aforesaid.

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notwithstanding defect of jurisdiction in the justice.

Costs, how to be taxed.

11. And be it further enacted, that where the plaintiff in any such action, against any Justice of the Peace, shall obtain a judgment, in case the judge before whom the cause shall be tried, shall, in open Court, certify on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

If the judge certify on the record that the justice have wilfully and maliciously committed the injury, which is the cause of action, double costs to be allowed.

12. And be it further enacted, that no action shall be brought against any Justice of the Peace, for anything done in the execution of his office, or against any constable, or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

Actions to be brought within six months after commission of the act complained of.

SCHEDULE.

*Form of the Oath of Allegiance.*

I, do sincerely promise and swear, that I will be faithful, and bear true allegiance to His Majesty King George. So help me God!

Oath of allegiance.

*Form of the Oath of Office to be taken and subscribed by Justices of the Peace.*

I, A. B. do swear, that as Justice of the Peace in the of in all articles in the Governor or Lieutenant-Governor's commission to me directed, I will do equal right to the rich and to the poor, to the best of my ability and power, and according to the laws and customs of the Colony, and ordinances and proclamations thereof: And I will not be of counsel of any quarrel depending before me: And the issues, fines, and amerçiements that shall happen to be made, and all forfeitures that shall fall before me, I will cause to be entered without any concealment or embezzling, and will truly send them to the Colonial Treasury, or otherwise dispose of them according to law: I will not obstruct the cause of justice for gift or other cause, but well and truly will discharge my duty as Justice of the Peace, without partiality, favour, or affection. So help me God!

Oath of office.

No. 10—1876.]

[July 4, 1876.

## ACT

## To Improve the Administration of Justice in places distant from a Seat of Magistracy.

## Preamble.

WHEREAS it is expedient that facilities should be given for the trial of certain offences committed at places distant from the seat of a Resident Magistrate: 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:—

Appointment of special justices of the peace.

1. It shall be lawful for the Governor from time to time to appoint any person whom he may think proper to act as a Special Justice of the Peace under this Act within such local limits as may be fixed and determined by him, not being within ten miles of the office of any Resident Magistrate.

Their jurisdiction and powers.

2. Every such Special Justice of the Peace shall have and enjoy, and be at liberty to exercise, within the limits so fixed and determined as aforesaid, over and in respect of any person committing within such limits any of the offences following, that is to say:

- (A). Assault, where no dangerous wound is given and no dangerous weapon is used.
- (B). Theft of any property not being a horse, mare, gelding, colt, filly, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, or ostrich, and not exceeding in value the sum of two pounds sterling.
- (C). Attempt to commit either of the above offences, or being accessory to the commission thereof.
- (D). Receiving stolen goods (not being anything excepted in clause B, and not exceeding in value the sum of two pounds sterling), knowing them to have been stolen.
- (E). Contravention of the seventh and eighteenth (<sup>1</sup>) sections of the Ordinance No. 25 of 1847, intituled "Ordinance for improving the Police of the Colony."
- (F). Contravention of any municipal regulation.
- (G). *Contravention of the 35th section of the Ordinance No. 9 of 1851, intituled "Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors," as amended by the eight section of the Wines and Spirits Act, 1875. (<sup>2</sup>)*

<sup>1</sup> § 18, Ord. 25, 1847, repealed by Act 27, 1882 (Police).

<sup>2</sup> Ord. 9, 1851, repealed by Act 28, 1883. Jurisdiction under latter Act given to Special J.P. by § 86 (Liquor).

(H). Contravention of any of the provisions of the Act No. 22 of 1867, intituled "An 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;"<sup>(1)</sup>

the same jurisdiction, power, and authority as if he were the Resident Magistrate of the district in which the offence then under investigation was committed: Provided that it shall not be lawful for any such Special Justice of the Peace to punish any offender in any higher or more severe manner than by fine not exceeding *twenty shillings*,<sup>(2)</sup> or (and in default of payment of the fine) by imprisonment 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*.<sup>(2)</sup>

3. In any proceeding relative to the prosecution of any offence before any Special Justice of the Peace under this Act, the form of summons to be served upon the defendant to appear to answer to the charge, the form of the process to obtain, and power to compel the attendance of witnesses, the form of recording the judgment or sentence of such Justice of the Peace, and all other forms and proceedings shall, as near as may be, be those from time to time directed and provided and had in regard to criminal cases in the Courts of Resident Magistrates: Provided, that in place and stead of the messenger of the Court of Resident Magistrate there shall be inserted the name of any person whom such Justice of the Peace shall nominate and appoint (which person is hereby authorized to act in regard to any such summons or process as aforesaid, as if the same were the summons or process of a Resident Magistrate's Court of which such person was messenger); and provided that no heading other than the direction of the instrument to such person as aforesaid, and no signature other than that of the Special Justice of the Peace, shall be necessary: And provided that no penalty for the non-attendance of witnesses shall exceed the sum of twenty shillings, and in default of payment of the fine the term of imprisonment shall not exceed the term mentioned in the second section of this Act.

Forms of summons,  
&c.

Penalty for non-attendance of witnesses.

4. Upon the day of hearing, the special Justice of the Peace shall inquire into the charge by hearing all such competent witnesses upon oath as may be produced in support or in disproof of the same, and shall faithfully take down the evidence and proceedings in writing, and note any objections which may be made to any evidence received, or to the rejection of any evidence refused to be admitted, and shall make or cause to be made a record in a book, to be kept for that purpose, of every such case,

Procedure in cases brought for trial.

<sup>1</sup> Jurisdiction in cases under §§ 2 and 7, Act 18, 1873, (Masters and Servants) conferred by Act 40, 1882 *infra*: and in certain cases under Act 27, 1882 (Police Offences) by § 20 of that Act, also by Act 23 of 1883.

<sup>2</sup> Amended by Act 40 of 1882, § 23 (Administration of Justice).

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showing in separate columns the name of the prosecutor, the name of the person complained of, the nature of the alleged offence, the date when the complaint was made, the date when the defendant was lodged in prison, the day of hearing, the judgment given, the sentence pronounced on conviction, and any remarks which such Justice of the Peace shall deem it proper to make.

Payment of costs  
in unfounded and  
vexatious cases.

5. In all cases brought before any Special Justice of the Peace under this Act it shall be lawful for him, if he shall dismiss the charge on the ground that the same is unfounded and vexatious, to adjudge that the private prosecutor shall pay to the defendant the costs of his defence, the amount of such costs to be taxed and allowed by such Justice of the Peace, and not to exceed the costs which would have been payable were the case a civil one in a Court of Resident Magistrate, and such costs shall be recovered, in default of payment thereof, together with the costs of recovering the same, to be also fixed and allowed by such Justice of the Peace, in like manner as directed by the forty-eighth section (<sup>1</sup>) of the said Ordinance No. 9 of 1851, with regard to fines or penalties in that section mentioned.

When a trial should  
be stopped, and pro-  
ceedings sent to resi-  
dent magistrate, or a  
preparatory exami-  
nation taken.

6. When, in the course of any trial before a Special Justice of the Peace under this Act, it shall appear to such Justice of the Peace that the offence is, from its nature or magnitude, only subject to the jurisdiction, or more proper for the cognizance, of the Court of Resident Magistrate of the district or other superior Court, such Justice of the Peace shall stop the trial, and either transmit the proceedings in the case, with report thereon, to the Resident Magistrate of the district, or commence anew the examination of the person accused, and the witnesses, as in a preparatory examination, and the proceedings upon and with respect and subsequent to such preparatory examination, shall be the same as those prescribed by law as to ordinary preparatory examinations.

Imprisonment of  
offenders.

7. Any Special Justice of the Peace acting under this Act shall have full power and authority by warrant under his hand to commit any person accused of having committed any of the offences in the second section hereof mentioned, whether before or during trial, and any person who may be committed for trial after preparatory examination, as in the last preceding section mentioned, to the nearest gaol or lock-up, to be there detained until liberated in due course of law, and it shall also be lawful for such Justice of the Peace, upon the conviction of any such person as aforesaid, by and before him, by like warrant as aforesaid, to commit such convicted person to such gaol or lock-up to be there safely kept until he shall have undergone the punishment awarded, or shall be otherwise lawfully discharged: Provided, however, that no person shall be committed to any gaol or lock-up before trial as aforesaid for any of the offences

<sup>1</sup> Printed at foot of this Act.

mentioned in sub-sections A and F of the second section of this Act, unless such Special Justice of the Peace shall have good and reasonable grounds for believing that the offender intends to abscond for the purpose of defeating the ends of justice.

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8. In case of there not being any ordinary constable or not sufficient ordinary constables available either to arrest or to convey to such gaol or lock-up any person accused, committed for trial, or convicted as aforesaid, it shall be lawful for the Justice of the Peace to appoint any proper person or persons to be a special constable or special constables for the arrest, custody, or conveyance, as the case may be, of such person to such gaol or lock-up, and every such special constable shall be paid at the same rate as if he had been appointed by a field-cornet under the Ordinance No. 9 of 1848.

Appointment of special constables.

9. When and as often as any Special Justice of the Peace shall exercise summary jurisdiction under and by virtue of this Act, he shall forthwith, after having disposed of the case, forward to the Registrar of the Supreme Court, or of the Court of the Eastern Districts (according as such case shall be disposed of in the Western or Eastern Districts respectively), 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 sections for the convicting Resident Magistrate; and all matters required to be done in the said sections by the clerk of the Resident Magistrate shall be done by the said Justice of the Peace.

Proceedings in cases summarily adjudicated to be forwarded to Registrar of Supreme or Eastern Districts Court, as the case may be.

10. Every appointment of a Special Justice of the Peace under this Act shall be notified in the *Government Gazette*, together with the local limits within which he is to exercise jurisdiction, and shall be during pleasure; and every such Justice of the Peace, upon his appointment, shall take and subscribe the like oaths as are prescribed in and by the Ordinance No. 32 for Justices of the Peace, and shall without any further appointment be in the same position as if he had been appointed a Justice of the Peace under the said Ordinance, all the provisions of which shall apply to such Justice of the Peace.

Appointment of special justice and limits of his jurisdiction to be notified in Gazette.

Oaths to be taken.

11. By "lock-up" in this Act is meant any building or part of a building in which any person lawfully arrested or detained in custody under this Act is placed while in such custody, whether before conviction or committed for trial, or afterwards, and every such lock-up shall, as to such person, be deemed to be a public gaol within the meaning of the Ordinance No. 24 of 1847, intituled "Ordinance for improving the Gaols of this Colony," and the Act No. 5 of 1866-'67, intituled an "Act for the better maintenance

Definition of term "Lock-up."

No. 10—1876.

Jurisdiction of resident magistrates as to escaped prisoners, &amp;c.

of discipline among persons under sentence of imprisonment with hard labour;" and the Resident Magistrate of the district in which such lock-up is situate, shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such lock-up or kept to hard labour outside the precincts of such lock-up as by the said last mentioned Ordinance and Act respectively are given to the Resident Magistrate of the district as to a public gaol within his district. Provided that it shall not be lawful for any such Resident Magistrate for any offence so committed to punish the offender in any higher or more severe manner than 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 corporal punishment not exceeding twelve lashes.

12. [This section refers to Act 2, 1855, which is repealed, and it has no further applicability.]

Effect of this Act on existing powers of justices of the peace and resident magistrates.

13. Nothing in this Act contained shall, except where expressly stated to the contrary, interfere with or affect any jurisdiction, powers, or authority already possessed by law by any Justice of the Peace, or with the jurisdiction, powers, or authority of any Court of Resident Magistrate.

Short title.

14. This Act may be cited for all purposes as "The Better Administration of Justice in Criminal Cases Act, 1876."

[Section 48 of Ordinance 9, 1851, referred to in section 5 of the foregoing Act, reads as follows :—]

Warrant for levying fine or penalty.

48. And be it enacted that when and as often as any offender shall be convicted of any offence against any of the provisions of this Ordinance it shall and may be lawful for the Magistrate or Justice of the Peace convicting such offender to issue his warrant for levying the amount of any fine or penalty imposed upon such offender by distress and sale of the goods of such offender whether such offender shall be in custody by reason of his conviction of such offence or not and for levying also the costs of such distress and sale, and every such warrant shall in substance be agreeable to the form in the schedule to this Ordinance in that behalf set forth, and the overplus if any levied under any such warrant shall be rendered to the said offender; and all goods and chattels taken under and by virtue of any such warrant shall be sold under the like provisions and regulations as are or shall be provided by the rules of the Courts of Resident Magistrate for the sale of goods and chattels taken under the process of execution by such Courts: Provided, always, that as often as any such warrant shall be issued by any Justice of the Peace the person to whom such warrant shall be directed shall for the purpose of such seizure and sale be deemed to be invested with the same rights and obliged to the performance of the same duties and be remunerated at the same rate as the

Sale of goods seized

messenger of a Magistrate's Court would have been invested with or obliged to or remunerated at in case the warrant in question had been issued by such Court.

*Form of Warrant for Distress and Sale referred to in foregoing Section.*

To \_\_\_\_\_, messenger of the Court of the Resident Magistrate of \_\_\_\_\_  
 (or in case the warrant be issued by a Justice of the Peace,  
 "To \_\_\_\_\_," the person to whom the warrant is directed).

Whereas \_\_\_\_\_ (name of the offender), of \_\_\_\_\_, was on this day (or on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_) convicted before me of contravening the Ordinance No. 9, 1851, and was duly adjudged to forfeit as a penalty the sum of £ \_\_\_\_\_; this is therefore to authorize and require you that of the goods and chattels of the said \_\_\_\_\_ you cause to be levied and raised the said sum of £ \_\_\_\_\_, with the costs of such conviction, amounting to the further sum of £ \_\_\_\_\_, together with your charges about the same, and return to the Clerk of this Court (or when the warrant is issued by a Justice of the Peace say "return to me") what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
 (Signed) \_\_\_\_\_, Resident Magistrate or  
 \_\_\_\_\_, Justice of the Peace  
 (as the case may be).

E. F., clerk of the Court (this is to be omitted when the warrant is issued by a Justice of the Peace).

No. 40—1882.] (1) [June 29, 1882.

\* \* \* \* \*

22. Every Special Justice of the Peace appointed under the provisions of "The Better Administration of Justice in Criminal Cases Act, 1876," shall in addition to the jurisdiction conferred by the second section of the said Act, have and enjoy and be at liberty to exercise within the local limits fixed and determined by any such proclamation as is in the first section of the said Act mentioned, the same jurisdiction, power and authority as if he were Resident Magistrate of the district in which the offence then under investigation was committed, over and in respect of any such offence or instance of misconduct as is mentioned in the second and seventh sections respectively of the "Masters and Servants Law Amendment Act, 1873," as such Act is amended by the "Master and Servants Act, 1875," subject to the provisions of the said Acts respectively.

Extension of jurisdiction of Special Justices of the Peace.

<sup>1</sup> For full text of this Act see Administration of Justice.



No. 40—1882.  
Their powers of  
fine and imprison-  
ment.

23. As often as any such Special Justice of the Peace shall, by the provisions of any Act, be empowered to impose a fine, such fine shall not exceed two pounds, and as often as any such Justice shall be empowered to adjudge imprisonment upon non-payment of any fine or otherwise such imprisonment shall not exceed one month.

\* \* \* \* \*

No. 15—1868.]

[Sept. 2, 1868.

### ACT

#### For the Encouragement of the Breeding of Horses.

Preamble.

WHEREAS by two several deeds, bearing date, respectively, the 24th day of February, 1863, and the 30th day of November of the same year, the Lieut.-Governor of British Kaffraria did grant in freehold to the trustees of the King William's Town Grand Stand and Race-course Company two pieces of land, on certain conditions and for certain purposes: And whereas by a certain other deed, bearing date the 6th day of January, 1866, the Governor's Deputy of British Kaffraria did grant in freehold to the trustees of the King William's Town Stud Farm Company a certain other piece of land, on certain other conditions, and for certain other purposes: And whereas it appears that the objects of the said grants can be better attained by the transfer, with the consent of the hereinbefore mentioned companies, of the said lands to other parties: 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 under certain conditions, grant certain lands to the King William's Town Stock and Produce Company.

1. It shall be lawful for the Governor, provided that the trustees and shareholders in the existing companies consent thereto, to grant in freehold the three pieces of land in the preamble to this Act mentioned to the trustees of the King William's Town Stock and Produce Company (Limited), on the following conditions, that is to say: So much of the two pieces of land first hereinbefore mentioned as has heretofore been used as a public race-course shall be open to the public for use in like manner for such and so many days, not exceeding thirty days, in each year, as the Governor shall from time to time appoint: and the piece of land last hereinbefore mentioned shall be used for the purpose of breeding and rearing of horses; and on breach of any of the said conditions, the land to which the same shall apply, with all buildings that may have been erected thereon, shall be forfeited to Her Majesty for the use of the Colony; but nothing herein contained shall be construed to prevent the said trustees from using the said lands, or any part of the same, for such purposes, in addition to the purposes hereinbefore mentioned, as may not be injurious to such last-mentioned purposes.

KING WILLIAM'S TOWN (STOCK AND PRODUCE COMPANY). 1315

2. When and so soon as the lands in the preceding section mentioned shall have been granted as aforesaid, the grants previously made by the Lieutenant-Governor and the Governor's Deputy of British Kaffraria of the same, respectively, shall be cancelled.

No. 15—1868.  
Previous grants cancelled on issue of such grant.

3. It shall be lawful for the Governor, if he shall see fit, to grant to the said last-mentioned trustees a piece of land on the Thomas River, in the division of Queen's Town, not exceeding in extent five thousand acres, on a lease for the term of twenty-one years, and on condition of payment of an annual rent of twenty-five pounds sterling, for the purpose of enabling the said trustees to form and maintain a depot for the rearing of young horses; and at the expiration of the said term of twenty-one years it shall be lawful for the Governor, if he shall see fit, to grant the said land to the said trustees, subject to such reasonable annual quitrent as he may see fit to impose, on payment by the said trustees of the sum of fifteen hundred pounds.

Governor may grant lease of land on Thomas River to Company.

And on expiration of lease may grant land on quitrent.

4. If, during the said term of twenty-one years, the land in the preceding section mentioned shall cease to be used for the rearing of horses; or if, during the said term, the conditions of the lease shall be violated; or if, at the expiration of the said term, the said trustees shall fail or refuse to pay the sum of fifteen hundred pounds, then, and in either such case, such land, together with any buildings that may have been erected thereon, and any improvements that may have been made of the same, shall revert to Her Majesty for the use of the Colony.

Land to revert to Crown if conditions be not complied with.

LANDS.

- |                                                                   |                                                       |
|-------------------------------------------------------------------|-------------------------------------------------------|
| 1. Act 6—1882, (Lands and Arbitrations Clauses Act).              | 9. Act 9—1859, (Land Measure, Unit of).               |
| 2. „ 7—1865, (Land Beacons Consolidation Act).                    | 10. Ord. 15—1844, (Registration of Settlers' Titles). |
| 3. „ 8—1866-67, ( do. ).                                          | 11. Act 12—1862, ( do. ).                             |
| 4. „ 9—1879, ( do. ).                                             | 12. „ 17—1876, (Settled Estates Leases Act).          |
| 5. „ 12—1877, (Preservation of Land Beacons, &c.).                | 13. „ 12—1873, (London Missionary Society).           |
| 6. Procln. 23 Dec., 1814, (Boundaries Cape Town and Simon's Bay). | 14. „ 14—1886, ( do. ).                               |
| 7. Act 28—1881, (Derelict Lands).                                 | 15. „ 20—1876, (Lovedale Missionary Institution).     |
| 8. „ 30—1883, (Fencing).                                          |                                                       |

No. 6—1882.]

[June 14, 1882.

ACT

For Consolidating in one Act certain Provisions generally contained in Acts authorizing the taking of Lands for Public and other Works, and Settling Compensation by Arbitration.

WHEREAS it is expedient to embody in one Act sundry provisions generally contained in Acts of Parliament authorizing the

Preamble.

No. 6—1892.

taking of lands and materials for public and other works, and for settling the amount of any compensation to be paid, or any matter in difference, by arbitration: 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:—

Provisions to apply to cases where authority is given to take materials for the purpose of any work.

1. As often as by any Act passed during the present or any future session of Parliament authority is given for the purposes of any work by such Act authorized to be undertaken or constructed, to take and use any land or to dig, get, or carry away any materials belonging to any person who may be entitled to demand compensation for such land or materials as the case may be (such person being in this Act designated "the owner") the following provisions shall apply:—

- (1) In case such land or materials shall be required to be taken by the Government, the Responsible Minister charged with the execution of the work, or some person authorized by him in writing in that behalf, or in case of any corporate body or person, such corporate body or person or the representative of such body or person, may treat and agree with the owner of such land or materials for the purchase or hire, as the case may be, of any such land or materials, and may enter into any contract relative to the obtaining of such land or materials, and for compensation for the use or taking thereof, upon such terms and conditions as may be deemed expedient.
- (2) If the parties, respectively, shall not agree upon the purchase money, hire or other recompense to be respectively given and accepted, the Minister, corporate body, or person acting therein as aforesaid, shall cause to be served upon the owner of the land or materials required to be taken or used a written notice, offering as recompense or compensation, whatever sum shall be deemed sufficient, and requiring such owner to state in writing within a limited time to be specified in such notice not being less than fourteen days after the date of service thereof, whether he is willing to accept the sum offered or not.
- (3) If such owner should refuse to accept the sum offered, or neglect to reply to such notice within the time specified therein, the matter in difference shall be determined by arbitration under the provisions of this Act.
- (4) In case any land or materials belonging to any owner who shall be absent from the Colony, or whose place of residence, agent, or representative, shall be unknown to the Minister, corporate body or person as aforesaid, shall be required for any work authorized by any such Act as aforesaid, then it shall not be necessary to serve the several notices by this Act prescribed upon such owner,

but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be sufficient notice to such owner.

- (5) It shall not be necessary before the exercise of any of the powers conferred by any such Act as aforesaid, that any proceedings shall be taken to settle the amount of compensation or recompense to be paid for, or in respect of the land or materials authorized to be taken, and which may be required for any such work, but it shall be lawful for the Minister, corporate body, or person, as aforesaid, as the case may be, to enter upon, take possession of, and use any such land or materials, 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 the manner by this Act provided.

2. As often as by any Act passed in the present or any future Session of Parliament, the amount of any compensation to be paid, or any other matter, is directed to be awarded, or settled by arbitration, then (except where other provision is specially made), unless both parties concur in the appointment of a single arbitrator, each party shall be entitled to appoint an arbitrator to whom the matter shall be referred.

How arbitrators to be appointed.

3. With respect to arbitrations under this Act the following provisions shall apply:

Provisions in regard to cases submitted to arbitration

- (1) Every appointment of an arbitrator shall be in writing, and signed by the party making the same, or when made by any public or corporate body shall be executed in such manner as such body is or may be authorized to execute any act or instrument, or as such body may by any lawful resolution direct.
- (2) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same.
- (3) After the making of any such appointment, the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation.
- (4) If for the space of twenty-one days after any matter authorized or directed by any act to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by, and shall act on behalf of, both parties.
- (5) If before the determination of any matter so referred, any arbitrator dies or refuses or becomes incapable to act, the

No. 6—1882.

- party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails to do so for the space of ten days after notice in writing from the other party the remaining arbitrator may proceed as sole arbitrator.
- (6) If a single arbitrator dies or becomes incapable to act before making his award, or fails to make his award within thirty days after his appointment, or in the case of more arbitrators than one if such arbitrators fail to make their award within thirty days after the date on which the last of them was appointed or within such extended time (if any) as may have been duly appointed by him or them respectively, for that purpose, the matter referred shall be again referred to arbitration under the provisions of this Act as if no former reference had been made.
  - (7) When there is more than one arbitrator, the arbitrators shall before they enter upon the reference appoint, in writing a third arbitrator, and if the person so appointed, dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead ; and if the arbitrators neglect or refuse to appoint a third arbitrator within fourteen days after being requested so to do by any party to the arbitration, then it shall be competent for any judge in chambers on the application of any such party to appoint such third arbitrator.
  - (8) The time for making an award shall not in any case be extended beyond three months from the date of the appointment of the last arbitrator, or in the case of a single arbitrator, the appointment of such arbitrator, unless by consent of the parties to the arbitration.
  - (9) Any arbitrator or arbitrators appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he or they may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath.
  - (10) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators.
  - (11) Any submission to arbitration under the provisions of this Act, or any award made thereunder, may be made a rule of any Court having jurisdiction on the application of any party thereto.
  - (12) The award of any single arbitrator or of a majority of three arbitrators, as the case may be, shall be final and binding on all parties to the reference.
  - (13) It shall be lawful for any Judge of the Supreme Court, by rule or order to be made for that purpose, to command the attendance and examination of any person as a

witness or the production of any documents to be mentioned in such rule or order: and disobedience to any such rule or order shall be deemed to be a contempt of Court, if, in addition to the service of any such rule or order an appointment of the time and place of attendance in obedience thereto, signed by the arbitrator, or one of the arbitrators before whom the attendance is required shall also be served either together with or after the service of such rule or order: Provided that every person whose attendance shall be so required shall be entitled to payment for expenses and loss of time, as for and upon attendance at any trial in the Supreme Court: Provided also that no person shall be compelled to produce under any such rule or order, any writing or other document which such person would not be compelled to produce at a trial.

- (14) In any case where reference shall be made to arbitration any competent Court to which application shall be made shall have power at any time, and from time to time, to remit the matters referred, or any of them to the re-consideration and re-determination of the arbitrator or arbitrators, upon such terms as to costs and otherwise, as to such Court may seem proper.

4. As often as any of the persons interested or concerned in any arbitration under this Act shall be a minor or person under curatorship the following provisions shall apply: In cases of miners and persons under curatorship.

- (1) All notices required to be given to such minor or other person shall be given to the guardian or curator of such minor or person as the case may be.
- (2) Every such guardian or curator shall have and exercise all the powers, and do and perform all acts, matters and things which the person under disability would, if capable of acting in his own behalf, have and exercise, or be liable to do and perform.
- (3) All moneys which shall in pursuance of any award be payable to any such minor or other person shall be paid to the Master of the Supreme Court administering the Guardian's Fund, who shall receive and administer the same on behalf of such minor or other person, subject to any order in respect thereof made by the Supreme Court.
- (4) 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 land the subject of any such arbitration in which any such minor or other person shall also be interested in remainder or expectancy, then the whole compensation as fixed by the award of arbitrators shall be paid to the Master of the Supreme Court in his said capacity, and the person

No. 6—1882

who was entitled to the life or other limited interest in the land shall be entitled for life, or for the other limited period, to draw the interest payable upon the sum so paid in: subject, however, to any order, in respect thereof, which the Supreme Court may, upon the application of any person having an interest see fit to make.

Short title.

5. This Act may be cited for all purposes as "The Lands and Arbitrations Clauses Act, 1882."

No. 7—1865.]

[Oct. 10, 1865.

## ACT

To Consolidate and Amend the several Acts relating to the Adjustment of Disputed Land Boundaries and to the Erection and Preservation of Land Beacons (<sup>1</sup>).

Preamble.

WHEREAS it is expedient to consolidate and amend the several Acts in force in this Colony relating to the Adjustment of Disputed Land Boundaries, and to the Erection and Preservation of Land Beacons: 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:—

Previous Acts repealed.

1. The following Acts are hereby repealed,—that is to say, the Act No. 10, 1859, entitled "An Act to provide for the Adjustment of Disputed Land Boundaries, and for the Erection and Preservation of Land Beacons," and the Act No. 3, 1860, entitled "An Act to amend the Act No. 10, 1859, entitled 'An Act to provide for the Adjustment of Disputed Land Boundaries and for the Erection and Preservation of Land Beacons,'" and the Act No. 6, 1862, entitled "An Act amending the Act No. 10, 1859, entitled 'An Act to provide for the Adjustment of Disputed Land Boundaries, and for the Erection and Preservation of Land Beacons.'"

Acts, proceedings, &amp;c., done before taking effect of this Act, not affected.

2. Notwithstanding the said repeal, every act, proceeding, matter, or thing done before the taking effect of this Act, under or by virtue of the Acts so repealed, or any of them, relating to the resurvey of any section or area, or the settlement of any dispute regarding the boundaries of any farm or farms not included in any such section or area, shall at all times hereafter be judged of, and be of the same force and effect, in all respects, as if the said Acts were still in force: Provided that as often as no fresh grant shall, at the time of the taking effect of this Act, have been, under the said Act No. 10, 1859, issued, then the provisions of this Act shall, if different from the provisions of the Acts aforesaid, or any of them, apply, so far as applicable, to all resurveys or other

Partial resurveys or other proceedings under previous Acts, how affected.

<sup>1</sup> See Act 9, 1879.

proceedings still in progress, in the state and condition in which such resurveys or other proceedings shall then be, precisely as if such resurveys or other proceedings had been begun under this Act, instead of under the other Acts aforesaid, or one of them.

No. 7—1865.

3. It shall be lawful for the Divisional Council of any division in this Colony, from time to time, to divide such division, or so much and such parts thereof as such council shall deem necessary or expedient, into sections or areas, for the purpose of a resurvey under the provisions of this Act.

Divisional councils may subdivide divisions for purposes of resurvey.

4. Every such section or area as aforesaid shall be, if possible, a tract of country lying between permanent and conspicuous natural objects, such as mountain ranges or rivers, or objects of a like nature; and in case of the total or partial absence of such natural objects, then some undisputed and indisputable beacons or landmarks or other sufficiently distinguishing points shall be resorted to for the purpose of defining or describing a section or area of such extent and of such a character as shall be suitable for the purpose of a complete and effectual resurvey, under this Act, of the several farms included therein.

Sections or areas to be bounded with reference to natural objects or other distinguishable landmarks.

5. As often as the absence at proper or convenient places of such objects or points as are in the last preceding section mentioned, or of a sufficient number of such objects or points, shall render it impossible or undesirable to define or describe a section or area in any particular locality by means of such objects or points it shall be lawful to define or describe for the purpose of such locality a section or area for resurvey under this Act by means of beacons which are capable of being disputed; but the boundaries or limits of all sections or areas so defined or described shall be provisional in their nature, and may be ultimately enlarged, contracted, or otherwise altered as may in the progress of the resurvey be found necessary, and the beacons so taken for the purpose of the provisional definition or description placed where, according to such alteration, they ought of right to stand: Provided that when and as often as any of the beacons so provisionally taken shall be beacons dividing farms being private property from other farms being private property, and the beacons so provisionally taken shall be disputed by the proprietors of farms lying beyond or outside of the said beacons, then such last-mentioned farms shall be deemed to be included in the section or area; and so on from private farm to private farm, until some natural object, some crown land, some undisputed beacons, or some other fixed points shall be arrived at, beyond which it shall not be necessary that the section or area should extend: Provided, also, that if any doubt or question should arise as to the point or points beyond which it is not necessary that any such section or area as in this section of this Act mentioned should extend, such doubt or question shall be decided by the Surveyor-General, with the advice of the Divisional Council: Provided, further, that no such beacons as are

In the absence of natural objects or landmarks, other beacons may be taken.

But the boundaries to be provisional only.

When beacon taken is a disputed beacon between two or more farms, such farms to be included in section.

Surveyor-General to decide questions as to limits of section.



No. 7—1865.

Beacons herein alluded to not to be taken unless Surveyor-General shall be satisfied of necessity for so doing.

in this section mentioned shall be at any time resorted to for the purpose of describing, either wholly or in part, any section or area for the purpose of resurvey under this Act, until the Divisional Council proposing such beacons shall have satisfied the Surveyor-General that it would, under the circumstances of the case, be either impossible or in the highest degree inconvenient to define or describe a section or area in the same locality by such objects or points as are in the preceding section mentioned; it being the true intent and meaning of this Act that no section or area other than one defined or described as in the last preceding section mentioned should be sanctioned by the Surveyor-General, unless in cases in which a departure from the provisions of the said section shall be either absolutely necessary or obviously desirable; Provided, lastly, that if in any case it should become necessary in the progress of the resurvey of any area under this section to include any farm lying beyond the limits of the division within which such area as provisionally defined originally lay, it shall be lawful to include such farm; and such farm shall be in the same plight and condition as regards the provisions of this Act as if it lay within the limits of such division as aforesaid.

Limit of area may be extended.

Surveyor-General to be consulted.

Concurrence of Surveyor-General not to be taken as an admission of correctness of beacons in reference to Crown land.

6. In defining and describing sections or areas of country for the purposes of this Act, every Divisional Council shall consult with, and obtain the concurrence of, the Surveyor-General of the Colony, or of such officer of his department, or Government surveyor, as the said Surveyor-General shall appoint: Provided that as often as there shall, under either of the two immediately preceding sections, be an area proposed to the Surveyor-General for his concurrence, which area shall, either wholly or in part, be defined or described by beacons, then the concurrence of the Surveyor-General, when given, shall not be taken to be an admission by the Surveyor-General that such beacons are correct in reference to crown land, or to deprive the Colonial Government of any crown land lying or being within the area defined or described by such beacons, or by any of them.

Boundaries of sections to be publicly notified.

7. As soon as the whole or any part of any division shall have been divided into such sections or areas as aforesaid, or as soon as any one such section or area shall have been defined, the Divisional Council of the division shall, by means of notices, affixed at public places, and by means of the Field-cornet or Field-cornets resident within such section or area, or otherwise, as such council shall devise, make publicly known the boundaries or limits of such sections or areas respectively, or of such single section or area, should only one be in the first instance described.

Who may apply for resurvey of area or section.

8. It shall be competent for any number of landowners owning not less than half the value of the whole immovable property lying in any such section or area, and valued for the purpose of being assessed for road rates, to apply, in writing, for the resurvey of such section or area, for the purposes of this Act: Provided

that, in determining the value of immovable property for the purpose of this section, the valuation of the same for road rates shall be binding and conclusive.

No. 7—1865.

Valuation for road rates to be taken as value of property.

9. Every Divisional Council receiving any such application as aforesaid shall forward the same to the Colonial Secretary, together with the report of such council that such application is signed by not less than one half in value of such owners as aforesaid, and a description or definition of the section or area to which such application shall relate.

Proceedings of divisional council on receiving application for re-survey.

10. As soon as the application, report, and description or definition in the last preceding section mentioned shall have been received by the Colonial Secretary, it shall be lawful for the Governor of the Colony, by proclamation in the *Government Gazette*, if he shall see fit to direct the resurvey of such section or area for the purposes of this Act.

Re-survey to be directed by proclamation in *Gazette*.

11. Upon the issue of any such proclamation as aforesaid, or before such issue, it shall be lawful for the Divisional Council of the division to which such proclamation shall relate, to recommend to the Surveyor-General such number of competent land-surveyors as they shall deem proper to be employed upon the resurvey of the section or area described or defined in such proclamation: Provided that it shall not be incumbent upon the Surveyor-General to appoint the surveyor or surveyors recommended by the council, and that if, in any case, he shall see cause not to do so, he may transmit to the Divisional Council the name or names of another surveyor or other surveyors as the person or the persons whom he proposes to employ, and unless the said council shall object to the surveyor or surveyors so proposed, and assign sufficient grounds of objection, to be judged of by the Governor aforesaid, then the last-mentioned surveyor or surveyors shall be appointed: Provided that every such surveyor shall be removable by the Governor at pleasure, and that in case of a vacancy arising from death, removal, or other cause, another surveyor may, in manner aforesaid, be appointed to supply such vacancy.

Divisional council may recommend surveyors.

Surveyor-General not bound to appoint such surveyors.

Surveyors removable by Governor.

12. Every surveyor employed in the resurvey of any section or area aforesaid shall receive from the Surveyor-General a commission or appointment, in writing, together with such practical instructions for his guidance or assistance in the performance of his duties as the said Surveyor-General may deem it fitting to supply.

Appointment of, and instructions to, surveyors.

13. When and as often as any such proclamation as aforesaid shall have been issued, the Divisional Council shall cause such notice published in the local newspaper, if any there be, in which notices of such Divisional Council are usually published, and it shall be incumbent upon the owner or owners of each farm included in the section or area described or defined in such proclamation, of which farm the beacons, or some of them, shall not be standing, to put up, within forty-two days from and after the publication of

Proclamation directing resurvey to be published in local newspaper (if any).

Owners of farms to set up beacons on issue of proclamation.

- No. 7—1865. the first *Government Gazette* containing such proclamation as aforesaid, the beacons of such farm, or some visible marks to serve provisionally as beacons, at or upon the spots where, as he or they maintain, the beacons of such farm ought of right to stand. Any owner failing or neglecting to put up any such beacon or landmark as aforesaid, within the time aforesaid, shall, upon conviction, forfeit any sum not exceeding ten pounds nor less than two pounds.
- Penalty for neglect. owner failing or neglecting to put up any such beacon or landmark as aforesaid, within the time aforesaid, shall, upon conviction, forfeit any sum not exceeding ten pounds nor less than two pounds.
- How, if owners differ as to position of their beacons. 14. As often as the owners of different farms in any section or area shall differ in regard to the true position of the beacons dividing or affecting the same, the beacons of each farm put up by the respective owners shall be merely provisional in their nature, and shall not be evidence, to any extent, of the rights of parties, but only of the fact that such rights are, or may be, in dispute: Provided, that it shall not be lawful for any person acting against the will or without the authority of the person or persons by whom any such beacon shall have been put up, to remove, destroy, or injure the same, pending the investigation, hereinafter provided, into the correctness or otherwise of the said beacon; and any person so removing, destroying, or injuring any such beacon shall, upon conviction, forfeit any sum not exceeding ten pounds nor less than two pounds: Provided, further, that nothing in this section contained respecting the merely provisional nature of all beacons within any section or area proclaimed for the purpose of resurvey shall extend to any beacons within any section or area proclaimed for resurvey at any time after the 31st of December, 1866, and which beacons shall, by virtue of the ninety-second section of this Act, have become at the date of such proclamation, admittedly true and correct.
- Penalty for removing or injuring beacons pending investigation. 15. As soon after the expiration of the forty-two days aforesaid as circumstances will permit, the surveyor or surveyors commissioned or appointed as aforesaid to resurvey the section or area in question shall commence the same: Provided that previous notice of the day and place or days and places of commencing such resurvey shall be given by the Divisional Council, by means of a notice in the *Government Gazette*, to be published therein for not less than twenty-one days before the first day fixed in and by such notice for the commencement of the resurvey; and provided that such notice may be given either before or after the expiration of the forty-two days aforesaid: Provided, also, that the Divisional Council shall besides publishing such notice in the *Government Gazette*, publish the same in the local newspaper in the thirteenth section of this Act mentioned, and take such other steps as they may deem expedient for causing the subject-matter of it to be made generally known to the owners of immovable property in the section or area about to be resurveyed; And provided, further, that it shall be lawful for the Divisional Council, in case it should so think fit, to depute one of its members to accompany such
- Clause respecting provisional nature of disputed beacons not to extend to beacons within sections proclaimed for resurvey after 31st December, 1866.
- Resurvey of section, when to commence.
- Notice to be given.
- Publication of notice.
- Divisional council may depute a member to accompany surveyor.

surveyor or surveyors in the making of such resurvey, in manner and form, and under the like conditions, in all respects, as are hereinafter in the ninety-eighth section of this Act set forth.

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16. It shall be the duty of the surveyor or surveyors, employed upon any such resurvey, when and as often as he or they shall find any farm or number of farms of which the beacons are all standing, and are admitted as correct by the owners of all the adjoining or other farms interested in or affected by such beacons, or any of them, to obtain proof of such admission by some writing signed by such owners, and thereafter to frame an accurate diagram of every such farm, taking the same to be the area represented by such admitted beacons, whether the said beacons shall or shall not coincide with the existing diagram of such farm, or with the extent of land which shall by the title-deed of such farm purport to have been granted: Provided that no beacon or beacons in any section or area proclaimed for the purpose of resurvey before the 31st of December, 1866, shall be taken to be so admitted before and until the beacons of all the farms within such section or area shall be standing or in existence: Provided that nothing in this section contained shall be construed so as to render it necessary to frame a new diagram of any such farm as is in the thirty-third section of this Act mentioned.

Duty of surveyor with regard to farms the beacons whereof are undisputed.

Exception as to admission of beacons in sections proclaimed for resurvey prior to 31st December, 1866.

Exception as to framing of new diagrams.

17. Every surveyor who shall frame any such diagram as is in the last preceding section mentioned, shall transmit the same to the Divisional Council, together with a report containing any information which he may deem useful, or which the Divisional Council may have desired, and amongst other things, the degree in which the new diagram coincides with or differs from the existing diagram or title-deed.

Diagram and report to be transmitted to divisional council.

18. The Divisional Council receiving any such diagram and report shall transmit the same, together with any remarks which the said council shall see fit to offer, to the Governor aforesaid, through the Surveyor-General, in order that a fresh grant, founded upon the resurvey and new diagram, if found by the said Surveyor-General to be correct, may be issued. And the said council shall also transmit to the Surveyor-General all title-deeds, transfer-deeds, and diagrams connected with the farm resurveyed, which deeds and diagrams the person in whose custody or power the same shall be, shall be bound, upon demand of the said council, to deliver over to such council.

Duty of divisional council on receiving such report.

19. Upon the issue of any such fresh grant, all existing title-deeds or transfer-deeds of the same farm shall become cancelled, void and of no effect: Provided that as often as any hypothecation, conventional or tacit, of or over any farm so re-granted, shall be in existence at the date of such re-grant such hypothecation shall attach to and upon the said farm as so re-granted precisely as it existed upon the said farm under its former title-deed or transfer-deed, and all usual and proper entries and endorsements

Fresh grant to nullify all previous titles and transfer-deeds.

Hypothecation to survive and be registered anew.

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upon or in regard to such fresh grant as may be necessary to record any hypothecation of the land therein contained, shall be made in the Deeds Registry of the Colony, before such fresh grant shall be delivered from and out of the office of the Surveyor-General to the person or persons entitled thereto.

Duty of divisional council when informed that fresh grant will be issued.

20. As soon as the Divisional Council shall have learned from the Surveyor-General that a fresh grant will be issued on the new diagram, then the said council shall cause notice to be given to the proper parties in that behalf, that they are at liberty to replace such of their existing beacons as shall not be of the description required by the one hundred and twelfth section of this Act, with other and proper beacons, as by the said one hundred and twelfth section prescribed; and no fresh grant of any farm shall be delivered to the person or persons entitled thereto, without the authority of the Divisional Council, which shall not give such authority until it shall be certified in writing to such council by the surveyor who made the new diagram, or by some other surveyor to be approved of by the said Surveyor-General, that the beacons of such farm have been inspected by him, and that they are correctly placed, and are constructed according to the provisions of the said one hundred and twelfth section of this Act, and that the provisional beacons, if any, of such farm have been demolished or removed.

No fresh grant to be issued without divisional council's authority.

When Crown land is included in section, surveyor bound to give information thereof to Surveyor-General.

21. As often as there shall be within any section or area defined, as aforesaid, for the purpose of resurvey, any crown land, it shall be the duty of the surveyor employed in making the resurvey of such section or area to report to the Surveyor-General of the Colony the existence of such crown land, and the name or other description of all the farms adjoining to or abutting upon it, and whether the beacons of such farms respectively upon the side of such crown land do or do not correspond with the diagrams of such farms respectively; and such surveyor shall also describe to the said Surveyor-General the nature and materials of such beacons, and whether they are in appearance original and authentic, or the reverse, and generally all such other information as may appear calculated to assist the Surveyor-General in determining whether any of the beacons of any such farm encroach upon crown land.

Surveyor-General may call for further information and direct survey.

22. If the Surveyor-General, upon considering any such report, shall be of opinion that it does not contain sufficient information to enable him to determine whether there has or has not been any such encroachment, then the Surveyor-General may call upon such surveyor for such further information and may direct such further survey as the said Surveyor-General may think needful or desirable.

Surveyor-General may depute a person to take evidence, &c.

23. Should the Surveyor-General be unable, from the information furnished to him by such surveyor, to determine whether there has or has not been such an encroachment as aforesaid, then the Surveyor-General shall, with the sanction of the Governor, by

any writing under his hand, appoint some fit and proper person, not being the surveyor employed in making the resurvey, to proceed to the spot for the purpose of taking evidence and collecting information.

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24. Every person so appointed as last aforesaid to take evidence is hereby authorized to summon witnesses, and examine them upon oath; and the provisions of the forty-eighth and forty-ninth sections of this Act shall, *mutatis mutandis*, apply to the said person so appointed, and to all witnesses summoned by him.

Person deputed may summon witnesses and take evidence upon oath.

25. Should the Surveyor-General, after considering all such information as shall have been supplied to him in regard to any such beacons as aforesaid, be of opinion that such beacons do encroach upon and include crown land, and if the person claiming such beacons as beacons of his farm shall not consent to the removal of the same to such spot or spots as the Surveyor-General shall prescribe, then the question in dispute shall be determined by commissioners chosen in manner and form as hereinafter set forth.

Disputes respecting encroachment on Crown lands may be settled by commissioners chosen for that purpose.

26. If any surveyor employed to resurvey any such section or area as aforesaid, and who shall survey any farm adjoining to or abutting upon any crown land, shall fail or neglect to report to the Surveyor-General the existence of such crown land, such surveyor shall (except as hereafter is excepted) forfeit any sum not exceeding one hundred pounds: Provided that if such surveyor, when proceeded against for any such forfeiture, shall prove that the existence of such crown land might, notwithstanding the exercise upon his part of due and proper skill and diligence, fail to be discovered by him, he shall not be liable to such forfeiture, unless the prosecutor shall prove that the existence of such crown land was, in fact, known to such surveyor.

Surveyor subject to penalty for failure to report existence of Crown land.

27. As often as any surveyor employed to resurvey any section or area shall be detained from proceeding with such resurvey by reason of reporting to the Surveyor-General as aforesaid and collecting evidence or other information for that officer, such surveyor shall be recompensed for his time and trouble whilst so detained at such reasonable rate as the Surveyor-General shall, with the sanction of the Governor, fix and determine.

Unless sufficient cause is shown for not so reporting.

Remuneration to surveyor for detention while so reporting or collecting information.

28. Every witness attending and giving evidence before any such person as is in the twenty-third section of this Act mentioned shall be entitled to his reasonable expenses, to be ascertained in manner and form as in the sixty-sixth section of this Act is provided.

Witnesses' expenses.

29. Should it at any time happen that the Surveyor-General, receiving any such diagram and report as are in the seventeenth section of this Act mentioned, shall find reason to believe or suspect that there has been included in that diagram some crown land the existence of which had not been reported to him by the surveyor, as in the twenty-first section of this Act is directed, then the Surveyor-General shall communicate with such surveyor on

How when Crown land, the existence of which has not been reported, is believed to have been included in any diagram.

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the subject, and call for all such information from such surveyor as may be deemed necessary; and in case it shall be found that there was, in such section or area, any crown land of which the existence was not reported, all and singular the foregoing provisions of this Act relating to crown land shall apply to such crown land, and to the beacons of all farms put up upon the side of such crown land.

Expenses incurred under preceding sections, how to be met.

30. The expenses of the person in the twenty-third section mentioned (should any such person be appointed), the recompense of the surveyor, as in the twenty-seventh section of this Act mentioned, and the expenses of the witnesses in the twenty-eighth section of this Act mentioned, shall be paid in the first instance out of the general revenue, and they shall be included in the costs of the inquiry by the commissioners who shall investigate and decide the case, as such costs are described in the sixty-eighth and sixty-ninth sections of this Act: Provided that as often as no commission shall be appointed by reason that the Surveyor-General shall ultimately admit the correctness of the beacons which were, for a time, in doubt, then the charges in this section mentioned shall (unless it shall be otherwise agreed upon between the Surveyor-General and the person who claimed the said beacons) be borne by the general revenue: And provided that as often as no commission shall be appointed by reason that the person who originally claimed certain beacons shall ultimately remove them from where they first stood, and place them where the Surveyor-General shall have prescribed, then the charges in this section mentioned shall (unless it shall be otherwise agreed upon as aforesaid) be borne by such person: Provided, also, that as often as no commission shall be appointed by reason that the Surveyor-General and the owner of the private property concerned shall mutually agree that the beacons which were, for a time, in question shall finally be placed neither where such owner originally placed them, nor where the Surveyor-General originally prescribed, but at some intermediate spot or spots, then such charges as aforesaid shall (unless it shall be otherwise agreed upon as aforesaid) be borne by the general revenue.

On issue of proclamation directing resurvey of any section, divisional council to require landholders to deliver over their title deeds and diagrams.

31. When and as soon as any such proclamation as is in the tenth section of this Act described shall have been issued, it shall be lawful for the Divisional Council of the division in which the section or area defined in such proclamation shall be situated, to require, by notice in writing, signed by the secretary, the several landowners within such section or area to deliver over to such Divisional Council all original title-deeds and all diagrams in their possession, respectively, or copies thereof certified as correct by a Government land surveyor, in order to enable the surveyor employed upon the proposed resurvey to proceed therewith, and such deeds or copies shall be delivered over by every such landowner within twenty-one days next after the receipt by him of

such notice, or within such further time as the said council shall think fit to grant in any particular case; and any landowner failing without lawful cause so to deliver the same shall be liable to pay the sum of five pounds sterling, to be recovered by such council, suing by its secretary, and paid into the funds of such council: Provided that the Divisional Council receiving any such deeds shall give a receipt for the same, and be responsible for the return of the same, or, in case of loss, for the supply of official copies thereof.

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Penalty for refusal

Council to give receipt, and be responsible for return.

32. The proprietor of every farm lying within any section or area in process of resurvey shall be bound, upon the application of the surveyor employed on such resurvey to point out to such surveyor the beacons of his farm, and shall also be bound, upon the like application, to admit or deny, by some writing witnessed by not less than two witnesses, the correctness of any of the beacons of any adjoining farm, which beacons abut upon his own farm, and which beacons shall be pointed out to him by the said surveyor; and in case any such proprietor shall refuse or neglect, after reasonable notice from such surveyor so to do, to point out his own beacons, then any beacons of any adjoining farm, which beacons may be inconsistent with the beacons of such proprietor, shall be deemed to be admittedly true and correct; and in case any such proprietor shall, after reasonable notice, refuse or neglect to admit or deny, in writing as aforesaid, the correctness of the beacons of any adjoining farm, which beacons abut upon his own farm, and which beacons he shall, as aforesaid, have been called upon to admit or deny, then those last-mentioned beacons shall be also deemed and taken to be admittedly true and correct; Provided, also, that the proprietor of every farm, whether within or without the division to which the section or area shall belong, which shall adjoin or abut upon any part of the outer side of the limits or boundary of any such section or area, shall be bound, upon such application as aforesaid, to point out the beacons of his farm; and should any such proprietor refuse or neglect so to do, then the same effects and consequences shall take place as are in this section enacted in regard to such refusal or neglect occurring in regard to any farm within the limits of the section or area.

Landholders bound to point out beacons and to admit or deny correctness of adjoining beacons.

How in case of neglect or refusal to do so.

Provisions of this section to apply to adjoining farms, whether within or without division to which section belongs.

33. If, in any case, the title-deed and diagram of any farm lying within any such section or area as aforesaid shall, upon resurvey, be found correct, and shall be found to be so by the Surveyor-General, so that no fresh grant of such farm shall be necessary, then the Surveyor-General shall cause a certificate of such correctness to be endorsed or written upon such diagram in testimony of such correctness.

When title deed and diagram are found to be correct, certificate to that effect to be endorsed on the latter.

34. No Divisional Council shall issue any diagram bearing any such certificate as is in the last preceding section mentioned until it shall be certified, in writing, to such council by the surveyor who made the resurvey, or by some other surveyor to be approved

Diagram, so certified, not to be issued without certificate regarding placing &amp;c., of beacons.

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of by the Surveyor-General, that the beacons of such farm have been inspected by him, and that they are correctly placed, and are constructed according to the provisions of the hundred and twelfth section of this Act.

Unless it be certified that provisional beacons have been demolished.

35. No Divisional Council shall issue any diagram bearing any such certificate as aforesaid, until it shall be certified, in writing, by the surveyor who resurveyed the section or area in question, or some other surveyor to be approved of by the Surveyor-General, that all provisional beacons, if any, of the farm in regard to which such certificate shall have been given, have been demolished or removed.

How, if dispute as to boundaries cannot be settled by parties concerned.

36. In all cases in which any surveyor employed in any such section or area as aforesaid shall find that any dispute exists regarding boundaries, which dispute cannot be settled amongst themselves by the parties interested, such surveyor shall give notice of such dispute, and of the names of all parties interested in it, so far as he can judge or discover, to the Divisional Council, in order that, by the means hereinafter provided, such dispute may be inquired into and settled.

Commission of inquiry, how to be formed and number of members.

37. As often as the Divisional Council shall receive any such notice as aforesaid, the said council shall take the same into consideration, and regard being had to the nature of the dispute to be settled, shall frame a list of six men, none of whom shall have any interest in the matter in dispute, or be related to any person who shall be interested therein in or within the fourth degree of consanguinity or affinity, from or out of which six men, two men to form, together with the Civil Commissioner of the division, as hereinafter mentioned, a commission of inquiry, shall be selected or obtained, in the manner hereinafter in that behalf provided.

Who may be placed on list.

38. The list aforesaid of six men, to be framed by the Divisional Council, may include members of such council as well as men not members; and shall contain the names of such men as shall, by the said council, be thought qualified to form an impartial and intelligent judgment upon the dispute in question: Provided that the said council, before inserting in the said list the name of any man proposed to be set down therein, shall ascertain from him that, if necessary, he will be prepared to act as a member of the commission; and provided, also, that not more than four of the names upon any such list shall be the names of members of the said council: Provided, also, that the name of the Civil Commissioner of the division shall, in no case, be inserted upon such list.

Consent to act on commission to be previously obtained.

39. As soon as such list of six men shall have been prepared, and notice thereof given to the parties to the said dispute, it shall be lawful for the said parties, in person, or by agents authorized by any writing under their hands, to attend at some time and place to be fixed by such council, in order that, as often as such dispute shall exist between the owner or owners of two farms only, the owner or owners of each farm may, if so minded, strike off

Civil commissioner not to be placed on list of proposed members.

If dispute be between owners of two farms only, number of proposed members may be reduced.

from such list the names of two men, so as to leave thereon the names of two men to form, with the Civil Commissioner of the division, the said commission : Provided that the owner or owners of one farm shall first strike off one name, and then the owner or owners of the other farm, another name, and so again alternately ; and provided that the farm of which the owner or owners shall strike off the first name shall be decided by lot.

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How such reduction shall be made.

40. In cases in which any such dispute as aforesaid shall embrace or involve a number of farms greater than two, it shall be lawful for the owner or owners of the two farms which shall respectively have the chief or principal interest upon the opposite sides of the dispute, to strike off, in manner aforesaid, for themselves and the others having a common or kindred interest with them, four names from the list of six men already mentioned. And in case any question shall arise regarding the two farms, or either of them, which really have the chief or principal interest in the dispute, such question shall be decided by the Divisional Council.

How reduction may take place in case of dispute between more than two.

Divisional Council to decide as to relative interest of parties to dispute.

41. Should any owner or owners entitled to strike off, in manner aforesaid, two names, decline so to do, this shall not prevent the other party from striking off, if so minded, two names: Provided that as often as the non-exercise of the right to strike off names, by either or both of the parties entitled so to do, shall leave a number of names greater than two upon the list aforesaid of six men, then the two men to form, with the Civil Commissioner of the division, the commission shall be taken by lot from the names so left.

How, if owners decline to strike off one or more names.

How, when more than two names remain on the list.

42. As often as any dispute in any such section or area as aforesaid, shall be a dispute relating to any crown land, as in the twenty-first section of this Act mentioned, then the Surveyor-General shall be deemed to be one of the parties to such dispute, and shall, in person or by an agent authorized by any writing under his hand, be entitled, on behalf of Government, to strike off in manner aforesaid two names from the list of six men framed as aforesaid by the Divisional Council, and the other party to such dispute two other names.

When disputes shall relate to Crown land, Surveyor-General to be one of the parties.

43. For the better and more satisfactory taking and recording of evidence, and securing greater regularity in the proceedings of the commission, the Civil Commissioner of the division shall, except as hereinafter is excepted, be *ex officio*, a member of the commission, and shall, together with the two men so selected as aforesaid, form such commission : Provided that in case such Civil Commissioner should have any interest in the matter in dispute, or shall be related to any person so interested in or within the fourth degree of consanguinity or affinity,—or in case such Civil Commissioner should, for any reason to be allowed by the Governor as sufficient, desire to be excused from serving on such commission, or should such Civil Commissioner, for any reason to be allowed by the Governor as sufficient, be objected to by either of the parties

Civil commissioner, *ex officio*, a member of commission.

Exceptions.

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to the dispute,—then some other Civil Commissioner, or some Resident Magistrate, to be named by the Divisional Council, with the sanction of the Governor, shall, with the two men so selected as aforesaid, form the commission.

Divisional council to notify time and place for commission to meet.

44. As soon as may be after a commission of three members shall, in manner aforesaid, have been obtained, the Divisional Council shall cause notice, in writing, to be given to the parties interested in the matter or matters in dispute of a time and place at which the said parties, with any witnesses whom they shall desire to have examined, shall attend, for the purpose of meeting, and giving information to, the commissioners named in such notice; and the Divisional Council shall hand over to such commissioners all title-deeds and diagrams or copies thereof in the possession of such council and relating to the matter or matters in dispute.

Oath to be taken by civil commissioner or resident magistrate.

45. At the time and place mentioned in such notice the said Commissioner shall assemble, and the Civil Commissioner or Resident Magistrate forming one of such commissioners shall, before the said commissioners proceed to any other business, take, in the presence of the other commissioners and of the by-standers, the following oath, that is to say:

Form of oath.

“I, A. B., do solemnly swear, as in the presence of Almighty God, that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, inquire into and decide all matters which this commission has been appointed to inquire into and decide. So help me God!”

Other members of commission to take similar oath.

And the Civil Commissioner or Resident Magistrate shall then administer the same oath, *mutatis mutandis*, to the other two commissioners, and the taking of the said oath by the commissioners shall be entered upon the minutes of their proceedings.

Examination, how to be conducted.

46. The said commissioners so assembled, being assisted by the surveyor who reported as aforesaid to the Divisional Council the existence of the dispute, or some other surveyor to be approved of by the Surveyor-General, shall, in the presence of the parties to such dispute, examine all deeds, documents, and witnesses produced by the parties, and shall inspect the localities in question between the parties, so as to ascertain where, according to real and substantial justice between the parties, the disputed beacons ought of right to stand: Provided that it shall be lawful for any party, whether present in person or not, to be assisted by an agent.

Parties to dispute may be assisted by an agent.

Rules for deciding matter in dispute.

47. In determining what real and substantial justice between the parties truly is, the commissioners will take into their consideration the particular circumstances of each particular case, but they will, as general principles be expected to recognize and act upon the rules following, that is to say:

a. The original beacons of farms, as pointed out at the original measurement thereof shall be deemed to denote and include the true and proper farms as granted and intended so to be, notwithstanding that such beacons

may not correspond with the original diagrams, or with the extents of land which the original title-deeds purport to grant. This rule is, however, to be subject to the qualification or modification mentioned under letter *b*.

- b*. As often as it shall be made to appear that certain well-ascertained beacons have been, for an uninterrupted period of thirty years or upwards next before the day on which the commission in the particular case was, in manner aforesaid, selected or obtained, recognized by the parties who dispute the same before the commissioners, or those under whom such parties claim, as the true and proper beacons, such beacons shall be taken to be and to have been the original beacons, nor shall any proof to the contrary be acted upon, unless the parties disputing such beacons shall allege and prove some fraud, deceit, or circumvention, in regard to such beacons, upon the part of the person maintaining their correctness, or upon the part of those from or under whom such persons claim.
- c*. As often as it shall be made to appear that any land included within the original beacons of an older grant has afterwards been included within the diagram and beacons, or diagram or beacons, of a later grant, the right of the older grant to the "overlap" shall prevail, unless in the cases next hereinafter stated under letters *d* and *e*.
- d*. If the parties interested in the later grant shall prove that they, or those from or under whom they claim, are or were purchasers for valuable consideration, and shall prove that they did, acting *bonâ fide*, and without notice of any error, purchase the farm granted by the later grant, according to its original beacons, and shall prove that the error made in planting or pointing out such original beacons was induced by the neglect or default of the parties interested, for the time being, in the older grant, in not having kept up their own beacons, or in not objecting, if present at the time of the inspection of the later grant, to the position of the beacons of such later grant, or in not attending at such time for the purpose of so objecting, in case, by the custom of the country, they ought to have so attended, then the title of the later grant to the "overlap" shall prevail: Provided that if the original beacons of the older farm were up and visible at the time of the survey of the later farm, then the right of the older farm to the "overlap" shall prevail, although the parties for the time being interested therein did not attend at the inspection of the later grant; and provided that, if such

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parties attended at the inspection of the later grant, and pointed out or gave notice of the spots where their beacons had been and should be, the older farm shall, in like manner, be entitled to the "overlap," although the beacons thereof may not have been then up or visible.

- e.* Although there may have been nothing in the conduct of the parties interested in the older grant, or those from or under whom they claim, in reference to the origin of the error in the later grant, which would prevent the said older grant from being entitled to the "overlap," yet if, for thirty years or upwards, beacons other than the original beacons of the older farm have been recognized in manner and form as in letter *b* set forth, then the rule mentioned in letter *b* shall apply.
- f.* As often as one party to any dispute shall rely upon the existing diagram, and shall maintain that the beacons which contradict it have been shifted, and the other party shall rely upon such beacons as original and authentic, and shall maintain that the diagram which contradicts them is erroneous, then the commissioners, in deciding whether such beacons are or are not the original and authentic beacons, shall have regard to the nature of such beacons as likely or not likely to have been shifted, to the nature of the diagrams as likely or not likely to be erroneous, and to the evidence produced before them as that of witnesses likely or not likely to know and speak the truth, and shall decide the controversy to the best of their skill and judgment. This rule, however, shall not apply in any case to which the rules under letters *b* and *e* shall apply.

Commissioners may  
summon witnesses,  
and require produc-  
tion of documents.

48. If the commissioners should, in any case, desire to obtain the evidence of any person who shall not come before them of his own accord, nor be produced by either or any of the parties interested in the case, it shall be lawful for the said commissioners, or any of them, by any summons under his hand, to require the attendance of any person who shall be regarded as able to give useful information, and to require such person to bring with him and produce such documents and papers as may be in his possession or power, and be deemed necessary to be examined; and every such summons shall be served by any person appointed for the purpose by the commissioners or any of them. And any person without lawful cause disobeying any such summons, after his reasonable expenses have been tendered to him, or without lawful cause refusing to answer any lawful question put to him by the said commissioners, or any of them, shall, upon conviction, incur a fine not exceeding forty pounds sterling, to be recovered in manner and form as provided by the Ordinance No. 6, 1839: Provided that

Penalty for dis-  
obeying summons.

the offence of disobeying any such summons shall be deemed to be committed in the district in which the person disobeying usually resides, although the place where such person should have given his attendance may be in another district.

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Offence shall be deemed committed in district in which offender resides.

49. It shall be lawful for the said commissioners, or any two or one of them, acting in pursuance of this Act, to administer an oath to any witness whom they or he shall examine, to the effect that the evidence he shall give regarding the matters and things that shall be lawfully required of him shall be the truth, the whole truth, and nothing but the truth, so help him God. And any witness who shall, before any such commissioners as aforesaid, or any two or one of them, make on oath, knowingly and wilfully, any false statement in regard to any matter material to any question which shall be the subject of inquiry by such commissioners, or any two or one of them, shall be guilty of perjury, and shall, upon conviction, be liable to such punishment as shall be by law provided for the said crime: Provided, always, that as often as by this or by any other section of this Act any person is required to take an oath, such person shall be entitled to make his solemn affirmation or declaration instead of an oath in case he would, if a witness giving evidence in a Court of Justice, be by law entitled so to do.

Commissioners may take evidence on oath.

Punishment for false oath.

When declaration may be substituted for oath.

50. It shall be lawful for any such commissioners to adjourn any inquiry, or the further proceeding thereupon, from place to place, or from time to time, as convenience may require; and such commissioners may, by any writing signed by the three of them, depute any two or one of them to take, in writing, the evidence of any person or persons named or described in such writing, in order that such evidence may be received and considered at the next meeting of the said commissioners.

Inquiry may be adjourned, and members deputed to obtain evidence.

51. The commissioners shall, when adjourning any inquiry pending before them, announce the place, day, and hour of their next intended meeting; and should they, during the adjournment, find reason to alter their announced intention, they shall cause notice to be given to all parties interested, through the field-cornet, of the changed place, day, or hour of such next meeting.

Upon adjournment, notice of time and place of intended meeting to be given.

52. The decision of the commissioners may be given by any two of them notwithstanding the dissent of the third.

How when decision of commission shall not be unanimous.

53. The commissioners shall, with all convenient speed, transmit to the Divisional Council a report, in writing, of their decision whether unanimous or not, upon the case submitted to them together with such documentary and other evidence as they may have taken, and any remarks explanatory of their decision which they may think it necessary or proper to attach.

Commission to report decision and forward evidence, &c., to divisional council.

54. The Divisional Council shall cause notice, in writing, to be sent through the field-cornet or some other person to the parties interested in the said decision, whether such decision shall have been an unanimous decision or a decision by a majority, informing

Notice of decision to be given to parties interested.

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such parties that unless legal proceedings, as by this Act provided, shall, within three months from and after the receipt of such notice, be instituted for the purpose of reversing or altering such decision, the same will become final, binding, and conclusive, and the field-cornet or other person will report to the Divisional Council the day or days upon which, and the manner in which every such notice shall have been served: Provided that as often as the Surveyor-General shall be one of the parties, notice to him shall be served upon the Civil Commissioner, who shall transmit the same to the Surveyor-General without delay: Provided, also, that such notice shall be served upon such parties either personally or by leaving at the residence of each party to be served a copy of such notice with one of his household: Provided, further, that in case any farm shall be jointly owned by more persons than one who shall, as such joint owners, be interested in the decision to which such notice relates, then, in case such joint owners shall not all reside upon the said farm, service upon such of them as reside thereupon shall be good service upon them all, unless the Divisional Council shall otherwise direct: Provided, lastly, that the costs of serving such notice shall be included in the costs of the inquiry.

When Surveyor-General is one of the parties, such notice to be served on him through the civil commissioner.

Notice how to be served.

How, in case of joint owners not being all resident upon farm to which dispute relates.

Cost of service.

Supreme Court may be appealed to against decision.

Any number of persons interested may join in appeal.

Surveyor-General, in certain cases, to be party interested.

Unanimous decisions prior to taking effect of this Act not affected.

Divisional Council on receiving notice of appeal, to transmit report and evidence to Supreme Court.

Court may be moved for rule to reopen decision.

55. It shall be lawful for any person whom such last mentioned decision shall or may concern, at any time within the three months aforesaid, to present a petition to the Supreme Court, stating that he feels aggrieved by such decision, and praying the said Court to enquire into and correct the same, and notice of such petition having been lodged shall be given, by or on behalf of the person presenting the same, to the Secretary of the Divisional Council not later than fourteen days from and after the day of the presentation thereof: Provided that any number of persons having the same or a similar interest opposing such decision may join in petitioning for the correction of the same: Provided, also, that the Surveyor-General, acting on behalf of Government, shall be deemed and taken to be a person concerned in any such decision which shall relate to crown land: Provided, further, that nothing herein contained shall be construed so as to confer or permit any such appeal as aforesaid against any decision, in regard to which the commissioners shall have been unanimous, pronounced before the taking effect of this Act.

56. The Divisional Council, upon receiving notice as aforesaid that a petition has been lodged, shall, with all convenient speed, transmit to the Supreme Court, addressed to the Registrar thereof, the report of the commissioners upon the subject of the decision petitioned against, and all evidence, documentary or otherwise, and all remarks received by the said council from the commissioners, or any of them.

57. It shall be lawful for the petitioner, at any time after such report, evidence, and remarks as aforesaid shall be in the hands of

the Supreme Court, to move the said Court, without notice, for a rule to show cause why the decision complained of should not be opened up for the purpose of being corrected, and why the petitioner should not be adjudged to be entitled to make good his right to such specific relief as shall be set forth in such rule; and the said Court, upon consideration of the report, evidence, and remarks aforesaid, and of any affidavit or affidavits which may be filed by the petitioner, and of such matter as shall be urged in his behalf, shall grant or refuse such rule as shall to justice appertain: Provided that the said Court shall only have regard to facts resting upon affidavit, in case it shall, by affidavit, be made to appear to such Court that good and sufficient cause existed why such facts were not proved before the commissioners.

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58. Should the said Court see fit to grant such rule as aforesaid, it shall be served upon all such persons as the said Court shall direct, and shall be returnable upon such day as the said Court shall appoint, and upon such day it shall be lawful for the parties served with the same, or any of them, to appear, and upon affidavit, or otherwise, to show cause against such rule, and thereupon such rule shall be discharged or made absolute, as to the said Court shall seem meet.

How, if rule be granted.

59. In case the said Court shall make such rule as aforesaid absolute, then the said Court shall direct the manner in which the matter in controversy between the applicants and the respondents shall be further investigated, and may take additional evidence, either *viva voce* or by affidavit, or may order an examination before a commissioner appointed by such Court, and upon interrogatories framed or approved of by such Court, or may depute one or more of the Judges of such Court to inspect the farms in question and take evidence upon the spot, and such Court shall, in the most speedy and inexpensive manner which shall consist with a thorough and effectual investigation of the case, decide, according to the principles set forth in the forty-seventh section of this Act, whether the decision in question shall or shall not be affirmed, wholly or in part.

When rule shall be made absolute court to direct manner of further investigation

60. As often as no petition shall be presented to the Supreme Court, within the time aforesaid, and as often as the Supreme Court, shall refuse a rule to show cause as aforesaid, or having granted such rule shall afterwards discharge the same, or having made such rule absolute shall ultimately affirm the decision petitioned against, then such decision shall become and be thenceforward final, binding, and conclusive; and thereupon the same proceedings and consequences shall take place in regard to new diagrams and fresh grants as are hereinbefore provided with respect to the farms which are in the sixteenth section of this Act mentioned, precisely as if the beacons established by such decision had been beacons originally admitted to be true and correct.

When decision of commission shall be final.



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If decision be corrected, court to fix position of beacons.

61. If, in any case, the Supreme Court shall see fit to correct any decision petitioned against, then the said Court shall fix by its judgment the proper position of all beacons connected with the case, and may delegate to such fit and proper person or persons as the said Court shall select the duty of placing the said beacons; and such beacons shall be forthwith constructed as hereinafter in the one hundred and twelfth section of this Act prescribed, and the surveyor aforesaid employed in the resurvey of the said section or area, or some other surveyor to be approved of by the Surveyor-General, shall treat and consider the beacons planted under the judgment of the Court as beacons admittedly correct; and thereupon the same proceedings and consequences shall take place in regard to new diagrams and fresh grants as are hereinbefore provided with respect to the farms which are in the sixteenth section of this Act mentioned.

Eastern Districts Court to have concurrent jurisdiction with Supreme Court.

62. As often as, by any of the preceding sections of this Act, jurisdiction is given to the Supreme Court, the Court of the Eastern Districts shall have jurisdiction concurrent with that of the Supreme Court in regard to all lands lying and being within any of the districts over which the said Court of the Eastern Districts has, by virtue of the "Administration of Justice Act, 1864," or has, or shall have, by any other Act, the certain jurisdiction by the "Administration of Justice Act, 1864," conferred.

Costs and charges of proceedings.

And whereas it is necessary to regulate the cost and charges of such proceedings as aforesaid, and to provide as to the manner in which the same shall be defrayed: And whereas, whilst the importance to the Colony at large of the objects contemplated by this Act is such as to justify a contribution towards the expense thereof from the public revenue, the importance to all landowners, especially in cases of disputed beacons, of being supplied with new and accurate diagrams and grants whereby they may know what lands are really their own, so as to divide and deal with them as they may think fit, without strife or litigation, is such as to render it right and proper that such landowners should also contribute, but in different proportions, according to circumstances: Be it enacted as follows:

Surveyor to be remunerated according to tariff.

63. Every surveyor employed in or upon any resurvey under this Act shall, in the absence of any special agreement between such surveyor and the Divisional Council, be remunerated according to a scale or tariff to be fixed from time to time, in regard to each division, by the Governor, with the advice of the Surveyor-General of the Colony and of the Divisional Council of such division.

Remuneration to commissioner.

64. Every commissioner aforesaid shall receive an allowance of two guineas per day for every day during which he shall be really and *bonâ fide* engaged in any such inquiry as aforesaid, or in repairing to or returning from the place or places where the same shall have been carried on: Provided that such allowance shall include horse-hire.

65. Every field-cornet performing any duty under the provisions of this Act shall be entitled to horse-hire and personal allowance, according to the Ordinance No. 9 of 1848.

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Remuneration to field-cornet.

66. Every witness attending and giving evidence in pursuance of any summons of the commissioners, issued under the provisions of the forty-eighth section of this Act, shall be entitled to receive his reasonable expenses, as if the place of his attendance were a Resident Magistrate's Court, and he had attended thereat to give evidence in a civil case.

Expenses of witnesses.

67. In all cases in which sections or areas shall be proclaimed after the taking effect of this Act, then, as regards all farms in any such section or area, which farms shall be found with all their beacons up, and admitted to be correct, as in the sixteenth section of this Act mentioned, the public revenue shall bear one half of the expenses of the resurvey, of the new diagram, and of the fresh grant, and the owner of the farm concerned the other half: Provided that, in regard to sections or areas proclaimed before the taking effect of this Act, the provisions of the forty-seventh and forty-eighth sections of the Act No. 10, 1859, shall apply as if the same were herein inserted.

Expenses of resurvey in regard of farms, the beacons whereof shall be found to be correct.

Sections 47 and 48 of Act 10, 1859, to apply in regard to sections proclaimed prior to Act taking effect.

68. In all cases of disputes investigated by commissioners in manner hereinbefore provided, the expenses of the resurvey shall be kept distinct from the costs of the inquiry, and it shall be in the discretion of the commissioners to decide, as they are hereby required to decide, whether any portion of the expenses of the resurvey shall be paid by the public revenue, or whether the whole of such expenses shall be paid by the owners respectively concerned: Provided that in no case shall the public revenue be liable for more than one-half of the expenses of the resurvey of any farm: And provided that the owner or owners of every farm shall be liable for the whole of such expenses, in case the public revenue shall not contribute thereto, or in case of such contribution for so much as the public revenue shall not pay: Provided, also, that it shall be competent for the commissioners to decide that any owner or owners, paying as aforesaid, the whole or any portion of the said expenses, shall recover the whole of what he shall have so paid, or any portion thereof, which the said commissioners shall fix, from any other owner or owners, as part and parcel of the costs in the next succeeding section mentioned.

Resurvey expenses to be kept distinct from cost of inquiry.

Portion for which the public revenue may be liable.

Each owner of farm liable for all costs.

But may recover from other owners.

69. The costs of the inquiry before the commissioners shall include only the expenses of the commissioners and of the field-cornet, at the respective rates aforesaid, and of witnesses so summoned as aforesaid, as well as such expenses of the resurvey as the commissioners may, as hereinbefore provided, adjudge, together with the expense of clerical assistance to the said commissioners, should they require and employ such assistance, and the cost of serving the notices in the fifty-fourth, seventieth, and ninety-first sections mentioned, as also in reference to any inquiry affecting

What costs of inquiry shall include.

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crown land, the charges in the thirtieth section of this Act mentioned; and shall be paid by the parties to such inquiry, in such shares and proportions or by one or more of the said parties to the exemption of the rest, according as the commissioners shall adjudge.

Notice as to taxation of costs.

70. The secretary to the Divisional Council shall cause notice, in writing, to be served upon each party by or to whom any costs are to be paid, calling upon him to attend at the office of such secretary upon some day to be fixed in such notice, not being sooner than fourteen days from the day of the service thereof, in order to have the said costs taxed and ascertained: Provided that such notice shall be served in like manner as the notice in the fifty-fourth section of this Act mentioned.

Service of notice.

Costs, by whom to be taxed.

71. Upon the day fixed in and by such notice, the secretary shall, in the presence of at least one of the commissioners, and of such of the parties interested as shall attend, tax and ascertain the amount of costs to be paid by each or any of the said parties: Provided that any of the said parties may attend by an agent appointed by any writing signed by such party: And provided that any person dissatisfied either with the admission or the rejection of any item in the account of costs may, upon notice to the other party or parties interested, bring the decision upon or in regard to such item under review of the Divisional Council at its next meeting, whose decision shall be final.

Parties may attend by an agent.

Decision liable to review by divisional council.

Costs, how recoverable.

72. In case the amount of any taxed and ascertained costs payable by any person who shall not by himself or his agent have signified in writing his intention to bring such taxation in review before the Divisional Council, shall remain unpaid after the expiration of twenty-one days from the day named in the notice aforesaid for the taxation of such costs, it shall be lawful for the secretary aforesaid to certify in writing to the Resident Magistrate of the district the amount due by any person or persons within his jurisdiction, and the process of such Court may issue for the levy of such amount, precisely as if such amount were a sum which had been recovered in a civil suit by the secretary aforesaid, in his said capacity. And as often as any taxation of costs shall be brought in review before the Divisional Council, the costs, as settled by the said council, upon review, shall be in manner aforesaid recoverable, if need be, by the process in execution of the Court of Resident Magistrate.

No petition as to costs to lie to Supreme or Eastern Districts Court.

73. No petition shall lie to the Supreme Court or to the Court of the Eastern Districts which shall complain of the judgment of commissioners merely, so far as it regards costs, or some item or items allowed or disallowed in the taxation of costs as aforesaid, and the costs of all proceedings had in the said Supreme Court or in the Court of the Eastern Districts in reference to any petition or other proceeding shall be in the discretion of the said Court: Provided that as often as the decision of commissioners which was appealed against shall be affirmed by the Supreme Court or by the

Cost of proceedings in Supreme or Eastern Districts Court.

Court of the Eastern Districts, then the costs as awarded by such decision shall be payable according to such decision; but in case such decision shall be reversed or altered, then all the costs of the resurvey and inquiry, as well as the costs of all proceedings in the Supreme Court or in the Court of the Eastern Districts, shall be in the discretion of the said Court.

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74. All expenses of re-survey due and payable by any land-owner shall be recoverable by action in any competent Court, at the suit of the Civil Commissioner who shall, as in the next succeeding section mentioned, have advanced such expenses.

Expenses of re-survey, how recoverable.

75. Such funds as may be necessary for carrying into effect any resurvey under this Act shall be from time to time advanced by the Colonial Government from the public revenue, under such rules and regulations as the Governor shall from time to time establish.

Funds for resurvey may be advanced from colonial treasury.

And whereas, in some parts of this Colony, there are farms which are partly in one division and partly in another, and divisions of which the boundary lines dividing them from other divisions are, in certain places, the boundary lines dividing certain farms one from another: And whereas, when beacons or boundaries happen to be disputed by and between any such farms and contiguous farms, doubts will arise as to the Divisional Council proper for the adjustment of such disputes: And whereas it is expedient to remove such doubts: Be it enacted as follows:

When farms are situated partly in one division and partly in another.

76. As often as any boundary line in dispute between two or more farms shall lie partly in one division, and partly in another division, and as often as any boundary line in dispute between two or more farms shall form part of the boundary line between any two divisions, and as often as a dispute regarding any boundary line within any division shall involve or affect any farm or farms lying wholly or in part in any other division, it shall be competent for the parties involved in such dispute to agree together upon or in regard to the Divisional Council to which the adjustment of such dispute shall be referred; and in case the said parties shall not agree thereupon, then it shall be competent for the Divisional Council of the respective divisions in which any of the lands involved in or affected by such dispute shall lie, to agree upon or in regard to the Divisional Council to which the adjustment of such dispute shall be referred; and in case neither the said parties nor the said councils shall so agree, then the Divisional Council to which such adjustment shall be referred shall be appointed by the Governor, with the advice of the Executive Council.

Owners of such farms to agree as to which council shall undertake adjustment of dispute.

In case of disagreement of owners, councils to agree.

And both failing, the Governor to decide.

77. In all such cases as are in the last preceding section described, it shall be competent for either of the persons interested in the dispute to give the other person having an adverse interest a notice, in writing, naming the Divisional Council to which, in the opinion of the person giving such notice, the adjustment of the dispute should be referred, and requiring the person to whom

Owner naming council to give notice to party having adverse interest.

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such notice shall be given to state, in writing, within fourteen days next after the receipt of such notice, whether or not he agrees to refer such dispute to the Divisional Council named in such notice, and, if not, what other Divisional Council he proposes.

When both parties agree, council selected to decide.

78. If, within the said period of fourteen days or afterwards, both parties shall agree as to the Divisional Council to which the adjustment of the dispute shall be referred, then such Divisional Council so agreed on shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such Divisional Council belongs.

On failure to agree parties may address themselves to the council of any division in which the disputed beacons are situate.

79. In case the said parties shall not within the fourteen days aforesaid, or within some extension of that time mutually agreed upon between them for the purpose of negotiation, agree upon or in regard to the Divisional Council to which the adjustment of the dispute shall be referred, then either of the said parties may address either or any of the Divisional Councils in which any of the lands involved in or affected by such dispute shall lie, stating the existence of such dispute, the giving or receipt of the notice aforesaid, the persons by and to whom such notice was given, and the failure of the parties to agree upon or in regard to the Divisional Council to which the adjustment of the dispute should be referred, and requesting the council so addressed to make arrangements for or in regard to the appointment of a Divisional Council by which the dispute shall be adjusted.

Duty of council, so addressed.

80. The Divisional Council so addressed as aforesaid shall, as soon as conveniently may be, and not later than one month next after being so addressed, communicate with the council or councils of the other division or divisions in which any of the lands involved in or affected by such dispute shall lie; and such councils shall, between or amongst themselves, agree, if they can, upon or in regard to the Divisional Council to which the adjustment of the dispute shall be referred; and thereupon such last-mentioned Divisional Council shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such Divisional Council belongs: Provided that it shall be lawful for the said last-mentioned council to agree with the other council or councils in question upon or in regard to all or any of the names proper to be placed upon the list of six men mentioned in the thirty-seventh section of this Act, should it eventually become necessary to appoint a commission.

As regards the selection of commissioners in such case.

On failure of councils to agree, application may be made to Governor.

81. In case the Divisional Councils aforesaid shall be unable between or amongst themselves to agree upon or in regard to the Divisional Council to which the adjustment of the dispute in question shall be referred, it shall be competent for either or any of the councils so unable to agree to apply to the Governor or name, with the advice of the Executive Council, the Divisional Council to which the adjustment of the dispute in question shall be referred.

82. As often as the Governor shall receive any such application as aforesaid, he shall, with the advice of the Executive Council, name the Divisional Council to which the adjustment of the dispute in question shall be referred: Provided that before naming such Divisional Council, the Governor shall call for a report upon the subject from the other council or councils concerned, and consider such reasons as may be therein given for naming some particular Divisional Council: And provided that as often as the Governor, with the advice of the Executive Council, shall name any Divisional Council for the adjustment of any dispute, such last-mentioned Divisional Council shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such last-mentioned Divisional Council belongs.

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Governor may name council to adjust dispute.

But not before due inquiry shall have been made.

Powers of council named by Governor.

83. Should it happen that any case not expressly provided for in this Act should occur, whereby a doubt or question might be raised regarding which one of any greater number of Divisional Councils is proper for the adjustment of any dispute, or for the performance of any other function under this Act, it shall be competent for the Governor, with the advice of the Executive Council, to determine such question, and thereupon the Divisional Council named by the Governor, with such advice as aforesaid, shall have the same power and authority to adjust such dispute, or perform such other function, as if all the lands involved in or affected by it lay within the division to which such last-mentioned council belongs: Provided that it shall not be competent for the parties to any dispute, nor for the Divisional Council connected with any dispute, nor for the Governor, to appoint any Divisional Council to adjust such dispute, except a Divisional Council belonging to some division in which or along some part of the boundary of which some of the lands involved in or affected by such dispute shall lie.

Doubts regarding functions, &c., of divisional councils, under this Act, may be determined by Governor.

No councils but those of the divisions in which, or along the boundary of which, the lands involved lie, to be appointed to adjust dispute.

And whereas the proclamation of the 23rd of December, 1814, by Lord Charles Henry Somerset, the then Governor of this Colony, enjoining the erection and preservation of permanent landmarks or beacons, having in many parts of this Colony, fallen into disuse, was, by the Act aforesaid, No. 10, 1859, repealed, and other provisions enacted in its stead: And whereas the period limited by the said Act No. 10, 1859, for the erection of beacons, either provisional or permanent, has for some time expired, and it is therefore the duty of every landowner in this Colony to have, now and henceforth, all the beacons of his farm erected and in existence: And whereas it is expedient to enforce the said duty by suitable penalties, as well as to provide for fixing, by acquiescence for a certain time, or in case of dispute, by due investigation, the boundaries of farms not contained in any such section or area as is in the third section of this Act mentioned: Be it enacted as follows:

Preservation of land beacons.

84. If, at any time, after the taking effect of this Act, any farm

Penalty for non-erection of beacons.

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Recovery of fine and costs and appropriation of fine.

Period when prosecution may be commenced, limited.

Beacons erected before 31st December, 1866, to be merely provisional.

Penalty for unlawfully removing, &c., such beacons.

Penalties recoverable from one or more joint owners.

Owners of new farms allowed six months for erection of beacons.

No beacon to be admitted as correct before 31st December, 1866.

throughout the Colony shall be found, of which farm all the beacons shall not be standing or in existence, the owner or owners of every such farm shall incur a fine not exceeding five pounds, nor less than one pound, for every beacon not then standing or in existence, and such fine shall be incurred afresh for every three months, from and after a first conviction, during which such owner or owners shall fail or neglect to have such beacons put up: Provided that such fine may be prosecuted for by the secretary of the Divisional Council, in his capacity as such secretary, and that the person convicted shall also be liable to the reasonable costs of the prosecution, and the fine when recovered, shall be paid to the Divisional Council for public purposes: Provided also that no prosecution under this section shall in any case be commenced later than three months next after the day on which the whole of the beacons of the farm in regard to which the fine shall have been incurred shall have been standing or in existence: Provided, further, that such beacons need not at any time before the 31st day of December, 1866, be of the description in the hundred and twelfth section of this Act described, and shall until then be merely provisional in their nature, and shall not be evidence to any extent of the rights of parties, but only of the fact that such rights are or may be in dispute; but no person shall, against the will or without the authority of the person or persons by whom such beacons shall have been put up, or without the authority of some competent Court, or of this Act, remove, destroy, or injure any such beacon; and any person who shall, in contravention of this section, remove, destroy, or injure any such beacon, shall upon conviction, forfeit any sum not exceeding ten pounds nor less than two pounds, to be recovered and applied in the same manner as the certain other fine in this section mentioned.

85. As often as any farm in regard to which any fine or penalty under this Act shall have been incurred shall be jointly owned in undivided shares by more persons than one, any one or more of such joint owners shall be liable and may be prosecuted for the whole of such fine or penalty.

86. As often as any new farm shall have been created after the taking effect of this Act, either by grant from the Crown or by the subdivision of any other farm or farms, the owner of such new farms shall be allowed a period of six months from the day of grant or transfer made to him within which period to erect the beacons of such new farm; and should not the whole of the beacons of such new farm be up or in existence at the expiration of such six months, then the fine in the eighty-fourth section of this Act mentioned shall be incurred by the owner of such farm.

87. No beacon, whether one erected before or one erected after the taking effect of the Act No. 10, 1859, shall (except as hereafter is excepted), be deemed to be admittedly true and correct, so as not to be afterwards disputed, before or until the 31st day of

December, 1866, anything in any former Act to the contrary notwithstanding: Provided that nothing in this or in the next succeeding section contained shall extend to any of the beacons of any fresh grant issued under and by virtue of the said Act No. 10, 1859, or of this Act, and which beacons shall be placed in conformity with such fresh grant, which beacons shall not, nor shall any of them be capable of being at any time disputed.

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Not to extend to beacons of fresh grants.

88. No beacon of any farm, although such beacon shall be standing and in existence on the 31st day of December, 1867, (1) shall be deemed to be admittedly true and correct, so as not to be afterwards disputed, unless such beacon shall have been up and standing for not less than six months next before the said day, and unless the notice in the next succeeding section mentioned shall have been given.

No beacon to be admitted correct unless standing not less than six months before 31st December, 1867, and unless prescribed notice shall have been given.

89. Every person who desires that the beacons of his farm shall, on the said 31st day of December, 1867, (1) (if not sooner), become admittedly true and correct, may deliver a notice, in writing, to the Divisional Council of the division in which such farm is situated, giving the name of such farm, or otherwise describing it, and naming or otherwise describing the farms which immediately adjoin such farm, and stating that all the beacons of such farm are up. Any notice which shall omit to state that all the beacons of the farm of the person giving it are up, shall be null and void; and if any person shall give a notice stating that all the beacons of his farm are up, when, in truth and in fact such beacons are not all up, he shall be liable to a fine not exceeding five pounds to be prosecuted for in like manner as the fine hereinbefore in the eighty-fourth section mentioned: Provided that nothing in this section contained shall impair or affect the validity of any notice given under the third section of the Act No. 6, 1862, at any time before the taking effect of this Act: And provided that every notice under this section of this Act shall be delivered to the said council not later than six months before the 31st day of December, 1867, (1) or otherwise the same shall be null and void: Provided, also, that the beacons in this section mentioned need not be beacons of the description in the one hundred and twelfth section described.

Notice to be given to council by parties desiring beacons to be taken as correct on 31st December, 1867.

Notice to state that all beacons are erected.

Penalty for false statement.

Validity of notice given under section 3 of Act 6 of 1862, not affected.

Period for giving notice, limited.

Description of beacons.

90. As soon as the Divisional Council shall have received such notice as in the last preceding section mentioned, the said Council shall forthwith cause notice in writing to be given to all parties interested, stating the day when such notice as aforesaid was received by the said council, and informing all parties interested that such beacons as aforesaid have been erected and are up, and that such parties are at liberty, should they regard the said beacons or any of them as encroaching upon their land, to object to the same in the manner prescribed by this Act.

Notice to be given to parties interested of receipt of such notice, and of their liberty to object.

91. The notice in the last preceding section mentioned shall be signed by the secretary of the Divisional Council giving the same,

Notice to parties interested by whom to be signed, to whom

<sup>1</sup> Printed as amended by Act 8, 1866-'67.



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and how to be sent,  
and how to be pub-  
lished.

Council may direct  
service of notice  
otherwise than by  
post.

Cost, how to be de-  
frayed.

When published in  
Government Gazette,  
proof of other publi-  
cation or of service  
of notice not neces-  
sary.

If costs be not pre-  
paid, notice to be  
void.

Postage included  
in costs.

When beacons  
shall be taken to be  
correct and undis-  
puted.

Exceptions.

and shall be sent to the proprietor, or to some one of the proprie-  
tors, of every farm abutting upon the farm of which the notice  
aforesaid shall have stated that all the beacons are up, and such  
notice may be sent by post or otherwise, as the Divisional Council  
shall, under the circumstances of each case, determine: and such  
notice shall also be published, together with a statement of the  
day on which it was received by the council, once a week during  
three consecutive weeks, in the *Government Gazette* and in the local  
newspaper, if any there be, in which notices of such Divisional  
Council are usually published: Provided that if the Divisional  
Council shall, under the circumstances of any case determine that  
such notice shall be served, instead of being sent by post, then  
such service shall be either personal or by leaving at the residence  
of the proprietor to be served a copy of the said notice with one of  
his household, and the costs of serving such notice shall be  
calculated at the rate for the time being chargeable for serving  
summonses of the Resident Magistrate's Court of the district in  
which the notice is served, and such costs and the cost of publica-  
tion in the *Gazette* and in the local newspaper shall be prepaid by  
the person who shall have given notice to the Divisional Council of  
the erection of his beacons; but should such beacons, or any of  
them, be disputed, and the dispute be referred to a commission  
constituted under this Act, the said costs shall be included in the  
costs of the inquiry: Provided, further, that if any question shall  
arise regarding the beacons mentioned or referred to in any such  
notice, it shall not be necessary to prove that any notice which  
shall have been duly published as aforesaid in the *Government  
Gazette* was published in any local newspaper or duly sent or served  
in manner aforesaid: Provided, also that if the person who should,  
as aforesaid, prepay the costs aforesaid shall not, upon demand,  
prepay the same, then no such notice as aforesaid shall be served  
or published as aforesaid, and the notice delivered by such person  
to the Divisional Council shall be null and void: Provided, lastly,  
that as often as any such notice shall be intended to be sent by  
post, then the costs, to be prepaid as aforesaid, shall include the  
postage.

92. Every beacon which shall be up on the 31st day of  
December, 1867, <sup>(1)</sup> and which shall have been up for six months  
next before that day, and in regard to which the respective notices  
aforesaid in the eighty-ninth and ninetieth sections of this Act  
respectively mentioned shall have been given, shall, unless  
disputed before or on the day in the next succeeding section  
mentioned, become and be admittedly true and correct, so as not  
to be afterwards disputed: Provided that nothing herein  
contained shall extend to render admittedly true and correct any  
such beacon as is in the hundred and ninth section of this Act

<sup>1</sup> Printed as amended by Act 8, 1866-'67.

mentioned, and which, by the said section, is otherwise provided for, or any beacon adjoining any crown land, as in the one hundred and tenth section of this Act is provided for.

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93. No beacon or beacons shall be deemed or taken to have been disputed unless an objection in writing shall have been lodged with the Divisional Council of the division in which such beacon or beacons is or are situated before the expiration of six months from the day on which the Divisional Council received the notice in the eighty-ninth section mentioned: Provided that any person who shall know that his beacons, or any of them, are questioned or objected to may at once apply to the council aforesaid, stating the circumstances, and requesting the council to have the correctness of such beacons investigated and determined under this Act. (1)

When beacons shall be taken as disputed.

Owners cognisant of dispute may at once apply to have dispute determined.

94. As often as any beacon or beacons shall be disputed in manner and form as in the last preceding section mentioned, and as often as any person whose beacons, or any of them, shall be objected to or questioned, shall make the application in the said section mentioned, then a surveyor or surveyors, appointed in manner and form as in the eleventh section of this Act mentioned, shall be sent by the Divisional Council to make a resurvey of all the farms or portions of farms, which it shall be necessary or proper to resurvey for the purpose of determining, or assisting to determine, the true and correct position of the beacons or beacon disputed or objected to; and the provisions of the thirty-first section of this Act shall apply to the title-deeds and transfer-deeds, and the provisions of the thirty-second section to the beacons, of all farms which, for the settlement of such dispute, it shall be necessary to resurvey or inspect: Provided, also, that as often as any such objection or application as in the last preceding section mentioned shall be lodged, it shall be lawful for the Divisional Council, in case it shall contemplate the formation of a section or area of country such as is in the third section of this Act mentioned, which section or area shall include the beacon or beacons in dispute, to defer for any period not exceeding twelve months from the day of the lodging of such objection or application the sending of a surveyor or surveyors to make the resurvey hereinbefore in this section mentioned.

When beacons are objected to or parties apply to have dispute determined, surveyor to be appointed in terms of section 11.

Provisions of section 31, as regards title and transfer deeds, and 32, as regards beacons, to apply.

If disputed beacons are included in a contemplated section for resurvey, council may defer proceedings.

95. Notice of the day and place of commencing any such resurvey as last aforesaid shall be given in manner and form as the notice in the fifteenth section of this Act mentioned.

Date and place for commencing resurvey to be notified.

96. It shall be lawful for the Divisional Council by which any such surveyor shall be sent, as in the ninety-fourth section mentioned, to make any resurvey, to depute a member of the said council, not interested in the matter in dispute, nor related to any person having an interest therein, in or within the fourth degree of consanguinity or affinity, to accompany such surveyor: Provided

Member of divisional council may be deputed to accompany surveyor.

<sup>1</sup> See § 4, Act 9, 1879, *infra*.

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 Remuneration to member deputed.  
 Deputing of such member in discretion of council.

If parties interested agree as to position of beacons, they shall be admitted as correct.

If parties cannot agree, sections 36 to 75 to apply to settlement of dispute.

Provisions of section 21, as regards reporting existence of Crown land, to extend to detached resurveys.

Report of surveyor to extend only to farms actually under process of resurvey.

Resurvey by sections to be preferred to decisions of detached disputes.

that such deputed member shall be paid for his attendance at the rate hereinbefore in the sixty-fourth section of this Act mentioned in regard to a commissioner, and that his expenses shall be taken to be included in the cost of the resurvey: Provided, also, that it shall be in the discretion of the Divisional Council, in each particular case, to decide, according to circumstances, whether a member shall or shall not be deputed as aforesaid.

97. In case all the parties interested or concerned in any such beacon or beacons shall, with the aid and assistance of the deputed member aforesaid (if any), and of the surveyor or surveyors aforesaid who shall have made the resurvey aforesaid, agree amongst themselves upon the spot where the beacon or beacons which had previously been disputed or questioned ought of right to stand, then the beacons of all the farms so resurveyed shall be deemed to be admitted as correct, and thereupon all and singular the same proceedings shall take place in regard to the farms so resurveyed as are in the sixteenth, seventeenth, eighteenth, nineteenth, and twentieth sections of this Act mentioned.

98. Should the deputed member aforesaid (if any), and such surveyor or surveyors as aforesaid, after the making of such resurvey as aforesaid, find that the disputing parties cannot agree amongst themselves in regard to the position of the beacon or beacons in dispute, then the said surveyor or surveyors shall give to the Divisional Council notice of such dispute, in manner and form as in the thirty-sixth section of this Act mentioned, and thereupon all and singular the same proceedings, in all respects, shall be had and taken as are hereinbefore in the several sections of this Act, from the thirty-sixth to the seventy-fifth, both inclusive, provided in regard to the determination by commissioners of similar disputes arising within such sections or areas as are in this Act mentioned.

99. As often as any farm not included in any such section or area as aforesaid, but adjoining to or abutting upon any crown land, shall be resurveyed by a surveyor appointed under the ninety-fourth section of this Act, it shall be the duty of such surveyor to report to the Surveyor-General the existence of such crown land in the manner by the twenty-first section of this Act directed, and thereupon all and singular the several sections of this Act, from the twenty-first to the thirtieth, both inclusive, shall apply to such surveyor, to such farm, and to such crown land, in like manner precisely as if such farm had been situate within some such section or area as aforesaid: Provided that the said surveyor shall not be bound to report upon the diagram or beacons of any farm adjoining such crown land, save and except the farm or farms which he shall be engaged in resurveying.

100. The Divisional Council of every division will, as much as circumstances will permit, adopt the system of defining or describing for resurvey sections or areas of country such as are in

the third section of this Act mentioned, in preference to the system of deciding detached disputes between the owners of particular farms.

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101. As often as any such resurvey as aforesaid shall be made of any farm or farms not included in any such section or area of country as aforesaid, and as often as any such commission as aforesaid shall be selected and appointed to adjust any dispute regarding such a farm or farms, no part of the costs of such resurvey or of such inquiry shall be paid from or out of the public revenue. In case, upon the resurvey, the parties previously in dispute shall agree upon the beacon or beacons which were in controversy, then the owner of each farm shall (unless it be otherwise agreed upon) be liable for the expense of resurveying such farm. And in case the dispute shall be referred to and determined by a commission, then the costs of the resurvey of every farm so resurveyed, and also the costs of the inquiry, shall be paid by the parties to such inquiry in such shares and proportions, or by one or more of the said parties to the exemption of the rest, according as the commissioners shall adjudge; and the provisions of the seventieth, seventy-first, and seventy-second sections of this Act shall apply to such costs: Provided, also, that the costs of any inquiry into any dispute relating to crown land shall be treated in the same manner precisely as if such costs had been incurred in regard to a dispute occurring in respect of crown land within a section or area.

Resurveys of farms not included in sections not to be paid for from public revenue.

Who liable for such expense.

How, in case of inquiry into dispute relating to Crown land.

102. Nothing in this Act from the eighty-fourth to the one hundred and first section, both inclusive, except the proviso contained in the eighty-seventh section, shall apply to any farm which shall be included in any such section or area of country as is hereinbefore in the third section of this Act mentioned.

Sections 84 to 101 not to apply to farms included in sections for resurvey.

103. As often as it shall be found upon any resurvey or other proceeding connected with any disputed boundary, whether within a section, or area, or not, that other farms besides those originally engaged in the dispute are really involved in or affected by it, then the owners of every farm involved in or affected by the dispute shall, as well as the farms originally engaged, be deemed to be, for the purpose of the one hundred and first section of this Act, parties to the inquiry, so as to be liable, at the discretion of the commissioners, to pay or contribute towards paying the costs in the said section mentioned, in such shares and proportions as the commissioners in the said section mentioned shall, under the circumstances, consider just and shall adjudge.

Owners of farms not included in section may be made parties to inquiry and be liable for share of cost.

104. Should the owner or owners of any farm, not contained in any section or area, of which the beacons shall, under and by virtue of the ninety-second section of this Act, have become admittedly true and correct, desire to obtain a fresh grant, founded upon a diagram truly and correctly representing the said farm as defined

Owners of farms of which beacons are admitted may obtain resurvey and new diagram.

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Expense to be borne by owner.

Issue of fresh grant not to take place within three months of publication of notice.

Provisions of section 99 regarding Crown land to apply.

Beacons erected within six months of 31st December, 1867, may be disputed.

How, when date of erection is disputed.

Notice required by section 3 of Act 6, 1862, to stand in place of notice in section 99 of this Act.

by such admitted beacons, such owner or owners may cause the said farm to be surveyed by a surveyor, appointed in manner and form as in the eleventh section of this Act mentioned, according to such admitted beacons; and thereupon the sixteenth, seventeenth, eighteenth, nineteenth, and twentieth sections of this Act shall apply to such case, and a fresh grant shall be issued, showing a correct diagram and the true contents of the said farm: And provided that the expense of such survey shall be borne by the person causing the same to be made: Provided, also, that no fresh grant shall be issued by the Surveyor-General under this section until after the expiration of three months from the publication of a notice in the *Government Gazette* by the Divisional Council, at the expense of the owner of the farm surveyed, stating the name or other description of the farm surveyed, and the field-cornetcy and division in which it is situated, and that it has been surveyed under this section for a fresh grant, according to its admitted beacons as the same stood on the 31st December, 1867, <sup>(1)</sup> and for six months previously: Provided, lastly, that the provisions of the ninety-ninth section of this Act, relating to crown land, shall extend and apply to every surveyor employed in making any resurvey under this section, in like manner as if such surveyor had been appointed under the ninety-fourth section of this Act.

105. Every beacon, whether of a farm of which the beacons ought before the taking effect of this Act to have been up, or of a farm first created by grant or transfer after the taking effect of this Act, and which beacons shall have been erected at any time later than six months next before the 31st of December, 1867, <sup>(1)</sup> may be disputed as erroneous for any length of time during which it could lawfully have been disputed in case this Act, (except the next succeeding section thereof) and the several Acts by this Act repealed had not been passed: Provided that as often as any doubt or question shall arise as to the time at which any beacon in controversy was first erected, such beacon shall be deemed and taken to have been erected later than six months before the said 31st day of December, 1867, <sup>(1)</sup> unless the person asserting that it was erected before that date shall prove the giving, not later than six months next before the said 31st day of December, 1867, <sup>(1)</sup> of the notice in the eighty-ninth section of this Act mentioned; and that the beacon in question was up when such notice was given, and that such beacon had ever since been standing; and in the absence of such proof such beacon shall be deemed to have been erected for the first time later than six months next before the said 31st day of December, 1867, <sup>(1)</sup>: Provided, also, that for the purpose of this section, the notice mentioned in the third section of the Act No. 6 of 1862, if given before the taking effect of this Act, shall

<sup>1</sup> Printed as amended by Act 8, 1866-'67.

be deemed to be equivalent to the notice in the eighty-ninth section of this Act mentioned: Provided, further, that nothing in this section contained shall extend to any beacons which shall have been erected in pursuance of and in conformity with any resurvey made under this Act, all which beacons shall be and remain indisputable.

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Beacons erected in conformity with any resurvey under this Act, not affected.

106. 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.

107. Nothing in this Act contained shall be construed so as to prevent the definition or description, at any time, of such sections or areas as are in this Act mentioned, it being the true intent and meaning of this Act, firstly, not to prevent or interfere with the creation, at any time, whether before or after the 31st day of December, 1867, <sup>(1)</sup> of such sections or areas as aforesaid; and secondly, to provide for the mode in which the beacons of farms not included in any such section or area may, if erected for a certain time before the 31st day of December, 1867, <sup>(1)</sup> become admittedly true and correct; and thirdly, to leave all other beacons whatsoever to be dealt with by the law of the Colony regulating prescription: Provided that if any such section or area shall include any farm which shall have been resurveyed, and shall have had its beacons fixed under the provisions of this Act applicable to the determination of detached disputes not arising within sections or areas previously described or defined, such farm shall not be again surveyed, or be chargeable with any of the expenses of the resurvey of the section or area in which such farm shall be afterwards included.

Definition or description of sections or areas not interfered with.

Farm already resurveyed, &c., if included in a section, not to be resurveyed in such section or charged with expenses.

108. Provided, always, and it is hereby declared, that it shall at all times hereafter, during the subsistence of this Act, be lawful for any person <sup>(2)</sup> who shall dispute the beacons of any other person, or whose beacons any other person shall dispute, to proceed, by objection or application (as the case may be), according to the ninety-third section of this Act: and thereupon the several sections of this Act from the ninety-fourth to the ninety-ninth, both inclusive, shall apply to the final settlement of such dispute: Provided that nothing in this section contained shall extend to any beacons within any section or area which shall have been proclaimed for resurvey.

Parties disputing beacons, or whose beacons are in dispute, not prevented from proceeding under section 93.

But not to extend to beacons included in any section.

109. Should it in any case happen that there shall be standing upon the 31st day of December, 1867, <sup>(1)</sup> and not then already objected to, or put in course of settlement, in manner and form as in the ninety-fourth section of this Act provided, the beacons of two or more farms not contained in any section or area which shall have been or shall be proclaimed for resurvey, which beacons shall

Inconsistent beacons not objected to or in course of settlement on 31st December, 1867, may be disputed.

<sup>1</sup> Printed as amended by Act 8, 1866-'67.

<sup>2</sup> Including the Surveyor-General, Act 8, 1866-'67, § 3.

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be inconsistent with each other, so that all of them cannot be true and correct, then, in case neither of the persons maintaining, respectively, the correctness of each set of inconsistent beacons, shall have given the notice in the eighty-ninth section of this Act mentioned, none of the said beacons shall become or be admittedly true and correct, but shall all be capable of being disputed as erroneous for any length of time during which they might lawfully have been disputed in case this Act (except the hundred and sixth section thereof) and the several Acts by this Act repealed had not been passed. But in case one of the said persons shall have given such notice as aforesaid, and the other shall not, then the beacons of the person who shall have given such notice shall be deemed to be admittedly true and correct, as against the person who did not give such notice: Provided that if the farm of such last-mentioned person shall have first come into existence by grant or transfer, within the period of six months next before the 31st day of December, 1867, <sup>(1)</sup> then such person may object to the beacons of the person who gave such notice, at any time before the 31st day of December, 1868, <sup>(1)</sup> and such objection shall be of the same force and effect as if it had been lodged within the time in that behalf in the ninety-third section of this Act limited.

How, when one of the parties concerned shall have given notice of such inconsistency.

Period for objecting, under certain circumstances, extended.

Admission of correctness of beacons not to affect right of Government to dispute beacons adjoining Crown land.

Except as regards beacons erected after resurvey.

Obligation of owners to keep beacons up and in repair from 31st December, 1866.

But council may extend time.

Council to prescribe size and shape of and material for beacons.

110. Nothing contained in the ninety-second or any succeeding section of this Act, regarding the cases or circumstances in which beacons shall or may become admittedly true and correct, shall apply to any beacon adjoining any crown land, which beacon may (except as hereinafter is excepted) be disputed by the Government for any length of time during which the same might have been disputed in case this Act and the several Acts hereby repealed had not been passed: Provided that nothing herein contained shall extend to any beacon erected in conformity with any fresh grant made, upon resurvey, under the Act No. 10, 1859, or under this Act, all which beacons, whether within a section or area or not, and if not within a section or area, whether under section ninety-four or section one hundred and four, shall be and remain indisputable.

111. From and after the 31st day of December, 1866, the owner or owners of every farm throughout the Colony shall (except as hereinafter is excepted) be at all times bound to keep up and in repair the beacons of such farm, being such beacons as are in the next succeeding section mentioned: Provided that when, by reason of disputes or any other sufficient cause, any owners or owner shall not be in a position to put up such beacons as are by the said succeeding section contemplated, it shall be lawful for the Divisional Council to grant to such owner or owners such an extension of time for the erection of such beacons as to the said council shall seem reasonable.

112. All such beacons as are in the last preceding section mentioned shall be of such a size and shape as the Divisional

<sup>1</sup> Printed as amended by Act 8, 1866-'67.

Council shall prescribe, and shall be made of stone and lime, or of brick and lime, unless where, in places in which such materials shall not be obtainable, the Divisional Council shall see fit to sanction the use of some other materials: Provided that no such other materials shall, unless in cases of necessity, be sanctioned, except such as are of a sort or description clearly and easily distinguishable from the soil and other substances at and about the spot where the beacon is to stand.

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But to be clearly distinguishable.

113. If after the 31st day of December, 1866, or after any further extension of time which the Divisional Council may under the hundred and eleventh section of this Act, have seen fit to grant, any farm within the Colony shall be found which shall not have the beacons thereof, being such beacons as are in the last preceding section mentioned, up and in good repair, the owner or owners of such farm shall incur, for and in regard to each beacon not up, or not in repair, a fine not exceeding five pounds, nor less than one pound, in addition to the costs of the prosecution which fine shall be incurred afresh for every three months, after a first conviction, during which any such beacon shall not be put up, or be left out of repair: Provided that it shall be lawful for the Divisional Council to cause every absent beacon of which the site is known to be erected, and every defective beacon to be replaced or repaired, and the costs thereby incurred shall be recovered as part and parcel of the costs of prosecution: Provided, also, that the fine aforesaid may be prosecuted for, and when recovered shall be applied, in like manner as the fine in the eighty-fourth section of this Act mentioned.

Penalty for not keeping beacons up and in repair.

Council may erect, replace, or repair beacon at cost of owner.

Fines, how to be recovered and applied.

114. If any person shall unlawfully and wilfully destroy, remove, or injure, or cause to be destroyed, removed, or injured, any beacon, whether belonging to such person himself or to any other person, and whether a provisional beacon or a permanent beacon with intent to defraud or injure any other person, such person so offending shall be guilty of the crime of contravening this section of this Act, and shall, upon conviction, forfeit any sum not exceeding five hundred pounds; and, in case of non-payment, shall be liable to be imprisoned and kept at hard labour for any term not exceeding three years.

Penalty for unlawfully destroying, injuring, or removing, beacons.

115. It shall be the duty of every field-cornet, and he is hereby required, to report to the Divisional Council of his division every case of absent or defective beacons within his ward which shall come to his knowledge; and it shall be lawful for the Divisional Council, from and out of any funds at its disposal, to pay such field-cornet for his trouble: Provided that nothing herein contained shall be construed so as to affect the proviso in the eighty-fourth section contained, touching the description of the provisional beacons which it shall be lawful to put up before the 31st of December, 1866.

Field-cornet to report when beacons are absent or defective.

Not to affect proviso in section 84 regarding provisional beacons.

116. As often as any beacon, whether within a section or area

How, as regards erection and mainte-



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nance of common  
beacons.

or not, shall be common between two or more farms, and shall, upon that or any other account, be a beacon which should of right be kept up by the said farms jointly, every owner of either or any of the said farms shall in case such beacon shall not be up, or not be in proper or substantial repair, be liable to the fine in the eighty-fourth and the hundred and thirteenth sections of this Act mentioned, and to the other provisions of the said sections, precisely as if such beacon had been exclusively a beacon of his own farm : Provided that every such owner may himself erect or repair (as the case may be) any such beacon, and may recover from the other owner or owners his or their proportion of the cost of so doing.

Owner erecting or  
repairing common  
beacon may recover  
proportion of cost  
from other joint  
owners.

Line beacons to be  
erected as well as  
angle beacons.

117. In all cases in which any farm, whether within a section or area or not, shall be resurveyed under any of the provisions of this Act, then, besides the angle beacons thereof, there shall be erected, under the inspection of the surveyor or surveyors, line beacons at distances and spots visible one from another ; and such surveyor or surveyors shall, upon the diagram or some writing annexed thereto, give, as he or they best can, a topographical description of the places where the angle beacons stand, and of the boundary line or lines connecting them : Provided that such line beacons need not be made of the materials hereinbefore in the hundred and twelfth section of this Act directed, in regard to the proper or angle beacons of the farm, and that they shall be, in shape, distinguishable from such angle beacons : Provided, also, that if any such line beacon shall not be kept up and in good repair, the owner or owners of the farm to whom it belonged or belongs shall incur and be liable to the penalties in the eighty-fourth section of this Act provided.

Material for line  
beacons.

Penalty for not  
keeping up and re-  
pairing line beacons.

As to resurvey of  
certain section in  
division of Piquet-  
berg irregularly com-  
menced and com-  
pleted.

And whereas the Divisional Council of the division of Piquetberg was, in the year one thousand eight hundred and sixty-two, requested by the proprietors of certain farms in the said division, who could not agree amongst themselves regarding the proper boundaries of their farms, to define or describe for resurvey a section or area under the "Land Beacons Act of 1859," in order to have all doubts, disputes, and controversies regarding such boundaries settled under the said Act, the said proprietors offering to defray the whole cost and charge of such resurvey : And whereas the said Divisional Council, acceding to the request of such proprietors, did define and describe for resurvey the section following, that is to say :

"A tract of country in the division of Piquetberg contained within the following boundaries, and including the places, 'Steenwerf,' 'Middelpost,' 'Avontuur,' and 'Holfmans Hoff,' namely, eastward from the Twenty-four Rivers mountain to the outermost beacon of the place 'Gelukswaard,' which is undisputed, to the outermost beacon of the place 'Klipbanks Drift,' which is also undisputed, to the outermost beacon of the place 'Koppes,' which is also undisputed, and from there to the Berg River ; and

southward from the undisputed beacon between the places 'Hofmans Hoff' of A. J. Wyd, in this division, and 'Hofmans Hof' of William Edwards and F. Liesching, in the division of Tulbagh, to the undisputed beacons between the places 'De Twenty-vier Rivieren,' and 'Avontuur,' in this division, and from there to the Berg River: "

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And whereas the Divisional Council aforesaid, in defining or describing the section or area aforesaid consulted with and obtained the concurrence of the Surveyor-General, as by the third section of the "Land Beacons Act of 1859" required, whereupon the resurvey of such section or area was, partly from reasons of local convenience, and partly from inadvertence, begun and completed, whilst as yet the application, report, and description or definition in the sixth section of the said Act mentioned had not been forwarded to the Colonial Secretary, and whilst as yet no proclamation under the seventh section of the said Act, directing the resurvey of the said section or area had been issued; And whereas under these circumstances, no proclamation for the resurvey of such section or area has been issued: And whereas it is expedient to supply the want of such proclamation, as well as the want of any other forms enjoined by the said Act, which may have been neglected, none of which forms, owing to the fewness in number of the proprietors of farms within the said section or area, and their unanimous desire to have such resurvey made, were needed in this particular case: Be it enacted as follows:

118. The description or definition of the section or area aforesaid and the resurvey of such section or area, and everything already done, or to be hereafter done, in reference to such resurvey, shall be judged of and be of the same force and effect, and be as valid and effectual, as if, before the commencement of such resurvey, a proclamation under the seventh section of the "Land Beacons Act of 1859" had been duly issued directing such resurvey and as if, the previous notice in the twelfth section of the said Act mentioned had been duly given.

Validity of resurvey of section irregularly commenced and completed established.

119. This Act may be cited for all purposes as the "Land Beacons Consolidation Act, 1865."

Short title.

No. 8—1866-'67.]

[January 12, 1867.]

## ACT

To Amend Act No. 7 of 1865, entitled "An Act to consolidate and amend the several Acts relating to the Adjustment of Disputed Land Boundaries, and to the Erection and Preservation of Land Beacons."

WHEREAS it is expedient that the landowners of the division of King William's Town and East London should have an opportunity

Preamble.

No. 8—1866-'67.

of availing themselves of certain temporary provisions of Act No. 7, 1865, whereby land beacons may be rendered indisputable, and that a further opportunity should be extended to the other landowners of this Colony: And whereas it is expedient that further provisions should be made for determining the boundaries of farms abutting on crown lands, when there is reason to believe that the beacons purporting to define such boundaries encroach on such crown lands: 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:—

Period allowed for verification of beacons extended.

1. That the eighty-eighth, eighty-ninth, ninety-second, one hundred and fourth, one hundred and fifth, one hundred and seventh, and one hundred and ninth sections of said Act shall be amended by inserting therein the year 1867 in lieu of the year 1866, wherever the said year 1866 is mentioned in any of the said sections, and the one hundred and ninth section shall be further amended by inserting therein the year 1868 in lieu of the year 1867 where the said year 1867 is mentioned in the said section.

Exceptions where beacons have been or are being adjusted.

2. Nothing in this Act contained shall be deemed to alter the law as now existing in respect of any beacons which shall have become indisputable before, or would become indisputable on the 31st day of December, 1866, or which now are or may then be in course of settlement, under any of the provisions of the said Act No. 7, 1865, or shall invalidate any act or proceeding already done under the said Act.

The word "person" in section 108 of Act 7, 1865, to include Surveyor-General.

3. For the purposes of the said Act No. 7 of 1865, the word "person" in the one hundred and eighth section of the said Act shall be held to include the Surveyor-General of the Colony in respect to any land the property of the Crown: Provided, always, that nothing herein shall be taken impliedly to repeal anything in the ninety-second or the one hundred and tenth section of the said Act contained.

Sections 92 and 110 of said Act not affected.

Rectification of beacons where the Crown is not bound by Act 7 of 1865.

4. It shall be lawful for the said Surveyor-General, on behalf of the Crown, at any time, in cases in which the Crown is not bound by virtue of the said Act, if he shall have reason to suspect that the beacons of any farm encroach on any land the property of the Crown, to cause a notice to be served on the proprietor of such farm that such beacons are disputed, which notice may also define where such beacons ought to be erected, and require that such proprietor shall rectify the same, and also to lodge with the Divisional Council of the division within which such beacons are situate a like notice; and if such proprietor do not within three calendar months after the service of such notice rectify such beacons in manner required by such notice, if he shall have been so required, then, at the expiration of such three calendar months, or if he shall not have been so required, then forthwith, proceedings shall be taken in manner provided by the ninety-fourth section of the said Act No. 7 of 1865, in like manner as if a person whose

beacons had been objected to had applied under the ninety-third section of the same Act requesting the council to have the correctness of such beacons investigated and determined under the said Act.

No. 8—1866-'67.

5. In every case in which the Surveyor-General, on behalf of the Crown, shall have required that the correctness of beacons disputed by him on behalf of the Crown should be investigated, and the same shall have been settled by a resurvey under the said Act or this Act, such settlement shall, under the provisions of the said Act, and subject to the conditions therein contained as to appeals, become and be binding on the Crown as well as on the person with whom such disputes shall have been settled, in like manner as if the Crown were a private proprietor of a farm abutting on the farm the beacons whereof shall have been so disputed as aforesaid, and such dispute had been settled under the said Act No. 7 of 1865.

Settlement under resurvey binding upon Crown.

6. This Act may be cited for all purposes as the "Land Beacons Amendment Act, 1866."

Short title.

No. 9—1879.]

[Sept. 11, 1879.

ACT

To amend in certain respects the Act No. 7 of 1865 entitled the "Lands Beacons Consolidation Act."

WHEREAS the Land Beacons Consolidation Act does not provide for the issue of amended titles in all cases where diagrams do not represent the boundaries actually in existence, and where the correctness of the said boundaries is not disputed or questioned by any of the persons concerned: and whereas it is necessary to amend the said Act in this respect: 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 Act aforesaid, No. 7 of 1865, as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Portion of Act 7 of 1865 repealed.

2. As often as it shall be found upon resurvey that the diagram of any piece of land enregistered in the land registers of this Colony, does not truly and correctly represent the boundaries of the said land, it shall be lawful for the owner thereof to require from the Surveyor-General the issue of an amended title and diagram, provided the following conditions shall have been fulfilled:—

Proceedings in cases where diagram found to be incorrect.

- (a) An agreement or agreements in writing, which shall be in the form set forth in the schedule hereunto annexed (or shall, so far as the circumstances of the case permit conform thereto), signed in the presence of two competent witnesses (one of whom may be the surveyor making the survey), by all the owners of land adjacent to

Agreement between all owners of land affected.

No. 9—1879.

the land resurveyed, or their duly-accredited agents, shall be lodged with the Surveyor-General, which agreement or agreements shall set forth that the said owners do consent to and accept the boundaries adopted in the said resurvey as the true and correct boundaries of the said land: Provided that it shall not be necessary to lodge such agreement or agreements in writing with regard to any beacon or beacons which shall have become admittedly true and correct, by virtue of any proceedings under any one of the following Acts, namely, Act No. 10 of 1859, Act No. 6 of 1862, Act No. 7 of 1865, and Act No. 8 of 1866-67.

Surveyor to lodge with surveyor-general certificate of agreement being duly executed.

(b) The surveyor aforesaid shall lodge with the Surveyor-General a certificate stating that the said agreement or agreements are signed by all the owners of the lands adjacent to and abutting upon the land resurveyed, except as hereafter provided, and that to the best of his knowledge and belief, the boundaries of the land resurveyed have not been changed by mutual arrangement, so as to cause a transfer of land otherwise than according to the laws in force for the transfer of fixed property.

How surveyor-general to act.

(c) The Surveyor-General shall be empowered to withhold the issue of an amended title, if he shall have reason to believe that crown land or other unregistered land is encroached upon or included within the boundaries of the land resurveyed, or that payment of transfer duty has been sought to be evaded by any change of boundary as referred to in the last clause (b): Provided that the owner of the land resurveyed may, if he sees fit, petition the Supreme or Circuit Court, which Court may order the Surveyor-General to issue an amended title, on proof to the satisfaction of the Court that no such change of boundary for the aforesaid purpose has been made.

In case of joint owners, the owner or owners of three-fourths may require amended title and diagram.

3. As often as any land shall be owned by two or more owners, without partition or subdivision, it shall be lawful and sufficient for the purposes of clause 2 of this Act, for the person or persons owning in the aggregate three-fourths of the registered contents or area of the land so held in common to require from the Surveyor-General the issue of an amended title and diagram, as provided for in the said clause, and such issue shall also be binding upon all the owners of the remaining one-fourth of the registered contents or area of the land aforesaid, who shall, moreover, be chargeable with their *pro rata* shares in the expenses connected with the re-survey and issue of the amended title and diagram of the land aforesaid, and which *pro rata* shares of expenses shall be recoverable against them, in any competent Court, at the instance of the other owners who shall have paid the same.

4. As often as any land adjacent to the land resurveyed shall be owned by two or more owners, without partition or subdivision, it shall not be necessary for all such persons to agree in the manner set forth in section (a) of clause II, but the signature or signatures to such agreement of the person or persons owning in the aggregate three-fourths of the registered contents or area of the land so held in common shall be taken to be sufficient and the said agreement shall be as valid and effectual as if it had been signed by all the owners of the said land: Provided that as to any such owner or owners refusing or failing to give his or their consent, notice in writing be given to such owner or owners, or his or their duly authorized agent or agents that, unless within thirty days after service thereof, an objection be lodged with the Divisional Council of the division in which the land is situated, in terms of the 93rd section of the "Land Beacons Consolidation Act, 1865," such owner or owners will be deemed and taken to have consented: And, provided further, that within the said period no such objections shall have been lodged by such owner or owners or his as their duly authorized agent or agents with the Divisional Council aforesaid.

No. 9—1879.

Signature of agreement by owner or owners of three-fourths binding on rest.

Notice to dissentient owners.

5. As often as the boundaries of any land, which shall have been in dispute between the owners, shall be or have been finally determined by the judgment of any competent Court, or by the award of arbitrators duly made a rule of a competent Court, it shall be lawful for the owner of such land to apply to the Surveyor-General for the issue of an amended title, based upon a diagram correctly representing the boundaries of such land as fixed and determined by such judgment or award: Provided that, as to the boundaries of such land other than the boundaries so fixed and determined as aforesaid, the provisions of the second section of this Act shall apply.

When dispute settled, owner may apply for amended title.

6. It shall be the duty of every land-surveyor who shall be employed upon any such resurvey to frame an accurate plan of the land resurveyed, and in doing so to conform to such instructions of the Surveyor-General, upon technical points, as may from time to time be issued for the guidance of surveyors in such cases. The surveyor shall forward the said plan to the Surveyor-General, with the new diagrams, and the title deeds or transfer deeds of the land resurveyed, together with a report containing any information which the said surveyor may deem useful, and amongst other things the degree or particulars in which the said plan differs from the existing diagram or title deed; and with his certificate that the beacons thereof have been erected in a substantial and durable manner, and of materials clearly and easily distinguishable from other objects in the vicinity of such beacons. The surveyor shall likewise forward to the Surveyor-General such proofs of the accuracy of the resurvey as the said Surveyor-General may deem it fitting to require.

Duties of land-surveyor under this Act.

No. 9—1879.

Notice by surveyor-general of intention to issue new title.

Sixty days.

On issue of amended title, &c., former documents void.

7. It shall be the duty of the Surveyor-General to give notice in the *Government Gazette* of every intended issue of an amended title under this Act, and to name in such notice a day for such issue: Provided always that the day so named shall not be earlier than sixty clear days from the date of such publication.

8. Upon the issue of such amended title, all existing title deeds or transfer deeds of the land resurveyed shall become void, cancelled, and of no effect: Provided that as often as any hypothecation, conventional or tacit, of or over such land shall be in existence at the date of such issue, such hypothecation shall attach to and upon the same precisely as it existed upon the said land under its former title deed or transfer deed, and all usual or proper entries and endorsements as may be necessary to record any such hypothecation shall be made in the Deeds Registry of the Colony before such amended title shall be delivered from and out of the office of the Surveyor-General to the person or persons entitled thereto.

How if diagram found correct.

9. If in any case application for amended title shall be made under the provisions of this Act, and the existing diagram shall be found to be correct by the Surveyor-General, so that no amended title of the said land shall be necessary, then the Surveyor-General shall endorse a certificate of such correctness upon such title deed and diagram.

Interpretation of terms.

10. In the interpretation of this Act the term "owner" shall mean the person or persons, or corporate body, or association, in whose favour enregisterment in the land registers in the offices of the Surveyor-General or Registrar of Deeds has been made, or in whom any land may have been vested by legal enactment. The term "unregistered land" shall mean land not enregistered in the aforesaid land registers as the lawful property of any person, corporate body, or association of persons, and shall include the following:—

- (a) Land belonging to the Crown, and not previously granted.
- (b) Land described in any proclamation of municipal regulations, or which has been by proclamation, Government notice, or other instrument or act, assigned as pasturage for any town or village.
- (c) Land occupied without title, by virtue of a certificate of reservation or ticket of occupation, issued by authority of any Governor of the Colony.
- (d) Land set apart for public purposes, such as outspan places or other reserves for the public convenience.

Short title.

11. This Act may be cited for all purposes as the "Land Beacons Amendment and Extension Act, 1879."

## SCHEDULE.

No. 9—1879.

FORM OF AGREEMENT HEREINBEFORE MENTIONED.

We, the Undersigned, \_\_\_\_\_, owners of the farm  
 [here describe the owners of any common beacons],  
 and \_\_\_\_\_ owner or owners of the farm  
 [here describe the owner or owners of the property for  
 which a new title is desired], certify that we have on the  
 day of \_\_\_\_\_, inspected the beacon [or beacons]  
 common to our said properties in the presence of Mr. Surveyor  
 \_\_\_\_\_. And we declare that we agree and  
 consent to the position of the beacon [or beacons] then pointed out,  
 and consent to a new diagram being framed in accordance therewith.

As witnesses :

E. F.

(Signed) A. B.

G. H.

C. D.

No. 12—1877.]

[August 8, 1877.]

## ACT

For the better preservation of certain Trigonometrical  
 Stations and Land Beacons.

WHEREAS certain Trigonometrical Stations have been accurately  
 determined at various points in this Colony, and beacons erected  
 at such points at considerable expense; and whereas there is reason to  
 believe that some of the said beacons have been injured or destroyed,  
 and it is important, in view of the future extension of trigono-  
 metrical surveys as well as for other purposes connected with  
 the survey and allotment of crown land and the partition of  
 private property, that the beacons aforesaid should be preserved  
 and maintained: 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 Surveyor-General or any officer  
 employed by him, by himself, his servants, horses, wagons, or other  
 vehicles, and the animals drawing the same, to enter upon any land,  
 whether belonging to the Crown or to a private individual, and to  
 erect thereon any signals or beacons for the purpose of a trigono-  
 metrical survey of the Colony or of any part thereof, or for the  
 survey of crown land under the provisions of any Act or Acts  
 applicable to the disposal of such land, or for the purpose of  
 examining and, if necessary, repairing or recovering or causing to  
 be recovered or repaired any signal or beacon that may be already  
 in existence; and it shall also be lawful for the Surveyor-General  
 or officer employed by him as aforesaid to take material for the  
 purpose of such repairs from the farm whereon such signal or

Certain officers may  
 enter on lands and  
 erect signals or be-  
 cons.

PPPP



No. 12—1877.

beacon is situate, provided that no injury be done thereby to land which has been improved by cultivation or otherwise, or if such injury be done then the owner or owners of the said land shall be compensated, such compensation being determined in the manner set forth in the twelfth section of Act No. 9, 1858, entitled "An Act to provide for the management of the Public Roads of the Colony."

Penalty for injuring, removing, or destroying beacons.

2. If any person shall unlawfully and wilfully injure, remove, or destroy, or cause to be injured, removed, or destroyed, any signal or beacon already erected, or to be hereafter erected, for any of the aforesaid purposes, whether such signal or beacon be upon his own property or not, he shall be liable to a fine of not exceeding fifty pounds sterling, and, in case of non-payment thereof, to imprisonment with or without hard labour for any term not exceeding three months.

Penalty for obstructing, &c., duly authorized persons from entering lands.

3. If any person shall obstruct, hinder, or prevent the Surveyor-General, or any person duly authorized by him in that behalf, or the servants, horses, wagons, or other vehicles, and the animals drawing the same, of such Surveyor-General or other person from entering upon any land for any of the aforesaid purposes, or from erecting, repairing, or examining any signals or beacons as aforesaid, or from doing what may be required for the purpose of any such survey as aforesaid, he shall be liable to a fine of not exceeding twenty pounds sterling, and, in case of non-payment thereof, to imprisonment, with or without hard labour, for any term not exceeding two months.

Fines may be recovered in resident magistrate's court.

4. All fines imposed under or by virtue of this Act may be recovered by criminal process in the Court of the Resident Magistrate of the district in the offender resides; but the person condemned may, if he feels himself aggrieved, appeal to the Supreme Court, the Court of the Eastern Districts, or the Circuit Court for the district as the case may be, first paying the penalty and giving security to the satisfaction of the Resident Magistrate for the costs of the appeal.

Appeal.

## PROCLAMATION.

By His Excellency General the Right Hon. Lord CHARLES HENRY SOMERSET, &c., &c. [Dec. 23, 1814.

Preamble.

WHEREAS doubts have arisen with respect to the quantity of disposable Government ground in the vicinity of this town, and with respect to the limits of private property as affecting the same, a commission was appointed, in the year 1811, for the purpose of superintending a complete survey thereof, and examining the documents and titles to the land claimed and occupied as private

LAND BOUNDARIES BETWEEN CAPE TOWN AND 1363

SIMON'S TOWN.

property : Now, be it hereby made known that the survey of all the land situate and being to the right of the great road from Cape Town to Simon's Town, and extending from the military lines to the estate of Claassenbosch, now possessed by W. F. Versfeld, has been completed, and laid before me by the Government sworn surveyor, L. M. Thibault; and having personally examined the same, and compared the whole with the documents in support thereof, and the reports relative thereto, I do hereby declare my entire approbation of the same, and hereby recognize the boundaries as described thereon to be the true limits of the respective estates therein described.

Proc., Dec. 23, 1814.

Boundaries of land from Cape Town to Claassenbosch established.

And it appearing, moreover, that the occupiers of several of the estates alluded to have, either through error or inadvertence, enclosed or cultivated proportions of land, to which the former grants of this Government have not entitled them, I have resolved to cede to each of the parties alluded to the land so illegally held by them, upon due valuation thereof by the Magistrate of the Cape District, provided the parties interested take out, within six months from the date hereof, the usual title, authorizing them to occupy the several spots of ground in question.

Cession of ground near Cape Town, enclosed and cultivated in error, to occupiers, on title being taken out within six months.

And whereas it appears that within the limits of the survey under consideration, there are other persons who claim Government land, in virtue of certain resolutions of the former Governments, although they had not obtained regular titles thereto; and being desirous, whenever the interest of the Crown and local circumstances will admit of it, and no actual disposition has taken place, or been directed, to give favourable consideration to claims of the nature alluded to, I have given detailed instructions to the landdrost of the Cape district, to value such of the lands alluded to as are specified to him as being such as may, without detriment to public interest, be alienated, in order to their being ceded under regular title to the parties in question.

Titles to claimants of Government land.

And it is hereby recommended to all holders of land in the direction of the said survey, for the prevention of all future disputes with respect to the boundaries or extent of the land they occupy, to cause to be taken from the general survey under consideration, a diagram or chart of the lands they possess, which diagram, with a proper certificate from the Colonial Secretary, will be delivered to each applicant, free of expense, excepting the usual cost attending the land surveyor's copying the same.

Delivery of diagrams to applicants

And in order that no person may plead ignorance hereof, this shall be published and affixed in the usual manner.

No. 28—1881.]

[June 25, 1881.

## ACT

To Provide for the Registration of Title in certain cases,  
and for the Disposal of certain Derelict Lands.

Preamble.

WHEREAS it is expedient to repeal the Ordinance No. 97, intituled "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 Register," and to make other provisions in lieu thereof and to make provision for the registration of title to certain lands acquired under powers granted by the Legislature to certain persons and public bodies: And whereas it is further expedient to provide for the disposal of certain derelict lands whereon rents, rates, and assessments are due and unpaid for a number of years, and for the speedy and inexpensive recovery of such rents, rates, and assessments: 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. The said Ordinance No. 97 and "The Ordinance No. 97 Perpetuation Act, 1865," 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.

Persons having acquired title to derelict lands may petition Supreme Court to order registration of such title.

2. Any person who shall, by prescription, or by virtue of any contract or transaction, or in any other manner, have acquired the just and lawful right to the ownership of any immovable property in this Colony, registered in the name of any other person and cannot procure the enregistration of such property in his name in the Land Register in the manner and according to the forms for that purpose by law provided, by reason of the death, mental incapacity, insolvency, or absence from the Colony, of the person in whose name such property stands enregistered as aforesaid, or of any person or persons through or from whom such right shall have been mediately or immediately derived, or owing to any other cause, may apply to the Supreme Court by petition to order the registration of the title to such property in his name in the Land Register of the Colony.

Also persons entitled to expropriate land and unable to obtain title in ordinary way.

3. As often as by any law now or hereafter to be in force in this Colony any person or body corporate or incorporate shall have acquired the right to any immovable property by expropriation and shall be entitled to obtain registration of title to such property, but cannot from any cause obtain such registration in the manner and according to the forms by law provided, such person or body may apply to the Supreme Court to order registration of title.

Persons having claim on derelict land may petition Supreme Court for relief.

4. Whenever there shall remain due and unpaid for the space of ten years, any quitrent or reservation in the nature of quitrent payable to any person or body corporate or incorporate (other than

the Colonial Government) or any rate or assessment payable to any Municipality, Municipal Corporation, Divisional Council, or other public body, upon any immovable property in this Colony, and such property shall be abandoned, deserted and left derelict, and the owner thereof cannot be found, it shall be lawful for the person or body claiming such quitrent, rate or assessment to apply to the Supreme Court by petition stating the amount claimed to be due and the grounds for applying for relief under the provisions of this Act.

5. Every petition to the Supreme Court under the provisions of this Act shall be lodged with the Registrar of the said Court, and the allegations contained in such petition shall be supported by affidavit and such documents in proof as the petitioner may be able to adduce.

Petitions to be filed and supported by affidavits.

6. Every such petition shall be laid before one of the Judges in Chambers, who shall make such order thereon as to him shall seem fit, and any such Judge may order that any matter arising upon any such petition shall be argued before and determined by the full Court.

Petition to be laid before Judge in Chambers.

7. Upon considering any petition for registration of title, the Court or Judge may, if such Court or Judge shall deem it expedient to do so, grant a rule setting forth the description of the property mentioned in such petition, and calling upon all persons having or pretending to have any right or title to such property to appear and establish their claims to the same upon some day to be named in the rule, or be for ever barred therefrom, and may direct the mode of service or publication of such rule.

Rule nisi to be granted by Court or judge.

8. Upon considering any such petition for registration of title, the Court or Judge may, and upon the return of any such rule granted as aforesaid, and no cause being shewn to the contrary, the Court may order the Registrar of Deeds to enregister the property mentioned in such order as the property of the person therein named, subject to such terms and conditions as may be therein mentioned.

Power of Court or judge to order registration of title as prayed.

9. In case any person should appear to shew cause against any rule so granted as in the last preceding section mentioned the Court may, if it shall see fit to do so, and without the issue of any summons, require any issue of fact to be tried upon pleadings or may make such order as will in the most speedy and inexpensive manner determine the matter in controversy.

In case of objection, Court or judge may direct trial of issues without pleadings.

10. Upon considering any petition for the sale of immovable property abandoned and left derelict, to satisfy any such claim as is referred to in the fourth section of this Act, the Judge before whom such petition is laid, or the Court, should such Judge, by order or rule granted, refer such petition to the Court, may order that the property mentioned in the petition be attached and sold to satisfy such claims as aforesaid thereon.

Judge or Court may order property to be attached or sold to satisfy claims.

11. Subject to the terms of any such order for registration of title as aforesaid, any conventional hypothecation over any immovable property so registered which shall be in existence at the date

Subject to such order conventional mortgages not to be affected.

No. 28—1881.

of such registry shall attach to and upon the said property precisely as it then exists, and all usual and proper entries and endorsements upon or in regard to any deed of transfer issued by the Registrar of Deeds in obedience to such order shall be made in the Deeds Registry before such deed shall be delivered to the person entitled thereto.

Effect of registration of title under this Act.

12. Every registration of immovable property made in favour of any person in pursuance of any order granted under the provisions of this Act shall have the effect of vesting such person with a title and right to such property which shall and shall not respectively be liable to be annulled, set aside, limited and affected on every ground and by reason of every and any cause, matter or thing by reason of which the title and right of such person to such property would or would not have been liable to be annulled, set aside, limited or affected if such property had been regularly transferred to and in favour of such person and to and in favour successively of every person through or from whom his right was derived or acquired.

Liability of persons to whom title given under this Act to pay taxes, duties, &c., incurred.

13. When any order shall have been made under the provisions of this Act directing the Registrar of Deeds to enregister any property in the name of any person, such person shall be liable to pay such taxes, duties, or stamps in respect of such registration as he would have been liable to pay if such property had been transferred to him directly from the person last enregistered as the proprietor thereof in due form of law, and shall not be liable or required to pay, nor shall the registration directed to be made in his favour be suspended or stayed by reason of the non-payment of any tax, duty, quitrent, or fine, which the person last enregistered as such proprietor, or any other person through or from whom he has mediately or immediately derived his right to such property may have become liable for or incurred, unless he shall by some contract or agreement have specially bound himself to pay such tax, duty, quitrent, or fine: Provided that any person who may have become liable for, or incurred such tax, duty, quitrent, or fine shall be and continue personally liable for the same notwithstanding that such property shall, by virtue of such order, have been registered as the property of the person therein named.

Previous owner to remain personally liable.

Registrar of Deeds to comply with order made under this Act.

14. Upon production to the Registrar of Deeds of any order granted under the provisions of this Act, and of a certificate of the proper officer of the due payment of the transfer duty, if any, which the person named in the order is liable to pay, the said Registrar shall enregister the immovable property as by the said order may be directed, in the form as nearly as is material contained in the schedule to this Act, subject to such conditions and stipulations as would have been contained in a deed of transfer passed in due and customary form to such person from the person last enregistered as the proprietor of such property, and to such other conditions as the said order may direct.

15. Whenever the Court or a Judge shall have ordered the attachment and sale of any derelict property under the tenth section of this Act the Registrar of the Court shall issue a writ for the attachment of the property mentioned in such order.

No. 28—1861.  
Registrar of Court  
to issue attachment  
under Section 10.

16. The Sheriff or his deputy shall attach the property by the writ directed to be attached by giving notice thereof to the Registrar of Deeds, and upon such notice being lodged with the said Registrar the said property shall be deemed to be duly attached and no other proceedings shall be necessary, anything in the twelfth or any other section of Ordinance No. 37 regulating the duties of Sheriff, or any rule of court to the contrary notwithstanding.

Sheriff to attach.

17. Upon such attachment being made as aforesaid the like proceedings shall be had and taken as are by the existing rules of court provided in the case of immovable property attached in execution of any judgment of the Court save and except that it shall not be necessary to cause a valuation of the property to be made as provided by rule 110, nor to affix a reserve price as by rule 113 is provided.

Rules of Court in  
cases of ordinary  
attachment to apply.

18. At the meeting to be held pursuant to rule 105 it shall be lawful for any person or body other than the petitioner at whose instance the property has been attached to appear and prove by affidavit any claim for quitrent or rates due upon or in respect of the same property.

Claims to be  
proved under rule  
of Court 105.

19. In case the amount realized by the sale of the property attached shall be insufficient, after the payment of the hypothecations on or affecting the same (if any), to pay the claims of the petitioner and others proved as aforesaid, the costs allowed to the petitioner shall first be paid thereout and the balance rateably divided between or amongst the petitioner and the said claimants.

Petitioners' costs  
to be first paid out  
of proceeds of sale.

20. Any sum of money which the Court or Judge making any order under the provisions of this Act shall find to be due by the person in whose favour such order is made to any other person, and any sum of money which shall remain in the hands of the Sheriff as the proceeds of any immovable property attached and sold under any such order, after payment of all claims allowed against such proceeds and all costs allowed and ordered to be paid thereout shall, in case the person to whom such money shall be payable shall be absent from the Colony, unknown, or a minor, be paid into the guardian's fund to credit of such person or persons as may be entitled to the same or otherwise as may be ordered by such Court or Judge.

Surplus of pro-  
ceeds after payment  
of all claims to be  
paid into Guardian'  
fund.

21. The Court or Judge, as the case may be, making any order under the provisions of this Act may make such order as to costs, and to and by whom the same shall be paid, as to such Court or Judge shall seem meet.

Costs of order  
under this Act to  
be in discretion of  
Court or Judge.

22. As often as by this Act jurisdiction is given to the Supreme Court, the Court of the Eastern Districts and the High Court of Griqualand West, shall respectively have jurisdiction concurrently

Jurisdiction of  
Eastern Districts  
and Griqualand  
West Courts.

No. 28—1881.

with that of the Supreme Court in regard to all immovable property lying and being within the area over which such Courts respectively have jurisdiction.

Supreme Court may make rules under this Act.

23. 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 such rules concerning the form and mode of proceeding under this Act by the Court or a Judge in Chambers as to such judges shall seem meet.

Memorials under Ordinance No. 97 not reported upon.

24. All memorials lodged with the secretary of the committee appointed under the provisions of the said Ordinance No. 97, and not reported upon prior to the taking effect of this Act, may be laid before one of the Judges in Chambers, and shall thereupon be proceeded with precisely as if every such memorial were a petition referred to in this Act.

Short title.

25. This Act may be cited for all purposes as the "Titles Registration and Derelict Lands Act, 1881."

SCHEDULE.

DEED OF TRANSFER.

Know all men whom it may concern,

That in obedience to an order of the Supreme Court [or of the Court of the Eastern Districts, or of the Honourable Mr. Justice . . . . . in Chambers, as the case may be] under the provisions of the "Titles Registration and Derelict Lands Act, 1881," I, the Registrar of Deeds, do hereby cede and transfer in full and free property to and on behalf of . . . . ., his heirs, executors, administrators, and assigns certain (here describe the property) and that by virtue of these presents the said . . . . ., his heirs, executors, administrators and assigns now is and henceforth shall be entitled thereto, conformably to local custom, Government however reserving its right.

In witness whereof I the said Registrar, have subscribed to these presents and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the Registrar of Deeds, in Cape Town, Cape of Good Hope, on the . . . . . day of the month of . . . . ., in the year of our Lord one thousand eight hundred and . . . . .

"A.B.," Registrar of Deeds.

No. 30—1883.]

[September 27, 1883.

ACT

To Regulate the Erection and Maintenance of Dividing Fences.

Preamble.

WHEREAS it is expedient that the erection and maintenance of dividing fences between adjoining properties should be regulated:

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. 30--1883.

PRELIMINARY.

1. In this Act, if not inconsistent with the context,
  - “To repair” shall include to trim, keep and maintain a live fence or ditch or part thereof.
  - “Occupier” shall include any person, company, co-partnership, or public body in actual occupation of, or entitled as owner to occupy any land alienated from the Crown.
  - “Dividing Fence” shall mean a fence separating the lands of different occupiers, of a kind which such occupiers may agree upon, or in the event of disagreement, which may be settled by arbitration.
2. This Act shall not apply to any crown land not alienated, nor shall the Public Treasury be liable to make any contribution towards the construction or repair of any dividing fence between the land of any occupier and any crown land.
3. For the purposes of any arbitration under the provisions of this Act, the provisions of the “Lands and Arbitration Clauses Act, 1882,” are hereby incorporated.

Interpretation Clause.

Exemption of Crown Lands.

“Lands and Arbitration Clauses Act, 1882,” incorporated.

PART I.—PROVISIONS APPLICABLE TO PROCLAIMED DIVISIONS.

4. The provisions of this part of this Act shall be in operation in such divisions or field-cornetcies as the Governor shall by proclamation prescribe: and from a date to be by such proclamation fixed and appointed.
5. If the Divisional Council of any division shall by resolution request the Governor to suspend the operation of this Act within such division or any field-cornetcy therein, the Governor may suspend this Act accordingly: And if such council shall by resolution request the Governor to bring this Act again into operation the Governor may bring it into operation accordingly: Provided that no such resolution shall be proposed until notice of the intention to propose the same shall have been given at an ordinary meeting of the council previously held, and until such notice shall have been published in the newspaper in which the notices of the council are usually published at least once a week during three weeks.
6. The occupiers of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands, in such proportions as may be agreed upon between them, or in default of agreement in the proportions to be settled by arbitration.
7. Any person desiring any other person to contribute to the construction of a dividing fence under the provisions of this Act may serve on such person a notice in writing to fence, which shall

Act in force where Governor may proclaim.

Governor may suspend Act when requested by any Divisional Council.

Fence between lands of different occupiers to be at cost of each.

Notice to any person required to contribute towards making fence.



No. 30—1883.

Arbitration pro-  
vided for.

specify the boundary to be fenced, and the kind of fence proposed to be constructed, and shall contain a proposal for fencing the same. If within three months after the service of any notice to fence, the person serving and the person served with such notice do not agree as to the kind of fence to be erected and the position thereof, and what proportion of the expense of constructing the same is to be contributed by them respectively, any of such matters as to which there shall be no agreement, shall be settled by arbitration. In making any award, the arbitrator or arbitrators shall be guided as to which kind of fence such arbitrator or arbitrators shall order or award to be constructed, by the kind of fence, if any, usually constructed in the place where it is proposed to erect such fence.

In case of refusal  
to comply with  
Award, &c.

8. If the person serving and the person served with such notice agree as to the matters aforesaid relating to the construction of such fence, or if, in default of such agreement, an arbitrator or arbitrators is or are appointed and make an award, and in either case either of such persons fail within the time named in that behalf in such agreement or award, or, if no such time be named, within six months after the date of such agreement or award, to perform his part of such agreement or to comply with such award, then the other of such persons may construct the whole fence as agreed upon or prescribed by such agreement or award, and may recover such part of the cost of constructing the same as may have to be contributed by the other of such persons in any Court of competent jurisdiction.

When contribu-  
tions may be paid  
by instalments.

9. If any person shall be called upon under this Act to join in or contribute to the construction of any dividing fence, and such person shall be unable or unwilling, sooner or otherwise, to pay the amount or any part thereof which he shall be or become liable to pay, and shall, within one month after the amount which he is liable to pay shall have been fixed, give notice to the person calling upon him to join or contribute as aforesaid, that he desires to pay such amount by instalments as hereafter mentioned, the amount payable by such person, or such part thereof as he shall not be willing to pay sooner or otherwise as aforesaid, together with interest thereon at the rate of six per centum per annum, shall be paid by such person by equal yearly instalments, such instalments to be so calculated and fixed that the said capital sum and interest shall be wholly paid off in a period of fifteen years from the date which he shall have given such notice as aforesaid, as more particularly shown in the first schedule: Provided that notwithstanding such notice, and the payment of any instalment as aforesaid, it shall be lawful for any such person at any time during the said fifteen years, to pay the value at that time of the unpaid instalments in one sum, as shown in the second schedule.

Proceedings in  
case of absent  
owners

10. When the occupier of any land is absent from the Colony or cannot be found or any land is unoccupied, the occupier of any

adjoining land shall insert in the *Gazette*, and in a newspaper (if any) published or circulating in the district in which such land is situated, at least once a month during six consecutive months, a notice addressed to the occupier of such land, describing him as the occupier of such land, requiring him to contribute to the construction of a fence and may then proceed *ex parte* to obtain from the Resident Magistrate of the district an order authorizing the construction of such fence, and specifying the kind of fence to be constructed, and the position thereof, and may construct a fence in compliance with such order; and if afterwards during the continuance of such fence, any person shall go into occupation of such adjoining land, he may, within one month thereafter, serve any person who, if such fence were not in existence would be liable to contribute to the construction of a fence in the place thereof, with a copy of such order, and shall, after the expiration of one month from the date of such service, be entitled to recover one-half the then value of such fence; but if such order so made *ex parte* be deemed by such person to be inequitable, he may require the matter in question to be settled by arbitration.

11. When any fence is constructed under the provisions of this Act dividing any lands held by any person as tenant of any landlord from any adjoining lands, such tenants shall pay yearly during the continuance of his lease the interest, calculated at six per cent. per annum, upon one-half of the cost of such construction: Provided, however, that no tenant whose unexpired term of lease does not exceed one year shall be liable to pay any such interest.

Tenants to pay interest on cost of fences.

12. Any tenant having a right to purchase any land occupied by him at a fixed rate, shall, on the completion of the purchase, pay to his landlord, in augmentation and as part of the purchase-money, any sum paid by such landlord under the last preceding section, together with any interest upon such sum as the tenant shall not previously have paid to his landlord.

Tenant, with right to purchase, to pay cost of fence in addition to purchase money.

13. When any dividing fence made or to be made shall be out of repair or become insufficient, the occupiers of land on either side thereof shall be liable to the cost of repairing such fence, in the same proportion that the occupiers contributed, or were liable to contribute, towards the cost of constructing the same.

Repairs.

14. The occupier of any land separated from any adjoining land by a dividing fence may serve a notice upon the occupier of such adjoining land, requiring him to assist in repairing such fence, and if such occupier shall refuse or neglect for the space of one week after the service of such notice to assist in repairing such fence, it shall be lawful for such first-mentioned occupier to repair such fence and to demand and recover of and from such occupier his portion of the cost of repairing the same, as provided for construction: Provided that, if any dividing fence, or any portion

Notice of required repairs to occupier of adjoining land.

No. 30—1883.

thereof, shall be destroyed by accident, the occupier of land on either side may immediately repair the same without notice, and shall be entitled to recover his proportion of the expense as above provided for from the occupier of the adjoining land: Provided that in case such dividing fence shall have been destroyed by fire, or by the falling of any tree, or by the trespass of any cattle, the occupier through whose neglect (if any) such fire shall have originated, or have caused injury to the fence, or such tree shall have fallen, or such cattle shall have caused such injury, shall be liable to repair the entire of the fence so damaged as aforesaid.

Mutual rights of recovery of moneys under this Act.

15. All moneys recoverable under this Act, in respect of the construction or repairing of any fence by any person serving any notice to fence or repair, or under any *ex parte* order or award, may be recoverable from any person liable to contribute to the cost of constructing or repairing such fence who is served with notice to fence or repair, or with such *ex parte* order or award, or any person who may come in and defend under the provisions of this Act any proceedings consequent on such notice, or the service of such order or award; and all such moneys recoverable by any person served with such notice may be recovered from the person serving the same, or any person liable to contribute to the construction or repair of such fence as tenant of whom the person serving such notice may hold the lands bounded by such fence.

Act not to apply to existing fences.

16. Nothing in this part of this Act contained shall be deemed to affect any substantial fence already erected at the time of the coming into operation of this Act.

#### PART II.—PROVISIONS APPLICABLE TO THE COLONY.

Part II. applicable to whole Colony.

17. The provisions of this part of this Act shall be in operation throughout the Colony.

Person using another one's fence to pay interest on half its cost.

18. If the occupier of any land shall have erected or hereafter erect, a fence on the boundary of his land, and any other person shall adopt any means by which such fence shall be rendered of beneficial use to himself, and shall avail himself of such fence or portion thereof, such person shall be liable to pay to the occupier of the land whereon such fence is erected, interest on half the then value of so much of such fence as such person shall use or avail himself of, at the rate of six pounds per centum per annum, for so long a period as he shall continue to use or avail himself of such fence; and shall also, so long as aforesaid, be liable for one-half the cost of repairs of so much of such fence as aforesaid.

When fence divides land from Crown Land subsequent occupier of latter to pay a portion of the cost.

19. Where a fence is erected on the boundary of any land, and any adjoining land is at the time of the erection of such fence crown land excepted from the application of this Act, then the occupier thereafter of such adjoining crown land shall, within six months after a demand in writing made upon him, pay to the

occupier of the land upon which, or the boundary of which such fence was erected, a reasonable portion not exceeding one-half of the then value of such fence: And if any difference shall arise as to the amount to be paid, such difference shall be settled by arbitration.

20. Where any fence is to be erected on land covered with bush, the person erecting such fence shall be entitled to clear the bush for a width not exceeding six feet on each side of such fence, and may remove any tree standing in the immediate line of any such fence: and the cost of such clearing shall be added to and form part of the cost of the erection of such fence, and in case the person erecting such fence shall be entitled to recover in respect of such cost of erection from any other person, the cost of such clearing shall be apportioned accordingly.

Bush may be cleared for fencing.

21. The occupier of any land may, in making a ditch and bank fence dividing his land from any adjoining land, make a ditch on such adjoining land (crown land inclusive), and use the soil taken therefrom towards making a bank, or he may make the ditch in his own land, and place the bank on such adjoining land.

Soil may be used in making ditch and bank fence.

Where a dividing fence is made of posts and rails, or wire, or palings, the posts of such fence shall, as nearly as may be, be placed on the boundary line.

Posts, rails, &c.

22. When a river, creek, or natural water-course forms the boundary of contiguous lands, but is not capable of resisting the trespass of animals liable to be impounded, it shall be competent for the occupiers of such contiguous lands to agree upon such a line of fence on either side of such river, creek, or natural water-course as shall secure such fence from the action of floods, and in the event of their not agreeing upon such a line of fence, the line of fence to be erected, and whether any and what compensation in the shape of an annual payment shall be paid to either of the parties occupying such contiguous lands in consideration of loss of occupation of land shall be settled by arbitration: Provided that the occupation of lands on either side of such line of fence shall not be deemed adverse possession, and shall not affect the title to or possession of any such lands save for the purposes of this Act.

Proviso when river is the boundary between lands.

23. If the occupier of any land shall clear the same of inflammable materials for the space of fifteen feet from any fence dividing such land from the land of any other occupier, and such other occupier shall neglect or omit so to clear his land, and any damage from fire shall happen to such dividing fence through such neglect or omission, the occupier so neglecting or omitting to clear shall, at his own cost and charge, cause such fence to be repaired and re-erected within the space of one month after the same shall have been so damaged, and in case he shall refuse or omit to repair or re-erect the said fence within such space of one month, it shall be lawful for the occupier of the land contiguous to the said fence

Damages against person neglecting to clear inflammable matter from boundary line.

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who shall have cleared the same of inflammable material as aforesaid to repair or re-erect such dividing fence, and all sums of money which shall or may be so expended or laid out under the provisions of this section shall be deemed and taken to be money paid to the use of the occupier in default: Provided that nothing herein shall be deemed to take away or interfere with the right of any person to sue for and recover compensation for or in respect of any damage or injury to any fence occasioned by the reckless or negligent use of fire.

Right of way to  
construct fences.

24. Every person engaged in constructing or repairing a fence under this Act, his agents and servants, may, if there be no available access thereto over the land of such person, with or without cattle, carts or other vehicles, at all reasonable times during such construction or repairing, enter upon the contiguous lands, and do thereupon such acts, matters, and things as are necessary or reasonably required to carry into effect the construction or repairing of such fence: Provided that nothing herein contained shall authorize the entry for the purposes aforesaid upon any land in cultivation or in or upon any garden, plantation, or pleasure ground without the consent of the owner; or shall authorize any person to cut down, lop, or injure any fruit or ornamental tree or shrub without such consent.

Swing gates when  
fences cross roads.

25. In case any dividing fence made under the provisions of this Act shall cross any public or private road, there shall be a swing gate erected at such crossing in lieu of a fence; and such gate shall be of such size and description as the Divisional Council of the division shall fix and determine; and the provisions of this Act shall apply to such gate as if it were part of such fence, and it shall be lawful for such Divisional Council to make such regulations as to the erection of any such gate as to it may seem fit.

Landlord may  
defend proceedings  
against tenant.

26. Any person may come in and defend any proceeding under this Act, against any tenant of such person, in consequence of which such person may ultimately incur any liability; and any defence which the person originally proceeded against might set up shall be available to the person so coming in to defend.

Resident Magis-  
trates to have jur-  
isdiction.

27. Proceedings for orders and for the recovery of sums of money may be taken before the Court of the Resident Magistrate of the district in which the defendant resides in respect of questions arising between occupiers of property liable to the provisions of this Act, notwithstanding that the decision of any such question shall be beyond the ordinary jurisdiction of such Resident Magistrate.

Existing contracts  
not affected by this  
Act.

28. Nothing in this Act contained shall be deemed or taken to affect any covenant, contract, or agreement made, or hereafter to be made, relative to fencing between landlord and tenant, or between occupiers of adjoining land.

Short title.

29. This Act may be cited as "The Fencing Act, 1883."

## THE FIRST SCHEDULE.

No. 30—1883.

Table of equal instalments payable at the end of each year for fifteen years, corresponding to amounts payable under the ninth section of this Act.

Amount payable.			Equivalent Instalments payable at the end of each year for fifteen years.		
£1	..	..	£0	2	1
2	..	..	0	4	1
3	..	..	0	6	2
4	..	..	0	8	3
5	..	..	0	10	4
6	..	..	0	12	4
7	..	..	0	14	5
8	..	..	0	16	6
9	..	..	0	18	6
10	..	..	1	0	7
20	..	..	2	1	2
30	..	..	3	1	9
40	..	..	4	2	4
50	..	..	5	3	0
60	..	..	6	3	7
70	..	..	7	4	2
80	..	..	8	4	9
90	..	..	9	5	4
100	..	..	10	5	11
200	..	..	20	11	10
300	..	..	30	17	9
400	..	..	41	3	8
500	..	..	51	9	8
600	..	..	61	15	7
700	..	..	72	1	6
800	..	..	82	7	5
900	..	..	92	13	4
1000	..	..	102	19	3
2000	..	..	205	18	6
3000	..	..	308	17	9
4000	..	..	411	17	0
5000	..	..	514	16	3

NOTE.—Yearly instalments for any sum not mentioned in this table, such as £2,345 may be obtained as follows:—

£2,000	gives	£205	18	6
300	„	30	17	9
40	„	4	2	4
5	„	0	10	4
Therefore £2,345	„	£241	8	11

No. 30—1883.

## THE SECOND SCHEDULE.

Aggregate value of unpaid instalments, each £100 in amount, of which the first is payable at once; and subsequently at yearly intervals.

Number of Instalments, £100 each.			Aggregate Value.
1	..	..	£100 0 0
2	..	..	194 6 10
3	..	..	283 6 9
4	..	..	367 6 0
5	..	..	446 10 3
6	..	..	521 4 9
7	..	..	591 14 8
8	..	..	658 4 9
9	..	..	720 19 7
10	..	..	780 3 5
11	..	..	836 0 2
12	..	..	888 13 9
13	..	..	938 7 8
14	..	..	985 5 4
15	..	..	1029 10 0

NOTE.—The aggregate value of instalments of any other amount may be readily obtained from the above table, by simple proportion.

No. 9—1859.]

[July 8, 1859.

## AN ACT

To Define and Declare the Unit of Land Measure in this Colony.

Preamble.

WHEREAS the unit of land measure within this Colony is the foot : And whereas it has been ascertained, by due investigation, that the foot used for land measurement in this Colony is a length which bears to the length of the foot now by law established in England a certain proportion : And whereas it is expedient to define and declare the said unit of land measure in this Colony by reference to the said proportion : 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 :—

Unit of land measure defined.

1. The unit of land measure in this Colony is, and shall be, a foot of such length that one thousand of such feet shall be equal to one thousand and thirty-three English feet, as now by law defined and established for lineal measurement in England.

No. 15.—Sd. P. Maitland.]

[August 28, 1844.]

## Ordinance to provide for the Enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820.\*

WHEREAS in consequence of the encouragement to emigration to the Cape of Good Hope offered by the Government of his late Majesty King George the Third in certain letters dated Downing-street, London, 1819, certain parties of settlers arrived in this Colony in and about the year 1820 and were located in the lower part of the division of Albany and at Glen Lynden in the division of Somerset, on certain lands which were surveyed for the said parties respectively: And whereas certain of the said parties consisted wholly or in part of individuals who paid, in England certain deposits required by the said Government, and thereby acquired certain rights to portions of the original locations so surveyed for the said parties: And whereas other lands were set aside by Government, and certain exchanges of granted land were made for the better maintenance of some of the said parties, and surveys of the shares held by the said individual settlers their heirs or assigns, at the date of survey, effected for the purpose of enabling the proprietors thereof to obtain registry of the same in the Land Registers of the Colony: And whereas the said proprietors have been and still are prevented from obtaining such registry by reason of the death, absence from the Colony, mental incapacity, or insolvency of the former heads or nominal heads of their parties, to whom in most instances grants of the original locations were issued, or of other persons through or from whom the said proprietors have mediately or immediately derived just, lawful, and undisputed rights to the said subdivisions, or by reason that in many instances it has now become impossible to produce such legal evidence of the cessions of the said rights as would enable the Supreme Court or the Circuit Courts of this Colony to declare and enforce the same, while at the same time the provisions of the Ordinance No. 97, entitled "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 Register," could not, properly be accommodated so as to meet the exigency of the cases aforesaid, or if they could be so accommodated not without much and unnecessary expense. And whereas in many instances the head of the party cannot give transfer of the subdivisions which have been effected by reason that the said subdivisions include without distinction portions of land registered as his property together with portions of lands granted to others, or of ungranted crown

Preamble.

\* Expired 31st December, 1846, but revived by Ordinances No. 15, 1847, and No. 7, 1853, and Acts No. 24, 1856, No. 7, 1859, and 12, 1862.

QQQQ



Ord. 15—1844.

lands allotted to the party: And whereas by reason of the issue and existence of certain title deeds to portions of the land referred to the Governor of this Colony is prevented from directing the issue of new title deeds of the said subdivisions in the names of the persons justly entitled to the same, and thus giving them registry in the Land Registers of this Colony.

Names of proposed grantees to be published.

2. Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council thereof, that from and after the promulgation of this Ordinance, it shall and may be lawful for the Governor of this Colony to publish by proclamation in the *Government Gazette* and in some one or more of such newspapers as shall be published in Graham's Town the names of such persons as shall after due investigation be recommended by the board of commissioners for lands as the persons entitled to receive grants of the aforesaid subdivisions of locations, together with a description of the said subdivisions and also the particulars of all such grants of original locations and other lands as it may be necessary to cancel by reason of portions thereof being included in such aforesaid subdivisions, and thereupon to proclaim that unless objections showing cause to the contrary be lodged in writing at the office of the Secretary to Government, in Cape Town, within six weeks from the day on which such proclamation shall be last published the title deeds therein mentioned will be cancelled and the subdivisions aforesaid granted accordingly. <sup>(1)</sup>

Objections to grants.

Grants to be issued in absence of objections.

3. And be it enacted that in case no objections are lodged in the office of the Secretary to Government as aforesaid at or before the expiration of the term of six weeks as aforesaid it shall and may be lawful for the said Governor to direct the said title deeds to be cancelled and the grants of the said subdivisions to be issued accordingly.

Consideration and disposal of objections.

4. And be it enacted that in case any such objections as aforesaid shall be lodged as aforesaid the said objections shall be referred to the board of commissioners for lands for investigation, and should the said board deem it necessary in any case to amend their previous recommendation a further publication of six weeks by proclamation in manner aforesaid of such amended recommendation, shall be necessary before it shall be lawful for the said Governor to direct that any title deeds or title deed shall in conformity with such amended recommendation be cancelled or be issued as the case may be: Provided that if no objection be lodged within the said period of six weeks to any such amended recommendation it shall be lawful for the said Governor to direct the certain title deeds or title deed referred to in such amended recommendation to be cancelled or issued as the case may be in conformity therewith.

Proceedings when objections disallowed.

5. And be it enacted that if after any such objections as are mentioned in the second section of this Ordinance shall have been

<sup>1</sup> See Act 12, 1862.

referred to the board of commissioners for lands the said board shall report to the said Governor that they do not see cause to amend their recommendation, or if any objections to the amended recommendation mentioned in the fourth section of this Ordinance shall be lodged as aforesaid, the said Governor shall cause a Government notice to be published in the *Government Gazette* and in one or more of the newspapers to be published in Graham's Town setting forth the particulars of any title deeds or title deed the cancellation of which shall have been objected to and a description of the several subdivisions which contain portions of the land described therein, and also the names of the person or persons to whom it is recommended to issue title deeds of the said subdivisions respectively, and in the case of such of the said subdivisions as may be unclaimed or if claimed when the claims to the said subdivisions are not proved or have not been reported on, then the name or names of the persons for whom the said subdivisions respectively have been surveyed, or a description of the title deed or title deeds if any the issue of which shall have been objected to accompanied by an announcement that the deeds aforesaid will be cancelled or issued as the case may be unless such cancellation or issue shall be restrained by the interdict of some competent Court or Judge to be duly sued out within three months from the date of such notice; and when and as often as any such notice shall be published then all persons who shall object to any of the matters or things embraced, in such notice, and by the same announced as intended to be done shall be bound to apply to some competent Court or some Judge having lawful authority for an interdict or order restraining all parties whom it may concern from proceeding to do the matter or thing which the person applying alleges ought not to be done; and unless the person so applying for such interdict shall obtain the same and shall within a period of three months from the date of the last publication of the said notice (if published on more days than one) lodge the said interdict or a copy thereof in the office of the Secretary to Government in Cape Town, then it shall be lawful for the Governor of the Colony to direct that the title deed shall be issued or the existing title deed shall be cancelled as recommended by the said board of commissioners for lands: Provided, always, that it shall and may be lawful for the said Governor upon cause shown to enlarge the time within which in any particular case such interdict may be applied for.

6. And be it enacted that it shall be lawful for the Supreme Court or any Circuit Court of this Colony to grant an interdict to any person or persons applying as aforesaid for the same in case it shall appear that the party so applying has some right to or over or in respect of the land of which a title deed is recommended to be cancelled, and to the cancellation of which such party objects or to which any new grant is announced as intended to be made, and

Ord. 15—1844.

Objector may apply for interdict.

Interdict to be lodged with Secretary to Government.

In what cases interdict may be granted.

Ord. 15—1844.

moreover that such party is likely to be prejudiced by the cancellation or issue as the case may be of any title deeds or title deed intended to be cancelled or issued respectively.

Notice of interdict to be published.

7. And be it enacted that when and as often as any such interdict as aforesaid or any copy thereof shall be lodged at the office of the Secretary to Government in Cape Town as aforesaid a public notice of the lodgment of the same shall be forthwith given in the *Government Gazette*, and in some one of such newspapers as aforesaid, and the said interdict or a copy thereof together with the claim or claims and all the proofs and documents relating thereto on which the recommendation of the board of commissioners for lands was founded, shall be delivered or transmitted to or placed at the disposal of the person or persons or some one of them to whom the grant was recommended or whose claims shall be stayed by the said interdict, or their heirs or other representatives, for the purpose of enabling him or them to procure the removal of the said interdict, and the final determination according to law of all questions in dispute connected with the same.

Interdict to be conclusive of rights unless removed.

8. And be it enacted that when and as often as any such final determination as aforesaid shall have been made by any competent Court in any suit or proceeding arising from or connected with any such interdict as aforesaid the cancellation of any old title deed or issue of any new title deed respectively shall be regulated in conformity with the judgment of such Court, and so as to secure as much as may be the rights of all parties as the same shall have been ascertained and declared by the judgment of such Court. But in case it shall so happen that the person or persons whose claims are stayed or supposed rights affected by any such interdict shall not within a period of six months from the date of the publication of the notice in the last preceding section mentioned obtain a final determination of the matters in dispute in regard to the same and give notice of such final determination being had and come to to the Secretary to Government in Cape Town, then the matters so in dispute shall be considered as if decided in favour of the party who shall have obtained the interdict, and thereupon the consequences hereinbefore mentioned shall take place in the same manner as if a competent Court had finally determined in favour of such party. Provided, always, that it shall be lawful for the Governor aforesaid to enlarge the time during which notice of any such final determination being had and come to may be given as aforesaid to the Secretary to Government.

Locations to be sold, if there be no application for grant.

9. And be it enacted that when there shall remain any subdivision or subdivisions of locations aforesaid to which no claim has been made or the claims to which shall not have been proved so as to enable the said land board to recommend the issue of the title deed or title deeds thereof to the claimant or claimants respectively, or to any other person, it shall be lawful for the Governor of the Colony to cause to be published in the *Government*

*Gazette* and in one or more of the newspapers which shall be published at Graham's Town a notice describing the said subdivision or subdivisions, and declaring that unless a notice stating cause to the contrary be lodged in the office of the Secretary to Government in Cape Town within three months after such notice shall be last published the said subdivision or subdivisions will be sold by public auction for account of whom it may concern.

Ord. 15--1844.

10. And be it enacted that if no such notice as aforesaid be lodged as aforesaid at or before the expiration of the said three months then it shall be lawful for the said Governor at any time thereafter to cause the said subdivision or subdivisions to be sold in freehold by public auction; and in case of any such sale the proceeds after deduction of the expenses of sale shall be disposed of in manner following, that is to say: first, a sum equal to fifteen years' purchase of the annual quitrent fixed for settlers' grants and of such stamps as would have been required in respect of such annual quitrent for the said period, shall be paid into the Colonial Treasury to account of the general revenue; secondly, the amount of loan from the Storm Fund if any with the interest thereon if any shall be paid into the said treasury to account of the said fund; and lastly, the remainder of the said proceeds if any shall be paid into the Guardian Fund in the name of the proprietor at the date of the said sale of the location surveyed for or other person justly entitled thereto or to any portion thereof, there to be 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.

Application of proceeds of sale.

11. And be it enacted that in case such a notice be lodged as the second notice in the ninth section mentioned the said notice shall be referred to the land board, and if the said board shall be enabled thereby to recommend the issue of title deed to the party who shall have lodged such notice or to any other person the name of the person or persons so recommended by the said board and the description of the subdivision or subdivisions referred to shall be published by proclamation as in the second section of this Ordinance provided. But if it shall appear to the said board that the said notice does not state any sufficient cause against the said sale and the party lodging it does not furnish sufficient proof to enable the said board to recommend the issue of title deed to such party or any other person then it shall be lawful for the said Governor to cause a notice to be inserted in the *Government Gazette* and in some one or more of such newspapers as shall be published at Graham's Town declaring that unless restrained by an interdict of some competent Court or some Judge having lawful authority to be lodged at the office of the Secretary to Government in Cape Town within three months from the publication of such notice the subdivision or subdivisions

Proceedings in case of notice under section 9.

Ord. 15—1844.  
Sale on rejection  
of claim.

mentioned in such notice will be sold by public auction ; and provided no such interdict be lodged as aforesaid then it shall be lawful for the said Governor to direct the said subdivision or subdivisions to be sold as aforesaid by public auction and the proceeds thereof disposed of as provided for in the tenth section of this Ordinance ; but in case an interdict shall have been so lodged as aforesaid then every matter and thing in relation to the said subdivision or subdivisions or to the title deed thereof or to the rights of any parties to or over the same shall be governed and directed by any order, judgment, or decree in the premises of any competent Court.

Cancellations and  
grants under this  
ordinance liable to  
be affected on the  
same grounds as  
would affect decrees  
of court of the same  
nature.

12. And be it enacted that the cancellation of every title deed effected under the provisions of this Ordinance and every title deed issued under the said provisions shall respectively be liable to be annulled, set aside, limited, qualified, and affected on every ground and by reason of every cause, matter, or thing (and shall not be annulled, set aside, limited, qualified, or affected on any ground or by reason of any cause, matter or thing) on or by reason of which such cancellation would by law have been liable to be annulled, set aside, limited, qualified, or affected in case such cancellation of any old deed had been respectively decreed by some competent Court in some suit or proceeding in which all persons not under some legal disability at the time of such suit or proceeding and having any right or title to or interest in any of the land affected by such cancellation or title deed were duly before the said Court.

Proceedings at law,  
or applications under  
Ordinance 97 compe-  
tent in fit cases, not-  
withstanding this  
ordinance.

13. And be it enacted that nothing in this Ordinance contained shall be held or construed so as to prevent any person or persons whomsoever from proceeding in any manner in which he or they may be advised in any competent Court in regard to any lands belonging or appertaining to any of the locations or extensions of the said settlers of 1820 ; or from applying to the committee nominated and appointed under Ordinance No. 97 in order to obtain enregisterment in any case to which the said Ordinance No. 97 shall be considered by such person or persons to apply. Provided, always, that no such proceeding as aforesaid in any such Court (except as certain proceedings are by this Ordinance contemplated and provided as aforesaid) and no application to the said committee shall in any case be commenced by any person or persons in regard to any locations or subdivisions mentioned in any such proclamation as in the second section of this Ordinance provided ; and all persons having commenced or being interested in any suit or proceeding at law or any application to the said committee in regard to any title-deed or to any subdivision or subdivisions mentioned in any such proclamation shall be bound within six weeks from the date of the publication of such proclamation to lodge at the office of the Secretary to Government in Cape Town notice of the pending of such suit or application, which notice shall be deemed and taken to be an objection duly lodged as in the fourth section of this Ordinance provided.

14. And whereas it is expedient to limit the time during which the provisions of this Ordinance shall be operative, be it enacted that this Ordinance shall take effect from and after the promulgation hereof, and that no such proclamation as is in the second section of this Ordinance mentioned shall be issued after the 31st day of December, 1846.

No. 12—1862.  
Limitation.

No. 12—1862.]

[August 7, 1862.

ACT

For Reviving the Ordinance No. 15, 1844, entitled “Ordinance to Provide for the Enregisterment in the Land Registers of this Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820.”

WHEREAS by the Act No. 7, 1859, provision was made for continuing in force until the 31st December, 1861, certain of the clauses of Ordinance No. 15, 1844, entitled “Ordinance to Provide for the Enregisterment in the Land Registers of this Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820:” And whereas it is expedient to continue the provisions of 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:—

Preamble.

1. It shall and may be lawful for the Governor of the Colony, at any time after the taking effect of this Act to issue any such proclamation as is in the second section of the Ordinance aforesaid, No. 15, 1844, mentioned and described; and thereupon every proclamation so issued shall be deemed and taken to be valid and effectual, and all and singular the provisions of the said Ordinance in reference thereto and to any subdivision of location mentioned therein shall be of full force and effect.

Power of Governor to issue proclamations under Ordinance 15, 1844, continued.

No. 17—1876.]

[July 4, 1876.

ACT

To Facilitate Leases of Settled Estates.

WHEREAS it is expedient that the Supreme Court, the Court of the Eastern Districts, and Circuit Courts respectively, should have power in certain cases to authorize leases of settled estates when such Courts respectively shall deem that such leases would be proper and consistent with a due regard for the interests of all parties entitled under the settlement: Be it enacted by the Governor

Preamble.

No. 17—1876.

Leases of settled estates may be authorized under certain conditions.

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 Supreme Court and for the Eastern Districts Courts and the Circuit Courts, so far as relates to immovable property, within the jurisdiction of the Eastern Districts Court and Circuit Court respectively, if such Courts shall deem it proper and consistent with a due regard for the interest of all parties entitled under any settlement as hereinafter mentioned and described, and subject to the provisions and restrictions in this Act contained, to authorize leases of any settled estates or of any rights or privileges over or affecting any settled estates for any purposes whatsoever provided that the following conditions be observed:

First,—Every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term not exceeding twenty-one years; or where the Court shall be satisfied that it will be beneficial to all persons interested to grant building leases for a longer term than for such term as the Court shall direct.

Secondly,—On every such lease shall be reserved the best rent, or reservation in the nature of rent, either uniform or not, that can reasonably be obtained, to be made payable annually or oftener.

Thirdly,—Every such lease shall be in writing, and shall contain a condition for re-entry on non-payment of the rent for a period of not less than three months after it becomes due.

Court may impose any further conditions deemed expedient.

2. Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions, and stipulations as the Court shall deem expedient with reference to the special circumstances of the case.

Leases of the whole or any part of settled estates.

3. The power to authorize leases conferred by this Act shall extend to authorize leases either of the whole or any parts of settled estates, and may be exercised from time to time.

Leases may be surrendered with leave of court.

4. Any leases granted under this Act may by leave of any of the aforesaid Courts be surrendered, either for the purpose of obtaining a renewal of the same or not; and the power to authorize leases conferred by this Act shall extend to authorize new leases of the whole or any part of the property comprised in any surrendered lease.

Court may authorize new lease of property surrendered.

5. The power to authorize leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing in conformity with the provisions of this Act shall be vested in trustees in manner hereinafter mentioned.

How power to authorize leases may be exercised by court.

Court may require applicants to produce evidence, &c.

6. When application is made to the Court, either to approve of a particular lease, or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and

circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorized.

No. 17—1876.

7. When a particular lease has been approved by the Court, the Court shall direct what person or persons shall execute the same as lessor, and the lease executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement.

Court may appoint lessors in particular cases.

8. When the Court shall deem it expedient that any general powers of leasing settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement, or in any other persons, and such powers when exercised by such trustees shall take effect in all respects as if the powers so vested in them had been originally contained in the settlement.

Court may invest trustees with general power of leasing.

9. Notice of any application under this Act shall be served upon all persons who, in the opinion of the Court to which application is made, ought to be so served unless the Court shall think fit to dispense with notice. And such notice shall require the person served to notify within a time to be specified therein, whether he assents to or dissents from such application, or submits his rights or interests so far as they may be affected by such application, to be dealt with by the Court; and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Notices of application to be given.

10. It shall be lawful for the Judges of the Supreme Court or the major part of them from time to time, to make rules or orders for carrying the purposes of this Act into effect, and for regulating the form and mode of procedure and generally the practice of the Court in respect of the matters to which this Act relates, and such rules or orders may be rescinded or altered by the like authority. And all such rules or orders shall be subject to the provisions of the third and fourth sections of the Act No. 15 of 1867.

Supreme Court may make rules for carrying this Act into effect, &c.

11. The word "settlement," as used in this Act shall signify any deed, agreement, will, or other instrument, under or by virtue of which any immovable property or any estate, or interest, in any such immovable property stand limited to, or, in trust for any person or persons by way of succession, or for a life or lives, or for a term of years determinable with the death of any person; and the term settled estates as used in this Act shall signify all immovable property and all estates or interests in any such immovable property which are the subject of any settlement.

Interpretation clause.

12. This Act may be cited for all purposes as the "Settled Estates Leasing Act, 1876."

Short title.



## ACT

To Provide for the Granting of Titles in Freehold to the Inhabitants of certain Missionary Institutions, and for the better Management of such Institutions.

Preamble.

WHEREAS divers tracts of land in this Colony have at various times and in various ways been acquired by the London Missionary Society for the purpose of founding certain missionary institutions, and it is desirable to give to the inhabitants of the said institutions on certain conditions, titles in freehold of the portions of land heretofore respectively occupied by them, free of transfer dues and expenses of survey; and whereas the inhabitants of the said institutions have hitherto been under the secular as well as the religious control of the missionaries of the said society, and it is desirable that the connection in secular matters between the said society and the said inhabitants should cease, and that under such altered circumstances, new rules and regulations should be framed for the better management of the said institutions in lieu of those heretofore in force: 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 appoint surveyors to divide and allot land of certain missionary institutions.

1. It shall be lawful for the Governor to authorize and appoint one or more duly qualified land-surveyors to survey and divide such tracts of land in this Colony as shall, at the time of the passing of this Act, be in the lawful occupation of the missionary institutions of the London Missionary Society, and such surveyor or surveyors, acting under such instructions as they shall from time to time receive from the Governor, shall divide the said tracts of land in such a manner as to allot to the respective occupiers thereof such portions of land as they shall at the time of such survey be entitled to occupy under and by virtue of the customs in force in such institutions respectively; and in case there shall be any dispute as to whether any person is entitled as aforesaid to any allotment of land, or as to the extent of land which ought to be allotted to any occupier, it shall be lawful for the Governor to decide whether any and what extent of land ought to be allotted to such person or occupier.

Disputes to be decided by Governor

Governor to cancel grants of certain lands to missionary institutions and grant titles to individual occupiers of such land as allotted under first section.

2. It shall be lawful for the Governor to cancel and annul the grant of a certain tract of land occupied by the missionary institution of Zuurbraak to the London Missionary Society in trust for the native races belonging to the said institution of Zuurbraak, dated the eleventh day of December, 1858, and the grant of a certain tract of land occupied by the missionary institution of Dysselsdorp to the missionary institution of Pacaltsdorp, dated the twelfth day of April, 1849, and to grant, free of quitrent, but

subject to all other reservations usual in quitrent grants of crown land in this Colony, to the respective occupiers of land in the said institutions of Zuurbraak and Dysselsdorp, and of the institutions of Pacaltsdorp and Bethelsdorp, such portions of such land as aforesaid as shall, under and by virtue of the last preceding section have been respectively allotted to them, or in cases of dispute, as the Governor shall decide ought to have been so allotted.

3. It shall be lawful for the board of directors of the London Missionary Society, by a resolution, in writing, signed by the chairman and secretary of the said board, to authorize and appoint one or more persons to transfer the tracts of land occupied by the missionary institutions of Hankey and Kruisfontein, and belonging to the said society and the person or persons so authorized and appointed shall forthwith transfer to the respective occupiers of the said institutions of Hankey and Kruisfontein such portions of land as shall have been respectively allotted to them, and the effect of such transfer shall be to vest in the respective transferees as full right and title to the portions of land respectively transferred to them as was vested in the said board of directors, or other the transferees of the farm Gamtoos River Wagondrift, and one-fourth share of the farm Fenstershoek, forming together the institution of Hankey, and the farm Kruisfontein, respectively, under and by virtue of the deeds of transfer to them of those lands, dated respectively the twenty-ninth day of March, 1822, the fifth day of September, 1845, and the second day of July, 1857: Provided that the said board of directors of the London Missionary Society, and all persons to whom any portion of land in the institution of Hankey shall be let by the said directors or shall be transferred as aforesaid, shall have the full right of grazing their sheep and cattle upon such tract of crown land adjoining the institution, and called Zoetekloof, as shall hereafter be defined by the Governor, by proclamation in the *Government Gazette*, subject to such regulations as are hereinafter mentioned: Provided, also, that all persons to whom any portion of the land heretofore used as an outspan-place for the use of the public shall have been transferred, shall have the full right to occupy, cultivate, and build upon their respective portions: Provided, however, that after such transfer as aforesaid, the whole of the land heretofore used as commonage shall be and become a free outspan-place for the use of the public.

4. It shall be lawful for the Governor to pay out of Her Majesty's colonial revenue to such land surveyors as aforesaid the expenses of survey which shall be incurred for the purpose of carrying out the provisions of this Act, and to remit to the persons to whom any portion of land shall be granted or transferred, under and by virtue of the provisions of this Act, all duties otherwise due and payable to Her Majesty's colonial revenue in respect of any such grant or transfer as aforesaid: Provided, however, that nothing in this section contained shall be held to apply to any

London Missionary Society authorized to appoint persons to transfer lands at Hankey and Kruisfontein to individual occupiers.

Occupiers of land at Hankey to have certain rights of grazing, subject to regulations.

Survey expenses to be paid out of general revenue and transfer dues remitted.

Not to apply to Hankey and Kruisfontein.

No. 12—1873.

expenses of survey or to the remission of any duties on any land which may be granted or transferred in connection with the institutions of Hankey and Kruisfontein.

Land so granted not to be alienated for ten years without Governor's consent.

5. In all grants made or deeds of transfer passed under the provisions of this Act there shall be inserted a condition to the effect that the land so granted or transferred in any missionary institution shall not for a period of ten years from and after the taking effect of this Act be alienated or transferred to any person unless consent of the Governor shall have been first had and obtained.

Licence for selling wines, &c., in missionary institutions not to be granted for ten years without the assent of three-fourths of the occupiers of the land in such institutions.

6. For a period of ten years after the taking effect of this Act no licence shall be granted authorizing the sale of wines or spirituous or fermented liquors on any portion of the lands which shall be granted or transferred under the provisions of this Act, unless three-fourths in number of the occupiers of land, situate within the limits of what at the time of the taking effect of this Act formed the missionary institution in which the land whereon it is desired to carry on such sale of wines or spirituous or fermented liquors as aforesaid is also situate, shall have signified their assent, in writing, to the granting of such licence, and any licence which may purport to have been granted by or in consequence of the determination of any licensing board in contravention of this provision shall, for all purposes, be null and void; but nothing in this section contained shall interfere with the right of any licensing board to refuse any application for a licence to retail wines or spirituous or fermented liquors on such lands as aforesaid.

Governor in Council to make regulations for such institutions.

7. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to make, alter, and amend all such regulations as may be required for the preservation of the health of the community in any of the said missionary institutions, for the proper control and equitable distribution of all streams and springs of water, and of the salt in saltpans belonging to such community or to the use of which such community may be entitled, or which such community has possessed, for the due management of the commonage and regulation and protection of the rights of pasturage thereon, for the preservation of the timber and brushwood growing on such commonage, and for the prevention and removal of nuisances within the limits of any such institution as aforesaid, due regard being had to the customs heretofore in force in such institutions.

Governor may impose certain penalties for contravention of such regulations.

8. It shall be lawful for the Governor, by such regulations as aforesaid, to provide that any persons contravening any such regulations may, on conviction by the Resident Magistrate of the district in which such contravention shall take place be sentenced to pay a fine not exceeding five pounds sterling, or in default of payment thereof, to imprisonment with or without hard labour for any term not exceeding one month.

9. All regulations and alterations and amendments thereof which shall be made in conformity with the provisions of this Act shall be published in the *Government Gazette*, and shall thereupon have the force of law for all purposes mentioned therein and allowed thereby.

No. 12—1873.

Regulations to be published in Gazette

10. Nothing in this Act contained shall be deemed or construed to take away, alter, or affect any private rights or privileges which may, at the time of the promulgation of this Act, be lawfully vested in any individual occupiers of land in any of the said missionary institutions.

Private rights of individual occupiers not to be affected by this Act.

11. Wherever in this Act the terms "missionary institution" or "missionary institutions" are used without specifying any particular institution, the terms shall be deemed and taken to denote and include the following institutions, to wit :

Interpretation clause.

Bethelsdorp, in the Division of Port Elizabeth,  
 Dysselsdorp, in the Division of Oudtshoorn,  
 Pacaltsdorp, in the Division of George, and  
 Zuurbraak, in the Division of Swellendam.

12. This Act may be cited for all purposes as the "London Missionary Society's Institutions Act, 1873."

Short title.

No. 14—1886.]

[July 6, 1886.

ACT

To Authorize the London Missionary Society to pass Transfer in Freehold to the Occupants of certain Lands in Port Elizabeth.

WHEREAS by two freehold grants, both bearing date the 17th August, 1859, certain two pieces of land, situated in Port Elizabeth, measuring respectively, after certain deductions, 1 morgen 31 square roods and 128·7 square feet, and 311 square roods and 132·18 square feet, were granted to the resident missionary at Port Elizabeth, in connection with the London Missionary Society, for the time being, and to his successors in his said capacity in trust for the said society : and whereas the said two pieces of ground have been used as a location for natives of various races under the religious instruction of the said society : and whereas it is desirable to give to the several occupiers of buildings or building sites on the said pieces of land transfer in freehold of the portions of the said land heretofore respectively occupied by them free of transfer dues : and whereas the trustees of the London Missionary Society, in pursuance of a resolution of the board of directors of the said society, have granted a power of attorney, under date the 11th June, 1885, authorizing and appointing the Reverend Thomas Samuel Merrington, the Rev. Nicolas Goezaar, and John

Preamble.

No. 14—1886.

Mackay, Esquire, all of Port Elizabeth, and each of them with power of substitution, to act on behalf of the said society in the Colony of the Cape of Good Hope, for the purpose of carrying out the provisions of this 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:—

Agents of the London Missionary Society authorized to sub-divide land and to allot to such occupiers such portions of land as they are entitled to occupy.

1. It shall be lawful for the said Reverend Thomas Samuel Merrington, Reverend Nicolas Goezaar, and John Mackay, Esquire, or such persons as shall from time to time be appointed by the board of directors of the said London Missionary Society by a resolution in writing, signed by the chairman and secretary of the said board, or for any two of them, to cause the said two pieces of land and any other pieces of land adjoining the same, acquired or to be acquired by the London Missionary Society from the Municipal Council of Port Elizabeth in exchange for portions of the said land, or otherwise, to be surveyed by a duly qualified land surveyor and divided into lots in such manner as to allot to the respective occupiers thereof such portions of land as they are entitled to occupy under and by virtue of the customs in force in the location existing on the said pieces of land, leaving spaces for streets and thoroughfares as may be required or agreed on by the Municipal Council of Port Elizabeth; and in case there shall be any dispute as to whether any person is entitled as aforesaid to any allotment of the said land, or as to the extent of land which ought to be allotted to any occupier, such dispute shall be referred to the arbitrament and award of two arbitrators, one to be appointed by the representatives of the London Missionary Society, and one by the occupier or alleged occupier, and such arbitrators shall, before entering upon the reference, appoint an umpire, to act in case of difference of opinion between them, and the decision of such arbitrators or umpire, as the case may be, shall be final and binding on both parties, and the costs of such reference shall be borne and paid for as shall be directed in such award.

Disputes to be settled by arbitration.

Society's Agents to give occupiers transfer of lots.

2. The person or persons appointed as aforesaid to represent the said London Missionary Society or any two of them shall, with all convenient speed, transfer to the respective occupiers of buildings or building sites in the said location such portions of land as shall have been respectively allotted to them, and the effect of such transfer shall be to vest in the respective transferees as full right and title to the portions of land respectively transferred to them as was vested in the said London Missionary Society by the said freehold grants of 17th August, 1859, or by any other deed of transfer or title deed.

Governor may remit duty.

3. It shall be lawful for the Governor to remit to the persons to whom any portion of the said pieces of land shall be transferred under and by virtue of the provisions of this Act all duties otherwise due and payable to Her Majesty's colonial revenue in respect of any such transfer as aforesaid.

4. In all deeds of transfer passed under the provisions of this Act there shall be inserted a condition to the effect that the land so transferred shall not for a period of ten years from and after the taking effect of this Act be alienated or transferred to any person unless the consent of the Governor shall have been first had and obtained; provided that nothing in this section contained shall be deemed to prevent the acquisition of any of such pieces of land by the municipal corporation of Port Elizabeth for town improvement or street purposes and transfer thereof to the said corporation accordingly.

No. 14—1886.  
Land transferred as provided in section 2 not to be alienated for ten years without Governor's consent.

5. Nothing in this Act contained shall be deemed or construed to take away, alter, or affect any private rights or privileges which may at the time of the promulgation of this Act be lawfully vested in any individual occupiers of buildings or building sites on any part of the said pieces of land.

Private rights of individual occupiers not to be affected by this Act.

6. This Act may be cited for all purposes as "The London Missionary Society's Port Elizabeth Lands Act, 1886."

Short title.

No. 20—1876.]

[July 4, 1876.

AN ACT

To remove certain Conditions and Restrictions at present imposed upon Lands held by the Lovedale Missionary Institution.

WHEREAS certain grants of land in freehold have from time to time been made by the Government of this Colony to and in favour of the several persons therein respectively named as trustees for the time being of the Lovedale Missionary Institution and of certain schools attached thereto: And whereas certain conditions and restrictions are in such several grants imposed upon the lands thereby granted: And whereas large sums of money have been expended in the construction of buildings, which it is intended to increase, but which work the conditions and restrictions of the grant tend to check, it is therefore desirable and expedient that such conditions and restrictions shall be removed: 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 thereof, as follows:—

Preamble.

1. So much and such parts of the five several deeds of grant, mentioned and referred to in the schedule to this Act annexed, as restrict the use of the lands therein granted to the special purposes therein respectively named, shall be, and the same are hereby, cancelled and annulled.

Restriction on the use of the lands mentioned in schedule cancelled.

2. It shall and may be lawful for the trustees for the time being of the said Lovedale Missionary Institution to hold, possess, and enjoy the several lands contained in the said deeds of grant

Lands to be enjoyed as freehold property in future.

1392 LANDS (LOVEDALE MISSIONARY INSTITUTION).

No. 20—1876.

as free property, and to have the free use and occupation thereof, and to sell, alienate, or mortgage the same or any part thereof, as if the several conditions and restrictions mentioned and contained in such grants had never existed.

SCHEDULE.

1. Deed of Grant in Freehold, dated 1st September, 1849, made by the Colonial Government to James Laing and James Weir, Missionaries of the Free Church of Scotland at Block Drift, and to the Missionaries for the time being of the said Free Church at that place, of a Piece of Land therein mentioned and described, and therein stated to be granted “for the purpose of being exclusively used as a Seminary and Mission of the said Free Church for religious instruction and agricultural and other useful occupation to the Aborigines, on condition that the Land thereby granted should revert to the Crown when it ceased to be used for that purpose.”

2. Deed of Grant in Freehold, dated 22nd November, 1849, made by the Colonial Government to the Reverend Henry Calderwood and to Miss Hannah Howland Harding, as Trustees of the Female Seminary attached to the Free Church of Scotland Mission School at Lovedale and to the Trustees for the time being, of a certain Piece of Land therein mentioned, and described, and therein stated to be granted “for the purpose of being exclusively used as a Female Seminary and Mission of the said Free Church for religious instruction to the Aborigines, on condition that the land thereby granted should revert to the Crown when it ceased to be used for that purpose.”

3. Three several Deeds of Grant in Freehold, each dated 7th May, 1859, made by the Colonial Government to the Reverend William Govan, Resident Missionary of the Free Church of Scotland at Lovedale and to his successors in the said office, in trust for the Lovedale Missionary Institution, of certain three Pieces of Land therein respectively mentioned and described, and therein respectively stated to be granted “on condition that the Land hereby granted should be used exclusively for Educational purposes.”

No. 46—1882.]

[June 30, 1882.

ACT

To Declare and Amend the Law relating to Libel.

Preamble.

WHEREAS it is expedient to declare and amend the law relating to defamatory libels, be it 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:—

Penalties for defamatory libel.

1. Any person who shall publish a defamatory libel shall be deemed to be guilty of a crime and shall, upon conviction thereof, be liable to imprisonment with or without hard labour for any term not exceeding two years, or to a fine not exceeding five hundred pounds sterling, or to both such fine and such imprisonment as the Court may award.

2. Any person charged with the crime of publishing a defamatory libel may, under the plea of not guilty, set up any defence (save as hereinafter excepted), which might be pleaded in answer to a civil action for the same libel.

No. 46—1882.

What defence under plea of not guilty.

3. (1) On the trial of any person accused of the crime of publishing such libel as aforesaid, the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters should be published in the manner in which and at the time when they were published, but to entitle the defendant to give evidence of the truth of such matters, it shall be necessary for him to file a special plea of justification in manner hereinafter in the fourth section of this Act provided; and if after such plea the defendant shall be convicted, it shall be competent to the Court in pronouncing sentence to consider whether the guilt of the defendant is aggravated or mitigated by the said plea or by the evidence given to prove or disprove the same: Provided always that the truth of the said matters shall in no case be inquired into without such special plea: Provided also that the defendant may plead such special plea alone or in addition to a plea of not guilty.

When truth of libellous matter a defence, special plea of justification necessary.

4. (1) Every such special plea of justification as hereinbefore in the third section of this Act mentioned shall be in writing and signed by the defendant or his counsel or attorney, and shall allege that the matters charged in the said libel are true, and that it was for the public benefit that such matters should be published in the manner in which and at the time when they were published, and shall also set forth the particular fact or facts by reason of which it was for the public benefit that such matters should be so published. A copy of such plea, together with a notice that the defendant intends to plead it, shall be served upon the prosecutor within such time before the trial as the Court at the trial may consider reasonable, in default whereof the Court may refuse to permit such plea to be pleaded or may adjourn the trial upon such terms as it thinks fit. The prosecutor may reply generally to any such special plea of justification denying the whole thereof.

Plea of justification to be in writing and signed, &c.

Requisite contents of plea.

Reply thereto.

5. Whenever under the plea of not guilty, upon the trial of any person for the publication of a defamatory libel, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove as a defence that such publication was made without his authority, consent, or knowledge, and did not arise from want of due care or caution on his part.

When defendant may prove want of knowledge of publication of libel.

6. If any person shall publish or threaten to publish any libel upon any other person, or shall directly or indirectly print or publish, or shall directly or indirectly propose to abstain from

Threats to publish, or offers to abstain from publishing, libels.

<sup>1</sup> See Act 29, 1886, § 1, *infra*.

RRRR



No. 46—1882.

printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing of any matter or thing touching any other person with intent to extort any money or security for money or any valuable thing from such or any other person or with intent to induce any person to confer upon or procure for any person any appointment or office of profit or trust, every such offender on being convicted thereof, shall be liable to be imprisoned with or without hard labour for any term not exceeding three years.

Costs in cases of private prosecutions.

7. In case of any private prosecution for the publication of a defamatory libel, if upon a special plea of justification such as herein-before mentioned the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by him by reason of such plea, such costs so to be recovered to be taxed by the proper officer of the Court before which the defendant is tried.

Fiat of Public Prosecutor necessary before criminal prosecution allowed.

8. No criminal prosecution shall be commenced against any person under the provisions of this Act for the publication of any libel or defamatory matter without the written fiat or allowance of the Attorney-General, or in case the publication shall have been made within the Eastern Districts or Griqualand West without the written fiat or allowance of the Solicitor-General or Crown Prosecutor for Griqualand West within their respective jurisdictions, as the case may be.

When Magistrate's Courts shall have jurisdiction.

9. (1) No Court of a Resident Magistrate shall have jurisdiction in any case in which any person shall be charged with publishing a defamatory libel unless such case, after a preparatory examination has been duly taken therein, shall have been remitted for trial to such Court by the Attorney-General, the Solicitor-General, or the Crown Prosecutor for Griqualand West, respectively, under the provisions of the statutes in that behalf made and provided.

Limitation of time for prosecution.

10. No prosecution shall be commenced against any person for the publication of any defamatory libel after the lapse of a period of six months from the date of such publication.

Definition of term "Prosecutor."

11. The term "prosecutor" in this Act shall with regard to any private prosecution mean the private prosecutor, and shall with regard to public prosecutions mean the Attorney-General, Solicitor-General or Crown Prosecutor, as the case may be, by whom, or under whose direction such public prosecution shall be commenced or shall be conducted.

What is a "defamatory libel."

12. The expression "defamatory libel" in this Act shall have the same signification that is attached thereto by the law of England: Provided that nothing herein contained shall have the effect of giving force in this Colony to any statutory enactment made and passed by the Imperial Parliament after the taking effect of this Act, unless the same shall be re-enacted here.

Short title.

13. This Act may be cited as the "Libel Act, 1882."

<sup>1</sup> See § 2, Act 29, 1886, *infra*.

No. 29—1886.]

[July 6, 1886.

## ACT

## To Amend the "Libel Act, 1882."

WHEREAS it is expedient to amend the Act No. 46 of 1882, commonly called the "Libel Act, 1882:" 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 any defendant charged under the provisions of Act No. 46 of 1882 with publishing a defamatory libel shall be acquitted upon the grounds of defence raised in any special plea of justification filed in the manner provided in the third and fourth sections of the said Act, it shall and may be lawful for the Judge or Magistrate presiding at his trial, if he shall think fit, to order and direct that the costs incurred by the defendant in and about the pleading and proof of such special plea shall be paid by the person at whose instance the prosecution was commenced, and all such costs shall be by the taxing officer of the Court before which the defendant is tried taxed and allowed at such sum as the said officer shall deem to be reasonably necessary and sufficient to meet the costs of pleading and proving such special plea.

Prosecutor to pay costs if special plea filed by Defendant is successful.

Costs, how taxed.

2. Notwithstanding anything to the contrary contained in the ninth section of the said Act or in any statute having the force of law in this Colony, no case based upon a charge of defamatory libel shall be remitted for trial to any Court of Resident Magistrate within a period of fourteen days after the record of the preparatory examination duly taken shall have been sent to the Attorney-General, Solicitor-General, or Crown Prosecutor for Griqualand West, respectively; and at any time before or during the said period it shall be lawful for the defendant in the case, by writing signed by the defendant or his lawful agent or attorney, to demand that the case against him shall be submitted for trial by jury to a Court of Justice superior to the Courts of Resident Magistrate, and after such receipt of any such demand no such case shall be remitted for trial to any Court of Resident Magistrate: Provided that if upon such trial by jury the defendant who has made such demand shall be convicted it shall and may be lawful for the judge before whom the trial shall have taken place to order, if he shall think fit, that the costs of such trial as taxed by the proper officer of the Court shall be paid by the defendant.

No case to be remitted to R.M. till defendant has had opportunity to demand trial before a superior court.

3. This Act may be cited as the "Libel Act Amendment Act, 1886."

Short title.

No. 8.—Sd. B. D'Urban.]

[July 25, 1836.

Ordinance for providing for the better and more effectual  
Management of the Public Library in Cape Town. (1)

Preamble.

WHEREAS it is expedient to repeal the Ordinance No. 71, dated 3rd February, 1830, and entitled, "Ordinance of His Excellency the Governor in Council for abolishing the office of trustees of the Public Library in Cape Town and for vesting the management thereof in a committee of the subscribers to that institution," and to make better and more effectual provision for the management of the said library: 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, the said Ordinance No. 71 shall be and the same is hereby repealed, except in so far as the said Ordinance repealed the whole or any part of any former law or ordinance.

Ordinance 71 re-  
pealed.Management of  
library.

2. And whereas the said library has been formed, augmented, and supported partly by means of a tax formerly by law imposed on and paid by the community of this Colony, but now abolished, and partly by voluntary periodical subscriptions of certain persons; and it is therefore fitting and expedient that the management of the said library, and the books, manuscripts, funds, and all other things now belonging and which may hereafter accrue to and belong to the said library should be vested, held, possessed, and administered in trust for and on behalf of the community of this Colony and for and on behalf and subject to the control of such persons during the currency of the period of their subscriptions as shall by periodical subscription have contributed to the support of the library in and by a committee to be elected by and out of the said subscribers: Be it therefore enacted that the management of the said library and the books, manuscripts, funds, and all other things now belonging and which may hereafter accrue to and belong to the said library shall until a committee be elected under and by virtue of the provisions of this Ordinance be vested, held, possessed, and administered in trust for the community of this Colony, and for and on behalf and subject to the control of such subscribers as aforesaid during the currency of the period of their respective subscriptions in and by the committee of management for the Public Library of the Colony of the Cape of Good Hope, elected under and by virtue of the provisions of the said Ordinance No. 71, which shall be in office at the passing of this Ordinance, and thereafter in and by such other committees as shall from time to time be elected under and by virtue of the provisions of this Ordinance, and that the persons elected under and by virtue of the provisions of the Ordinance 71 to be and who shall at the passing

<sup>1</sup> A copy of every book published in this Colony must be supplied *gratis* to this Library. See § 8, Act 2, 1873 (Copyright).

of this Ordinance be in office as treasurer or auditors of the Public Library shall during the same period as aforesaid hold and perform the duties of such their offices under and by virtue of and subject to the provisions of this Ordinance.

Ord. 8-1836.

3. And be it further enacted that the election of persons to serve as members of the committee of the Public Library shall take place at an annual general meeting of the subscribers to be holden in the month of April, 1837, and in the same month of each succeeding year, on public notice being given to that effect by the committee then in office at least ten days previous to the day appointed for the meeting; and the subscribers then present shall, except in the cases hereinafter mentioned, proceed to elect from amongst the whole number of subscribers nine persons to serve as members of the committee until the next ensuing annual meeting, and to elect one person from amongst the committee then chosen to serve the office of treasurer for the same period; and to elect one or more persons from amongst the subscribers, not being members of the committee, to serve the office of auditor for the same period: Provided, always, that no subscriber whose permanent residence is more than ten miles from Cape Town shall be eligible to serve as member of the committee, treasurer, or auditor. And in the event of the death, departure from the Colony, or resignation of any member of the committee, or of his removing his permanent residence beyond the distance of ten miles from Cape Town, or of his ceasing to be a subscriber to the library, or of the election of any committee becoming null and void, or of any committee forfeiting their office under and by virtue of the fourth and eleventh sections of this Ordinance, the committee, or in the event of the number of members of the committee having been reduced to less than a quorum or of the election of the committee having become null and void or of the committee having forfeited their office as aforesaid, then the librarian shall and the committee and librarian are hereby respectively directed and required to call forthwith a general meeting of the subscribers on seven days' notice, for the purpose of electing the necessary number of qualified persons to fill the vacant offices; and if any of the persons so elected being present at the meeting at which he shall be elected shall decline to serve any of the offices for which he shall have been chosen, then the meeting shall forthwith proceed to elect some qualified person to fill up the vacancy; but in case any person so elected not being present at the meeting at which he shall be elected shall not within one week after his election has been intimated to him by the librarian, who is hereby directed and required forthwith to make such intimation by letter, notify to the librarian his acceptance of office, then the librarian shall and he is hereby directed and required to call a general meeting on seven days' public notice, for the purpose of electing the necessary number of qualified persons to fill up the vacant offices until the whole of

Election of office-bearers.

Vacancies in offices.

Ord. 8—1836.

such vacancies shall have been filled up ; and that when any person elected to serve the office of treasurer or auditor shall decline to serve, or shall not notify his acceptance of any such office in manner hereinbefore provided, or shall vacate such office by ceasing or becoming disqualified to hold the same, then and in every such case proceedings shall be had for the election of some qualified person to fill up such vacant office in like manner as is hereinbefore provided for the election of qualified persons to fill the vacant offices of members of the committee : Provided, always, that it shall be competent to the subscribers at such general meeting to re-elect the whole or any of the members of the existing committee, the treasurer, or the auditor or auditors, to serve for the ensuing year or until the next ensuing annual election.

Annual accounts,  
production of.

4. And be it further enacted that in order to secure as far as may be the due and regular administration of the affairs of the library it shall not be lawful for the subscribers at any annual meeting to proceed to the election or re-election of office-bearers for the ensuing year until the committee in office shall have laid, as they are hereby directed and required to lay, before the meeting a statement of the receipts and expenditure of the library during the period which shall have intervened between the last previous audit and allowance of accounts and the day fixed for the said meeting, which statement and accounts must have undergone the previous examination and if necessary the correction of the auditor or auditors, and in case such annual meeting shall see fit to allow the said accounts then and in that case only shall the committee and auditor or auditors be relieved from their responsibility and the election shall proceed : Provided, always, that the committee then to be elected shall publish the said statement and accounts in the *Government Gazette* for general information within fourteen days after allowance of the same, otherwise their election is hereby declared to be null and void.

Inspectors of  
accounts.

5. And be it further enacted that in case any committee shall neglect or refuse to render an account of their administration in manner aforesaid, or shall render accounts which shall not have been certified by the auditor or auditors, or which being so certified shall not be allowed by a majority of votes at the annual meeting, or in case the auditor or auditors shall neglect or refuse to examine such accounts it shall and may be lawful for the subscribers present at such annual meeting to elect, or when the committee shall not have appointed some day in the month of April for holding or shall not have called the annual general meeting of the subscribers in manner hereinbefore provided, then and in such case a general meeting of the subscribers shall be held on the seventh day of the succeeding month of May, or if the same be on a Sunday or holiday on the next lawful day (of the holding of which meeting the librarian is hereby directed and required to give public notice), and the subscribers present at such general meeting shall then elect by

ballot three subscribers to act as inspectors, whose duty it shall be to examine into the cause of such neglect or refusal, to call on the committee or auditors for all necessary information on the subject of their inquiry, and to make report thereon at a general meeting of the subscribers to be assembled on their requisition within seven days after their appointment as inspectors, which meeting shall thereupon take such steps as circumstances may require and may allow the accounts and proceed to the election, or direct proceedings against the committee, as they shall see fit: Provided, always, that in case of the non-allowance of the accounts at any general meeting the treasurer for the time being shall make no further disbursements until a new committee shall have been duly elected.

Ord. 8—1836.

6. And be it further enacted that it shall and may be lawful for the committee for the time being to appoint a librarian and other officers at such rates of salary and under such orders as they shall see fit, and to suspend such librarian and to dismiss or suspend such other officers and to make and promulgate all necessary regulations for the management of the library and of its officers provided the same be not inconsistent with or contrary to the true intent and meaning of any of the enactments of this Ordinance, and that all such proceedings and regulations shall be laid before the next general meeting of the subscribers, and shall be subject to their decision; and that no such regulation whereby any existing regulation which shall have been passed or approved of by any general meeting shall be repealed or altered shall take or be carried into effect; and that it shall not be lawful for the committee to incur any obligations or engagements or do any act by which the capital belonging to the library may be encroached on unless a resolution to that effect shall have been entered on the minute-book of the committee, and until one month after a copy of any such regulation or resolution shall have been affixed in some conspicuous place within the hall of the library. And provided, further, that whenever the committee shall suspend the librarian or any other officer as aforesaid, the committee shall forthwith call a general meeting of the subscribers, on ten days' previous public notice, for the purpose of confirming such suspension and dismissing such librarian or other officer or of rescinding such suspension. And provided, further, that for the dispatch of the ordinary business of the committee three shall be a quorum, but that no new regulations shall be made, nor any existing regulation be repealed or altered, nor any resolution passed for vesting the funds on mortgage or encroaching on the capital of the library at any meeting of the committee at which fewer than five members shall be present.

Librarian and other officers, appointment of.

Rules for library.

Obligations by committee.

Suspension of librarian.

Quorum of committee.

7. And be it further enacted that the committee for the time being shall and they are hereby directed and required to call, by public notice given for that purpose, a general meeting of the subscribers whenever they shall be required so to do by any requisition

General meeting.

Ord. 8--1836.

to that effect specifying the object and purpose of the meeting, and signed by not fewer than thirty subscribers on any lawful day specified in such requisition, not being less than four days subsequent to the date of the transmission of such requisition to the committee; and if no day shall be so specified then on any day not more than three weeks subsequent to the date of such transmission as to the committee shall seem fit. And when the committee or the librarian shall neglect or refuse to give any public notice or to call any meeting of the subscribers which such committee and librarian are by the provisions of this Ordinance respectively directed and required to give or to call, then and in such case it shall and may be lawful for any five of the subscribers to give any such public notice and to call such meeting, to be holden on any lawful day not less than four days subsequent to the publication of the notice calling the same.

Subscribers may approve or alter proceedings of committee at general meetings.

8. And be it further enacted that it shall and may be lawful for the subscribers present at the annual or any other general meeting of the subscribers to consider all proceedings which may have been taken and all regulations which may have been made and promulgated by the committee during the period which shall have intervened since the last general meeting was holden, and by the votes of the majority of subscribers then present to approve, alter, and to annul the same as they shall see fit, as also to repeal or alter or amend any regulations which shall have been passed or approved by any former general meeting, and to make any new regulation for the management of the library or the administration of the property and affairs thereof as they shall see fit: Provided, always, that a notice that any such repeal, alteration or amendment of any such existing regulation as last mentioned or that any such new regulation as aforesaid is to be proposed at such meeting shall have been affixed to some conspicuous place within the hall of the library for at least seven days previous to such meeting.

Deposits of moneys in a bank.

9. <sup>(1)</sup> And be it further enacted that the treasurer of the library for the time being shall immediately on entering upon the duties of his office and of receiving the balance of the library funds open an account with the discount bank, and pay over to the cashier thereof the said balance as well as all sums which he may hereafter receive on the library account as soon as possible after receipt thereof, and it shall not be lawful for the said treasurer to retain in his private possession any moneys the property of the library, under the penalty of thereby forfeiting his office and becoming liable to pay to the committee for the benefit of the funds of the library interest at the rate of ten per cent. for and during the period such money shall be illegally retained by him, or to draw any part of the funds thereof from the bank except in making disbursements which shall have been previously sanctioned by

<sup>1</sup> See § 8, Ord. 9, 1842, *infra*.

written resolution of the committee of which it shall be the duty of the auditor to take due notice, and which disbursements shall be made by drawing cheques on the said bank, signed by the treasurer and countersigned by the chairman of the committee for the time being : Provided, always, that nothing herein contained shall be construed to prevent the committee from vesting such part of the funds as may not be required for the immediate use of the library in mortgages on houses or landed property and at the legal rate of interest a necessary condition of the mortgage bonds, being when houses are so mortgaged that the said houses shall be duly insured against accidents by fire ; and provided, further, that no part of the funds of the library shall be applicable or be applied to defray the expenses of any litigation whatever, save and except in cases in which it may have been necessary or proper to have recourse to legal proceedings for the recovery of debts due to the library or in defence of its just rights, and in which the Court before which such proceedings shall have been taken shall expressly adjudge that such expenses shall be defrayed out of the funds of the library.

Ord. S---1836.

Investment of  
moneys on mortgage.

10. And be it further enacted that the said library shall remain open to the public at least seven hours during each day in the summer months and six hours in the winter months, except on Sundays and holidays or at other times when it may be necessary to close the same for the purpose of alteration, repair, or other reasonable cause, and all respectable persons even although they be not subscribers shall have free access thereto at such hours, together with the use of the books, charts, or other publications of the library of reference, together with all other publications not required for immediate circulation : Provided, always, that no person who is not a subscriber shall have the right of demanding books or other works to be taken out of the library or of attending at the meetings of the subscribers, or of being a member or of interfering with the committee in their administration of the affairs of the library in any way whatever.

Rights of access to  
and use of library.

11. And whereas the Public Library already contains many valuable books and other works which it has been deemed expedient to preserve as a library of reference, and which have already been classed and distinguished from those which when required shall be circulated amongst the subscribers : Be it therefore enacted that the several books, maps, and other works which previously to the passing of this Ordinance shall have been classed as belonging to and placed in such library of reference, together with such other books, maps, and works as may hereafter from time to time be added thereto in manner hereinafter mentioned, shall remain and be kept within the library in all time to come for the purpose aforesaid, and shall not be put in circulation by any committee under pain of *ipso facto* forfeiting their office, and that the committee for the time being shall have the power of placing any other books, maps, or works in the said library of reference

Books for reference  
only.



Ord. 9—1836.

provisionally until the next general meeting of the subscribers, who shall at such meeting decide whether the same shall be finally placed in the library of reference or not; and that it shall not be lawful for any committee nor for the subscribers at any general meeting to remove from the library of reference and put in circulation any such books, maps, or other works as shall at the passing of this Ordinance have been or shall hereafter in manner aforesaid finally be classed as belonging to and placed in the library of reference: Provided, nevertheless, that the committee shall have the power upon application in writing being made to them to lend out to any individual on special occasions under such conditions as they shall see fit any of the aforesaid works.

Dessinian collec-  
tion.

12. And whereas by the will of the late J. N. von Dessin, executed in the year 1761, a large and most valuable collection of books was bequeathed in trust to the consistory of the Dutch Reformed Church in Cape Town to serve as the nucleus of a Public Library, and a certain annual sum was likewise so bequeathed in trust for its preservation and maintenance; and whereas the said collection, known by the name of the "Dessinian Collection," was some years past removed from the immediate keeping of the said consistory and placed in a separate apartment of the building appropriated at that time for the reception of the Public Library established under the proclamation of the 20th March, 1818, and it is desirable that the Dessinian Collection should still remain attached to and form part of the Public Library, subject, however, to certain separate regulations for its management: Be it therefore enacted that the said Dessinian Collection shall continue to be in a proper and commodious part of the building which is now or may hereafter be appropriated for the reception of the Public Library and separate and apart from the books thereunto belonging, subject to the sole and entire management of a committee of the said consistory, who shall make as heretofore all such regulations for its management as they shall deem requisite; provided the same do not interfere with the general regulations for the management of the Public Library, and provided also that such regulations shall be notified to the committee of management at least ten days previous to their having force and effect; and the said consistory shall continue to expend from the funds under their separate trust and independently of the subscribers to the library or their office-bearers all such sums of money as they shall see fit to appropriate for the maintenance and augmentation of the valuable collection committed to their charge, and shall have power to appoint at their own expense, if needful, a librarian to take the entire charge of the Dessinian Collection: Provided, always, that nothing herein contained shall be construed to authorize the said consistory or its committee to interfere officially in any way with the management of the said Public Library or the application of its funds.

13. And be it further enacted that in any action which shall or may be brought touching the matters aforesaid or any of them, or in anywise relating to the said Public Library, by or against the committee of the said Public Library for the time being, it shall and may be lawful for the said committee to sue or be sued by the style and description of "The Committee of Management for the Public Library of the Colony of the Cape of Good Hope."

Ord. 5—1842.  
Nomen juris of  
committee.

No. 5—1842.]

[May 4, 1842.

\* \* \* \* \*  
8. (1) And be it enacted that the committee of the Public Library in Cape Town shall within fourteen days next after the promulgation of this Ordinance select and appoint some bank or banks within this Colony other than the Government discount bank, with which bank or banks the treasurer of the said library shall open an account and into which the said treasurer shall pay all sums which he may receive on the library account as soon as possible after the receipt thereof; and when and as soon as such bank or banks shall be selected and appointed by the said committee the said treasurer shall and he is hereby authorized by a cheque upon the said discount bank signed by the said treasurer and countersigned by the chairman of the said committee for the time being to draw forthwith out of the said discount bank all the funds then deposited therein belonging to the said library, and forthwith to lodge the same in the bank or banks which shall be selected and appointed by the said committee as aforesaid; and it shall be competent for the committee of the said library for the time being to select and appoint from time to time such bank or banks for the deposit of the funds of the said library as they shall deem most expedient and from time to time to direct the treasurer of the said library for the time being to remove the said funds from any given bank or banks to any other bank or banks which the said committee shall select and appoint; and the treasurer of the said library for the time being is hereby authorized and required from time to time to pay into such bank or banks as the said committee shall select and appoint all sums which he may receive on the library account at such time and under the like penalty in case of default as in the ninth section of Ordinance No. 8, 1836, are mentioned and provided; and the said treasurer for the time being is further authorized and required whenever he shall be to that effect directed by the committee of said library for the time being to remove all such sums belonging to the said library as shall be deposited in any particular bank or banks to such other bank or banks as the said committee shall select and appoint, and such removal of the said funds shall be made as aforesaid by means of cheques to be drawn by the treasurer and countersigned by the chairman of the committee for the time being.

Deposit bank for  
moneys of the pub-  
lic library.

<sup>1</sup> For full text of this Ordinance see *Banks*.

No. 20—1864.]

[July 26, 1864.

## AN ACT

## To Incorporate the Trustees of the Public Library of Port Elizabeth.

Preamble.	WHEREAS it is expedient to provide for the appointment, rights, and duties of trustees for the Port Elizabeth Library, and to incorporate such trustees: 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 the library.	1. The trustees of the Port Elizabeth Public Library are hereby constituted a body corporate, by the name of "The Trustees of the Port Elizabeth Library," by which name such body corporate shall have a common seal and perpetual succession.
Number of trustees.	2. The said trustees so incorporated shall be three in number, and shall be appointed by the Governor of this Colony by proclamation, and two trustees shall form a quorum.
Vacancies, how to be supplied.	3. In case of the death, resignation, absence from the Colony, or removal from office by the Governor, of any trustee, his office shall become vacant, and every such vacancy shall be supplied by a new appointment to be made as aforesaid by the Governor.
Property in whom vested.	4. All property, movable and immovable, of every sort and description, belonging to the Port Elizabeth Library, or to which such library shall become in any manner entitled, and all claims for moneys payable to such library, shall vest in and be in law the property of the trustees for the time being, who shall sue and be sued for, or in regard to any matter or thing connected with the said library, and such trustees may, by their name aforesaid, buy and sell, and take and give transfer or delivery of property, movable and immovable, and grant and take leases of property, and pledge or mortgage such property, and generally become and be owners and administrators, but in trust for the said library, of every right, title and interest whatsoever, belonging to the said library.
Powers of trustees.	5. Provided, always, that the said trustees shall, in the execution of their trust, conform, at all times and in all respects, to the instructions of "The Committee of Management" for the time being of the said library, elected by the subscribers to the said library in manner and form as is, or shall be, provided by the rules of the said library for the time being, which instructions shall be communicated to the said trustees by resolutions of the said committee, and that such trustees shall not, as such, have any right or power to interfere with the management of the said library, which management shall belong to the said committee, nor shall such trustees do any act, as such trustees, without the previous authority of the said committee, to be communicated by some resolution thereof.
Trustees bound to conform to instructions of "Committee of Management."	
Short title.	6. This Act may be cited for all purposes as "The Port Elizabeth Library Act, 1864."

No. 6.—Sd. George Cathcart.]

[April 3, 1852.

## Ordinance to prevent the Commission of Nuisances in the River Liesbeek.

WHEREAS a large and increasing number of families resident in Rondebosch and neighbouring places are solely dependent for their supply of water for drinking and domestic purposes upon the water of the River Liesbeek: And whereas owing to the commission of nuisances in the said river and the absence of proper regulations for securing the purity thereof, the water of the said river is likely to be rendered, more especially in the summer season, so unwholesome as to be unfit for use: And whereas it is expedient to remedy this growing evil: 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 and singular the rules and regulations in the schedule to this Ordinance contained, and all and singular the penalties and punishments by the said rules and regulations provided for contraventions thereof shall have and they are hereby declared to have the force of law, and to be of the like effect in every respect as if they had been severally and respectively inserted in the body of this Ordinance.

Preamble.

Legalization of rules in schedule.

2. And be it enacted that the offence of contravening any of the rules or regulations aforesaid may lawfully be prosecuted in the Court of the Resident Magistrate of the district in which such contravention shall have taken place: and be it enacted that the amount of every fine imposed and recovered under this Ordinance and not exceeding twenty shillings shall be paid to the informer, and that when any such fine exceeding twenty shillings shall be imposed and recovered one half thereof shall be paid to the informer and the other half to the Colonial Treasury: Provided that if one half of such last-mentioned fine shall amount to less than twenty shillings the informer shall nevertheless receive twenty shillings thereof and the balance only shall be payable to the Colonial Treasury.

Prosecution of offences in court of resident magistrate.

3. 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.

## SCHEDULE.

1. No dam (by which is meant any hindrance placed in the river to prevent the ordinary flow thereof) shall be placed or continued in the bed of the river unless provided with a fit sluice or fit sluices. Any person placing or continuing to keep up any dam not provided with a fit sluice or sluices to forfeit any sum not exceeding ten pounds nor less than two pounds, and in default of payment to be liable to imprisonment with or without hard labour for any period not exceeding one month: Provided that nothing herein contained shall be deemed or taken to confer any right or title upon any person whomsoever to place

Prohibition of dams.

- Ord. 6—1852. hereafter any dam in the said river or to continue therein any dam already placed therein, which right or title if any shall be judged of precisely as if this Ordinance had never been passed.
- Raising and putting  
down of sluices. 2. All sluices in the Liesbeek River shall be raised by the respective persons by whom they shall have been respectively placed or by whom they shall be respectively kept up or used at least once in every month during the period between the 1st of September and the 1st of May in every year; that is to say, they shall be raised so as to allow the free escape of the water on the last Saturday of every month during such period, not later than five o'clock p.m., and shall not be again put down so as to stop the flow of the water before seven o'clock on the same evening. Any person having a dam and neglecting to cause this regulation to be complied with to forfeit for every such offence any sum not exceeding ten pounds nor less than two pounds, and in default of payment to be liable to imprisonment with or without hard labour for any period not exceeding one month: Provided that if any person shall succeed in showing the existence of a legal right antecedent to the passing of this Ordinance to object to the opening of his sluice or sluices in the manner above directed if such opening had been enforced by the authority of the Colonial Government, shall be enabled to claim compensation from the Colonial Government for any damage which he shall prove himself to sustain by being compelled to obey this regulation.
- Penalty on contra-  
vention. 3. Every person having or keeping up any dam and sluice in the said river must within seven days from the commencement of this Ordinance report the same to the Resident Magistrate of the district in which the same shall be placed; and any sluice found in the said river in regard to which no such report shall have been made shall by order of the Resident Magistrate of the district be demolished. The person who shall make such report and in case of change of possession the occupier for the time being of the property occupied by such person to be the person bound to fulfil the preceding regulations.
- Prior legal rights. 4. Any person erecting or having any privy or watercloset so situated that the filth thereof or therefrom will fall into the said river or by means of any drain, pipe, or other channel find its way into the said river, and any person throwing or conducting nightsoil or throwing or conducting the offal of blood of slaughtered animals into the said river, or washing wool, or dressing or steeping skins in the said river or throwing into the said river any dead carcase of any animal, or drowning any animal in the said river shall forfeit any sum not exceeding twenty pounds and not less than ten pounds, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding three months.
- Report of dams to  
resident magistrate. 5. Any person casting or throwing garden or other rubbish into the said river or throwing or suffering to run over the surface of the ground into the said river any water fouled by washing dirty clothes therein, or doing wilfully and knowingly any other act not specified in these regulations and plainly calculated to make the water of the said river impure shall forfeit any sum not exceeding ten pounds nor less than one pound and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month.
- Penalty on erect-  
ing privies and other-  
wise polluting the  
stream. Penalty on throw-  
ing rubbish, &c., in-  
to the river.

6. It being in contemplation to raise by public subscription or other means sufficient funds for providing suitable washing-places on the banks of the river furnished with necessaries and conveniences for washing clothes, at which washing-places all persons shall be at liberty to wash clothes free of charge, it shall not be lawful for any person at any time after a sufficient number of such washing-places shall have been provided and suitably supplied with necessaries and conveniences for washing clothes to wash or place dirty clothes in the bed of the said river, under any penalty not exceeding two pounds nor less than five shillings, and in default of payment the person convicted shall be liable to be imprisoned with or without hard labour and with or without spare diet for any period not exceeding fourteen days: Provided that nothing in this regulation shall have any force or effect until one month after His Excellency the Governor shall by a Government notice to be published in the *Government Gazette* announce for general information that a sufficient number of such washing-places furnished with necessaries and conveniences for washing clothes have been provided. And printed notices containing such Government notice, both in the English and Dutch languages, and such other matter as may be useful, shall be posted in convenient places at and near the said river for the guidance of all whom it may concern.

Ord. 6—1852.  
Erection of washing-places.

Government notice of such erection, &c.

7. It shall be lawful for the respective Resident Magistrates of the Cape and Wynberg districts in their respective districts to frame rules for such washing-places when established, regulating the mode in which persons frequenting them shall make use of them and of the several conveniences to be there provided, which rules shall be approved of by the Governor for the time being. Any person who shall disobey any of such rules so approved of may by the Magistrate be excluded from the privilege of using any of the washing-places in his district, and may moreover be fined any sum not exceeding ten shillings, and in default of payment may be imprisoned with or without hard labour for any period not exceeding seven days.

Regulations for washing-places.

8. As soon as the sixth of these regulations shall come into force but not before all occupiers of any land by or through which the river runs and generally all persons whomsoever using the water of the said river for washing purposes elsewhere than at some public washing-place shall be bound to be provided with washing-tubs, which tubs must not be placed in the river but only upon or adjacent to one or other of its banks under the like penalty as in the sixth of these regulations provided.

Washing-tubs on adjacent properties.

9. Every such occupier or other person as in the eighth regulation mentioned shall be bound by digging a pit or by some other means to prevent the dirty water from the washing-tubs from falling or running back over the surface of the soil into the river, unless from the lie of his ground such dirty water may be emptied upon it without falling or running back into the river. And any occupier who shall permit the washing of clothes upon his land without providing pits or other means of preventing the dirty water aforesaid from running back over the surface into the river when such means shall be necessary for preventing the same shall for each offence forfeit any sum not exceeding five pounds and not less than one pound, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month.

Penalty on allowing foul water to flow back into the stream.

- Ord. 6--1852. 10. In order that the public may be able to obtain occasional supplies of drinkwater comparatively free from impurity pending the time when such washing-places as aforesaid may be established no washing of dirty clothes in the said river shall during the period between the 1st of September and the 1st of May in every year take place sooner than eight o'clock in the morning of any day. Any person found washing dirty clothes in the said river contrary to the terms of this regulation shall incur the like penalty as that by the sixth regulation provided.
- Hours within which washing may be done
- Penalty on washing on private property without leave. 11. Any person washing clothes upon private property by or through which the said river runs without being employed or authorized so to do by the occupier of the property in or on which such person shall be so washing shall forfeit any sum not exceeding two pounds and not less than ten shillings, and in default of payment shall be liable to imprisonment with or without hard labour and with or without spare diet for any period not exceeding one month.
- Definition of river. 12. All open cuts, ditches, water-courses, or channels whether artificial or natural into which the water of or from the said river passes and out of which the water returns again into the river, either through the same mouth by which it entered such cuts or channels or by any other, shall for the purposes of the fourth, fifth, sixth, eighth, ninth, and tenth of these regulations be deemed to be a part of the said river.
- Duties of constables as to regulations 13. It shall be competent for any police constable or other person authorized in writing by either of the Resident Magistrates aforesaid to enter upon any private property lying along the sides of the said river in order to ascertain that the foregoing regulations are complied with and to note any contraventions of the same; and any person obstructing any police constable or other person so authorized whilst in the performance of such duty shall for every offence forfeit any sum not exceeding ten pounds and not less than two pounds, and in default of payment shall be liable to imprisonment with or without hard labour for any period not exceeding one month. But every such constable shall announce to the occupier or some person at his residence his office and the object of his visit.

No. 28—1883.]

[September 27, 1883.

## ACT

## To Amend and Consolidate the Laws regulating the Sale of Intoxicating Liquors.

Preamble.

WHEREAS it is expedient to amend and consolidate the laws regulating the sale of intoxicating liquors: 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 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 offences committed against, or proceedings commenced or pending under any of such

repealed laws, and except as to subsisting licences which shall during the interval between the coming into operation of this Act and the expiration of such licences respectively, be deemed and judged of in respect of the sales and dealings which they shall be held to authorize, and the liabilities which the holders thereof shall incur, as if the said repealed laws still remained in force.

2. Nothing in this Act shall apply

Exemptions from  
operation of this Act

- (1) To any person selling any spirituous or distilled perfume or perfumery ;
- (2) To any apothecary, chemist, or druggist who may administer or sell any spirituous, distilled, or fermented liquors, for medicinal purposes ;
- (3) *(1) To any person engaged in agriculture who may sell, upon the property occupied by him, intoxicating liquors in quantities of not less than seven gallons at one time, such liquors being the produce of grapes or other fruits respectively of his own growth or purchased or procured by him : Provided that such liquors shall be distilled or made upon such property and shall not be drunk or consumed on his premises.*
- (4) To any such person as in the last preceding sub-section mentioned, who may sell any liquors, being such produce as aforesaid, upon any public market, or to any licensed dealer ;
- (5) To any sheriff, messenger, or other officer acting under the authority of any Court, Judge, or Magistrate ; or to any officer of Customs, in the exercise or discharge of his duty ;
- (6) To any auctioneer selling by auction liquor in quantities not less than such as are authorized to be sold under a wholesale licence belonging to a licensed dealer upon the licensed premises of such dealer, or belonging to any such person as is mentioned in sub-section (3) upon the property occupied by such person.
- (7) Any person appointed by the President of the Legislative Council and the Speaker of the House of Assembly, as caterer of the refreshment rooms of the Houses of Parliament, who shall sell any spirituous or other liquors, subject to such rules and conditions as may be laid down by the Joint Refreshment Room Committee of the Council and Assembly respectively. <sup>(2)</sup>

3. In this Act, if not inconsistent with the context :

Interpretation  
clause.

“Intoxicating liquor” or “liquor” means any spirits, wine, ale, beer, porter, cider, perry, or other fermented, distilled, spirituous or malt liquor of an intoxicating nature, and every drink with which any such liquor shall have been mixed.

<sup>1</sup> Superseded by § 13, Act 44, 1885.

<sup>2</sup> Printed as amended by § 2 Act 44, 1885, *infra*.



No. 28—1883

“Licence” means any licence for the sale of liquors granted under this or any other Act now or hereafter to be in force relating to the sale of such liquors.

“Licensing Court” or “Court” means the Licensing Court of the district wherein a licence is intended to take effect.

## LICENCES.

Licence to be issued by Distributor of stamps.

4. The licences authorized to be granted under this Act shall be issued by the distributors of stamps, respectively, in Cape Town, and in the several districts of the Colony, and such distributors shall, in regard to the issue of such licences, and any privileges allowed or granted to the holders thereof, to be noted or endorsed upon any licence, conform to the provisions of this Act, and any regulations to be made by the Governor relating to the performance of their duties under this Act.

Fees for licences as in Schedule II.

5. For or in respect of licences granted or renewed, or transfers or removals of licences or privileges allowed to the holders of licences under and in terms of this Act there shall be payable and paid to the Public Treasury such sums of money to be collected by means of stamps as are prescribed in the second schedule hereto.

Description of licences.

6. Licences under this Act may be granted of the several descriptions following, that is to say :

- (1) Wholesale Licences.
- (2) Retail Licences.
- (3) Bottle Licences.
- (4) Temporary Licences.
- (5) Club Licences.

Definitions and provisions in regard to licences.

7. In regard to licences granted under this Act the following definitions and provisions shall apply :

- (1) A “wholesale licence” shall authorize a dealer to sell and deliver liquors in quantities of not less than five gallons if in cask, or one unbroken case containing not less than twelve reputed quart, or twenty-four reputed pint bottles, to be delivered at one time, such liquors not to be consumed in or upon the seller’s house or premises.
- (2) A “retail licence” shall authorize the sale of liquor in any quantity on the premises therein specified between the hours of six in the morning and nine at night on any day other than Sunday, Christmas Day, and Good Friday ; or between such other hours as may be fixed by the Licensing Court under the provisions of this Act ; such liquors according to the conditions of the licence to be consumed in or upon the seller’s house or premises, or otherwise.
- (3) (1) A “bottle licence” shall authorize the sale on the premises therein specified, but not elsewhere, of liquors in bottles, and not to be drunk or consumed in or upon

<sup>1</sup> See Act 44, 1885, § 3.

the premises for which the licence is granted. Under any such licence not less than one reputed quart bottle of liquor made in the Colony, nor less than one bottle of imported liquor of any size shall be sold at one time to one person.

- (4) A "temporary licence" shall authorize the dealer, being also the holder of a retail licence, to sell liquors by retail at any place of recreation or public amusement for the period stated therein, subject to such restrictions and conditions as the Resident Magistrate authorizing the issue of the same shall think fit.
- (5) <sup>(1)</sup> A "club licence" shall authorize the sale and supply of liquor in any quantity to the members of a club, at any time, for consumption on the premises; provided that no place of accommodation, entertainment or refreshment shall be considered a club where others than members or the invited guests of such members are allowed entry or accommodation, or where others than members are charged or permitted to pay for any refreshment or accommodation they may obtain therein.

8. No licence shall be granted or transferred to any person or to the wife of any person

Who disqualified from obtaining licences.

- (1) Holding office or appointment under Government;
- (2) Occupying premises of which any constable or member of a police force is the proprietor or landlord, or in which such constable or member has any interest;
- (3) Convicted of selling liquor without a licence until after a period of one year subsequent to the date of such conviction;
- (4) Licensed to sell or otherwise deal in diamonds or keeping a native eating-house in any district in which the Diamond Trade Act of 1882 is or shall hereafter be in operation.

9. No retail licence or bottle licence shall authorize the sale of liquors in any town or village otherwise than in premises having the bar entrance opening in or towards a public street or thoroughfare. No licence shall authorize the sale by auction of liquors in quantities less than such as may be sold under a wholesale licence.

Licensed places to have entrance to public street, &c.

10. Club licences may be obtained at any time upon application to the distributors of stamps, in the district in which the club premises are situated.

Club licences.

Every club licence shall be issued to the chief manager or steward of the club. No transfer of any such licence shall be necessary upon any change of any such manager or steward, but the person for the time being holding any such office shall be entitled to the privileges granted by the licence, and subject to all duties and liabilities imposed upon the holder thereof.

<sup>1</sup> See Act 44, 1885, §§ 4, 5.

No. 22—1893.

When certificate of licensing court not required.

11. No certificate from a Licensing Court shall be required in respect of the granting of the following licences :

- A wholesale licence for the sale of liquors in any municipality or in any town or village which is the seat of a Court of Resident Magistrate : or
- A licence for the sale of liquors at any railway refreshment room : or
- A temporary licence : or
- A club licence.

## WHOLESALE LICENCES.

Within short limits wholesale licences to operate.

12. Any person may upon application to the distributor of stamps obtain a wholesale licence for the sale of intoxicating liquors within the limits prescribed for any municipality, or within the limits of any town or village which shall be the seat of a Court of Resident Magistrate : and for the purposes of this section the limits of any such town or village, not being a municipality, shall if defined for the purposes of the "Villages Management Act, 1881," be such limits, and if not so defined, shall be deemed to be a circle of two miles in diameter, having the court-room of the Resident Magistrate's Court for its centre.

Certificate when licence is for place beyond Municipality, town or village.

13. No wholesale licence for the sale of liquors beyond the limits of any municipality or of any town or village as in the last preceding section defined, shall be granted except upon the certificate of a Licensing Court, as in this Act provided.

Companies.

14. Wholesale licences may be issued in the name of a company or co-partnership where two or more persons carry on business as a company or co-partnership in the same house or premises.

Number of wholesale stores within two miles, unlimited

15. Any person holding a wholesale licence may store any liquors in any number of stores or places approved of by the Resident Magistrate and described in or endorsed upon the licence, but no one of such stores or places shall be distant from any other such stores or places more than two miles.

Auctioneers.

16. Any auctioneer having a wholesale licence may sell by auction liquors at any sale held by him.

## LICENCES ON RAILWAYS.

Conditions on which licences to be issued for railway refreshment rooms.

17. Licences for the sale of intoxicating liquors at any railway station refreshment room, upon property owned or occupied by the Government of the Colony for railway purposes, shall be granted, and shall be obtainable upon and subject to the conditions following :

- (1) The lessee or occupier may apply in writing to the Commissioner of Crown Lands and Public Works, or any officer of the railway department whom the said Commissioner may appoint for that purpose, for a certificate to obtain a licence.
- (2) The said Commissioner or such officer may, if he sees fit, issue a certificate authorizing the grant of a retail licence

- by the proper stamp officer to the applicant for any period not exceeding one year to expire on the thirty-first day of March next after issue.
- (3) Every licence so granted shall be renewable by the like authority for any period not exceeding one year.
  - (4) Any licence so granted may be transferred by the authority of the said Commissioner or such officer as aforesaid.
  - (5) Under any such licence liquors shall be sold only within a reasonable time before and after the arrival or departure of any train at a station.
  - (6) Any licence granted under the authority of any such certificate may at any time be cancelled by the said Commissioner.
  - (7) For or in respect of any such licence issued for a year there shall be paid such sum as is prescribed by the said second schedule, and for any period less than a year one-twelfth of the said sum for every month for which or the part of which the said licence is granted.

#### TEMPORARY LICENCES.

18. Any person being the holder of a retail licence may apply to the Resident Magistrate for a certificate authorizing the distributor of stamps to issue a temporary licence for the sale of liquors at any place of recreation or amusement.

Place of recreation.

19. The Resident Magistrate to whom any such application shall be made may, if he shall see fit, grant a certificate wherein shall be stated the name of the applicant, the place where such temporary licence is to be granted, the number of days during which sales are authorized, and such restrictions and conditions as such Magistrate may impose: the time mentioned in any such certificate may be extended, but the licence shall not endure for longer than twenty-one <sup>(1)</sup> days in all.

What Magistrate's certificate must specify.

#### NATIVE LOCATIONS AND AREAS.

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," or any Act hereafter to be passed for regulating native locations except with the permission of the Governor.

No licence in Native Locations without permission of Governor.

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.

Governor may define area within which no licence shall issue.

<sup>1</sup> Printed as amended by Act 44, 1885, § 6.

No. 28--1883. 22. Save and except as to any liquor administered medicinally  
 Liquor not to be supplied to Native Locations, &c. 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.

#### RESTRICTIONS UPON THE ISSUE OF NEW LICENCES.

How objections to increase of licence to be made. 23. (1) The voters registered for the election of members of Parliament within the limits of any field-cornetcy, municipality, or place where the "Villages Management Act, 1881," is in operation, or, where a municipality is divided into wards, within the limits of any ward, may not less than four days before the annual meeting of the Licensing Court lodge with the Resident Magistrate of the district in which such voters reside, a memorial or memorials objecting to the increase of the number of licensed premises for the sale of liquor under any retail licence or bottle licence or under licences of both descriptions within the limits of such field-cornetcy, municipality, or place, or ward of a municipality as the case may be.

What provisions applicable. 24. With respect to every such memorial the following provisions shall apply :

- (1) It may be in the form marked A in the third schedule, or to the like effect.
- (2) It shall contain the name in full of every voter signing the same, corresponding to the name as registered on the list of registered voters, and his place of residence or business.
- (3) Annexed or appended to such memorial there shall be a declaration signed by the person by whom the signatures were collected in the form as nearly as is material marked B in the said third schedule.

False representations, &c. 25. Any person who shall

- (1) Falsely append the name of any other voter to any such memorial ; or
- (2) Make any declaration in form or in substance corresponding to the form marked B in the third schedule containing any wilfully false statement,

shall be liable, upon conviction, to a penalty not exceeding fifty pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding six months, or to both such penalty and such imprisonment.

Magistrate to strike off names not being those of registered voters. 26. The Resident Magistrate receiving any such memorial shall cause the names appearing thereon to be compared with the list of registered voters, and he may strike off therefrom any names which

<sup>1</sup> See § 12, Act 44, 1885, *infra*.

are either illegible, or do not appear in the list of registered voters, or do not correspond with any name in such list, and shall ascertain and certify the number of names of registered voters appearing properly to be appended to such memorial: Provided that any person whose name has been so struck off may appear in person before the Resident Magistrate, or before the Licensing Court, and upon satisfying such Magistrate or court that he is a registered voter, and signed the said memorial, his name may be restored: and any person may, in like manner, appear and have his name withdrawn, or, if forged or improperly appended, struck off.

No. 25—1883.

27. If it shall appear that such a majority (as hereinafter mentioned) of the voters registered within the limits of the field-cornetcy or other locality in question object to the grant of any new licence increasing the number of licensed premises as aforesaid, then it shall not be competent for the Licensing Court to grant any certificate which shall have the effect of increasing the number of licensed premises of the description referred to in the memorial or memorials

Majority required to prevent increase of licences.

- (1) During one year then ensuing, if such majority shall exceed one-half of the voters then registered within such limits.

## LICENSING COURTS.

28. A court for the consideration and determination of applications for or relating to the granting, renewal or transfer of licences for the sale of intoxicating liquors is hereby constituted, and shall be held in and for each district of the Colony.

Licensing Court.

Such court shall consist of

- (1) The Resident Magistrate, or in the absence of the Resident Magistrate, the Assistant Resident Magistrate (if any).
- (2) The mayor, or chairman of any or each municipality within the district, unless disqualified under the provisions of this Act, and in case such mayor or chairman shall be disqualified, the council or commissioners of the municipality may elect one of their number instead.
- (3) Three members of the Divisional Council of the division which includes such district, to be chosen in the manner provided by this Act.
- (4) Such Justices of the Peace, not being more than two in number, as the Governor may appoint to be members: Provided that no Justice of the Peace being in the Civil Service shall be so appointed, or shall continue to be a member if he shall enter the Civil Service after appointment.

Constitution thereof.

No. 28—1883.

Who disqualified  
from being members  
of licensing court.

29. The following persons shall be disqualified for election or appointment, or if elected or appointed, of continuing, as members of a Licensing Court, that is to say :

- (1) The holder of any licence for the sale of intoxicating liquors.
- (2) Any brewer or distiller, other than an agriculturist distilling only from fruit the produce of his own property or purchased by him.
- (3) Any person interested or concerned in partnership with any holder of such licence as aforesaid, or with any brewer or distiller.
- (4) Any paid officer, or agent of any co-partnership or society interested in the sale or the prevention of the sale of intoxicating liquors.
- (5) Any person employed, directly or indirectly, as an agent for the purpose of making application for a licence for any other person, or any partner of any person so employed as an agent.

And no person being the owner or landlord of, or the agent or manager of or a partner in, any trade or calling carried on upon any premises licensed or about to be licensed, or the holder of any mortgage bond upon such premises, shall take part in the discussion or adjudication upon any application for or relating to any licence for such premises.

Penalty.

Any person so disqualified acting or sitting as a member of a Licensing Court shall be liable to a penalty not exceeding fifty pounds for every offence.

Divisional Council  
to elect three mem-  
bers of court.

30. Before the last day of February in every year, and as often as a vacancy shall occur, the Divisional Council of the division which includes one or more districts may at a duly convened meeting thereof, by a majority of the votes of the members present elect three members of such council to be members of the Licensing Court for the district, or three members for each district in case more than one district shall be included in such division.

Annual appoint-  
ment of J. P.'s as  
members.

31. The Justices of the Peace to be appointed members of the Licensing Court by the Governor as aforesaid shall be appointed annually, or on the occurrence of any vacancy.

Duration of office.

32. Every member of the Divisional Council so elected, and every Justice so appointed as aforesaid, shall hold office until the last day of December in the year in which he is appointed, unless his office shall be vacated by death, resignation, ceasing to be a member of such council, or Justice of the Peace, or to reside in the division or district, as the case may be.

Days of meetings  
of the court.

33. A meeting of the Licensing Court open to the public shall be held in each district on the first Wednesday in the months of March and September in each year, for the purpose of taking into consideration all applications for the granting of such licences as

require a certificate from such court, to authorize their issue, and for the renewal, transfer or removal of any licences for or in respect of which proper notice shall have been given.

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The meeting to be held in the month of March shall be the “annual licensing meeting.”

34. Three members of a Licensing Court shall form a quorum for the dispatch of business.

Quorum.

If a quorum be not present at any licensing meeting on the day appointed or advertised, or at any adjournment of a meeting on the appointed day, the said meeting or adjournment shall stand adjourned from day to day until a quorum can be present to hold such meeting.

Adjournment in absence of quorum.

35. Any meeting of a Licensing Court may be adjourned from time to time as such court may determine.

Adjournment generally.

36. The Resident Magistrate shall, if present, preside at every meeting of the Licensing Court; in the absence of the Resident Magistrate, the Assistant Resident Magistrate (if any) shall preside; and in case there shall be no such Assistant Magistrate present, the members present shall elect one of their number to preside.

President of court.

The officer or person presiding shall in case of an equality of votes have a casting as well as a deliberative vote.

37. The Magistrate or member presiding at any meeting of the Licensing Court shall, within seven days, cause to be forwarded to the Treasurer of the Colony and the distributor of stamps of the district, a list signed by him specifying the names and places of residence of all persons to whom certificates shall have been granted by the court for obtaining or renewing licences, and the nature of the licence authorized to be granted or renewed.

Lists of certificates to be sent to distributor of stamps.

38. The Licensing Court may, as a condition of the granting of any retail licence, require that the holder thereof shall, during the continuance of his licence, provide for the accommodation of travellers such number of rooms and stabling for such number of horses as such court may deem necessary for the convenience of the public: and may also require such holder to make provision for sufficient means of egress in case of fire, and for proper drainage and sanitary arrangements and conveniences upon the licensed premises.

Power to insist on accommodation for travellers.

39. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting grant to the holder of any retail licence, on payment of such additional sum as may be prescribed in that behalf, an extension of the time prescribed for the sale of liquors until not later than twelve o'clock at night, or authority to keep open his licensed house during such hours of Sunday<sup>(1)</sup>, Christmas Day, or Good Friday as such court shall think fit for the refreshment of *bona fide* travellers. Such extension or authority shall respectively be termed “Midnight privileges” and “Sunday privileges.”

“Midnight” and “Sunday” privileges

<sup>1</sup> But see Act No. 44, 1885, §§ 1 and 7. Also § 79 of this Act.



- No. 28 - 1883. Evidence before court on oath. 40. When any Licensing Court shall deem it necessary to take evidence respecting any question to be determined by such court, such evidence shall be given on oath (which oath the person presiding is hereby authorized to administer) and shall be filed of record in the office of the Resident Magistrate of the district.
- Perjury. 41. If any person shall, upon any examination before any Licensing Court, wilfully and corruptly give false evidence, such person shall be deemed and taken to be guilty of perjury.

## APPLICATIONS FOR OR RELATING TO LICENCES.

- When and how applications for licences to be made. 42. On or before the last day of the months of January and July any person desiring to obtain at the next licensing meeting
- A wholesale licence in respect of the issue of which a certificate is required from the Licensing Court: or
  - A retail licence in respect of the issue of which such certificate as aforesaid is required: or
  - A bottle licence: or
  - The renewal of any licence other than a licence in respect of which notice is not by this Act required to be given: or
  - The removal of any licence from the premises to any other premises in the same district: or
  - The transfer of a licence by the holder to any other person, may make application, in writing, addressed to the Resident Magistrate of the district setting forth the nature or description of the licence required to be obtained, renewed, removed or transferred, as the case may be, and of the place, stating the number or name (if any) of the house, and the street or road where the business is intended to be or is being carried on, or in case of the transfer of a licence the name of the person to whom the same is desired to be transferred.
- Magistrate to post notice of applications 43. The Resident Magistrate receiving any such applications as are in the last preceding section mentioned shall cause a notice to be posted in some conspicuous place at or in his office and to be published in some newspaper circulating in the district in which the court is held, containing the name of the applicant, nature of the application, description of the premises referred to in the application, the day on which and the place where the court will sit for hearing such application.
- Such notice shall be posted and published fourteen days at least before the sitting of the said court, and a copy thereof shall be sent by post or otherwise to every member constituting such court: Provided that no licence authorized to be granted by any such court shall be capable of being questioned by reason that any such notice was not duly posted, published, or sent as aforesaid.
- Cases in which Attorney-General may authorize applications not made in proper time to be considered. 44. In case any application for the granting, removal, renewal, or transfer of any licence which ought, under the provisions of this Act, to have been made on or before the last day of January or July, as the case may be, shall through inadvertence not be made

in due time, but shall be made within ten days after the appointed day, the Attorney-General may, if he shall see fit, authorize the consideration of such application by the Licensing Court at the next meeting or any adjournment thereof, upon condition of payment in case the application shall be granted or allowed of such sum as the Attorney-General may determine, not being less than five pounds, and upon such terms, as to notice to be given, as the said Attorney-General may prescribe.

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Such sum of money shall be denoted by stamps, to be affixed to the licence, issued and cancelled as by law required.

45. In case the applicant for any licence shall die, or shall become insolvent after applying for the grant or renewal of a licence, but on or before the day for considering such application by the Licensing Court, such court may, if it shall think fit, grant a certificate for such licence to the widow of any deceased applicant, or to the executor, curator bonis, or trustee, as the case may be, of the estate of such applicant.

In case of death, &amp;c., of licensed person.

46. Any chief constable or member of a police force, and any person residing in the city, town, village, or field-cornetcy wherein a licence or a renewal of a licence is applied for, may object in writing or personally at any meeting of a Licensing Court to the granting or renewal of such licence.

Who may object to licences or renewals.

## OBJECTIONS.

47. The objections which may be taken to the granting of a licence may be one or more of the following :

What objections may be made.

- (1) That the applicant is of bad fame or character, or of drunken habits, or has previously forfeited a licence, or has been convicted of selling liquor without a licence within a period of three years ; or
- (2) That the premises in respect of which the application is made are out of repair, or have not reasonable accommodation.
- (3) That the licensing thereof is not required in the neighbourhood, or that the premises are in the vicinity of a place of public worship, hospital, school or native location, or that the quiet of the place in which such premises are situated will be disturbed if such licence is granted.
- (4) That the number of previously licensed premises is sufficient for the requirements of the neighbourhood.

48. The Licensing Court may of its own motion take notice of any matter or thing which in the opinion of the members thereof would be an objection to the granting of a licence, or to the renewal, transfer or removal of a licence, although no objection has been made by any person.

Cases in which court may itself raise objections.

In any such case the court shall inform the applicant, and shall adjourn the further consideration of the application, should the applicant so request, for any period not less than four days in

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order that the person affected by such objection may be offered an opportunity of replying thereto.

The court shall after any such adjournment give notice in writing, signed by the president, of the cause of objection to the person affected thereby, and of the day on which the adjourned application will be considered.

Municipalities and  
Village Boards may  
object.

49. The council or commissioners of any municipality or the board of management of any village or community in which the "Villages Management Act, 1881," is in operation, may authorize any person to appear before the Licensing Court for the purpose of objecting on behalf of the inhabitants to the granting or renewal of a licence in such municipality, village or community, as the case may be.

#### RENEWAL OF LICENCES.

Renewals.

50. At the annual meeting of the Licensing Court any licensed person who has held a licence for three years or upwards in respect of the same premises shall, subject to the provisions in this Act contained and without notice, be entitled to obtain from such court a certificate authorizing the renewal of such licence: Provided that

Provisos.

- (1) Such licence has not been allowed to expire.
- (2) Has not been forfeited or cancelled, or become void from any cause.
- (3) The applicant has not been convicted of any offence against this Act or any other Act relating to the sale of intoxicating liquors during the preceding three years.
- (4) The said court may vary the conditions upon which such licence shall be renewed.

When renewal may  
be refused.

51. Upon application for the renewal of any licence the Licensing Court may refuse to grant a certificate of renewal if it shall be proved that such licence is liable to be forfeited under the provisions of this Act.

Objections to re-  
newals.

52. The objections that may be taken to the renewal of any licence may be all or any of the following:

- (1) That the applicant is of bad fame and character, or of drunken habits.
- (2) That the licensed premises are out of repair, or are not kept in a clean and wholesome state.
- (3) That the business is conducted in an improper manner and drunkenness permitted upon the licensed premises.
- (4) That the conditions upon which the licence was granted have not been satisfactorily fulfilled.
- (5) That a licensed place is no longer required in the neighbourhood.

Notice of objections  
to be lodged.

53. In case of objections to the renewal of any licence, the persons objecting shall cause notice of the intention to object and grounds of objection to be given to the applicant at least two days before the sitting of the Licensing Court. If such notice shall not

have been given, such court may notwithstanding, if it see fit, adjourn the hearing of the application to a future day, and require the attendance of the holder of the licence on such day, and may then consider the objections and determine thereon.

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54. When the renewal of any licence is refused for some reason personal to the licensed person, the Licensing Court may, if it see fit to do so, adjourn to such day not being less than fourteen nor more than thirty days after such meeting.

When licence refused for personal reasons.

Application (not being by the person so refused) for a licence of the same description as that refused in respect of the same premises may be heard and determined at such adjourned meeting.

55. In case the renewal of a licence held by any person shall be refused by the Licensing Court, and such person shall not during the preceding twelve months have been convicted of any offence against this or any other Act relating to the sale of intoxicating liquors, he shall, upon payment of a proportionate part of the cost of a licence such as then held by him, be entitled to obtain a licence for a period of three months.

Three months extension to certain persons to whom renewal refused.

#### TRANSFER AND REMOVAL OF LICENCES. (1)

56. Any person being the holder of a licence (other than a temporary or club licence) who shall during the currency thereof sell or dispose of his business or the house or premises in respect of which such licence was granted, may make application to the Resident Magistrate for a temporary transfer of such licence to the purchaser of such business or to the purchaser or lessee of such premises, as the case may be: and such Magistrate, and any two members of the Licensing Court may, if they think fit, and upon proof of payment by the applicant of the sum prescribed for such transfer, by memorandum endorsed upon the original licence, grant temporary transfer of such licence accordingly.

In case of sale, &c., of licensed premises.

57. The holder of any licence (except a temporary licence) who may desire to remove his licence from the licensed premises to any other premises in the same district not distant more than one mile, may make application to the Resident Magistrate to authorize such removal: and such Magistrate and any two members of the Licensing Court, if satisfied that to wait for the next meeting of the Licensing Court would subject such holder to serious loss or inconvenience, and if they think fit, may, upon payment of the sum prescribed, authorize such removal after notice of such application shall have been given by advertisement in a newspaper circulating in the district for not less than fourteen days, and in such other manner as may by the said Magistrate and members be directed; provided that in case objections be made to the removal of the licence to the premises proposed by any person who would be entitled to object to the granting of a licence for such premises, such removal shall not be authorized as aforesaid.

Licensed person removing to other premises.

<sup>1</sup> See Act 44, 1885, §§ 8 and 9.

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 Transferees to apply for licence at next Court.

58. Any person to whom a licence may be temporarily transferred and any person who may be authorized to remove his licence to other premises shall at the next licensing meeting apply for a licence in the same manner as if he were not a licensed person: Provided that if any such application shall be made at the September meeting of the court, and be allowed by such court, an endorsement thereof shall be made upon the existing licence, which shall, subject to such endorsement, be of force during the unexpired term thereof.

Objections to transfer, &c.

59. Any objections which may be taken to the granting or renewal of a licence may in like manner be taken to the transfer or removal of a licence.

When transfer or renewal refused.

60. In case the temporary transfer of a licence, or the removal of a licence as aforesaid shall not be ratified by the action of the Licensing Court at the next meeting upon consideration of the application then made in respect thereof, such licence shall, as to the person to whom the same was originally granted, or in respect of the premises originally licensed, as the case may be, remain unimpaired.

Holders of temporary licence in same position as person represented by them.

61. Any person to whom a licence may be temporarily transferred, or who may be carrying on or conducting the business of licensed premises as the widow, or curator bonis, or executor of the estate of any deceased person, or as trustee of the estate of any insolvent, or as approved agent of any such widow, curator, executor, or trustee, shall, until the end of the period for which the licence was granted, possess all the rights and be subject and liable to all the duties, obligations and penalties of the original holder of the licence.

Curators, Executors, Trustees, &c.

62. In case of the death of the holder of any licence, the widow (if any) or the executor of the deceased person, and failing the appointment of an executor, any curator bonis appointed by the Master of the Supreme Court for taking charge of the estate of such deceased person, or any person approved of by the Resident Magistrate, and in case of insolvency, the trustee of the estate of such insolvent, may carry on the business until the next meeting of the Licensing Court, either personally or by an agent approved of by any writing under the hand of the Resident Magistrate, without any formal transfer of the licence.

Rights of woman marrying to pass to her husband.

63. In case of the marriage of any woman who shall have obtained any licence, such licence shall confer on her husband the same privileges, and shall impose upon him the same duties, obligations and liabilities as if such licence had been granted to him originally.

#### DUTIES AND LIABILITIES OF LICENSED PERSONS AND OTHERS.

Production of licence.

64. Every holder of a licence under this Act shall produce such licence within a reasonable time after production thereof is demanded by any Resident Magistrate, Justice of the Peace, Excise Officer, Chief Constable or member of any Police Force.

65. Every licensed person, except the holder of a temporary licence or club licence, shall cause to be painted and fixed, and shall keep painted and fixed on the front of the premises in respect of which his licence is granted, in a conspicuous place, and in letters two inches at least in length, his name, with the addition of the word "licensed," and of words sufficient to express the business for which the licence has been granted. No person who is not licensed shall have any words or letters on his premises importing that he is licensed, and no licensed person that he is licensed in any way other than that in which he is duly licensed.

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Licensed persons to have name, &c., painted in front of his premises.

66. The Licensing Court may, if it shall see fit, require the holder of any retail licence in any city, town or village to keep a lamp affixed over the door of the licensed premises, or within twenty feet thereof, and lighted during such hours as such court shall determine.

Lamp may be ordered to be kept.

67. The holder of every retail licence which shall have been granted on the condition of providing accommodation to travellers, who shall fail or refuse, except for some sufficient reason to be judged of by the Resident Magistrate, to supply lodging, meals or accommodation to travellers, shall, for each offence, be liable, on conviction, to a penalty not exceeding ten pounds.

Penalty for not providing stipulated accommodation for travellers.

68. No person shall recover any sum of money or maintain any suit at law on account of any liquor sold by him on credit to any person for consumption on the premises, except in the case of liquor supplied in moderate quantities with meals to any person actually lodging with such first mentioned person.

Price of liquor consumed on premises cannot be sued for.

69. No person shall receive in payment, or as a pledge or security for any liquor or entertainment supplied in and from his licensed premises, anything except current money, cheques on bankers, or orders for payment of money.

Pledges forbidden.

The person to whom anything pledged in contravention of this section shall belong shall have the same remedy for recovering any such thing, or the value thereof, as if it had not been pledged.

Penalty.

No person shall receive payment in advance for any liquor to be supplied: Any payment so made in advance may be recovered, notwithstanding that any liquor may have been supplied subsequently to such payment.

No payment in advance.

70. It shall be the duty of the chief constable or chief officer of the police to report to the Licensing Court any licensed premises which are out of repair, or have not reasonable accommodation, or proper or sufficient sanitary or drainage requirements and any case in which the holder of a licence shall be of drunken habits, or shall keep a disorderly house.

Duties of Police.

71. Any chief constable or officer of police, or any constable or policeman authorized in writing by the Resident Magistrate, chief constable, or police officer, may, during the hours for which the premises are licensed, enter on any such premises, and inspect and examine every room and part of such premises, for the purpose

Right of entry.

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Returns to be laid  
before Licensing  
Court.

of reporting, as in the last preceding section is required, as to the state and condition of the premises.

72. At every meeting of the Licensing Court, a return shall be laid before such court by the clerk to the Resident Magistrate of the district showing:

- (1) The name of every applicant for a licence, and of every licensed person who shall, since the previous annual meeting of the court, have been convicted of any crime or offence, the nature of such crime or offence, and the penalty or punishment imposed.
- (2) In case of a previous conviction within three years, the particulars of such previous conviction.

## OFFENCES.

Offences by licen-  
sed persons.

73. The holder of any licence who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding ten pounds: that is to say, if he shall

- (1) Permit drunkenness, or any violent, riotous or quarrelsome conduct to take place upon his premises,
- (2) Sell liquor to any person already in a state of intoxication or by any means encourage or incite any person to drink liquor.
- (3) Knowingly harbour or suffer to remain on his premises any constable or policeman during any time appointed for such constable to be upon duty unless for the purpose of keeping or restoring order, or in the execution of his duty.
- (4) Suffer any unlawful game or gambling to be carried on on his premises.
- (5) Permit his premises to be a brothel, or the habitual resort or place of meeting of reputed prostitutes.
- (6) Sell or knowingly permit to be sold to any person apparently under the age of fifteen years, any description of spirits, or permit or suffer any such person to drink any such spirits upon his premises.
- (7) Keep his licensed premises open for the sale of liquor, or sell or expose any liquor for sale, during any time when he is not authorized by the licence to sell, or allow any liquors purchased before the hour of closing to be consumed on such premises.

And in the case of a second or subsequent conviction every such holder shall be liable to a penalty not exceeding forty pounds.

Offences generally.

74. Every person who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding twenty pounds: that is to say, if he shall

- (1) Wilfully mix or cause to be mixed with any liquors any

*\* or deliver or supply, or  
knowingly permit to be  
delivered or supplied  
(Act 22 of 1894)*

injurious, poisonous, or deleterious ingredient or material to adulterate the same for sale.

- (2) Sell, or keep or offer for sale any liquor with which any ingredient or material injurious to the health of persons drinking such liquor has been mixed.

75. Any person who shall contrary to the provisions of this Act sell, deal in or dispose of intoxicating liquors without a licence, or sell or offer, or expose for sale any such liquors at any place where he is not authorized by his licence to sell the same, shall upon conviction be liable to the following penalties, that is to say : Penalties for dealing without licence.

For the first offence a penalty not exceeding twenty-five pounds, and in default of payment being made or security given for the same, to imprisonment with or without hard labour for any period not exceeding three months unless such penalty be sooner paid or levied.

For a second offence a penalty not exceeding fifty pounds, and in default of payment or security as aforesaid being made or given, to imprisonment with or without hard labour for any period not exceeding six months, unless such penalty be sooner paid or levied.

For a third or any subsequent offence a penalty not exceeding one hundred pounds, and in default of payment or security as aforesaid being made or given, to imprisonment with or without hard labour for any period not exceeding twelve months, unless such penalty be sooner paid or levied ; or to both such penalty and such imprisonment.

In addition to any other penalty imposed by this section, the convicting Magistrate or Special Justice of the Peace, as the case may be, may in case of a second or subsequent conviction of any person for any offence in this section mentioned, within three years previously adjudge that such person shall, if he be a holder of a licence under this Act, or the holder of a retail shop licence, forfeit such licence, or both such licences if both be held by such person, and that the offender be disqualified from taking out any other retail shop licence during the remainder of the then current year, and also from holding any licence for the sale of intoxicating liquors for any term of years or at any time.

76. (1) The holder of any retail licence or bottle licence shall be liable to forfeit such licence Cases when licence becomes forfeited.

(1) If he shall permit any other person to manage, superintend, or conduct the business of the licensed premises during his absence for a longer period than one month without the consent, in writing, of the Resident Magistrate.

(2) If he shall, whether present in such premises or not, permit any unlicensed person to be in effect the owner of the business of the licensed premises, unless with the consent of the Licensing Court.

<sup>1</sup> See also § 11, Act 44, 1885.



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- (3) If (being the keeper of any inn or hotel) he shall fail to provide and maintain the accommodation required according to the conditions prescribed by the Licensing Court granting such licence.
- (4) If (except in the case of fire, tempest, or other cause beyond his control) he shall allow the licensed premises to become ruinous or dilapidated.
- (5) If he shall permit his premises to be a brothel, or if he shall sell liquor to any person already in a state of intoxication.
- (6) If he shall be twice convicted of selling, offering or keeping for sale any adulterated liquor.
- (7) If he shall be convicted of any offence under this Act, and a previous conviction within the preceding six months of the same or any other offence under this Act shall be proved.
- (8) If he shall be convicted of any crime and sentenced to imprisonment without the option of a fine.

What need not be proved in prosecutions.

77. In any proceeding relative to any offence under this Act it shall not be necessary to show that any money actually passed, or that any liquor was actually consumed, if the Court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of liquor was about to take place; and proof of consumption, or intended consumption of liquor, on licensed premises by some person other than the occupier, or a servant in such premises, shall be evidence that such liquor was sold to the person consuming or about to consume the same by or on behalf of the holder of such licence.

If any vendor of ginger or other beer, soda water, lemonade, or the like drinks, not being duly licensed, shall supply liquors to mix or be taken with such drink, he shall be deemed to have sold such liquor.

Who may be refused admission to licensed premises.

78. Any licensed person may refuse to admit to or may turn out of the premises in respect of which his licence is granted any person who is drunk, or who is violent, quarrelsome or disorderly, whether drunk or not, and any person whose presence on his premises would subject him to a penalty under this Act, and may refuse to serve any such person with liquor. Any such person, who upon being requested by such licensed person, or his agent, or servant, or any constable or policeman, to quit such premises, refuses or fails to do so, shall be liable to a penalty not exceeding five pounds; and all constables or policemen are required on the demand of such licensed person, agent or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be reasonably necessary for that purpose.

Lodgers and travellers.

79. (1) Nothing in this Act contained shall

- (1) Preclude any person who is licensed to sell liquor to be

<sup>1</sup> See § 39.

consumed on the premises from selling such liquors at any time to any person lodging in his house or to any *bonâ fide* traveller.

- (2) Preclude the sale at any time at any railway station of liquors to persons arriving at or departing from such station by railroad, by any person duly licensed in that respect.

A person for the purposes of this Act shall not be deemed to be a *bonâ fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare. "Traveller" defined.

80. Every person who, by falsely representing himself to be a traveller or a lodger, buys or obtains, or attempts to buy or obtain at any premises any liquor during the period for which such premises are to be closed under this Act or otherwise, shall upon conviction be liable to a penalty not exceeding five pounds. False representations.

81. Where any riot or tumult occurs or is expected to occur in any place, the Resident Magistrate, or any two Justices of the Peace, may order any or every licensed person in or near such place to close his premises during any time which such Magistrate or Justices may see fit. Closing during riot, &c.

82. Any person acting by order of any Resident Magistrate or two Justices of the Peace may use such force as may be necessary for closing such premises: Any person resisting or obstructing the execution of any such order, and any licensed person selling liquor in contravention of such order, shall upon conviction be liable to a penalty not exceeding fifty pounds. Force may be used.

83. Any constable or member of a police force may demand the name and address of any person found on premises in which he seizes or from which he removes any liquor under the provisions of this Act, and if such person shall fail upon such demand to give his name or address, or shall give a name or address which the constable, or other person demanding the same, has reasonable grounds to believe is false, he may apprehend such person without warrant, and take him as soon as possible before a Resident Magistrate or Justice of the Peace. Any such person who fails to give his name and address when so demanded, or gives a false name or address, shall, upon conviction be liable to a penalty not exceeding five pounds. Persons found on premises when seizure made, to give name and addresses.

84. In any proceeding against any person for selling, or allowing to be sold, any liquors without a licence, such person shall be deemed to be unlicensed unless he shall produce his licence or give other satisfactory proof of his being licensed. The fact of any person not holding a licence having any sign or notice importing that he is licensed upon or near his premises, or having a house or premises fitted up with a bar or other place containing bottles, casks, or vessels, so displayed as to induce a reasonable belief that Penalty.

Evidence of being unlicensed.

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liquor is sold or served therein, or of there being on such premises liquor concealed, or more liquor than is reasonably required for the persons residing therein, shall be deemed *prima facie* evidence of the unlawful sale of liquor by such person.

Penalties for contravention of Act.

85. Any person convicted of contravening any of the provisions of this Act for or in respect of which no penalty is specially provided, shall be liable 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; and when a penalty has been provided for any offence without any period of imprisonment in default of payment thereof then the person convicted of such offence shall be liable

To imprisonment with or without hard labour not exceeding one month if the penalty do not exceed five pounds; or

To imprisonment with or without hard labour not exceeding three months if the penalty exceed five pounds;

Unless such penalty be sooner paid.

#### JURISDICTION OF RESIDENT MAGISTRATES AND JUSTICES OF THE PEACE.

Magistrates to have jurisdiction.

86. All offences against this Act shall be cognizable before the Resident Magistrate, or any Special Justice of the Peace within whose jurisdiction such offences shall have been committed, and any such Resident Magistrate or Special Justice of the Peace may impose the penalties respectively by this Act provided.

Warrants to search.

87. Any Justice of the Peace, if satisfied by information on oath that there is reasonable ground to believe that liquor has been or is being sold or kept for sale at any place, whether a building or not, in which or where such liquor is not authorized to be sold, or in any vehicle, may grant a warrant under his hand by virtue whereof it shall be lawful for any constable or member of a police force at any hour within a time to be stated in such warrant, or if no time be stated, within fourteen days from the date thereof, to enter, and if need be by force, the place or vehicle named in the warrant, and every part thereof, and search for liquor therein, and to seize and remove any liquor found therein which there is reasonable ground to believe or suppose is in such place or vehicle for the purpose of unlawful sale, and the vessels containing such liquor.

Forfeiture of seized liquors.

88. In the event of any person being convicted of selling or keeping for sale any liquor which he is not authorized to sell, any liquor seized under the authority of this Act and the vessels containing such liquor shall be forfeited and sold and the proceeds thereof paid into the Public Treasury.

Power to forbid selling by licensed persons.

89. The Resident Magistrate of any district may by an order in writing, forbid the selling of liquor to any person who

Shall within the space of three months have been thrice convicted of drunkenness, or, who having been twice so convicted shall also have been convicted of assault;—or

By excessive drinking of liquor misspends, wastes, or lessens his estate, or greatly impairs his health, or endangers the peace of his family.

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Every such order shall be in force during such time as the said Magistrate may determine, not however exceeding twelve months, in the district wherein the same was granted and in any other district into which such person may remove or be. Every licensed person who shall with a knowledge of such prohibition sell to any such person any liquor, and every other person who with such knowledge shall give to, purchase or procure for such prohibited person any liquor shall on conviction be liable to a penalty not exceeding five pounds, in respect of each offence.

#### MISCELLANEOUS PROVISIONS.

90. For the purposes of this Act Cape Town and the district thereof and the Cape district shall be deemed and taken to be one district.

Cape Town and  
Cape District one  
district.

91. Any licensed person being the keeper of any inn or hotel, to whom any person shall be indebted for board or lodging, or for the keep or expenses of any horse or other animal left with or standing at livery in the stables of such licensed person, shall be entitled to cause to be sold any property which may have been deposited with him or left in the house he keeps, or on the premises belonging thereto, subject to the following provisions and conditions:

Proceedings of  
landlords in regard  
to persons who have  
left without paying.

- (1) No such property shall be sold unless the same shall have been for the space of one month in the charge or possession of such licensed person without such debt being paid or satisfied.
- (2) If the address of the debtor shall be known to such licensed person, notice in writing shall be given or sent by post prepaid, informing him that unless within ten days from the date of such notice the debt be paid or satisfied, the property in question will be sold.
- (3) If the address of the debtor shall not be known, notice shall be given by advertisement in some newspaper circulating in the district at least once a week during three weeks of the intended sale.
- (4) If after the expiration of the period stated in any such notices respectively, the debt shall not be paid, the person having custody of any such property may require the messenger of the Court of the Resident Magistrate of the district to sell such property by auction.
- (5) The messenger if so required shall make an inventory of such property, and deal therewith precisely as if such property had been property attached by legal process. Such messenger shall lodge with the clerk of the Court of the Resident Magistrate all documents and accounts which in

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the case of the execution of a writ he would be required to lodge, or such as the Resident Magistrate may order or require.

- (6) The messenger after payment out of the proceeds of any sale of the fees and charges due to him in respect of such sale, according to the scale allowed in civil process, and upon taxation thereof by the clerk of the Court, shall pay to the licensed person the amount due to him, including the cost of postage on, or of advertising any such notice, as aforesaid, and if there be any surplus such surplus shall be paid to the debtor.

When such person's property may be sold.

92. Any property which may have been left in charge of any such licensed person, and not reclaimed within six months, may, after notice such as is in last preceding section has been given, be sold by the messenger provided in the manner aforesaid.

Who may prosecute under the Act.

93. Any person may prosecute any offender for contravening the provisions of this Act: and in any summons or information it shall be sufficient to set forth the offence charged in the words of this Act or in similar words without inserting or negating any exception, exemption, or qualification, but any such exception, exemption, or qualification may be proved by the defendant.

Half fine may go to prosecutor.

94. The Court before which any offence against this Act shall be prosecuted may direct that any portion not exceeding one-half of any penalty imposed and recovered, shall be paid or awarded to any person who may have given such information as shall have led to the conviction of the offender; and when any prosecution shall have been conducted by any field-cornet one-half of the penalty imposed and recovered shall be awarded to such field-cornet as remuneration for his trouble in conducting such prosecution.

Levying for penalties.

95. For the purposes of levying any penalty imposed under the provisions of this Act execution may be levied upon all goods and chattels found on the premises upon or in respect of which the offence shall have been committed, whether the said goods and chattels be or be not the absolute property of the person upon whom the penalty was imposed. The provisions of this section shall not apply to goods the *bonâ fide* property of lodgers or travellers or of persons who may leave or deposit such goods for safe custody, or convenience, or for the purpose of being worked by any handi-craftsman.

Errors which may be rectified by Governor.

96. If through any accident or omission anything required by this Act to be done is omitted to be done, or is not done within the time fixed, the Governor may order all such steps to be taken as may be necessary to rectify any error or omission, and may validate anything which may have been irregularly done in matter or form, so that the intent and purpose of this Act may have effect. The Governor may also authorize the holding of a special meeting of any Licensing Court in the event of any emergency requiring that a special meeting should be held.

97. The Governor may from time to time make, alter, and revoke regulations, not being contrary to the provisions of this Act, for regulating the proceedings and meetings of Licensing Courts, prescribing the forms of licences, notices and other documents to be used, and generally for the more efficient administration of this Act.

No. 28—1883.  
Governor may frame regulations for Licensing Court.

98. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-four, and may be cited as the "Liquor Licensing Act, 1883."

When Act to come into force.

Short title.

### THE FIRST SCHEDULE.

#### ENACTMENTS REPEALED.

Number and Year.	TITLE.	Extent of Repeal.
No. 6, 1844.	Ordinance for regulating Sales by Auction.	The Eleventh Section.          The whole.
No. 9, 1851.	Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors.	
No. 10, 1860.	An Act to make better provision for the granting and withholding of Licences to Sell Wines and Spirituous and other Liquors.	
No. 2, 1868.	The Retail Wines and Spirits Act, 1868.	
No. 8, 1875.	The "Wines and Spirits Act, 1875."	
No. 11 of 1876.	An Act to amend the Law relating to the Sale of Wines and certain other Liquors by Auctioneers.	
GRIQUALAND WEST.		
No. 16 of 1879.	Ordinance for consolidating and amending the Laws relating to the Sale of Intoxicating Liquors.	
No. 19 of 1880.	"Liquor Law of 1879 Amendment Ordinance, 1880."	

### THE SECOND SCHEDULE.

Sums payable for or in respect of Licences granted or renewed, and privileges allowed under the "Liquor Licensing Act, 1883."

1. For a Wholesale Licence, to endure for one year from the date of issue thereof . . . . . Thirty pounds.

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|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| 2. For a Retail Licence at any Railway Restaurant, to endure for one year from date of issue thereof . . . . .                                             | Thirty pounds.   |
| 3. For a Retail Licence for a Refreshment Room at a Theatre, to endure for one year from the date of issue thereof . . . . .                               | Fifteen pounds.  |
| 4. For a Club Licence to endure for one year from date of issue thereof . . . . .                                                                          | Eighteen pounds. |
| 5. For a Bottle Licence for one year, ending on the last day of March, or for the renewal thereof. . . . .                                                 | Thirty pounds.   |
| 6. For a Bottle Licence for six months, ending on the last day of March, after the issue thereof                                                           | Fifteen pounds.  |
| 7. For a Retail Licence for one year, ending the last day of March, and for a renewal of any such licence, if issued in respect of any place or premises : |                  |
| (1) Within any municipality, or within five miles of the limits of a municipality . . . . .                                                                | Forty pounds.    |
| (2) Not within any municipality, or within such limits . . . . .                                                                                           | Thirty pounds.   |
| 8. For a Retail Licence for six months ending the last day of March after the issue thereof, half the sum payable for such licence for a year . . . . .    |                  |
| 9. For the allowance of midnight privileges an additional sum of . . . . .                                                                                 | Five pounds.     |
| 10. [Repealed by Act 44, 1885, § 1.]                                                                                                                       |                  |
| 11. For the removal of a Licence to other premises                                                                                                         | Two pounds.      |
| 12. For the transference of a Licence to a person other than the person to whom the Licence was granted . . . . .                                          | Two pounds.      |
| 13. A Temporary Licence—A sum to be fixed by the Resident Magistrate authorizing the issue thereof, not being less per diem than . . . . .                 | Ten shillings.   |

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THE THIRD SCHEDULE.

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A.

Form of Memorial of Registered Voters objecting to an increase in the number of licensed premises.

To the Licensing Court for the district of . . . . .

We, the undersigned, registered Voters residing within the limits of the [*Field-cornetcy, Municipality, or other area, describing it*] of . . . . . do hereby object to the increase of the number of licensed premises or the sale of liquor within the said [*field-cornetcy, or as the case may be*] under any Retail Licence [or Bottle Licence, or if the objection be to the increase of both descriptions of licence. describe both].

## SIGNATURES.

No. 28—1883.

Names in full.	Places of Residence.

## B.

Declaration to be made by the person collecting signatures to a Memorial.

I, A.B., of... do hereby declare that the persons whose names appear upon the above (or annexed) Memorial marked A, signed the said Memorial in my presence; that such persons are respectively resident within the limits of the field-cornetcy (or as the case may) of ..... and that the names of such persons appear upon the list of registered voters for the District of.....

A. B.

Witness :

C. D.

Act No. 44—1885.]

11th August, 1885.

## ACT

To Amend the Law regulating the Sale of Intoxicating Liquors.

WHEREAS it is expedient in certain respects to amend the provisions of the law regulating the sale of intoxicating liquors: 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. For the purposes of this Act the words "the said Act" shall be taken to mean the "Liquor Licensing Act, 1883;" and so much of the thirty-ninth section of the said Act and of the second schedule thereto as relates to the granting of Sunday privileges, and so much of the provisions of the said Act as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

Meaning of words "said Act" and parts repealed.

2. The second section of the said Act, providing for certain exemptions from the operation of the Act, shall be read and construed as if the following had been inserted and formed a part thereof :

Exemption from operation of the Act.

- (7) Any person appointed by the President of the Legislative Council and the Speaker of the House of Assembly, as caterer of the refreshment rooms of the Houses of Parliament, who shall sell any spirituous or other liquors,



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subject to such rules and conditions as may be laid down by the Joint Refreshment Room Committee of the Council and Assembly respectively.

Bottle licences; hours for sale between 6 a.m. and 8 p.m.

3. The Licensing Court may, in respect of any "bottle licences" granted, fix the hours during which sales under such licences may take place, not being earlier than six o'clock in the morning nor later than eight o'clock at night on any day other than Sunday, Christmas Day, and Good Friday. Under any "bottle licence" liquors may be sold in bulk in any cask or other vessel, in quantities not less than seven gallons.

All club licences terminate on 30th September, 1885.

4. All club licences then current shall cease and determine upon the thirtieth day of September, 1885, and in case of licences issued for a longer period, there shall be refunded to the licensees a proportionate amount of the sums paid for or in respect of such licences; and no club licence shall be issued under the said Act, nor if issued shall be renewed, unless the applicant shall produce a certificate from the Resident Magistrate of the district, which shall be issued subject to any regulations made by the Governor, and shall state that it has been made to appear to his satisfaction that the club in respect of which a licence is sought has been established as a *bonâ fide* club, and is a fit and proper club to receive a club licence: Provided that the granting of such certificate by any Resident Magistrate shall not be held or considered a bar to any enquiry as to whether any such club is or is not a *bonâ fide* club: Provided, further, that no club licence shall be granted to any diamond mining company or their employes, within the mining areas of Kimberley, De Beer's, Du Toit's Pan, or Bultfontein.

Renewals subject to certificate by Magistrate and regulations made by Governor.

No club licence to Diamond Mining Companies.

Penalty for contravention of club licence.

5. Any person who, under colour of a club licence, shall sell liquor to any person not being a member of such club; or any licensed person who shall contravene any condition of his licence, or who shall sell liquor to any person to whom he is not authorized by his licence to sell, shall be liable upon conviction to the penalties prescribed by the seventy-fifth section of the said Act.

Amendment of Section 19.

6. From the nineteenth section of the said Act the word "eight" shall be expunged and the word "twenty-one" inserted instead of the said word "eight."

Of section 39.

7. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting grant to the holder of any retail licence authority to keep open his licensed house during such hours of Christmas Day or Good Friday as such court shall think fit.

Provision for carrying on business in licensed premises for remainder of term of licence, under certain circumstances.

8. The Resident Magistrate and any two members of the Licensing Court may, either upon or without production of the licence, authorize any person whom they shall consider entitled to the benefit of any licence (other than a wholesale licence or club licence) to carry on the business in the licensed premises for the remainder of the term for which the licence was granted in any of the following cases:

- (1) Whenever any person to whom the licence was granted absconds or abandons the licensed premises.
- (2) If, during the currency of any licence, the holder is ejected from, or ceases to occupy, the licensed premises or his tenancy thereof is determined by effluxion of time, or by notice to quit, or by any other means except insolvency, and he neglects or refuses to transfer the licence to the person claiming to be entitled to the benefit of the licence as owner or lessor of the licensed premises.
- (3) When, in pursuance of any contract or agreement between the parties, the licensed person has agreed to transfer the licence to the person claiming to be entitled, and unjustly refuses or neglects to do so.
- (4) When any licensed person (not being the owner or lessor of the licensed premises) becomes personally disqualified, or has his licence forfeited, and such owner or lessor has not been privy to, nor a consenting party to, the act or default of his tenant, and has the legal right to eject the tenant from such premises, or such tenant agrees to vacate the licensed premises :

Provided that (except in any case where the licensed person shall have absconded) the licensed person shall have served upon him notice in writing of the intention to apply for the authority sought, stating the grounds upon which the application is made, and the time and place where it will be considered, at least two days before the time therein fixed.

9. In any case in which the holder of any licence who shall not be the owner of the licensed premises shall make application under the said Act for the removal of his licence from the licensed premises to any other premises or for the transfer or temporary transfer of the licence from such holder to any other person, such application shall not be considered unless proof be given that at least two days' notice in writing has been given to the owner of the premises or lessor of the applicant when the lessor is not the owner, stating the nature of the intended application, and the time and place when it will be considered.

Transfer of licences.

10. Upon application and upon production of a certificate signed by any field-officer commanding in either the Cape Mounted Riflemen or the Cape Infantry, it shall be lawful for any Resident Magistrate without claiming the payment of any sum of money, to grant to the applicant producing such certificate a licence to be called a regimental canteen licence, and thereupon the person applying shall be entitled and authorized at any time or place during the period specified in such certificate to sell in any quantity any intoxicating liquors to any member of the force in which the said field-officer holds command, but to no other person whatsoever: Provided that every certificate shall specify and set forth

Licence for Regimental Canteen upon certificate of Commanding Officer of certain defence forces

Details of certificate.

- (1) The name of the applicant ;

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(2) That the applicant is a fit and proper person to receive and hold the licence required ;

(3) The period during which the licence is recommended to be granted to the applicant ;

Penalty for sale to person not member of force.

and provided, further, that any person holding such regimental canteen licence who shall sell intoxicating liquor to any person not being a member of the said force, shall be liable on conviction to the penalties prescribed in the seventy-fifth section of the said Act as though he were convicted of dealing in or disposing of intoxicating liquors without a licence. Any such regimental canteen licence may at any time be cancelled by the Resident Magistrate on the recommendation of such field-officer as aforesaid.

Manager of licensed business subject to same penalties as holder of licence.

11. Any person who shall at any time be lawfully managing, superintending or conducting the business of the holder of any licence under the said Act or this Act shall be subject and liable to the same duties, obligations and penalties as such holder : provided that nothing herein contained shall be taken to relieve such holder from any duties, obligations or penalties to which he may by law be subject or liable.

Wards in Cape Town

12. For the purposes of the twenty-third section of the said Act the several districts of the Cape Town Municipality, defined in pursuance of the fifth section of the Cape Town Municipality Act 1882, shall be deemed and taken to be wards of the said municipality.

Farmers may sell their own produce in quantities of not less than eight gallons.

13. Nothing in the Liquor Licensing Act, 1883, shall apply to any person engaged in agriculture who may sell upon the property occupied by him intoxicating liquors in quantities of not less than eight gallons at one time, such liquor being the produce of grapes or other fruits respectively of his own growth or procured by him or shall remove such spirits from the place of distillation for the purpose of trading and who shall sell such spirits in quantities not less than eight gallons elsewhere than on his farm, or in any public market, or to any licensed dealer : Provided that such liquors shall be distilled or made upon his farm premises, and shall not be drunk on or consumed on such premises except by persons in his employ.

Sunday privileges to be continued during currency of existing licences.

14. Notwithstanding anything contained in this Act, any licensed person who shall have been granted Sunday privileges, and shall have paid the sum prescribed by the said Act in respect thereof, shall be entitled to such privileges during the currency of his licence.

Title.

15. This Act shall be read as one with the "Liquor Licensing Act, 1883," and may be cited as the "Liquor Licensing Act Amendment Act, 1885."

CAPE OF GOOD HOPE  
STATUTES

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1652-1886

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