

STATUTES



OF THE

CAPE OF GOOD HOPE,

PASSED BY THE

FIRST PARLIAMENT

DURING THE

SESSIONS 1854—1858.

TO WHICH ARE PREFIXED THE
LETTERS PATENT AND ORDER IN COUNCIL CONSTITUTING A
PARLIAMENT FOR THE COLONY.

CAPE TOWN:
SAUL SOLOMON AND CO., STEAM PRINTING OFFICE.

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CAPE OF GOOD HOPE STATUTES.

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 :

*Letters Patent,
May 23, 1850.*

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

*Letters Patent,
May 23, 1850.*

A Parliament to be established at the Cape of Good Hope.

Constitution of Legislative Council and House of Assembly;

Under such regulations prescribed by Ordinance to be passed by present Legislative Council.

Chief Justice to preside over Legislative Council.

Constitution Ordinances 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.

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 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 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 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.

*Letters Patent,
May 23, 1850.*

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.

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, Baronet.

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

Recital of Letters Patent.

*Order in Council,
March 11, 1853.*

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 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:

*Order in Council,
March 11, 1853.*

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:"

Confirmation of Ordinance of April 3, 1852.

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:

With certain amendments.

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.

[SCHEDULE REFERRED TO IN THE FORE-
GOING 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.

Establishment of a Parliament within the Cape of Good Hope, to consist of the Governor, a Legislative Council, and House of Assembly.

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, 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 and 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 Ordinance.

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 elective members; and the said Chief Justice (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.

Constitution of the Legislative Council.

3. And be it enacted that five members of the said Council shall form a quorum for the dispatch of business; and all questions arising in the said Council shall be decided by a majority of votes of the members present other than the presiding member; but when the votes shall be equal, the presiding member shall have the casting vote.

Quorum of Legislative Council.

4. And be it enacted that of the fifteen elective members of the said Council, eight shall be elected by the majority of the votes taken, as hereinafter mentioned, of the voters in and for the following electoral divisions of the said colony collectively, that is to say, the divisions of the Cape (exclusive of the city of Cape Town), Stellenbosch, Caledon, Swellendam, George, Beaufort, the Paarl, Worcester, Malmesbury, Clanwilliam, and the city of Cape Town (including the municipality of Green Point), which divisions shall, for the purposes of this ordinance, constitute and are hereinafter collectively referred to as the western districts; and the remaining seven of the said members shall be elected by the majority of votes so taken of the voters in and for the following electoral divisions of the said colony collectively, that is to say, the divisions of Albany (exclusive of the town of Graham's Town), Uitenhage, Port Elizabeth, Fort Beaufort, Victoria, Albert, Somerset, Graaff-Reinet, Cradock, Colesberg, and the town of Graham's Town, which divisions shall, for the purposes of this ordinance, constitute and are hereinafter collectively referred to as the eastern districts.

When votes equal, presiding member to have the casting vote.

Elective members of Council to be chosen: eight for certain districts called the Western districts, and seven for certain other districts called the Eastern districts.

5. And be it enacted that of the fifteen members first elected of the said Council, eight, that is to say, four of those elected for the western districts and four of those elected for

First members of Council how to vacate their seats

Constitution Ordinance.

the eastern districts respectively, shall vacate their seats at the expiration of five years from the date of such first election, and the members who shall so vacate their seats shall be those of the members elected for the western districts and eastern districts respectively who have been elected by fewest votes; and in case, by reason of any such members having been elected by an equal number of votes, it be uncertain which of such members shall vacate his seat, the Governor shall cause such question to be determined by lot among such members elected by an equal number of votes, such lot to be drawn in the presence of one of the judges of the Supreme Court, and of such members or their agents, authorized in writing (in case such members or agents think fit to attend); and the remaining seven members shall vacate their seats at the expiration of ten years from the date of such first election; and upon the vacating of their seats by such eight members and such seven members respectively, there shall be elected for the western districts and eastern districts respectively a number of members of the said Council equal to the number of members elected for such districts respectively whose seats have become vacant, and the members to be so elected shall hold their seats for ten years from the date of their election; so that all the elective members of the said Council, save the aforesaid eight members of the fifteen first elected, shall hold their seats for the term of ten years, and so that there shall be an election of eight members and an election of seven members alternately, at the end of every five years, for ever: Provided that every member vacating his seat under the provisions of this section shall be eligible to be re-elected, and provided that nothing herein contained shall prevent the Governor from at any time dissolving the said Council, under the power hereinafter in that behalf contained.

6. And be it enacted that the House of Assembly of the Cape of Good Hope shall consist of 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 dispatch 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.

7. 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

Eight members and seven members to be elected alternately for ever.

Number of members of the House of Assembly.

Quorum of the same.

When votes equal, presiding member to have the casting vote.

Electoral divisions.

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 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.

Constitution Ordinance.

Cape Town to include Green Point.

Boundaries of the electoral divisions.

8. 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 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

Who qualified to be registered as voters, and to vote at elections of members of the Council and of members of the Assembly.

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.

Constitution Ordinance.

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.

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.

Cape Town and Graham's Town not included in this or any of the four next succeeding sections.

Civil commissioner to draw out, at or about the same time, lists of claimants.

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,—

Form of such lists.

“ Division of —.”

Form of notice to be prefixed to such lists.

“ 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.

“ Given under my hand, this — day of —, 185—.
(Signed) “ A. B.

“ Civil Commissioner for the division of —.”

Civil commissioners to give notice to claimants, persons objected to, and persons objecting.

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.

Constitution Ordinance.

20. And be it enacted that upon the day appointed for commencing to take the poll for members of the Legislative Council at 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 section of this ordinance described, certified under the hand of the civil commissioner to be a correct copy, and 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.

An officer to attend at every polling-place.

What lists such officer is to be furnished with.

21. 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 claim shall

Officer at polling-place to hear and determine claims and objections.

Divisional lists to be rectified in conformity with such determination.

Constitution Ordinance.

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 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.

Copy of all such rectified lists to be preserved.

Governor, when needful, may appoint for any polling-place two officers instead of one.

List of voters for Cape Town and Graham's Town, how to be made.

22. And be it enacted that the list 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 *Gazette*.

Persons appointed to make out such lists respectively, to make out lists of resident householders from the municipal records.

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.

When lists of resident householders obtained, other persons claiming to be voters to receive notice to make their claims.

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 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.

Constitution Ordinance.

Manner of making claims.

25. And be it enacted that the person so nominated as aforesaid and attending at such 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.

Claimants attending in person to have their names taken down.

26. 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 names of claimants and resident householders shall be all received, copies of the several lists to be posted for not less than seven days.

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 last-mentioned section contained shall, *mutatis mutandis*, be applicable and be used.

When several lists posted, notice thereof shall be given, as well as notices similar to those in the 14th section mentioned.

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

Notice of revision of the general lists for Cape Town and Graham's Town, how to be given.

Constitution Ordinance.

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.

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.

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.

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

Resident magistrate to revise the voters' lists for Cape Town and Graham's Town.

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.

Constitution Ordinance.

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 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.

Lists for Cape Town and Graham's Town as revised, to be kept in the offices of the resident magistrates.

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 proclamation to command that the returning officer to be by him appointed for each of the said electoral divisions 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.

Votes for members of the Legislative Council to be called for, and polling places to be appointed.

33. 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

Qualification of members of the Legislative Council.

Constitution Ordinance.

property situate within the districts of this colony, western or eastern, as the case may be, for which he shall be elected, 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 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.

Requisition to candidates.

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 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 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.

No person to sign more than one requisition.

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.

Governor to require persons who have received and accepted such a requisition, to transmit the same as directed.

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 to nominate each a scrutineer to examine lists of voters.

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.

Constitution Ordinance.

37. 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 western districts, and such three of the scrutineers nominated by the candidates for the 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 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.

Lists of candidates to be published.

How committees of scrutineers to be appointed.

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 person, shall be entitled to 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.

Persons on registered lists entitled to vote.

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.

Commencement and continuation of poll.

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

The votes for members of Legislative Council may be distributed amongst the candidates, as the voter pleases.

Constitution Ordinance.

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 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.

Manner of voting for members of the Legislative Council.

41. 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.

No inquiry at time of polling, except as to the identity of the voter, and whether he has voted before at the same election.

42. And be it enacted that no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows, that is to say: that the officer taking the poll 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 voter at the time of tendering his vote, and not afterwards, the following questions, or either of them, and none other:

Firstly. Are you, to the best of your knowledge and belief, the same person whose name appears as A.B.,

of _____, on the list of registered voters for the division of _____?

Constitution Ordinance.

Secondly. Have you already voted, either here or elsewhere, at this election for any member of the Legislative Council?

And if any person shall wilfully make a false answer to either of the questions aforesaid, he shall be deemed to be guilty of the crime of contravening this present section of this ordinance, and shall on conviction of any such offence be liable to be imprisoned with our without hard labour for any period not exceeding two years.

Punishment for false answers.

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.

44. 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 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 of the Legislative Council to be ascertained and announced by proclamation.

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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, 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 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.

Each electoral division other than Cape Town to elect two members of Assembly.

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 twenty-two electoral divisions hereinbefore mentioned, except the city of Cape Town, to elect two 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.

Cape Town to elect four members.

Voters in Cape Town may distribute their votes amongst the candidates at pleasure.

47. 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 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.

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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 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

Nomination of candidates for the House of Assembly, and proceedings thereupon.

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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

Poll for members of Assembly, where and how to be taken.

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 thereof 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 for 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 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.

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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 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.

The register to be conclusive proof of right to vote.

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.

No vote to be received except for a candidate nominated as in the 48th section mentioned.

52. And be it enacted that the provisions of the forty-second section of this ordinance shall apply to every election for members of the House of Assembly precisely as if the words thereof were here repeated, with the alteration of the term Legislative Council into the term House of Assembly, save that in the second question in such section mentioned the words "in this electoral division" shall be inserted after the word "elsewhere."

The provisions of the 42nd section, regarding the inquiries which may be made at time of polling, to apply to elections for the Assembly.

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

Lists of voters received at polling-places to be transmitted to the returning officers.

Constitution Ordinance.

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. 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, 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.

The names of the members of the House of Assembly to be published.

56. 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.

Provision for the case in which the same member is elected for more than one division.

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 forty-fifth 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.

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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 prevent it from meeting and dispatching business so long as there shall be a quorum of members present.

Provision for failure to elect.

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.

Penalty on returning officer or other person for contravening this ordinance.

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.

Governor to summon the Council and the Assembly to meet at such place and time as he shall appoint.

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 :

The oath of allegiance to be taken by the members of the Council and of the Assembly.

“ 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

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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."

Affirmation in lieu of oath in certain cases.

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.

House of Assembly to elect its Speaker.

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 the meetings of the said House.

Declaration of property qualification to be made by the members of the Legislative Council.

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:

"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 last-mentioned 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."

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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 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.

Declaration to be filed.

Penalty for sitting and voting before making the said declaration.

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, and that it shall or may be lawful for any registered voter in or for any electoral division in the colony of the Cape of Good Hope to present to the said Council, through the President, a petition alleging in regard to any member that he does not possess the proper qualification by the 33rd section of this ordinance required; and unless the party petitioning shall fail in giving the security hereinafter mentioned, the President aforesaid shall, at the sitting of the said Council next after the receipt of such petition, inform the said Council of the nature and contents thereof, upon which occasion, should the member in question not admit the truth of the matters alleged in such petition, a time shall be appointed for taking such petition into consideration, at which time the said Council shall, without debate, proceed to choose a committee of three members, for the purpose of inquiring into the matters of the said petition; and such committee shall be chosen by writing upon a separate piece of paper the name of each member of the said Council then present (not being related either to the member whose qualification is in question or to the petitioner within the fourth degree of consanguinity or affinity), which pieces of paper, being all as nearly as may be of equal size, shall be put together in a box to be provided for that purpose, and

Property qualification must be possessed during the time the member of Council retains his seat.

Petition for want of property qualification and proceedings thereupon.

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the clerk of the Council shall draw out three of the said papers one after another, and the said three members so first drawn shall form the said committee; and the said committee shall with all convenient speed inquire into the matter of the said petition to them referred, and shall hear what shall be urged upon the part of the petitioner and on the part of the member whose qualification shall be questioned, and all evidence which shall be offered by either of them, and shall then report to the Council the result of their inquiry; and if the said committee shall unanimously or by a majority report that the member whose property qualification shall have been so questioned does in the opinion of the said committee possess such qualification, the petition shall be dismissed; and if the said committee shall unanimously or by a majority report that such member does not possess such qualification, then such member shall upon the bringing up of such report be deemed and taken to have vacated his seat: Provided, always, that no petition presented as aforesaid shall be taken into consideration in or by the said Council until the party petitioning shall have given security to the satisfaction of the President that he will duly pay and satisfy such sum or sums of money if any as he may be lawfully condemned or adjudged to pay under and by virtue of any of the provisions of the next succeeding section of this ordinance.

Provision for case in which petition is dismissed.

66. And be it enacted that when and as often as any petition shall upon the report as aforesaid of any such committee as aforesaid be dismissed, the party petitioning shall be liable to pay to the member whose property qualification shall have been called into question the sum of one hundred pounds sterling, together with and over and above any special damage, charges, or expenses which such member shall prove himself to have sustained from or expended by reason of the said petition, which sums shall be recovered by action in any competent court, together with costs of suit, unless the defendant shall in his defence succeed in proving to the satisfaction of the said court, either that such member did not when such petition was presented possess the necessary qualification, or otherwise that he, the defendant, had when such petition was presented reasonable and probable cause for believing that such member did not possess such qualification: Provided, always, that when the said defendant shall fail in proving that such member at the time aforesaid did not possess the necessary qualification, but shall succeed in proving that he, the said defendant, had reasonable and probable cause for believing that such member did not possess such qualification, such defendant shall still be condemned in the costs of suit: Provided, also, that in case such defendant shall succeed in proving that the said member did not at the time aforesaid possess the necessary qualification as aforesaid, such defendant shall be entitled to judgment in his favour, with his costs of suit.

67. And be it enacted that all questions of disqualification alleged against any member of the Legislative Council aforesaid other than the want of such a property qualification as aforesaid shall be inquired of and determined in manner and form as hereinbefore in the 65th section of this ordinance provided; and the said 65th section and the 66th section aforesaid shall apply, *mutatis mutandis*, to the determination of all such questions precisely as if the disqualification contemplated by the said sections respectively had been the certain other disqualification which may happen to be alleged.

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Questions of disqualification of members of Council other than the want of the property qualification, to be determined in the same manner as before provided in regard to the property qualification.

68. And be it enacted that all and singular the provisions of the said 65th and 66th sections shall (except as hereinafter is excepted) apply, *mutatis mutandis*, to the inquiring of and determining of all questions of disqualification alleged against any member of the House of Assembly of the Cape of Good Hope, precisely as if the said provisions were herein again repeated, substituting the term "House of Assembly" for the term "Legislative Council" and the term "Speaker" for the term "President:" Provided, always, that the said Assembly shall choose in manner and form as is in the said 65th section mentioned a committee of five members instead of a committee of three members.

Questions of disqualification of members of the House of Assembly, how to be determined.

69. And be it enacted that it shall be lawful for any member of the Legislative Council of the Cape of Good Hope, by 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 Council.

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 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.

Resignation of seat in Assembly.

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 insolvent, the seat of such councillor or member of the Assembly shall thereby become vacant.

Vacating of seats in certain cases and for certain causes.

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.

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.

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Election how to take place on vacancies.

73. 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.

Dissolution of the Council and Assembly, or of the Assembly without the Council.

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.

Proceedings upon any general election, caused either by a dissolution or by effluxion of time.

75. 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 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.

Constitution Ordinance.

76. 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 list 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 officer 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 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

Provision for a biennial registration of voters.

Constitution Ordinance.

shall begin to be prepared, then in that case the respective officers appointed to prepare such fresh biennial list in the respective field-comptroleries 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 of the Legislative Council of the said colony.

A session of Parliament once, at least, every year.

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.

Standing rules and orders to be made in and for the Council and the Assembly respectively.

78. 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: Provided that no such rule or order shall be of force to subject any person not being a member or officer of the House to which it relates to any pain, penalty, or forfeiture.

79. And be it enacted that it shall be lawful for the Colonial Secretary, the Attorney-General, the Treasurer, and the Auditor, of the said colony to sit and take part in any debate or discussion which may arise in either the Legislative Council

Certain public officers to sit in either house but not to vote.

or House of Assembly, subject nevertheless to any such standing rules and orders as are hereinbefore mentioned; but that it shall not be lawful for them to vote on any proceeding in either House.

Constitution Ordinance

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 Governor to assent to any Bill appropriating to the public service any sum of money from or out of 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.

Manner in which the public revenue shall be appropriated to the public service.

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 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.

Governor may transmit drafts of laws to either house.

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 Governor to assent to, or to refuse to assent to, or to reserve for the royal pleasure, Bills which have passed the two houses.

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,

Power of the Crown to disallow acts assented to by the Governor.

Constitution Ordinance.

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 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.

Bills reserved when to take effect.

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.

Acts of the Parliament to be printed in the Government Gazette.

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.

Copies of Acts of the Parliament to be enrolled.

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.

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.

Constitution Ordinance.

Certificates of disallowance of Acts of the Parliament to be enrolled.

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.

Bills grantingsupplies or imposing taxes to originate in the Assembly.

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 language, and that all journals, entries, minutes, and proceedings of the said Council and Assembly be made and recorded in the same language.

Proceedings in both houses to be in the English language.

90. 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 fifty 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.

Provision for the payment of the expenses of certain members of the two houses.

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

Interpretation of terms.

Constitution Ordinance.

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.

Ordinance when to take effect.

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 as Her Majesty shall by the advice of her Privy Council fix for that purpose.

W. L. B.

ORDER IN COUNCIL.

At the Court at Buckingham Palace, 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 third 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.

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.

Order in Council.

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 pleasure 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.

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:

Preamble.

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: 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.

Charges of collecting and managing the revenue to be paid thereout.

Accounts of all such disbursements to be laid before the Parliament.

2. And be it enacted that until the Parliament of the said colony shall otherwise direct there shall be payable every

Grants for civil and other services.

Appropriation Ordinance.

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.

Interpretation clause.

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.

Ordinance when to commence.

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.

SCHEDULES REFERRED TO IN THE FOREGOING ORDINANCE.

SCHEDULE A.

The Governor and Private Secretary	£5,300 0 0
The Lieutenant-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 ditto ..	1,890 0 0
The Auditor-General ditto ..	1,650 0 0
The Registrar of Deeds ditto ..	1,000 0 0
The Surveyor-General ditto ..	2,080 0 0
The Civil Engineer's ditto ..	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
Educational Establishments ..	4,100 0 0
Medical Departments	1,895 0 0
Police, Prisons, and Gaols.. ..	1,540 0 0
	<hr/>
	£61,030 0 0

SCHEDULE B.

Pensions 15,000 0 0

SCHEDULE C.

Public Worship 16,060 0 0

SCHEDULE D.

Border Department (Aborigines).. .. 14,000 0 0

£106,090 0 0

No. 1—1854.] AN ACT [Sept. 19, 1854.

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.

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 obstruction 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.

Preamble.

Freedom of speech and debates or proceedings in Parliament not to be questioned out of Parliament.

II. 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

Mode of proceeding in cases in which suits at law are instituted in regard to papers published by authority of either House of Parliament.

No. 1—1854.

such civil or criminal proceeding, and the same and every writ or process issued thereon shall be and the same shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Act.

This Act not to affect the rights and privileges of Parliament.

III. 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.

Interpretation clause.

IV. That in construing this Act the word "Governor" shall mean any officer for the time being lawfully administering the government of this colony.

No. 2—1854.]

AN ACT

[Sept. 26, 1854.

For Applying a Sum not exceeding Twenty-three Thousand Seven Hundred and Seventy Pounds Ten Shillings and Four Pence for the Service of the Year 1854, in addition to the Sum already in that respect provided.

Preamble

WHEREAS by Ordinance No. 4, bearing date the 10th day of October, 1853, it is enacted that a sum not exceeding one hundred and fifty-four thousand four hundred and ninety-seven pounds and two shillings, required for the service of the government of this colony for the year 1854, be applied in the manner and for the purposes in the said Ordinance detailed and set forth: And whereas no provision has in the said Ordinance been made for the different services under the following heads, and detailed in the estimates hereunto annexed, viz.:

How to be appropriated.

For the expenditure of the Civil Establishments, a sum of six hundred and twenty-six pounds and five shillings;

For the expenditure of the Police and Gaol Establishments, a sum of one hundred and sixty pounds;

For the expenditure of the Ecclesiastical Establishment, a sum of one thousand pounds;

For the expenditure on account of Charitable Allowances, a sum of two thousand six hundred and ninety-five pounds five shillings and four pence;

For the expenditure on account of Works and Buildings, a sum of six thousand two hundred and nineteen pounds;

For the expenditure on account of Miscellaneous Services, a sum of thirteen thousand and seventy pounds;

Amounting in the whole to twenty-three thousand seven hundred and seventy pounds ten shillings and four pence :

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Parliament thereof, that the said sum of twenty-three thousand seven hundred and seventy pounds ten shillings and four pence, to be so applied as aforesaid, shall be and the same is hereby charged upon the revenue of the said colony for the service of the year 1854, as fully and to all intents and purposes as if the same had been included in and sanctioned by the said Ordinance, No. 4 of 1853.



No. 3—1854.] AN ACT [Sept. 26, 1854

For Applying a Sum not exceeding Nine Hundred and Ninety-seven Pounds, in addition to the Sums already in that respect provided, for the Service of the Year 1854.

WHEREAS by Ordinance No. 4, bearing date the 10th day of October, 1853, it is enacted that a sum not exceeding one hundred and fifty-four thousand four hundred and ninety-seven pounds and two shillings, required for the service of the government of this colony for the year 1854, be applied in the manner and for the purposes in the said Ordinance detailed and set forth : And whereas no provision has been made in the said Ordinance or in the Bill submitted by His Honour the Lieutenant-Governor to the House of Assembly, on the 28th August, 1854, for the different services under the following heads, and detailed in the estimates hereunto annexed, viz. :

Preamble.

For the expenditure of the Judicial Establishment, a sum of seven hundred and sixty pounds ;

How to be appropriated.

For the expenditure on account of the Education Establishment, a sum of two hundred and thirty-seven pounds ;

Amounting in the whole to nine hundred and ninety-seven pounds :

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Parliament thereof, that the said sum of nine hundred and ninety-seven pounds, to be so applied as aforesaid, shall be and the same is hereby charged upon the revenue of the said colony for the service of the year 1854, as fully and to all intents and purposes as if the same had been included and sanctioned by the said Ordinance, No. 4, 1853.

No. 4—1854.

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.

IV. 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 or 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.

Book or review to be stamped at the time of entry.

V. 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.

Interpretation of terms.

VI. 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 versâ*, unless in any of the above cases there be something in the subject or the context plainly to exclude such construction.

No. 4—1854.

VII. 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. 5—1854.] AN ACT [Sept. 26, 1854.

To Regulate till the Expiration of the Year 1855 the Dealing in Gunpowder, Firearms, and Lead.

WHEREAS the Ordinance No. 2, 1853, entitled "Ordinance to regulate till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead," is by the twenty-seventh section thereof limited to continue and be in force till the expiration of the year 1854 and no longer: And whereas it is expedient to continue the said Ordinance in force till the expiration of the year 1855: 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, that the said Ordinance No. 2, 1853, and every provision thereof shall continue and be in force until the expiration of the year 1855, anything in the said Ordinance contained to the contrary notwithstanding.

Ordinance No. 2, 1853, to continue and be in force till end of year 1855.

II. And be it enacted that this Act shall commence and take effect from and after the promulgation thereof.

No. 6—1854.] AN ACT [Sept. 26, 1854.

For Applying a Sum not exceeding One Hundred and Ninety-three Thousand Three Hundred and Five Pounds Eight Shillings and Three Pence for the Service of the Year 1855.

WHEREAS further sums in addition to those already by law provided are required for the service of the Government of this colony for the year 1855: 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, that a sum not exceeding one hundred and ninety-three thousand three hundred and five pounds eight shillings and three pence be charged upon the revenue of the said colony for the service of the year 1855, and applied in the manner following, that is to say:

Preamble.

For the expenditure of the Civil Establishments, a sum not exceeding thirty-nine thousand six hundred and seventeen pounds nineteen shillings and nine pence, in the manner set forth in the schedule hereunto annexed.

How to be appropriated.

No. 6—1854.

For the expenditure of the Judicial Establishment, a sum not exceeding fifteen thousand two hundred and fifty-two pounds three shillings and six pence, in the manner set forth in the schedule hereunto annexed.

For the expenditure of the Educational Establishment, a sum not exceeding five thousand three hundred and eighty-two pounds and ten shillings, in the manner set forth in the schedule hereunto annexed.

For the expenditure of the Medical Establishment, a sum not exceeding seven thousand three hundred and twenty-four pounds and fifteen shillings, in the manner set forth in the schedule hereunto annexed.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding thirty-one thousand seven hundred and thirty-two pounds and five shillings, in the manner set forth in the schedule hereunto annexed.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding twenty-six thousand three hundred and eighty-five pounds and fifteen shillings, in the manner set forth in the schedule hereunto annexed.

For the expenditure on account of Works and Buildings, a sum not exceeding twenty-eight thousand seven hundred and thirty-five pounds, in the manner set forth in the schedule hereunto annexed.

For the expenditure on account of Roads, Streets, and Bridges, a sum not exceeding twenty-eight thousand two hundred pounds, in the manner set forth in the schedule hereunto annexed.

For the expenditure on account of Miscellaneous Services, a sum not exceeding ten thousand six hundred and seventy-five pounds, in the manner set forth in the schedule hereunto annexed.

Amounting in the whole to one hundred and ninety-three thousand three hundred and five pounds eight shillings and three pence sterling, as detailed in the schedule hereunto annexed.

No. 7—1854.]

AN ACT

[July 5, 1855.]

For Extending Trial by Jury to Civil Cases.

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,

Preamble.

Repugnant laws repealed.

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.

II. 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 except as is hereinafter in the fourth section provided be tried by jury.

III. 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.

IV. It shall be competent for the attorney of either of the parties to any civil case depending in the Supreme Court at any time after the pleadings in such case shall have been closed to serve a notice upon the attorney of the opposite party, calling upon him to attend before a judge of the Supreme Court in chamber at some time to be specified in such notice, there to settle the issue or issues to be tried by jury: Provided that it shall be competent for the parties to any such case, at any time after pleadings closed and before the serving by either of them of such notice as aforesaid, to agree together in writing signed by their respective attorneys that such case shall be tried without a jury, and thereupon such case shall be proceeded with and be tried in like manner precisely as if this Act never had been passed: Provided however 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.

V. 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.

VI. 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.

Questions of fact in civil cases in the Supreme Court to be tried by jury.

Exception.

Questions of law to be reserved for the court.

After pleadings closed, issues to be framed, and how.

The parties, by consent, may try their cases as before this Act.

When any fact in any case shall be tried by jury, all facts shall be so tried.

Form in which issues shall be framed.

In mixed questions of law and fact, the law and the fact may, if capable of separation, be separated.

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When damages claimed, the issues shall leave it to the jury to assess the damages.

VII. 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.

Issues approved by judge in chamber may be reviewed by or referred to the Supreme Court.

VIII. 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 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.

IX. 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.

Days for jury trials to be set apart.

X. There shall be set apart for trials by jury in the Supreme Court such day or days, in or after or in and after each term as the judges thereof may from time to time find necessary and appoint: Provided that the day or days so set apart for trials by jury in or after any terms shall, not later than the tenth day of such term, be posted up in the office of the said registrar and also at or in the Supreme Court.

Jury trials to be had before a judge and a jury of nine men.

XI. 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.

XII. 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.

XIII. 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.

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When any case set down for trial by jury, the registrar shall give notice to the sheriff that a jury will be required.

XIV. The sheriff of the colony after receiving any such notice as aforesaid from the registrar of the Supreme Court 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 (except as hereinafter is excepted) take from and out of the jurors' book for the time being from which the names of men summoned to serve as jurors in criminal cases in the said court would then of right be taken, in such manner as shall be directed and prescribed by any such general rules or order of the Supreme Court as shall have been or as may from time to time be duly issued and promulgated by the said court for summoning the jurors in civil cases by the sheriff of the colony: Provided that in taking the thirty-six men aforesaid to be summoned for civil cases all men qualified to serve as grand jurors in criminal cases shall be taken in their proper place and turn, precisely as if not so qualified: And provided that no juror who shall not reside within the municipality of Cape Town or within ten miles of some part or portion of the limits of such municipality shall be summoned as juror to serve in civil cases.

The sheriff shall summon a jury.

No juror residing elsewhere than within the municipality or ten miles of its limits to be summoned in civil cases.

XV. 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.

Jurors for civil cases to be summoned as if for criminal cases.

XVI. 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 on oath or affidavit) as the court shall think meet, not exceeding twenty-five pounds.

List of jurors summoned to be called over.

Penalty for non-attendance.

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How penalty to be recovered.

XVII. 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.

Each party in the cause may strike off the names of nine jurors from the list of thirty-six.

XVIII. 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 the other; 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.

The remaining names to be placed in a box, and the nine men first drawn to be the jury.

How to proceed in case there shall be more cases than one for the same day.

XIX. 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.

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.

XX. 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.

XXI. 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.

Jurors who have served on one jury to be liable to serve again for other causes standing for trial on the same day.

XXII. 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.

No challenge except for cause.

Cause of challenge the same as in the courts at Westminster.

XXIII. 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!"

The jury to be sworn.

Form of oath.

XXIV. 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.

The jury after being sworn to be kept apart by themselves.

XXV. 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.

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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.

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.

Verdicts may be either general or special.

How verdicts to be received and recorded.

Jury when to be discharged.

XXVI. 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.

XXVII. 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 sixteenth 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.

XXVIII. The verdict of every jury impannelled 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.

XXIX. 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.

XXX. No jury impannelled 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 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.

XXXI. 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.

XXXII. 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.

XXXIII. 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.

XXXIV. 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.

XXXV. 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

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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.

All issues and findings to be kept of record.

Jurors how to be paid for serving.

New trials may be applied for, and upon what grounds.

The respective powers of the judge and of the jury in regard to the determination of questions of mixed law and fact.

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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.

Exceptions may be taken to the opinion or direction of the judge in matter of law.

XXXVI. 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.

Proceeding upon exceptions.

XXXVII. 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.

XXXVIII. 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.

XXXIX. 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

After issues found by the jury the case may be set down for final judgment.

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.

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XL. 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.

Judgments pronounced upon or after findings by a jury may be appealed from as being upon the facts as found erroneous in law.

XLI. 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.

This Act not to affect the practice in provisional cases, motions, interdicts, or cases by default.

XLII. 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.

Interpretation clause.

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

Act when to commence.

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No. 1—1855.]                      AN    ACT                      [May 4, 1855.  
 For Granting Duties of Customs in the Colony of the  
                                          Cape of Good Hope.

**B**E it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council and House of Assembly, as follows:

**I.** In lieu and in stead of all other duties of Customs there shall be raised, levied, collected, and paid unto Her Majesty, her heirs and successors, upon goods imported or 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 table to this Act annexed.

What duties of customs to be payable.

**II.** The several Orders and parts of Orders of Her Majesty in Council and the Ordinance or parts of such Ordinance set forth in schedule A to this Act annexed are hereby repealed

What former laws repealed.

No. 1—1855.

to the extent to which such Orders in Council, Ordinance, or parts thereof, are by such schedule expressed to be repealed, except as to anything done before the commencement of this Act, and except so far as relates to any arrears of duty or to any allowance which shall have become due or payable, and all bonds taken under the authority of any of the Orders in Council hereby repealed shall notwithstanding such repeal be valid and effectual.

Certain goods to be  
free of duty.

III. And all the goods described as free in the said table shall be exempt from duty on the importation thereof into the colony of the Cape of Good Hope.

Act, when to com-  
mence.

IV. This Act shall commence and take effect from and after the promulgation thereof; and in citing it in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression, "The Customs Tariff Act, 1855."

TABLE OF DUTIES REFERRED TO IN THE FOREGOING ACT.

|                                                                                                                                                             | £ | s. | d. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| Ale or beer, viz.:                                                                                                                                          |   |    |    |
| In bottles, the gallon .. .. .                                                                                                                              | 0 | 0  | 3  |
| Not in bottles, the gallon .. .. .                                                                                                                          | 0 | 0  | 2  |
| Cheese, the cwt. .. .. .                                                                                                                                    | 0 | 10 | 0  |
| Cinnamon or cassia, the lb. .. .. .                                                                                                                         | 0 | 0  | 3  |
| Cloves, the lb. .. .. .                                                                                                                                     | 0 | 0  | 4  |
| Coffee, the cwt. .. .. .                                                                                                                                    | 0 | 12 | 6  |
| Flour, wheaten, the barrel of 196 lbs. .. .. .                                                                                                              | 0 | 3  | 0  |
| Fruits, dried, viz.:                                                                                                                                        |   |    |    |
| Currants, raisins, or figs, the cwt. .. .. .                                                                                                                | 0 | 5  | 0  |
| Ginger, viz.:                                                                                                                                               |   |    |    |
| Dry, the lb. .. .. .                                                                                                                                        | 0 | 0  | 1  |
| Preserved or chowchow, the lb. .. .. .                                                                                                                      | 0 | 0  | 1  |
| Gunpowder, the lb. .. .. .                                                                                                                                  | 0 | 0  | 6  |
| Guns, or gun-barrels, each barrel .. .. .                                                                                                                   | 1 | 0  | 0  |
| Mace, the lb. .. .. .                                                                                                                                       | 0 | 0  | 9  |
| Meat, salted or cured, the cwt. .. .. .                                                                                                                     | 0 | 3  | 0  |
| Nutmegs, the lb. .. .. .                                                                                                                                    | 0 | 0  | 6  |
| Pepper, the cwt. .. .. .                                                                                                                                    | 0 | 10 | 0  |
| Pistols, or pistol-barrels, each .. .. .                                                                                                                    | 0 | 10 | 0  |
| Rice, the cwt. .. .. .                                                                                                                                      | 0 | 2  | 0  |
| Spirits, of all sorts, not exceeding the strength<br>of proof by Sykes's hydrometer, and so in pro-<br>portion for any greater strength, the gallon .. .. . | 0 | 3  | 0  |
| Liqueurs, cordials, or sweetened spirits, the gallon .. .. .                                                                                                | 0 | 4  | 0  |
| Sugar, viz.:                                                                                                                                                |   |    |    |
| Unrefined, the cwt. .. .. .                                                                                                                                 | 0 | 3  | 6  |
| Refined or candy, the cwt. .. .. .                                                                                                                          | 0 | 5  | 0  |
| Molasses, the cwt. .. .. .                                                                                                                                  | 0 | 2  | 0  |
| Tea, the lb. .. .. .                                                                                                                                        | 0 | 0  | 6  |
| Tobacco, viz.:                                                                                                                                              |   |    |    |
| Not manufactured, the cwt. .. .. .                                                                                                                          | 1 | 8  | 0  |
| Manufactured (not cigars), or snuff, the cwt. .. .. .                                                                                                       | 2 | 16 | 0  |

TABLE OF DUTIES—(continued).

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|                                                                                                                                                                                                | £ | s. | d. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| Cigars (at the option of the officers of customs),<br>the 1,000 .. .. .                                                                                                                        | 0 | 12 | 6  |
| Or the lb... .. .                                                                                                                                                                              | 0 | 1  | 3  |
| Wine, viz.:                                                                                                                                                                                    |   |    |    |
| In bottles, the gallon .. .. .                                                                                                                                                                 | 0 | 2  | 6  |
| Not in bottles, the gallon .. .. .                                                                                                                                                             | 0 | 2  | 0  |
| Wood, unmanufactured, the cubic foot .. .. .                                                                                                                                                   | 0 | 0  | 2  |
| Goods not being enumerated or described, nor<br>otherwise charged with duty, and not prohibited<br>to be imported into or used in the colony of<br>the Cape of Good Hope, for every £100 value | 7 | 10 | 0  |

FREE.

Animals, living; books and music, printed; bottles of common glass imported full of spirits, wine, beer, or ale; bullion or coin; coals, coke, or patent fuel; diamonds; guano; ice; maps or charts; pictures; provisions or stores of every description imported or supplied for the use of Her Majesty's land or sea forces when the customs duties shall not have been paid thereon; seeds, bulbs, or plants; specimens illustrative of natural history.

Wine imported or taken out of bond for the use of military officers serving on full pay in this colony or in British Kaffraria, 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 wines shall be subsequently sold in this colony except for the use or consumption of any of Her Majesty's military or naval officers serving as aforesaid the same shall be forfeited and be liable to seizure accordingly.

All articles of naval or military uniform or appointments imported by officers stationed in this colony or in British Kaffraria for their own use.

SCHEDULE (A) OF LAWS TO BE REPEALED.

| Date of<br>Order in Council<br>or of Ordinance.              | Title or Subject.                                                                                                                                                                      | Extent of Repeal.                                                                                                   |
|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| Order in Council,<br>bearing date the 24th<br>April, 1847.   | To make regulations touching<br>the Trade and Commerce to and<br>from the Colony of the Cape of<br>Good Hope.                                                                          | Part of Section 2,<br>as recited as being<br>excepted from repeal<br>in Section 1 of Ordina-<br>nce No. 6, of 1853. |
| Order in Council,<br>bearing date the 28th<br>Sept., 1847.   | Supplying an omission in the<br>above Order in Council.                                                                                                                                | The whole.                                                                                                          |
| Order in Council,<br>bearing date the 31st<br>October, 1848. | For imposing a Duty on Spirits<br>of all sorts imported, and per-<br>mitting the delivery, duty free, of<br>one gallon of such Spirits for every<br>ten gallons of Cape Wine exported. | The whole.                                                                                                          |
| Ordinance No. 6,<br>of 1853, dated 14th<br>October, 1853.    | For the general management and<br>regulation of the Customs in the<br>Colony of the Cape of Good Hope.                                                                                 | Section 2.                                                                                                          |

No. 2—1855.]

AN ACT

[June 8, 1855.]

For Abating Public Nuisances and other Mischiefs of a  
Public Nature in certain Towns and Villages  
not being Municipalities.

Preamble.

WHEREAS in certain of the towns and villages of this colony not being municipalities public nuisances and other mischiefs of a public nature are constantly committed, against the continuance or recurrence of which the inhabitants have at present no effectual protection: And whereas it is expedient to make provision for the repression of such evils: 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:

Towns or villages to which this Act extends.

I. This Act shall extend and apply to every town or village in the colony being the seat of or where a court is holden by a resident magistrate and not being a municipality, and not to any other town or village: Provided that it shall be lawful for the Governor aforesaid as often as it shall be made to appear to him that the provisions of this Act or some of them are unsuitable to the town or village which is or shall be the seat of or where a court is holden by resident magistrate and not a municipality, by any proclamation to be by him issued and published in the Government Gazette, to declare from time to time what sections if any of this Act shall extend and apply to such town or village, and thereupon so much only of this Act as shall by any such proclamation be declared to extend and apply to such town or village shall extend and apply thereto; or the Governor may by any such proclamation as aforesaid declare that none of the provisions of this Act shall apply to such town or village.

Limits of towns and villages to be fixed by proclamation.

II. The limits also for the purpose of this Act of every town and village to which this Act or any part of it shall apply shall be such limits as shall from time to time be fixed by any proclamation to be by the Governor aforesaid issued and published in the Government Gazette.

Towns or villages becoming municipalities, this Act to cease to apply thereto.

III. As often as any town or village to which this Act or any part thereof extends and applies shall become a municipality, then this Act shall continue to extend and apply to such town or village until the first set of municipal regulations for such municipality shall be promulgated in the Government Gazette, but no longer. And with respect to towns and villages to which this Act shall apply, be it enacted as follows:

Weights and measures to be assized and marked.

IV. No weights or measures shall be used within the town or village for the purpose of trade or dealing unless the same shall have been duly assized and marked by such person as the resident magistrate may appoint, under a penalty not exceeding three pounds sterling.



V. The standard of weights and measures for the time being legally in force in the colony shall be deemed for the purpose of this Act to be the standard of weights and measures.

*No. 2—1855.*  
What weights and measures to be legal.

VI. Once in each year the person so appointed as aforesaid to assize weights and measures shall, upon a day and at a place,—of which day and place not less than seven days' previous notice shall be given,—attend for the purpose of assizing all weights and measures kept or used as aforesaid; and all persons using weights and measures for the purpose of trade or dealing shall then and there attend to have their weights and measures assized; and if any person shall after such notice and after his weights and measures might have been assized as aforesaid use in his trade or dealing or have in his shop, store, or place of dealing or trade, any weights or measures which have not been assized such weights and measures shall be forfeited and destroyed, and such person shall be liable over and above such forfeiture to a fine not exceeding three pounds sterling.

Assizing how to be effected.

VII. It shall and may be lawful for the person appointed as aforesaid to enter any shop or store or other place of trade or dealing and to require that all weights and measures, scales, steelyards, or other balances used therein be produced and shown to him; and if such person shall find any such weights and measures, scales, steelyards, or other balances which have not been duly marked and which shall be deficient in weight or measure, or any false or unjust weights or measures, or defective scales or balances, such weights and measures, scales, steelyards, or other balances shall be forfeited and destroyed; and the person or persons in whose shop, store, or place of trade or dealing such weights and measures, scales, steelyards, or other balances, or any one of them shall be found shall be liable to a penalty not exceeding three pounds sterling.

Weights and measures in use may be examined.

VIII. Any owner or proprietor of such shop, store, or place of trade or dealing or any other person in his or her employ who shall refuse to produce or shall willfully keep back such weights and measures, scales, steelyards, or other balances when required so to be produced, or any person whatever obstructing or hindering such person in the execution of his duty, shall incur and be liable to a fine not exceeding three pounds sterling.

Penalty upon persons eluding or impeding such examination.

IX. It shall be lawful at any time for any person desiring to have any weights or measures assized to apply to the resident magistrate, who shall thereupon cause the same to be done.

Weights, &c., may be assized at any time on application.

X. There shall be paid to the assizer for every weight or measure assized and marked the sum of two pence each.

Sum payable for assizing.

XI. For the purpose of preserving the health and cleanliness of the town or village it shall be lawful for any person appointed by the resident magistrate aforesaid from time to time and when and so often as he shall see fit to visit all

Slaughterhouses, &c. to be visited, and offal, &c., to be removed.

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butchers' shops and places where cattle and sheep are slaughtered for the purpose of sale, and to give such directions as he may deem expedient for the cleansing of the same and for the removal of all blood, offal, filth, and other refuse; and if the proprietor or person in charge of such shop or slaughtering-place shall fail, neglect, or refuse to remove such blood, offal, filth, or other refuse he shall incur and be liable to a penalty not exceeding two pounds sterling.

Places to be fixed where offal, &c., may be laid down.

XII. The magistrate shall appoint one or more place or places to which the blood, offal, filth, and other refuse mentioned in the foregoing section shall be removed, and any person or persons who shall remove and deposit such blood, offal, filth, and other refuse in any other place than by this section appointed shall incur and be liable to a fine not exceeding one pound sterling, and shall moreover, at his or her or their own cost and charge, remove such blood, offal, filth, or other refuse, and deposit the same at the places appointed by the said magistrate.

Persons casting filth, &c. in any street, &c., to be liable to a penalty.

XIII. Any person who shall cast any filth, soil, earth, or rubbish into any street, thoroughfare, square, or waste ground within any town or village excepting upon such place or places as shall be fixed and appointed by the magistrate, and who shall refuse after warning to remove the same, shall incur and be liable to a fine of ten shillings sterling, and shall moreover be obliged to remove the same at his own expense and deposit it at the place or places appointed for that purpose. Building materials or earth may be left, provided that the same be spread by way of repairing such street.

Guns not to be fired without lawful cause.

XIV. No person shall be allowed to discharge any gun or firearms without lawful cause or let off any fireworks in any part of any such town or village as aforesaid, under a penalty not exceeding one pound sterling.

No open fire to be carried through any street.

XV. No person shall be allowed to make any open fire except on such place or places as may be appointed by the magistrate, or carry any open fire through the streets, nor shall any person be allowed to smoke an open pipe in any street, public thoroughfare, or square, nor be allowed to throw away a burning cigar, under a penalty not exceeding ten shillings sterling.

Persons damaging trees, &c., to be liable to a penalty.

XVI. Any person who shall wilfully or by negligence break down, spoil, or damage any tree or plant in any street, road, avenue, or square, whether the same shall be public or private property, shall forfeit and pay a fine not exceeding three pounds sterling and shall also make full satisfaction for the damage done.

Stray cattle may be impounded.

XVII. All cattle, sheep, or goats found straying in any of the public streets, thoroughfares, or squares without being in charge of some one shall be impounded, and the owner be compelled to make good any damage irrespective of the usual pound fees.

Horses, &c., to be knee-haltered.

XVIII. No horses or mules shall be allowed to graze in any

public street, thoroughfare, or square, without being kneehaltered, under a penalty not exceeding ten shillings sterling.

XIX. In case a pig or pigs be found straying in any public street, thoroughfare, or square, or watercourse, the owner of such pig or pigs shall be liable to a fine not exceeding ten shillings sterling, and such pig or pigs may be impounded; and ducks and geese may be destroyed when found in public fountains, dams, or watercourses.

XX. No person shall be allowed to make a sawpit or other excavation in or near any public street, thoroughfare, or square, or to make any gutter or new watercourse in or across any street, without the previous consent of the magistrate, under a penalty not exceeding one pound sterling.

XXI. Any person breaking, injuring, damaging, or destroying any public dam or dams now existing or which may hereafter be erected, or any aqueduct, watercourse, sluice, or reservoir within any such town or village as aforesaid, to which the public may have any right of property or use, shall be liable to pay a fine not exceeding ten pounds sterling, and shall be bound over and above such fine to make good the damage so done.

XXII. Any person who shall cast or throw any filth or rubbish in any such watercourse, aqueduct, fountain, drain, dam, or reservoir as aforesaid, or in any manner or way pollute the water running or being in such course, aqueduct, fountain, drain, dam, or reservoir, or who shall place, cast, or put any filth or rubbish so near to any such course, dam, or reservoir as to be likely to pollute the water thereof, shall incur and be liable to a penalty not exceeding two pounds sterling.

XXIII. No person shall wash clothes or any other article or thing in any public aqueduct, watercourse, dam, fountain, reservoir, or at any public pump, excepting at such places as shall have been appointed by the resident magistrate, under a penalty not exceeding ten shillings sterling.

XXIV. The chief constable or any person whom the Governor aforesaid may be pleased to appoint shall be the public prosecutor in all cases falling under the provisions of this Act.

XXV. The fines levied under this Act to be distributed in the following manner: One third to the informer and the remaining two thirds to the colonial treasury.

XXVI. In case any of the penalties enumerated in the foregoing sections be not paid the magistrate shall have the power to adjudge the party offending to imprisonment with or without hard labour until such fine be paid, such imprisonment not to exceed one month.

XXVII. In the construction of this Act, the word "governor" shall mean the officer for the time being administering the government of this colony; the word "magistrate" shall mean the resident magistrate of the

No. 2—1855.

Stray pigs may be impounded—Their owners liable to a penalty.—Ducks and geese found in the public fountains, &c., may be destroyed.

No one to make sawpits, &c., in public streets, &c.

Penalty on persons damaging public dams, &c.

Penalty on persons polluting public fountains, &c.

No person to wash clothes in public fountains, &c.

Who to prosecute for penalties under this Act.

Fines how to be applied.

In case of non-payment of fine, offender may be imprisoned.

Construction of words.

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district in which the town or village is situated, or the officer for the time being acting as such; and words importing the plural number shall include the singular number, and words importing the singular number shall include the plural number, and words importing the masculine gender shall include females, unless in any case there be something in the subject or context repugnant to such construction.

Act when to commence.

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

No. 3—1855.]

AN ACT

[June 8, 1855.]

For the Better Organization and Regulation of an Armed and Mounted Police Force upon the Frontier of this Colony.

Preamble.

FOR the purpose of providing for the better organization and regulation of an armed and mounted police force upon the frontier 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:

Police force to be embodied.

I. It shall be lawful for the Governor to 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.

Governor may appoint commandant and other officers.

II. It shall also be lawful for the Governor by warrant under his hand to appoint a commandant and inspectors of such police force, or such officers as he may deem expedient for the general superintendence and management of the said force; and such commandants, inspectors, and other officers from time to time to displace and remove and to appoint others in their place, as to him shall seem meet.

Governor may make regulations for the force.

III. It shall also be lawful for the Governor from time to time to make such regulations respecting the training, arms and accoutrements, clothing and equipment of such force, and respecting all other matters connected therewith, as may be required for promoting the discipline and efficiency thereof; and also to direct the employment and distribution of the said force, within or without the colonial boundary, as to him shall seem meet.

The force to suppress all tumults, &amp;c.

IV. It shall be the duty of the commandant, inspectors, 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.

V. The members of the aforesaid force so sworn as aforesaid shall (except as in the fourteenth section is excepted), throughout the colony, have all such powers and privileges and be liable to all such duties and responsibilities as any policeman 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 such commandant, or any inspector or other officer.

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Legal powers of the members of the force.

VI. For the purpose of securing obedience to the regulations from time to time to be made for promoting the discipline and efficiency of the said force it shall be lawful for the commandant to stop from the pay of any policeman offending against any such regulation any sum not exceeding twenty shillings in respect of every such offence, or to cause such policeman to be taken before any resident magistrate; and every such policeman upon conviction before any court of resident magistrate of any offence against the regulations so to be made as aforesaid shall forfeit and pay any sum not exceeding twenty pounds nor less than five shillings, to be recovered in a summary way; and shall in addition to such fine or in default of payment thereof be liable to be imprisoned with or without hard labour for not less than one week nor more than three calendar months in any gaol or place of confinement within the colony.

Pay may be stopped for breaches of regulations or policemen may be prosecuted for such breaches.

VII. It shall be lawful for the commandant for the time being to suspend or dismiss from his employment any such policeman whom he shall think remiss or negligent in the execution of his duty or otherwise unfit for the same; and when any such policeman 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 Ordinance shall cease and determine.

Commandant may suspend or dismiss policemen.

VIII. If any such policeman shall take a bribe or any gratuity whatever for suffering any person lawfully in his custody to escape, or shall wilfully neglect to execute any warrant intrusted to him, every such policeman shall forfeit and pay for every such offence any sum not exceeding twenty pounds or be imprisoned and kept to hard labour for any period not exceeding six calendar months, as to the convicting magistrate shall seem meet: Provided that nothing in this section contained shall be construed so as to prevent such policeman from being prosecuted otherwise than under this section for any act in contravention thereof which shall by law be punishable more severely than in this section is provided.

Penalty upon policemen taking bribes or gratuities.

IX. If any such policeman shall during the period for which he shall have engaged to serve in the said force desert from the same or refuse to serve therein, every such offender shall forfeit and pay for every such offence any sum not exceeding twenty pounds, to be recovered in a summary way, or be imprisoned and kept to hard labour for any

Penalty for desertion or refusal to serve during term of service.

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Application of fines levied under this Act.

period not exceeding six calendar months, as to the convicting magistrate shall seem meet.

X. All fines and penalties which may be recovered by virtue of this Act shall be given and paid, one third to the informer or prosecutor if demanded, and the residue for the use of Her Majesty, her heirs and successors, for the public uses of the colony and the support of the government thereof: Provided always that when any policeman belonging to the said force shall be entitled to the whole or a proportion of any forfeiture, penalty, or seizure under this Act or any other Law or Ordinance in force for the time being the amount or proceeds thereof shall go to a general fund, to be distributed at the end of every year among the policemen belonging to the said force according to such regulations as the Governor shall direct and determine; and in default of any such regulations and directions the same shall be paid to the person entitled thereto immediately upon the recovery thereof.

Penalty upon dealers in wines, &c., who harbour policemen.

XI. If any licensed or unlicensed dealer in wines and spirits or any intoxicating liquors shall knowingly harbour or entertain any policeman belonging to the said force or permit such policeman 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.

Governor may grant rewards and compensation in certain cases.

XII. It shall be lawful for the Governor to award to any of the policemen 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.

Persons acting in execution of this Act to receive notice of action and to be entitled to tender amends.

XIII. For the protection of persons acting in the execution of this Act all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within four calendar months after the fact committed and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant together with the costs incurred up to that time; and if a verdict shall be given for the defendant or the plaintiff be non-suited or discontinued 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; and though a verdict shall be given for the plaintiff in any such action such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.

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XIV. 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.

Ordinance No. 25, 1847, not to extend to the force embodied under this Act.

XV. For the purposes of this Act the word "Governor" shall be taken to include the officer administering the government of the colony for the time being.

Construction of the word "Governor."

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

Act when to commence.

No. 4—1855.]                      AN ACT                      [June 8, 1855.  
For Encouraging the Importation of European Labourers  
into this Colony.\*

WHEREAS it is expedient to encourage the introduction of European labourers into this colony:

Preamble.

I. 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, that so much of an Ordinance enacted by the Governor of this colony, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance for amending and consolidating the Laws regulating the Rights and Duties of Masters and Servants and Apprentices," and confirmed by an Order of Her Majesty in Council, bearing date 27th August, 1842, as shall be repugnant to or inconsistent with any of the provisions of this Act, be repealed, and the same is hereby repealed accordingly.

Repugnant provisions of the Masters and Servants Ordinance repealed.

II. And be it further enacted that any contract, covenant, or agreement entered into in writing in any place in Europe according to any law in force within such place with any servant born in Europe for the performance of personal, domestic, manufactural, or agricultural service or labour shall be within this colony of force and effect and binding upon the parties or persons who shall have entered into the same for the term therein stipulated: Provided the term shall not exceed the period of five years from the day on which the servant shall have landed or entered in this colony; in which case such contract shall expire at the end of such period of five years: Provided always that it shall be competent to either party who shall have entered into any such contract

Contracts made in Europe shall be in force in this colony, if made in regard to the *lex loci*.

Contracts not to be for more than five years' service.

Remedies for either party to such contract.

\* Repealed by Act No. 15 of 1856.

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and shall feel aggrieved in respect to the service or any condition thereunder or from any other sufficient cause to bring complaint thereof before the resident magistrate of the district within which the parties or either of them shall reside; and it shall be lawful for such resident magistrate on the hearing thereof to cancel such contract upon such terms and conditions as justice and right shall or may require as to repayment of all the expenses of transport to this colony or any part thereof, and such further allowances as may be found equitable between the parties, with power of appeal from the decision of the resident magistrate to the supreme court or circuit court, as in other cases under and within the jurisdiction of the said resident magistrate.

Act when to commence.

III. And be it further enacted that this Act shall commence and take effect from and after the promulgation thereof.

No. 5—1855.] AN ACT [June 8, 1855.

For Creating Divisional Councils in this Colony.\*

Preamble.

WHEREAS it is expedient that boards should be established in the several divisions of this colony for the better administration of their local affairs: And whereas it is expedient to make provision by this Act for the better administration of the functions now performed by the divisional road boards, the district school commissions, and of the court for the better regulation of pounds and prevention of trespasses, leaving it to Parliament hereafter from time to time by other Acts thereof to bestow or impose such further powers, functions, and duties upon such boards as shall be provided and prescribed: And whereas it is expedient that such divisional boards should be called divisional councils, and that all the members of every such council, with the exception of the civil commissioner should be elected by the inhabitants: 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:

Repugnant laws repealed.

I. The Ordinances No. 8, 1843, and No. 16, 1847, as far as they are contrary to and repugnant to or inconsistent with the provisions contained in this Act are hereby respectively repealed.

Every division to be divided into six districts, each returning a member of the divisional council.

II. Every division of this colony shall be divided into six subdivisions, to be called districts, and every such district shall elect one person to be a member of the divisional council of such division.

Districts by whom and how to be fixed,

III. It shall be lawful for the Governor by a proclamation or by proclamations to be by him issued and published in the Government Gazette to fix and prescribe the limits

\* Amended by Acts Nos. 4 of 1856, 14 of 1856, 4 of 1859, 14 of 1860, and 9 of 1861.



of each of the six districts of every division in such manner as shall after investigation be found most convenient and advantageous: Provided that every such district shall 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 by numbering the same respectively, beginning at number one and proceeding to number six.

IV. 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.

District limits alterable.

V. All persons in any such district registered as voters under the Ordinance for constituting a Parliament for this colony, and no other persons, shall be entitled to vote for the members of the divisional council to be elected by such district.

Who to vote for members of divisional council.

VI. The poll for the member to be so elected by each district shall be taken by the field-cornet at his residence, in case such district shall be constituted by a single field-cornetcy; and when any district comprises more field-cornetcies than one the poll shall be taken by the field-cornets of such field-cornetcies, each field-cornet at his own residence in his own ward.\*

Poll where and by whom to be taken.

VII. No voter shall vote except in the field-cornetcy in which such voter stands registered.

Every voter to vote in the field-cornetcy in which he stands registered. Who capable of being elected to the divisional council.

VIII. Every person registered as a voter for any division under the Ordinance aforesaid for constituting a Parliament shall (except as hereafter excepted) be eligible to be elected by any district into which such division shall be subdivided as aforesaid to be the member for such district of the divisional council of such division: Provided that no person holding any office of profit under Her Majesty the Queen within this colony and no uncertificated insolvent shall be eligible to be elected.

IX. As soon as may be after the limits of the six districts aforesaid of any division shall have been fixed by proclamation as aforesaid and not later than twenty-one days from the date of the first publication of the proclamation fixing such limits, the civil commissioner for such division shall by notice to be published in the Government Gazette require the field-cornet or field-cornets of or within such districts respectively to proceed upon some day or days to be named in such notice to take a poll for the election of a member of the divisional council for every such district: Provided that every such notice shall be published in the Government Gazette for not less than thirty-one days before the earliest day named in such notice for the taking of the poll in any field-cornetcy.

Manner of giving notice of a poll.

X. The poll aforesaid shall be open between the hours of eight o'clock a.m. and five o'clock p.m., before or after which hours no votes shall be received.

Poll when to open and close.

No. 5—1855.

Field-cornet to take the poll to be furnished with certified list of voters.

XI. The civil commissioner shall not less than seven days before the earliest day named by him in the notice aforesaid for the taking of the poll in any field-cornetcy deliver or cause to be delivered to the field-cornet of such field-cornetcy a list of the voters registered in such field-cornetcy under the Ordinance aforesaid for constituting a Parliament, which list the said civil commissioner shall under his hand certify to be correct.

Manner of voting.

XII. The manner of voting shall be this: The voter shall if so disposed write on a piece of paper the name of the person for whom he votes and shall sign such paper, or should the voter desire it the field-cornet shall write upon a piece of paper the name of the person for whom such voter votes, and shall cause such voter to affix his mark to such paper; and all such polling papers shall be by the field-cornet carefully preserved until the close of the poll at that polling place.

At close of poll, result to be ascertained.

XIII. As soon as may be after the close of the poll at any polling place the field-cornet shall in the presence and with the assistance of two witnesses, who shall be persons qualified to serve as jurors and not related to the field-cornet within the third degree of consanguinity or affinity, examine the several polling papers and cast up the votes given for each person for whom votes have been given and frame a list or return in writing containing the names of all persons for whom votes shall have been given and the number of votes which each of them shall have received, and such list or return shall be signed in duplicate by the said field-cornet and the two witnesses, and thereupon the said polling papers and one copy of the said list shall be carefully sealed up in a parcel and shall be safely delivered or forwarded by the field-cornet to the civil commissioner of the division.

Civil commissioner to examine the polling returns of each field-cornetcy and ascertain who has been chosen member for the district.

XIV. The civil commissioner as soon as he shall have received the polling papers of the field-cornetcy or field-cornetcies composing any such district as aforesaid shall compare the same with the list or return in writing signed by the field-cornet and witnesses, and shall ascertain for whom the greatest number of votes in such district shall have been given; and such person shall be the member of the divisional council for such district.

If polling papers lost how loss to be supplied

XV. If by any accident or mischance the parcel aforesaid containing the polling-papers of any field-cornetcy should be lost or destroyed on its way from the field-cornet to the civil commissioner then the duplicate list or return in writing directed to be made and signed as aforesaid shall be received and acted upon by the civil commissioner in place and stead of the polling papers so lost or destroyed.

Penalty for wilful destruction of any parcel containing polling lists.

XVI. If any person shall wilfully occasion the loss or destruction of any such parcel as in the last preceding section mentioned or of any of the contents of any such parcel such person shall upon conviction be liable to a fine not exceeding

ten pounds, and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding one month.

No. 5—1855.

XVII. When the civil commissioner shall have ascertained in manner aforesaid the names of the six 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 the names of such six members, placing opposite to or in connection with every such name the number of the district by which such member was elected: Provided that if in any district the two persons who shall have received the greatest number of votes shall each have received the same number of votes, then the question between such two persons shall be determined by lot, to be drawn in presence of the civil commissioner, and not fewer than seven witnesses.\*

Names of members of each divisional council to be published.

XVIII. The civil commissioner shall in the same Gazette 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 of the day, hour, and place appointed for such first meeting.

First meeting of council how and when to be convened.

XIX. The civil commissioner of the division shall *ex officio* be a member of the divisional council and shall when present preside at all the meetings thereof; and in case the votes upon any question shall be equally divided the presiding member shall in addition to his original or deliberative vote have also a casting vote.

Civil commissioner a member *ex officio* and to preside.

XX. At every meeting of any divisional council three members including the chairman shall form a quorum.

What number a quorum.

XXI. Should it happen that any meeting of any divisional council should be held at which the civil commissioner shall not be present then the member for district No. 1 shall if present preside, and in case of his absence the member for district No. 2, and so on until a member shall be found to preside.

Who to preside in the absence of civil commissioner.

XXII. The members of the first divisional council of any district shall go out of office at the end of the third year from the day of the publication of the notice in the seventeenth section of this Act directed to be published; and in place of such members so going out of office a like number of other members, to be elected as hereinafter provided, shall come into office and remain in office for three years; and at the expiration of such last-mentioned term of three years shall in like manner go out of office and be succeeded by other members who shall remain in office for a like term of three

Members to go out of office triennially.

\* See section 3, Act No. 9 of 1861.

No. 5—1855.

Subsequent elections to be conducted like the first election.

years ; and so on for ever : Provided that every member so going out of office shall be eligible to be again elected.

XXIII. The civil commissioner of every division shall in regard to every such successive triennial election as aforesaid publish or cause to be published in the Government Gazette a notice similar in all respects to the notice in the ninth section of this Act mentioned for the election of each new divisional council : Provided that the civil commissioner shall in every such notice fix some day or days for the taking of the poll, not later than seven days nor earlier than twenty-eight days next before the day on which any such term of three years shall expire : Provided also that every successive term of three years shall be reckoned from the day of the publication by the civil commissioner in the Government Gazette of the notice containing the names of the members last elected as hereinbefore in the seventeenth section and hereinafter in the twenty-seventh section of this Act directed.\*

Subsequent elections to be conducted like the first election.

XXIV. All successive triennial elections for members of any divisional council shall be conducted in manner and form as hereinbefore provided in regard to the first election of such members, and all and singular the several sections of this Act from the ninth to the eighteenth both inclusive shall extend and apply to every such successive triennial election.

Non-election by any district not to make council incomplete so long as a quorum is left.

XXV. No divisional council shall be deemed to be incomplete by reason that any district of such division has neglected to elect a member to represent the same so long as there shall be members of such council sufficient to form a quorum.

Vacancies how created.

XXVI. If any member of any divisional council shall refuse to act or cease to reside in the division by any district of which he was elected or become insolvent or accept any office of profit under Her Majesty, his office shall, *ipso facto*, become vacant.†

How to proceed in case of vacancies occurring.

XXVII. Should any such vacancy as in the last preceding section mentioned occur at a date more than one year prior to the day on which the three years' term of the then existing council will expire the civil commissioner of the division shall forthwith proceed to cause a poll to be taken for a new member for the district in regard to which such vacancy shall have occurred and thereupon all and singular the several sections of this Act from the ninth to the seventeenth both inclusive, shall, *mutatis mutandis*, and so far as applicable, apply to the election of a member to supply such vacancy ; and the person chosen to fill such vacancy shall be competent to remain in office till the then next ensuing general election of members, but no longer : Provided that should any such vacancy occur within one year prior to the day aforesaid then the person who at the then last preceding general election received in the district in regard to which such vacancy shall have occurred a number of votes greater than any other

\* See section 1, Act No. 9 of 1861.

† See section 3, Act No. 14 of 1860.

person not then elected shall be entitled without any fresh election to fill such vacancy ; and provided that should such last-mentioned person be dead or refuse to act or be incapable of acting then the person who in such district stood next to him upon the poll at the then last preceding general election shall be entitled to fill such vacancy ; and so on until a member shall be found to fill such vacancy : Provided also that if in the manner last mentioned no member for such district can be obtained then the vacancy in question shall remain unfilled until the then next ensuing general election, in case the divisional council shall still possess members sufficient to form a quorum ; but in case by reason of the number of vacancies members shall not remain sufficient to form a quorum, then the civil commissioner shall forthwith proceed to cause a fresh election to take place in every district in regard to which there shall be a vacancy in manner and form as first in this section directed and described.

XXVIII. The clerk of the civil commissioner of each division shall be and act as the secretary of the divisional council of that division.\* Clerk of civil commissioner to be secretary of council.

XXIX. The several divisional councils of the colony shall in all future Acts be referred to as “ The divisional councils, constituted under Act No. 5, 1855 ;” and in all legal proceedings it shall be sufficient to refer to any such council by the style or description of “ The divisional council of \_\_\_\_\_.” Divisional councils how to be described.

XXX. Every such divisional council is 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 and orders shall be of any force or effect until the same shall have been submitted to and approved of by the Governor of the colony. Each council may frame rules.

XXXI. The powers and functions now vested in the divisional road boards by Ordinance 8, 1843, shall from and after the passing of this Act cease and determine, and all such powers and functions shall be vested in the divisional councils by this Act created : Provided that in regard to the division of the Cape the joint boards of commissioners and wardmasters of the municipalities of Cape Town and Green Point voting together as one constituency shall be entitled to elect three persons, who shall in regard to all matters connected with the powers and functions in the said Ordinance mentioned be entitled to sit, deliberate, and vote with the members of the divisional council of the Cape division precisely as if ordinary members thereof : Provided that as soon as may be after the civil commissioner of the Cape division shall have issued the notice in the ninth section of this Act mentioned he shall by a notice to be published in the Government Gazette appoint a day and hour and fix a place for taking the poll of the joint boards aforesaid, upon Divisional council to be the divisional road board of its division. Provisions regarding the divisional council of the Cape division considered as the divisional road board.

\* Repealed by section 2, Act No. 4 of 1859.

No. 5—1855.

which day and at which place and hour the said civil commissioner shall attend to take the poll; and such civil commissioner shall cause the names of three persons who shall be elected by a majority of votes to be published in the Government Gazette; and provided that such notice as aforesaid shall be published for not less than fourteen days before the day named for the taking of the poll: Provided also that every member of such joint boards shall have three votes, but shall not be entitled to give more than one vote to one person: And provided further that the three persons so elected as aforesaid shall receive due notice of all meetings of the divisional council of the Cape division for the consideration of all matters relative to the road administration vested as aforesaid in such council, according to such standing rules and orders in that behalf as shall be framed by the divisional council and approved of by the Governor: And provided lastly that all liabilities lawfully existing against any divisional road board shall survive against the divisional council of the same division.

Liabilities of road board to survive against the divisional council.

Divisional council to exercise functions of school commission.

XXXII. The powers and functions now vested in the several district school commissions shall likewise so cease and determine, and the divisional councils created by this Act shall henceforward perform and exercise all functions required to be performed by such school commissions in their respective divisions.

Powers under section 27 of Ordinance No. 16, 1847, to be vested in divisional council.

XXXIII. The powers vested in the civil commissioners and justices of the peace under and by virtue of section 27,\* Ordinance No. 16 of 1847, entitled "An Ordinance for the better Regulation of Pounds and Prevention of Trespasses," shall cease and determine, and be vested in and exercised by the said divisional councils from and after the promulgation of this Act.

Act when to commence.

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



No. 6—1855.] AN ACT [June 8, 1855.]

For Granting Compensation to certain Persons in the Kat River for the Loss of Erven to which they were respectively entitled.

Preamble.

WHEREAS in the latter end of the year 1850 a rebellion broke out in certain portions of the eastern frontier of this colony, in which rebellion a number of the erf-holders and other inhabitants of the Kat River became implicated: And whereas after the said rebellion had been under the blessing of Divine Providence effectually suppressed by the late Governor, Lieutenant-General Sir George Cathcart, K. C. B., certain proceedings were

\* Misprint for 37th section. See Act No. 14 of 1856.

instituted, of which the avowed design and true intent and meaning were that all loyal erf-holders of the Kat River should be placed in immediate possession of their erven and that the lands which had been occupied by persons clearly proved to have been engaged in the said rebellion should be forfeited for their treason: And whereas by the law of this colony as now existing the penalty of forfeiture of lands or goods for high treason is not entailed by or consequent upon a conviction of the said crime in due form of law: And whereas, irrespective of the irregularity of declaring by executive authority, under any circumstances however pressing, a forfeiture, which forfeiture could not have been declared even by a court of justice, there is reason to believe that the erven of certain erf-holders or persons having claims to grants of erven who (though absent from the Kat River) had not been engaged in the said rebellion, were declared forfeited under the erroneous belief that such erf-holders or other persons had actually been rebels: And whereas it is fitting to provide for granting just and full compensation to such erf-holders or other persons as shall be found after due investigation to have owned or been otherwise entitled to erven, and who shall desire to receive such compensation: 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:

I. It shall be lawful for the Governor, by any instrument or instruments under his hand and bearing the public seal of the settlement, to appoint three fit and proper persons to be commissioners for carrying into effect the object of this Act.

Governor may appoint commissioners.

II. It shall be the duty of such commissioners to receive from any person who shall allege himself to have been at any time heretofore an erf-holder of or a resident in the Kat River Settlement his or her claim to any erf or piece of land therein.

Duty of commissioners.

III. As often as the said commissioners shall receive from any person any such claim as aforesaid they shall proceed to inquire and ascertain,—first, whether such person had at the time of the breaking out of the rebellion aforesaid any title, and if so what title to any erf or other land within the said settlement; and, secondly, what sum of money would be just and full compensation to be paid to such person for and on account of any such erf or other land.

What inquiries to be made.

IV. Every claimant shall make his claim in person, unless by reason of illness or other sufficient reason he shall by the commissioners be excused from so doing, and no claim shall be received from or on behalf of any person who shall not at the time of the making of such claim be within the limits of this colony.

Claimants to claim in person, except in certain cases.

V. The said commissioners shall be and they are hereby empowered by summons under the hand of two or more of them to require the attendance of all such persons as shall appear to them to possess useful information and whom they

Commissioners may summon witnesses.

No. 6—1855.

may think fit to examine regarding any matter connected with the said inquiry, and also to require such witnesses to bring with them and produce such papers or documents as shall be in their possession, custody, or power, and may be deemed necessary, and to administer oaths to all such witnesses so summoned and to all other persons who shall come or be before the said commissioners and whom they shall see fit to examine.

Summons how to be served.

VI. Every such summons as aforesaid shall be directed to the same officer and served in the same manner as if the same were process for procuring the attendance of a witness to give evidence in any criminal case before a circuit court to be held for the district in which the place at which the witness in question shall be required to attend shall be situated.

Witnesses to receive their expenses, unless disallowed them.

VII. Every witness attending before the said commissioners in pursuance of any such summons as aforesaid shall (except as hereafter is excepted) be allowed and paid his expenses at the same rate precisely as if he had attended at the same place in pursuance of the process of any such court as in the last preceding section mentioned issued at the instance of the public prosecutor; a bill of which expenses shall be made out by the clerk of the peace, or if there be none the resident magistrate, of the district in which the witness shall have attended before the said commissioners, upon production to such clerk of the peace or resident magistrate of a certificate under the hand of two or more of the said commissioners certifying that the said witness had attended before them in pursuance of a summons issued for that purpose, and upon proof given of the time and distance proper to be charged for; and whenever any such bill accompanied by the certificate of the clerk of the peace or resident magistrate that the distance and time charged therein are correct shall be produced to the civil commissioner of the division in which the place where such witness attended shall be situated, such civil commissioner shall forthwith pay the amount of such expenses, for which payment such bill when duly receipted shall be his sufficient voucher: Provided always that it shall and may be lawful for the said commissioners to disallow the expenses of any witness who shall prevaricate or otherwise misconduct himself in the course of his examination.

False swearing, perjury.

VIII. If any person sworn by or before such commissioners as aforesaid shall wilfully make any false answer to any lawful question which shall be put to him by the said commissioners, such person shall be deemed guilty of the crime of perjury, and on conviction thereof shall suffer the punishment by law provided for the said crime.

Commissioners to report to Governor.

IX. The said commissioners shall report to the Governor their opinion upon every case investigated by them together with the evidence which they shall have taken.

Governor may direct compensation to be made.

X. It shall be lawful for the Governor after considering the report and evidence in any such case as aforesaid to



authorize and direct payment to be made from and out of the colonial treasury of whatever sum the said Governor shall deem to be a just and full compensation to any such claimant as aforesaid for or on account of any erf or other land as aforesaid, or the said Governor may grant to any such claimant compensation in land should such claimant agree to receive compensation in that form.

No. 6—1855.

XI. The Governor shall cause to be laid before each House of Parliament at the next session thereof a return showing the names of all persons who shall have claimed compensation under this Act, together with the amount of compensation if any paid to them respectively.

Return of claimants compensated to be laid before Parliament.

XII. Nothing in this Act contained shall be deemed or taken to deprive any person whomsoever of the right to assert by legal process in any competent court any title which he shall have or suppose himself to have to any lands or tenements whatsoever; and every such case shall be judged of precisely as if this Act had not been passed: Provided that no person who shall have claimed and received compensation under this Act shall be at liberty to claim in a court of law either the property in regard to which such compensation shall have been given or any further or other compensation in regard to such property.

This Act not to prevent a recourse to legal process.

XIII. This Act shall commence and take effect from and after the promulgation thereof, and shall continue in force for the space of twelve calendar months next after such promulgation, and no longer.

Act when to commence.

No. 7—1855.]                      AN ACT                      [June 8, 1855

To Regulate till the Expiration of the Year 1856 the Dealing in Gunpowder, Firearms, and Lead.

WHEREAS the Ordinance No. 2, 1853, entitled "Ordinance to regulate till the expiration of the year 1854 the Dealing in Gunpowder, Firearms, and Lead," is by the twenty-seventh 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 said Ordinance was continued in force until the expiration of the year 1855: And whereas it is expedient further to continue the said Ordinance in force till the expiration of the year 1856:

Preamble.

I. 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: The said Ordinance, No. 2, 1853, and every provision thereof shall continue and be in force until the expiration of the year 1856, anything in the said Ordinance contained to the contrary notwithstanding.

Ordinance No. 2, 1853, continued till end of 1856.

II. This Act shall commence and take effect from and after the 1st day of January, 1856.

Act when to commence.

No. 8—1855.]

AN ACT

[June 8, 1855.]

To Amend Ordinance No. 6 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.

I. 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 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.

Act when to commence.

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



No. 9—1855.]

AN ACT

[June 8, 1855.]

For Incorporating the South African Association.

Preamble.

WHEREAS a certain Ordinance was duly made and passed in this colony, No. 6, 1836, and entitled “Ordinance for incorporating and establishing the South African Association for the Administration and Settlement of Estates:” And whereas the joint stock or capital sum of seven thousand eight hundred and seventy-five pounds sterling (£7,875) mentioned in the preamble to the said Ordinance, and at the time of the passing thereof vested in the directors of the said Association, to serve as a fund to secure the payment of any claim or demand which any person or persons might then or thereafter have against the said Association hath since been annually increased according to the provisions for increasing the same in the said Ordinance contained and now amounts to the sum of nineteen thousand seven hundred and sixty-one pounds sterling (£19,761): And

whereas under the provisions of the Ordinance No. 10, 1837, entitled "Ordinance for limiting the duration of the powers granted by the Ordinance No. 6 of 1836, entitled 'Ordinance for incorporating and establishing the South African Association for the Administration and Settlement of Estates, and dated the twenty-seventh day of June, 1836,' to the said Association," the said Association will cease to possess the powers granted to the same by the Ordinance aforesaid, No. 6 of 1836: And whereas the joint stock or capital sum of nineteen thousand seven hundred and sixty-one pounds sterling (£19,761) aforesaid is composed of forty-two shares in the said Association, at present of the value of four hundred and seventy pounds ten shillings (£470 10s.) each: And whereas the following persons and estates are owners of shares in the said Association, that is to say: James Abercrombie, M.D.; Johan Andries Bam; Louis François Charles Biccard, M.D.; the widow of Pieter Gerhard Brink; Johannes Jacobus Cruywagen; Adriaan Christiaan Deneys; the estate of Daniel Denyssen, LL.D. (deceased); Richard Paxton Dobie; Jan Willem Eksteen; Jan Pieter Eduard Faure; the Honourable William Field; William Hawkins; Johan Willem Jacobus Herman; Dirk Gerhard de Jongh; Johannes Tobias Jurgens; the widow of Johan Rynhold Gerhardus Klerck; the Rev. Godlieb Willem Anthony van der Lingen; Ryk Johannes Loedolff; Cornelis Mostert, senior; François Gerhard Myburgh; the estate of Gerrard Ewout Overbeek, sen. (deceased); the widow of Anthony Jacobus Leonardus Plouvier; the Honourable William Porter; the widow of Cornelis van Reenen; Johannes Hermanus Redelinghuys; Jan Serrurier; William Smith; Johannes Adriaan Smuts, sen.; Johannes Joachim Lodewyk Smuts; Willem Jacob Smuts; Johan Georg Steytler, G.s.; John Stein; John Steuart; Hendrik Johan Pieter le Sueur; Johannes Adriaan le Sueur; Ryk le Sueur; John Robert Thompson; Pieter Fredrik Ryk de Villiers; the Honourable Johannes de Wet, LL.D.; Richard Wolfe; Roeloff Abraham Zeederberg, jun.; Roeloff Abraham Zeederberg, sen.: And whereas it is expedient to continue to the said Association the said powers, with such alterations and amendments in the provisions of the said Ordinance as have by experience been found to be desirable: And whereas for this purpose it is expedient to repeal both the Ordinances aforesaid 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 Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

I. The Ordinances aforesaid No. 6, 1836, and No. 10, 1837, are hereby respectively repealed.

II. Notwithstanding the repeal aforesaid every right or claim of or against the said Association existing at the time

Names of shareholders.

Ordinance 6, 1836, and Ordinance 10, 1837, repealed.

Existing claims of and against Association not hereby affected.

No. 9—1855.

of the taking effect of this Act shall survive for or against the said Association incorporated under this Act, and shall be judged of as if this Act had not been passed.

III. Each of the forty-two shares aforesaid at present of the value of four hundred and seventy pounds and ten shillings each shall be divided into and form two shares at present of the value of two hundred and thirty-five pounds and five shillings each, so that the said Association shall from henceforth consist of eighty-four shares, subject to be increased in number or manner and form as hereinafter provided.

IV. Every existing shareholder of one of the shares aforesaid at present of the value of four hundred and seventy pounds and ten shillings each shall be entitled to hold both of the two shares into which such share is by this Act divided; and every person who under the thirty-second section of the Ordinance aforesaid, No. 6, 1836, may at the taking effect of this Act have become entitled to the share of any deceased shareholder shall be deemed to be a shareholder for the purpose of this section of this Act, and be entitled to hold the two shares aforesaid which such deceased shareholder if living would have been entitled to hold.

V. No shareholder who shall become such at any time after the taking effect of this Act shall be capable of holding more than one share.

VI. No shareholder who is now entitled as aforesaid to hold the two shares into which his former share is divided shall be capable of holding more than one share at any time after he shall sell or assign to any other person or persons either or both of his said shares.

VII. It shall not be lawful for any shareholder to sell or assign his share or shares in the capital stock to any person or persons until he shall have made an offer in writing, addressed to the secretary, to sell the same to the directors for the time being for the benefit of the said Association and such offer shall by them have been refused; provided that should the directors fail to reply to such offer within fourteen days after the same shall have been delivered they shall be deemed to have refused to purchase such share or shares; and upon such refusal it shall and may be lawful for such member or other shareholder to assign such share or shares to any other person, by endorsement upon the certificate thereof specifying the person or persons to whom the same is or are assigned, and upon production of such assignment at the office of the Association the same shall be registered by the secretary in the name of such person or persons as the holder or holders of such share or shares; and thereupon the member or shareholder having made such assignment shall cease to have any interest therein: Provided that every shareholder shall be bound to offer his share or shares to the said directors for the amount or value thereof as ascertained by the last preceding balance sheet and such other accounts

Present shares to be divided into two shares.

Each present shareholder may hold two shares.

But no others after the taking effect of this Act.

As to sale or disposal of shares.

as in the thirty-fourth section mentioned, together with interest upon such amount or value at the rate claimable by such shareholder from the date of such last preceding balance sheet till date of payment thereof by the said directors.

No. 9—1855.

VIII. In case of the insolvency of any shareholder his share or shares shall, *ipso facto*, become the property of the directors for the time being for the benefit of the Association; but the said directors shall be bound to pay to the trustee of the insolvent estate of any such shareholder whose share or shares shall have thus accrued to the Association the amount of such share or shares as ascertained by the last preceding balance sheet and other accounts as in the thirty-fourth section mentioned, together with interest upon such amount at the rate claimable by such shareholder from the date of such last preceding balance sheet till day of payment.

Shares of insolvent shareholders to become the property of the Association.

IX. Any shareholder may bequeath the share or shares belonging to him at the time of his death to his surviving widow if any or to any male descendant of the testator or to the husband of any female descendant, and such share or shares shall be regarded and registered as if assigned to such legatee by endorsement as in the seventh section provided: Provided that no share shall be capable of being bequeathed to more than one person; and provided that as often as the testator shall be the owner of more shares than one it shall not be competent for him to bequeath both his shares to one person save and except to his surviving widow.

Shareholders may bequeath their shares.

X. In case any shareholder shall die without having in manner aforesaid bequeathed his share or shares as aforesaid then the share or shares of such deceased shareholder shall become the property of the directors for the time being for the benefit of the Association, and the directors shall pay into the estate of such shareholder the same amount which under the provisions of the eighth section of this Act they would have paid into the estate of such shareholder in case instead of dying he had become insolvent.

Shares not bequeathed to become the property of the Association.

XI. The members of the Association who shall be such at the time of the taking effect of this Act shall continue to be such members: Provided that any member ceasing to be a shareholder or who shall be absent from the colony for a period of more than twelve months, such period to be reckoned from the first day of May subsequent to his quitting the colony, shall, *ipso facto*, cease to be a member.

Present members continue as such, but ceasing to be a shareholder shall cease to be a member.

XII. In the event of a vacancy occurring among the members the directors may, and whenever the number of members shall be reduced to twenty-five or less the said directors shall call a meeting of the members, of which fourteen days' previous notice shall be given by the secretary to each member, so soon as may be convenient and not later than twelve months after the members shall have been reduced to twenty-five or less in number, at which meeting the members present shall elect by ballot from among those who may

Election of new members, if reduced to 25.

No. 9—1855.

have made application to become such member or members one or such greater number of persons as the directors shall think advisable to be members, so as that the number of members may not exceed in the whole the number of shares of which the Association shall at the time consist: Provided however, that no person shall be elected as a member unless three fourths of the members present shall have voted in his favour; and provided that should any shareholder have made application to become a member no person not being a shareholder shall be elected until three fourths of the members present shall have voted against the election of such shareholder: And provided further that should any such shareholder not be elected he shall be bound, upon application having been made to him in writing by the secretary within fourteen days thereafter, to sell his right and interest in his share or shares to the person if any in such manner elected to be a member for the amount in the eighth section set forth as payable to the trustee of the insolvent estate of any shareholder.

Shareholder may demand a ballot to become a member.

XIII. Any shareholder not being a widow holding a share or shares by bequest as aforesaid 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.

How persons not being shareholders may become eligible to be members.

XIV. No person not being a shareholder shall be eligible to become a member until he shall have deposited in the hands of 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 be bound and shall be able to purchase such share.

General meetings.

XV. A general meeting of the members of the Association shall be held on the last Monday in the months of January, April, July, and October in each year, for the purpose of general business.

Eight members may call general meetings.

XVI. 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 eight 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 three 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 general meetings.

XVII. 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.

XVIII. 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.

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No business to be considered except for which meetings shall have been convened.

XIX. No general meeting of members shall be constituted or be competent to enter upon any question or business whatever unless a majority of the members at the time residing in Cape Town or within six miles thereof shall be present, and all questions at any general meeting shall be decided by a majority of votes.

No meetings competent unless majority of members present.

XX. Every general meeting duly constituted may upon question put and carried be adjourned till some future day to be fixed upon by such meeting.

General meetings may be adjourned.

XXI. No member shall be allowed to vote by proxy, and no member present shall have more than one vote.

No member to vote by proxy.

XXII. The president hereinafter in the twenty-fifth 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 original or individual vote have also a casting vote.

President to preside and in his absence senior director.

XXIII. The affairs of the Association shall be intrusted to and carried on by five directors being members of the Association residing in or within six miles of Cape Town: Provided however that when by the 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 composed again of five members.

Affairs intrusted to five directors.

XXIV. 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 besides his original or individual vote have also a casting vote.

Directors to choose their president.

XXV. The following members shall be the first directors under this Act, that is to say: The Hon. Johannes de Wet, LL.D., Johannes Tobias Jurgens, Johannes Adriaan Smuts, sen., Johan Andries Bam, and William Smith, of whom the said Johannes de Wet shall be president; and such directors shall remain in office till the 30th day of April, 1855, and thenceforth until some other directors shall be appointed in their room and stead.

First directors under this Act.

XXVI. Upon the thirtieth day of April, one thousand eight hundred and fifty-five, the said Johannes de Wet shall go out of office as a director and 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 thirtieth day of April, one thousand eight hundred

The senior director to go out of office each year, but eligible to be re-elected.

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and fifty-six, the said Johannes Tobias Jurgens shall, in like manner go out of office, and shall 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 thirtieth of April, one thousand eight hundred and fifty-seven, the said Johannes Adriaan Smuts shall go out of office, and be replaced by another member to be chosen as aforesaid; and upon the thirtieth of April, one thousand eight hundred and fifty-eight, the said Johannes Andries Bam shall go out of office, and be replaced by another member to be chosen as aforesaid; and upon the thirtieth of April, one thousand eight hundred and fifty-nine, the said William Smith shall go out of office, and 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 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 thirty-second 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.

Disqualification of directors.

XXVII. 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.

Meetings of directors: three directors to form a quorum.

XXVIII. The directors shall meet once in each week, and oftener if necessary, at the office of the Association for the time being 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 the votes of the directors present.

Two directors to execute deeds, &c.

XXIX. It shall 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 account, distribution account, or other account, or any act or instrument whatsoever; 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.

Director absent for three months except by leave shall vacate his seat.

XXX. 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 seventh section of this Act contained notwithstanding.



XXXI. 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 five of the members of the Association to be prejudicial to the interests of the said 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.

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How directors to be removed.

XXXII. 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 twenty-seventh or the thirtieth 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 becoming 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.

How vacancy in board of directors to be filled up.

XXXIII. The said joint stock or capital of nineteen thousand seven hundred and sixty-one pounds, and such stock or capital as may be added to the same 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 at interest upon good and sufficient security of landed or other property, or otherwise invested in landed 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.

Joint stock or capital to be vested in directors.

XXXIV. 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,—first, a balance sheet of the books of the Association; secondly, an abstract from the balance sheet, showing under appropriate headings the gross

General meeting to be held in May or June.

Balance sheet and accounts to be submitted to meeting.

No. 9—1855.

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 thirdly, 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 before 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: Provided that in making up the accounts in this section mentioned shareholders being members shall be allowed interest upon their shares at the rate of interest for the time being current in this colony, and shareholders not being members interest upon their shares at the rate of one per cent. less than the interest paid to members.

Appropriation and  
division of net income  
of preceding year.

XXXV. 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 income 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 other part shall be added to and become part of the capital stock of the Association, by a proportionate division amongst the several shares: Provided however that should any loss have been sustained by the Association so as to reduce the capital stock below the sum as shown by the last preceding balance sheet and other accounts, then no dividend and no interest to the members or shareholders not being members upon the shares held by each respectively shall be paid until the said capital stock shall have become increased to such amount; and provided also that when the said capital stock shall amount to the sum of twenty-five thousand pounds sterling (£25,000), then so long as the said capital stock shall not fall below such last-mentioned sum no further additions need be made thereto, and what would but for this proviso have been added thereto shall be added to the fund for division amongst the members and shareholders in equal proportions, unless the members at the meeting in the last preceding section mentioned shall otherwise determine: saving always the right of the shareholders to participate in the increase to the value of the shares if it shall be so determined, or in such other benefits as the members may be made to derive from any other appropriation of the one fourth part or share of the net income as before provided.

Shareholders not  
being members to  
receive interest at the  
rate of one per cent.  
per annum less than  
members.

XXXVI. 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 or shall cease to be such shareholder, he shall be entitled to receive interest on account thereof at and after the rate of one per cent. per annum

less than the rate of interest payable for the time being to shareholders being members on the amount or value of such share, as ascertained by the last preceding accounts of the capital stock, as the only profit or interest to be derived by him as the holder of such share.

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XXXVII. It shall and may be lawful for the directors to purchase any share or shares which shall be offered to them by any shareholder 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 to such person or in such manner as such general meeting or any subsequent general meeting shall determine.

Directors may purchase shares.

XXXVIII. It shall be lawful for the members of the said Association at any general meeting held for the purpose, by the votes of three fourths of the members present at such meeting, to increase the number of shares in the capital stock of the said Association, and such new shares shall be issued to such persons and upon such terms as the members aforesaid at any general meeting shall by a majority determine; and as often as the number of shares shall be increased the number of members shall be increased by the same number: Provided that any member intending to propose any increase in the number of shares shall be bound to give the directors notice of his intention to propose such increase: And provided that no meeting shall be competent to increase the number of shares for the time being except a meeting of which the members shall severally have received a notice of not less than fourteen days, which notice shall set forth the object of such meeting.

Number of shares may be increased.

XXXIX. 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.

How auditors to be elected.

XL. The members aforesaid at any quarterly general meeting or special general meeting may from time to time appoint a secretary, cashier, book-keeper, and such other officers as shall to such members seem to be required, and such officers or any of them from time to time may dismiss: Provided that the directors shall before the holding of any meeting for determining upon any such election or dismissal give not less than fourteen days' previous notice of such meeting and of the object thereof to the several members: Provided also that in case of any proposal to dismiss any such officer the directors shall give a notice to such officer of not less than fourteen days that the question of his dismissal is to come before such meeting.

General or special meetings to appoint secretary, cashier, bookkeeper, and other officers.

No. 9—1855.

Office and officers of the Association.

**XXI.** Until the members shall as aforesaid otherwise determine, the following shall be the offices and officers of the Association, namely,—Office, No. 5, Church-square, Cape Town: officers, Abraham Denysen, secretary and cashier; Jan Pieter Edward Faure, book-keeper; and Ryk le Sueur, auditor.

Remuneration of directors and salaries how to be determined.

**XLII.** 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 and the amount of salary which shall be paid to the officers of the said Association.

**XLIII.** That an alphabetical list of the names and additions of all the shareholders in the capital stock and the names of the places where each of the partners reside 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.

How estates to be charged with fees and charges.

**XLIV.** 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.

Actions by the Association to be brought in the name of the secretary, and to be sued in the same manner.

**XLV.** 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 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 fraud, 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 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.

**XLVI.** The directors are empowered to frame and establish all necessary by-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 by-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 by-laws, rules, and regulations being confirmed with or without amendment, they 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 by-laws, rules, and regulations, or some of them, which such member specifies, shall be repealed or amended; and as often as any such meeting shall repeal or amend any by-law, rule, or regulation the same shall be repealed or amended accordingly. And all such by-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 they shall have passed be published in the Government Gazette of this colony, and when so published shall have the same force and effect as if they had been inserted in this Act.

XLVII. 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.

Association to have a common seal.

XLVIII. The Association hereby incorporated shall continue to exist so long as there shall remain so many as twenty 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 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 nineteen or less, and three months thereafter elapse without the election of any new member so as to compose twenty 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.

How Association shall be dissolved.

No. 9—1855.

Construction of certain terms.

XLIX. 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.

Public Act.

L. 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.

Act when to commence.

LI. This Act shall commence and take effect from and after the promulgation thereof and shall continue in force for the term or period of twenty-one years thereafter.



No. 10—1855.]

AN ACT

[June 8, 1855.]

### For the Better Administration of Justice.

Preamble.

WHEREAS it has been found that the number of judges of which the Supreme Court at present consists is insufficient to enable the said judges to hold courts in the several districts of this colony as the wants of the inhabitants require, or to devote to the sitting of such courts as much time as in regard to some of them would be needful for the full and deliberate hearing of the cases depending therein: And whereas in order to remedy these evils it is expedient to add to the number of the judges of the said Supreme Court: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Former laws repealed

I. So much of the Royal Letters Patent of his late Majesty King William the Fourth, bearing date at Westminster the 4th 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.

Supreme Court, of what judges to consist.

II. The Supreme Court aforesaid shall henceforth consist of one chief justice and three puisne judges.

Governor may provisionally appoint a puisne judge.

III. It shall be lawful for the Governor to appoint provisionally, until Her Majesty's pleasure be known, the puisne judge at present required to complete the number aforesaid of three puisne judges.

Such judge how to be appointed.

IV. Such judge shall be appointed in manner and form as by the fourth section of the Charter of Justice directed in regard to the appointment of fit and proper persons to supply

such vacancies in the office of judge as are in the said section mentioned.

No. 10—1855.

V. 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 till 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.

Number of judges necessary to form a quorum.

VI. 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, jurisdictions, and authorities belonging to or vested in the said court.

As long as a quorum of judges exists, court to be competent to act.

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

Act when to commence.

No. 11—1855.] AN ACT [June 8, 1855.

For Applying a Sum not exceeding Thirty-four Thousand Nine Hundred and Forty Pounds Four Shillings and Four Pence, in addition to the Sums already provided, for the Service of the Year 1855.

WHEREAS by Act No. 6 of 1854 it is enacted that a sum not exceeding one hundred and ninety-three thousand three hundred and five pounds eight shillings and three pence, required for the service of the government of this colony for the year 1855, be applied in the manner and for the purposes in the said Act detailed and set forth: And whereas it is required that further provision be made for the said service: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, that a further sum, not exceeding thirty-four thousand nine hundred and forty pounds four shillings and four pence, be charged upon the revenue of the said colony and be applied in the manner following, that is to say:

Preamble.

For the expenditure of the Civil Establishment, a sum not exceeding eight hundred and fifty-four pounds and ten shillings.

How to be appropriated.

For the expenditure of the Judicial Establishments, a sum not exceeding one thousand one hundred and thirty-six pounds.

For the expenditure of the Educational Establishment, a

No. 11—1855.

sum not exceeding five hundred and thirty-seven pounds eight shillings and nine pence.

For the expenditure of the Medical Establishment, a sum not exceeding two hundred pounds.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding four hundred and seventy-two pounds.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding seventeen thousand four hundred and eighty-six pounds.

For the expenditure on account of Pensions, Retired Allowances, and Gratuities, a sum not exceeding two thousand one hundred and twenty pounds.

For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred and thirty pounds twelve shillings and three pence.

For the expenditure on account of Works and Buildings, a sum not exceeding three thousand and fifty pounds.

For the expenditure on account of Roads, Streets, and Bridges, a sum not exceeding seven thousand pounds.

For the expenditure on account of Miscellaneous Services, a sum not exceeding one thousand nine hundred and fifty-three pounds thirteen shillings and four pence.

Amounting in the whole to thirty-four thousand nine hundred and forty pounds four shillings and four pence sterling, as detailed in the schedule hereunto annexed.

No. 12—1855.]      AN ACT      [June 8, 1855.

For Applying a Sum not exceeding Sixty-six Thousand One Hundred and Ninety-two Pounds for the Service of the Year 1856.

Preamble

**W**HEREAS it is expedient to provide further sums in addition to those by law provided for the service of the government of this colony, until the 30th April, 1856: 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, that a sum not exceeding sixty-six thousand one hundred and ninety-two pounds be charged upon the revenue of the said colony towards the service of the year 1856, and applied in the same manner and for the same purposes as are set forth as permanent services in the schedule annexed to the Act No. 6 of 1854, and any other Act passed during the present session for the appropriation of the public revenue, that is to say:

How to be appropriated.

For the expenditure of the Civil Establishments, a sum not exceeding thirteen thousand two hundred and sixty-four pounds.

For the expenditure of the Judicial Establishment, a



sum not exceeding five thousand seven hundred and seven-  
ninety-four pounds.

For the expenditure of the Educational Establishment, a sum not exceeding one thousand seven hundred and ninety-four pounds.

For the expenditure of the Medical Establishment, a sum not exceeding two thousand five hundred and nine pounds.

For the expenditure of the Police and Gaol Establishment, a sum not exceeding ten thousand eight hundred and thirty-eight pounds.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding seventeen thousand and thirty-eight pounds.

For the expenditure on account of Pensions, Retired Allowances, and Gratuities, a sum not exceeding twenty pounds.

For the expenditure on account of Works and Buildings, a sum not exceeding one thousand and seventy-eight pounds.

For the expenditure on account of Roads, Streets, and Bridges, a sum not exceeding eleven thousand six hundred and thirty-four pounds.

For the expenditure on account of Miscellaneous Services, a sum not exceeding two thousand three hundred pounds.

Amounting in the whole to sixty-six thousand one hundred and ninety-two pounds.

No. 13—1855.]

AN ACT

[June 8, 1855.]

For the Appointment of Shipping Masters and for other purposes relating to the "Merchant Shipping Act, 1854."

WHEREAS by an Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," it is among other things enacted that "If the governor-general of India in council or the respective legislative authorities in any British possession abroad by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted throughout Her Majesty's dominions in the same

Preamble.

No. 13—1855.

manner as if such provisions had been hereby so adapted and applied and such penalties and punishments had been hereby expressly imposed:” And whereas it is expedient to apply and adapt to this colony certain provisions of the third part of the said Act to British ships registered at or being within the limits of this colony and to the owners, masters, mates, and crews of such ships: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

Governor may establish shipping offices and appoint shipping masters.

I. The Governor may establish a shipping office or shipping offices at any port or ports in this colony, and may for that purpose appoint and from time to time remove and re-appoint superintendents of such offices, to be called shipping masters, with any necessary deputies, clerks, and servants; and every act done by or before any deputy duly appointed shall have the same effect as if done by or before a shipping master; and such shipping masters shall perform in this colony the duties and exercise the powers conferred upon such shipping masters by the aforesaid Act in so far as may be applicable in this respect to this colony in regard to British ships registered at or being within the limits of this colony.

Governor may grant to shipping masters and other officers reasonable salaries.

II. It shall be lawful for the Governor to grant to such shipping masters, deputies, clerks, and servants appointed as aforesaid such salaries or other allowances out of the fees to be received under this Act for the labour and responsibility in executing the duties of their respective offices or employments as the Governor shall deem to be reasonable and necessary.

Duties of shipping masters.

III. It shall be the general business of shipping masters appointed as aforesaid to afford facilities for engaging seamen by keeping registries of their names and characters; to superintend and facilitate their engagement and discharge in manner provided in the aforesaid Act; to provide means for securing the presence on board at the proper times of men who are so engaged; to facilitate the making of apprenticeships to the sea service; and to perform such other duties relating to merchant seamen and merchant ships as are now or may hereafter be legally committed to them.

What fees to be payable at shipping offices.

IV. Such fees, not exceeding the sums specified in the table marked A in the schedule hereto annexed, as shall from time to time be fixed by the Governor shall be payable upon all engagements and discharges effected before shipping masters; and the Governor shall cause scales of the fees payable for the time being to be prepared and to be conspicuously placed in the shipping offices; and all shipping masters, their deputies, clerks, and servants may refuse to proceed with any engagement or discharge unless the fees payable thereon are first paid.

V. Every owner or master of a ship engaging or discharging any seamen or seaman in a shipping office or before a shipping master shall pay to the shipping master the whole of the fees hereby made payable in respect of such engagement or discharge, and may for the purpose of in part reimbursing himself deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain any sums not exceeding the sums specified in that behalf in the table marked B in the schedule hereunto annexed: Provided that if in any case the sums which the owner is so entitled to deduct exceed the amount of the fees payable by him such excess shall be paid by him to the shipping master, in addition to such fee.

No. 13—1855.

By whom certain fees are to be paid in the first instance and how those parties are to be reimbursed.

VI. Any shipping master, deputy shipping master, or any clerk or servant in any shipping office who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship excepting the lawful fees payable under this Act shall for every such offence incur a penalty not exceeding twenty pounds and shall also be liable to be dismissed from his office.

The receiving of anything except lawful fees an offence.

VII. The whole of the fees received by the shipping masters under this Act shall be paid by them into the colonial treasury at such times and in such manner as the Governor shall direct.

Fees to be paid into the colonial treasury.

VIII. The shipping masters shall keep true and correct accounts of all such fees and shall render accounts of the receipts and payments of the same, duly vouched, in such manner and form and at such periods as the Governor shall direct.

Shipping masters to keep correct accounts of fees.

IX. All shipping masters, deputies, clerks, and servants so appointed as aforesaid shall before entering upon their duties give such security if any for the due performance thereof as the Governor may require.

Shipping masters may be required to give security.

X. Any person interfering with or taking upon him to perform any of the duties and powers of any shipping master in this colony, by engaging seamen or otherwise dealing with any matter within the province of such shipping master, shall incur a penalty not exceeding twenty pounds: Provided however that nothing herein contained shall be construed so as to prevent any owner, master, or mate from entering into any agreement with any seaman, such agreement to be perfected according to the provisions of this Act before a shipping master at the shipping office.

No person under a penalty of £20 to interfere with or perform any of the duties of shipping masters.

XI. The Governor may from time to time dispense with the transaction before a shipping master or in a shipping office of any matters required by this Act to be so transacted, and thereupon such matters shall if otherwise duly transacted as required by law be as valid as if transacted before a shipping master or in a shipping office.

Governor may dispense with the ministration of shipping masters in regard to matters by this Act required to be transacted before shipping masters.

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The agreements mentioned in the 149th and 150th sections of the "Merchant Shipping Act, 1854," to be conformed to.

Penalty for carrying seamen to sea without an agreement executed.

Shipping masters to arbitrate in disputes between masters and seamen.

Fee for so arbitrating.

How seamen to be engaged to serve on board British ships registered and being within this colony.

XII. In the case of all British registered ships the agreements entered into in this colony between the masters of such ships and their crews shall be dated and signed and shall contain all the particulars as far as applicable as are set forth in the one hundred and forty-ninth and one hundred and fiftieth sections of the aforesaid Act and in the second schedule to this Act annexed.

XIII. If in any case a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master or owner of the ship shall for each such offence incur a penalty not exceeding five pounds.

XIV. Every shipping master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be in writing and shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any court of justice be deemed to be conclusive as to the rights of the parties, and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *primâ facie* evidence thereof. And every shipping master shall receive from the parties such fee, not exceeding one pound sterling, upon each arbitration as the said shipping master shall fix and determine.

XV. And whereas it is further enacted in the Act aforesaid that "Every master of a ship who, if such ship is registered in the United Kingdom, engages any seaman in any British possession, or if such ship belongs to any British possession, engages any seaman in any British possession other than that to which the ship belongs shall, if there is at the place where such seaman is engaged any official shipping master or other officer duly appointed for the purpose of shipping seamen, engage such seaman before such shipping master, and if there is no such shipping master or officer then before some officer of customs; and the same rules, qualifications, and penalties as are hereinbefore specified with respect to the engagement of seamen before shipping masters in the United Kingdom shall apply to such engagements in a British possession; and upon every such engagement such shipping master or officer as aforesaid shall endorse upon the agreement an attestation to the effect that the same has been signed in his presence and otherwise made as hereby required; and if in any case such attestation is not made the burthen of proving that the seaman was duly engaged as hereby required shall lie upon the master." And whereas it is expedient to extend and apply in this colony the provisions of the Act above recited to all British registered vessels registered in this colony: Be it further enacted that such provisions shall extend and apply to all British vessels registered

in this colony which shall be within the limits of this colony.

XVI. The provisions contained in the two hundred and forty-third, the two hundred and forty-fourth, the two hundred and forty-seventh, and two hundred and forty-eighth sections of the aforesaid Act and in the second schedule to this Act annexed, relating to punishments for offences committed by seamen or apprentices to the sea service, are hereby extended and applied to all crews of all British ships registered in this colony which shall be within the limits of this colony.

XVII. Whereas it is enacted by the two hundred and forty-second section of the aforesaid Act and in the second schedule to this Act annexed that the Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate in certain cases, one of which cases, set forth in paragraph five of the said section, is as follows: "If upon any investigation made by any court or tribunal, authorized or hereafter to be authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships or as to shipwrecks or other casualties affecting ships, a report is made by such court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the government of such possession:" And whereas it is expedient to authorize courts or tribunals in this colony for the purposes stated in the said recited section: Be it hereby further enacted that any of the courts of resident magistrates in this colony shall be authorized to make the inquiries into all the matters and for the purposes set forth in the said section; and further that it shall be lawful for the Governor upon any occasion which he may see fit to nominate and appoint any other person or persons whatever to be a court or tribunal duly authorized to make inquiry into the several matters and things set forth in the aforesaid recited section.

XVIII. The provisions contained in the five hundred and eighteenth, the five hundred and twentieth, and five hundred and twenty-first sections of the aforesaid Act and in the second schedule to this Act annexed, relating to legal procedure, to the punishment of offences, to the recovery of penalties, and to jurisdiction, shall be held to extend as far as applicable to this colony.

XIX. All penalties recovered under this Act shall be applied in the same manner and upon the same principles as are set forth in the five hundred and twenty-fourth section of the aforesaid Act and in the second schedule to this Act annexed.

No. 13—1855.

The 244th, 247th, and 248th sections of the "Merchant Shipping Act, 1854," to apply to all British ships registered and being within this colony.

What tribunals or persons to perform in this colony certain duties mentioned in the 242nd section of the "Merchant Shipping Act, 1854."

The 518th, 520th, and 521st sections of the "Merchant Shipping Act, 1854," extended to this colony.

How penalties under this Act to be applied.

No. 13—1855.

XX. This Act may be cited for all purposes as the "Local Merchant Seaman's Act, 1855."

This Act how to be cited.  
Construction of terms

XXI. In the construction of this Act the word "Governor" shall signify the person who for the time being shall be lawfully administering the government of this colony, and the words "master," "seaman," and "ship" shall respectively have the meaning given to them in and by the imperial Act aforesaid; and words importing the singular number shall include the plural number and words importing the plural number shall import the singular number, unless in any such case there shall be something in the subject or context repugnant to such construction.

Act when to commence.

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

SCHEDULE TO WHICH THIS ACT REFERS.

Table A. [See Section 4.]

Fees to be charged for matters transacted at shipping offices.

1. *Engagement of Crews.*

|                        | £ | s. | d. |
|------------------------|---|----|----|
| In ships under 60 tons | 0 | 4  | 0  |
| " 60 to 100            | 0 | 7  | 0  |
| " 100 to 200           | 0 | 15 | 0  |
| " 200 to 300           | 1 | 0  | 0  |
| " 300 to 400           | 1 | 5  | 0  |
| " 400 to 500           | 1 | 10 | 0  |
| " 500 to 600           | 1 | 15 | 0  |
| " 600 to 700           | 2 | 0  | 0  |
| " 700 to 800           | 2 | 5  | 0  |
| " 800 to 900           | 2 | 10 | 0  |
| " 900 to 1000          | 2 | 15 | 0  |
| Above 1000             | 3 | 0  | 0  |

And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.

2. *Engagement of Seamen separately.*

Two shillings for each.

3. *Discharge of Crews.*

|                        | £ | s. | d. |
|------------------------|---|----|----|
| In ships under 60 tons | 0 | 4  | 0  |
| " 60 to 100            | 0 | 7  | 0  |
| " 100 to 200           | 0 | 15 | 0  |
| " 200 to 300           | 1 | 0  | 0  |
| " 300 to 400           | 1 | 5  | 0  |
| " 400 to 500           | 1 | 10 | 0  |
| " 500 to 600           | 1 | 15 | 0  |
| " 600 to 700           | 2 | 0  | 0  |
| " 700 to 800           | 2 | 5  | 0  |
| " 800 to 900           | 2 | 10 | 0  |
| " 900 to 1000          | 2 | 15 | 0  |
| Above 1000             | 3 | 0  | 0  |

And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.

4. *Discharge of Seamen separately.*

Two shillings for each.

Table B. [See Section 5.]

Sums to be deducted from wages by way of partial repayment of fees in Table A.

1. In respect of engagements and discharges of crews, upon each engagement and each discharge.

From wages of any mate, purser, engineer, surgeon, carpenter, or steward .. .. . 1s. 6d.

All others except apprentices .. .. . 1s.

2. In respect of engagements and discharges of seamen separately, upon each engagement and each discharge .. .. . 1s.

SCHEDULE OF QUOTATIONS FROM THE IMPERIAL MERCHANT SHIPPING ACT, 1854, REFERRED TO IN THE LOCAL MERCHANT SEAMAN'S ACT, 1855.

No. 13--1855.

149. The master of every ship, except ships of less than eighty tons registered tonnage, exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say:

- (1.) The nature and as far as practicable the duration of the intended voyage or engagement.
- (2.) The number and description of the crew, specifying how many are engaged as sailors.
- (3.) The time at which each seaman is to be on board or to begin work.
- (4.) The capacity in which each seaman is to serve.
- (5.) The amount of wages which each seaman is to receive.
- (6.) A scale of the provisions which are to be furnished to each seaman.
- (7.) And regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law: Provided that if the master of any ship belonging to any British possession has an agreement with his crew, made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade.

150. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements, that is to say:

- (1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping master.
- (2.) Such shipping master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature.

No. 13—1855.

- (3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping master and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.
- (4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall when practicable be made before some shipping master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made the master shall before the ship puts to sea, if practicable, and if not as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereafter sign the same in the presence of a witness, who shall attest their signatures.

242. The Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate in the following cases, that is to say:

- (1.) If upon any investigation made in pursuance of the last preceding section he is reported to be incompetent or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.
- (2.) If upon any investigation, conducted under the provisions contained in the eighth part of this Act, or upon any investigation made by a naval court constituted as hereinafter mentioned, it is reported that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default.
- (3.) If he is superseded by the order of any admiralty court, or of any naval court constituted as hereinafter mentioned.
- (4.) If he is shown to have been convicted of any offence.
- (5.) If upon any investigation made by any court or tribunal authorized or hereafter to be authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters and mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the government of such possession.

And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same, or of any lower grade.

243. Whenever any seaman who has been lawfully engaged or



any apprentice to the sea service commits any of the following offences he shall be liable to be punished summarily as follows, that is to say:

- (1.) For desertion, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him.
- (2.) For neglecting or refusing without reasonable cause to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port, either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty, not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay or any expenses which have been properly incurred in hiring a substitute.
- (3.) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay.
- (4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour; and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days' pay.
- (5.) For continued wilful disobedience to lawful commands or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour; and also, at the discretion of the court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay or any expenses which have been properly incurred in hiring a substitute.
- (6.) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.
- (7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.
- (8.) For wilfully damaging the ship or embezzling or wilfully

damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

- (9) For any act of smuggling of which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

244. Upon the commission of any of the offences enumerated in the last preceding section an entry thereof shall be made in the official log-book, and shall be signed by the master, and also by the mate or one of the crew: and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished or that the same has been so read over as aforesaid and the reply if any made by the offender shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceedings the entries hereinbefore required shall if practicable be produced or proved, and in default of such production or proof the court hearing the case may at its discretion refuse to receive evidence of the offence.

247. Whenever any seaman or apprentice is brought before any court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such court may, if the master or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship or the owner or his agent to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and if necessary to be deducted from any wages which he has then earned or which by virtue of his then existing engagement he may afterwards earn.

248. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any justice may at the request of the master or of the owner or his agent cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship or to the owner or his agent to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

518. In all places within Her Majesty's dominions except Scotland the offences hereinafter mentioned shall be punished and penalties recovered in manner following, that is to say :

- (1.) Every offence by this Act declared to be a misdemeanour shall be punishable by fine or imprisonment with or without hard labour; and the court before which such offence is tried may, in England, make the same allowances and order payment of the same costs and expenses as if such misdemeanour had been enumerated in the Act passed in the seventh year of his late Majesty King George the Fourth, chapter sixty-four, or any other Act that may be passed for the like purpose; and may in any other part of Her Majesty's dominions make such allowances and order payment of such costs and expenses if any as are payable or allowable upon the trial of any misdemeanour under any existing Act or Ordinance, or as may be payable or allowable under any Act or Law for the time being in force therein.
- (2.) Every offence declared by this Act to be a misdemeanour shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months with or without hard labour, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary manner instead of being prosecuted as a misdemeanour.
- (3.) Every offence hereby made punishable by imprisonment for any period not exceeding six months with or without hard labour or by any penalty not exceeding one hundred pounds shall, in England and Ireland, be prosecuted summarily before any two or more justices: as to England, in the manner directed by the Act of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three; and as to Ireland, in the manner directed by the Act of the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes. And all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if the offences in respect of which the same are instituted were hereby stated to be offences in respect of which two or more justices have power to convict summarily or to make a summary order.
- (4.) In all cases of summary convictions in England where the sum adjudged to be paid exceeds five pounds or the period of imprisonment adjudged exceeds one month any person who thinks himself aggrieved by such conviction may appeal to the next court of general or quarter sessions which is holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division, or place wherein the case has been tried; provided that such persons shall give to the complainant a notice in writing of such appeal and of the cause and matter thereof, within three days after such conviction and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions or enter into a recognizance with two sufficient sureties before a justice

of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given and such recognizance being entered into the justice before whom the same shall be entered into shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of the appeal and shall make such order therein with or without costs to either party as to the court shall seem meet; and in case of dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall if necessary issue process for enforcing such judgment.

- (5.) All offences under this Act shall in any British possession be punishable in any court or by any justice of the peace or magistrate in which or by whom offences of a like character are ordinarily punishable, or in such other manner or by such other courts, justices, or magistrates as may from time to time be determined by any Act or Ordinance duly made in such possession, in such manner as Acts and Ordinances in such possession are required to be made in order to have the force of law.

520. For the purpose of giving jurisdiction under this Act every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which the same actually was committed or arose or in any place in which the offender or person complained against may be.

521. In all cases where any district within which any court or justice of the peace or other magistrate has jurisdiction, either under this Act or under any other Act or at common law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat or for the time being belonging thereto, in the same manner as if such ship, boat, or person were within the limits of the original jurisdiction of such court, justice, or magistrate.

524. Any court, justice, or magistrate imposing any penalty under this Act for which no specific application is herein provided may, if it or he think fit, direct the whole or every part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed or to be applied in or towards payment of the expenses of the proceedings; and subject to such directions or specific application as aforesaid all penalties recovered in the United Kingdom shall be paid into the receipt of Her Majesty's exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

No. 14—1855.] AN ACT [June 8, 1855.

For Exempting from Wharfage and Cranage Dues certain Articles landed from or shipped on board Whaling Vessels.

**W**HEREAS 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.

I. 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:

Certain articles connected with whaling ships to be free from wharfage dues.

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.

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

Act when to commence.

No. 15—1855.] AN ACT [June 8, 1855.

To Amend the Ordinance No. 18, 1844, for Regulating the Payment of Transfer Duty in this Colony.

**W**HEREAS the first schedule to the Ordinance No. 18, 1844, setting forth the various transfers which are exempt for the payment of transfer duty, requires to be altered and enlarged: And whereas also it is requisite to prevent persons from pretending to purchase as agents when in fact they are not the agents of any principals, by which device the public revenue is frequently defrauded, fair purchasers placed at a disadvantage, and heedless persons led into making untrue declarations: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and

Preamble.

No. 15—1855.

Schedule No. 1 of Ordinance 18, 1844, repealed.

Schedule to this Act No. 1 substituted.

Agents purchasing at public sales to name their principals.

Bidders refusing to say for whom they buy may be deemed themselves the purchasers.

Bidder naming a principal without authority from him in writing to be personally liable to transfer duty.

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

I. The said first schedule, or schedule No. 1, appended to the said Ordinance No. 18, 1844, is hereby repealed.

II. The schedule to this Act marked No. 1 shall be deemed and taken to be in room and stead of the schedule aforesaid hereby repealed, and the said Ordinance No. 18, 1844, shall be construed with reference to the schedule to this Act as if it were the schedule to the said Ordinance.

III. As often as any immovable property shall be sold by public sale the auctioneer shall before or at or forthwith after the knocking down of the hammer or other closing of the bidding for any lot ascertain from the bidder for whom he purchases, and if such bidder shall profess to purchase for some person other than himself then the auctioneer or his assistant shall in case the purchase 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 lot, notwithstanding that the hammer may have been knocked down, 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 by-standers, provided it may be made known to the auctioneer and be by him or his assistant taken down in writing as aforesaid.

IV. Should any bidder whose bid shall have been accepted by the auctioneer refuse to declare when called upon so to do by the auctioneer after the knocking down of the hammer 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.

V. If in any case any bidder should give in as aforesaid the name of some person as his principal, who shall be taken down as aforesaid 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 however that such bidder paying transfer duty shall recover the same

over 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.

No. 15—1855.

VI. No auctioneer shall take down in regard to any lot the name of any person as purchasing in the manner commonly called and written "q. q.," or receive in any form the name of any person as purchasing any lot for an unnamed principal; and any auctioneer contravening this section of this Act shall incur and be liable to any penalty not exceeding twenty-five pounds.

No auctioneer to take down any purchaser as purchasing "q. q."

VII. If in any case the person whose name shall have been given in and taken down as the purchaser of any property shall deny that he gave authority for the making of such purchase, or if for any other reason such person shall decline to accept such purchase and the agent or alleged agent shall be willing to take such property for his own individual account, and the vendor shall consent thereto, no transfer duty shall be payable upon the sale or alleged sale to the alleged principal; but only single transfer duty as if the sale had been made *ab initio* to the alleged agent in his individual capacity, and the solemn declarations by law required to be made shall be altered in the manner indicated in the forms marked A and B to this Act annexed.

When alleged principal refuses the property the alleged agent may take it without paying any second transfer duty.

VIII. Every private sale or sales made otherwise than by auction in regard to which the purchaser shall not profess to purchase for himself in his individual capacity shall be wholly null and void, unless at the time of the making and completion thereof the name of the principal for whom the purchase is made shall be disclosed and inserted in the note or memorandum in writing, if any, which may be made in regard to such sale.

In private sales all agents must name their principals.

IX. The provisions of the fifth and seventh sections of this Act 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.

The 5th and 7th sections of this Act to apply to private sales.

X. When and as often as any contract of sale upon which transfer duty shall be payable shall be by mutual consent of the vendor and the purchaser cancelled and rescinded before transfer made, without any part of the purchase money having been paid or any valuable consideration given or promised by or on behalf of the purchaser for the purpose of obtaining the consent of the vendor to such cancellation, the transfer duty upon such sale shall be remitted: Provided that the vendor and the purchaser or their agents shall make in reference to such cancellation solemn declarations, which shall be in substance in the forms marked C and D to this Act annexed: Provided also that the Governor may, in case from death or other cause any vendor or purchaser shall be unable to make such declaration, dispense with the declaration of such vendor or purchaser.

Sales may in case no consideration have passed be rescinded and transfer duty shall be remitted.

No. 15—1855.

Sales declared void by legal process not to be chargeable with transfer duty.

When purchasers cannot be discovered and no purchase money has been paid declaration may be altered.

Form of solemn declaration in regard to certain of the foregoing cases.

Before whom declaration to be made.

What declaration to be made in case of rescinded sale.

Transfer duty to be payable upon transfers for religious, charitable, educational, municipal, and the like purposes.

**XI.** When and as often as any contract of sale upon which transfer duty shall be payable shall be set aside or declared or made void by the judgment of any competent court, the transfer duty upon such sale if unpaid shall not be payable, and if paid shall be returned.

**XII.** When and as often as it shall be made to appear to the Governor of the colony by any person who shall have sold any property upon which sale transfer duty shall be payable that the purchaser of such property cannot be discovered within the colony, or has left the colony without taking transfer and without paying any part of the purchase money, and that such vendor is unable to obtain or enforce the fulfilment of the contract, it shall be lawful for the said Governor to permit the vendor aforesaid, in case he shall sell the said property over again, to make the necessary alteration in the form of the solemn declaration to be made by him in reference to such second sale: Provided that nothing herein contained shall alter or affect the law in reference to the respective rights or remedies of such vendor and such purchaser in regard to such first or original sale.

**XIII.** In the case of a fresh or second sale of any property which was included in any such sale as in the tenth, eleventh, and twelfth sections aforesaid mentioned, the solemn declaration to be made by the vendor in regard to such fresh or second sale shall be altered in the manner indicated in the form marked E to this Act annexed.

**XIV.** The several declarations mentioned in this Act shall be made before such persons respectively as are or shall be by law entitled to attest declarations of sale and purchase for the purpose of transfer duty, and any person who shall wilfully and corruptly make and subscribe any declaration in this Act mentioned knowing the same to be untrue in any material particular shall be deemed to be guilty of the crime of contravening this section of this Act, and shall upon conviction thereof suffer such punishment as shall be by law provided for the crime of perjury.

**XV.** When and as often as any sale in regard to which transfer duty shall have been paid but no transfer given shall be cancelled and rescinded by mutual consent of the vendor and purchaser it shall be lawful for the Governor, upon being satisfied that no portion of the purchase money has been paid nor any valuable consideration given or promised for or in respect of such cancellation, to permit in regard to any fresh or second sale by the same vendor of the same property the declaration to be made by such vendor to be altered so as to conform to the fact; and such declaration shall be in substance in the form marked E to this Act annexed.

**XVI.** And whereas remissions of transfer duty are virtually grants of money, and grants of money made in an inconvenient form: Be it enacted that from and after the commencement



and taking effect of this Act no transfer duty shall be remitted upon any sales made to any person or persons for religious or charitable or educational uses or purposes, or upon sales made to municipal commissioners for municipal uses or purposes, or upon sales made to harbour improvement boards for harbour improvement purposes, or generally upon any sales whatever except sales in regard to which the transfer duty if paid would be paid directly from and out of the colonial revenue.

No 15-1855.

XVII. And whereas surviving spouses who had been married to their deceased spouses in community of property frequently take over by appraisement or some similar arrangement, or by purchase at public sale from the executors or heirs of the deceased, the immovable property of the joint estate: And whereas the rule in regard to the payment of transfer duty by such surviving spouses requires to be declared and established: Be it enacted that no surviving spouse shall be chargeable with any transfer duty upon a purchase or taking over by appraisement or other mode of acquiring any of the immovable property of the joint estate, and that every such surviving spouse, if a widow, may have such property standing registered in the name of her deceased husband registered in her own name in her individual capacity without the payment of any duty.\*

Surviving spouses taking over the joint estates to pay no transfer duty.

XVIII. In the interpretation of this Act, the word "Governor" shall mean the officer for the time being administering the government, and any word importing the singular number or masculine gender shall be understood to include several persons and things as well as one person or thing and females as well as males, unless there be something in the subject or context repugnant to such construction.

Construction of terms

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

Act when to commence.

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### SCHEDULE No 1.

A. When any person appearing upon the records of the deeds registry to be a joint owner of any property shall purchase that property he shall not be charged with duty upon that proportion of the purchase money which represents his individual share or interest.

B. Any person being a descendant of any deceased person and who would be the heir, or one of the heirs *ab intestato* of such deceased person, who shall, being entitled as an heir or legatee in the estate, purchase or take over the immovable property in the estate or any part thereof, shall not be chargeable with duty upon so much of the purchase money or value of such property as represents his share, considered as or as if an heir *ab intestato*; and the husband of any such heir or legatee, or the tutor, curator, or authorized agent or trustee of any such heir or legatee, purchasing

\* Repealed by section No. 7 of Act 7 of 1858.

for and in the name of such heir or legatee shall be deemed and taken to be such heir for the purpose of this exemption.

C. Any heir or legatee of any deceased person, being such a person as has been above described under letter B, who shall require to have any of the immovable property inherited by him from the deceased, or by the deceased legated or prelegated to him, removed from the name of the deceased into his own name, shall not be chargeable with duty upon the amount of his share in the property so to be transferred in case or supposing that the deceased died intestate.

D. Every surviving spouse, being either the sole or a joint heir *ex testamento* of his or her deceased spouse, shall for the purpose of the exemption provided as aforesaid under letter C be regarded as if an heir *ab intestato* of the deceased spouse.\*

E. When any surviving spouse shall have been instituted as sole and universal heir of the first dying spouse, which first dying spouse shall leave children (him or her surviving, such children shall respectively be entitled (unless wholly and lawfully disinherited) to the exemptions provided as aforesaid under letters B and C, precisely as if they together with the surviving spouse had been instituted joint heirs of the deceased.

F. The husband of any female to whom he shall be married in community of property may have any property standing in the Deeds Registry Office in the unmarried name of such female removed into his own name without the payment of any duty.

G. As often as the owner of any immovable property, being a husband or intended husband, or being an intended wife, or being the parent of a husband or wife or of an intended husband or intended wife, shall agree or determine to vest such property in a trustee or in trustees for the purpose of thereby making a provision for the support of the marriage, or for the wife or intended wife, or for the children of the marriage, transfer of such property may be made to such trustee or trustees without the payment of any duty: Provided that this exemption shall only extend to cases in which no consideration other than an intended marriage or natural love and affection for or towards both or one or other of the spouses or the children of their marriage shall be given to the owner of the property proposed to be vested in trustees upon the trusts aforesaid or upon trusts of the like nature.

H. In every case in which any one person shall by the records in the Deeds Registry Office appear to be merely a trustee for any other person, whether the latter shall be a minor or a major or under coverture or not, the property so held in trust may be removed from the name of the trustee to that of the other party being entitled to have it so removed without the payment of any duty.

I. In every case of voluntary or compulsory partition between joint owners of immovable property all changes in the records of the deeds registry required for the due registration of the separate shares to be held by each in severalty shall be made without the payment of any duty.

J. Any person being a descendant or a surviving spouse of any person who shall by will or otherwise have burthened any immovable property with the entail of *fidei commissum* in regard to such descendant or surviving spouse, so that the latter shall be

\* Repealed by section 7 of Act No. 7 of 1858.

entitled only to a life or other limited interest in such property, may have his title to such limited interest recorded in the Deeds Registry Office without the payment of any duty.

K. Any person claiming free property in remainder after the expiration or extinction of any previous *fidei commissum* burthening such property may, in case such person be a descendant within the fourth degree of the person imposing such *fidei commissum*, have the said property registered as his own in the Deeds Registry Office without the payment of any duty.

## FORM A.

I, A B, do solemnly and sincerely declare that I sold to C D, as the agent or alleged agent of E F, on the — day of —, 185—, and not before, the property following, namely (here describe the property), for the sum of £—; and I declare that the said E F has declined to accept the property, and that the said C D has signified his willingness to take the same to and for his own individual account for the said sum of £—, neither more nor less: And I further declare that I am not to receive any valuable consideration other than the said sum of £— for or in respect of the alienation of the said property: And I further declare that the said C D, as the agent or alleged agent of the said E F, is the only person who has ever purchased the said property, and that I never sold the same to any other person than in manner aforesaid to the said C D, who with my consent and by virtue of the Act in that behalf provided takes over the property aforesaid as his own: And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled “Ordinance for substituting Declarations in place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.”

(Signed) A B

Declared before, &amp;c.

## FORM B.

I, C D, do solemnly and sincerely declare that I did, in the name of E F, purchase from A B, on the — day of —, 185—, and not before, the property following, namely (here describe the property), for the sum of £—; and I declare that the said E F has declined to accept the said property, and that the said A B has consented and agreed that I shall take over the said property as the purchaser thereof for the sum of £—: And I further declare that I have not, nor has any person to my knowledge on my account given, nor is there by me or on my behalf to be given, any valuable consideration of any kind whatever for or in respect of the alienation to me of the said property other than the sum of £— aforesaid: And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled “Ordinance for substituting Declarations in place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.”

(Signed) C D

Declared before, &amp;c.

## FORM C.

I, A B, do solemnly and sincerely declare that I sold to C D, on the — day of —, 185—, the property following, namely (here describe the property), for the sum of £—; and I declare that I have never received any sum of money or other valuable consideration from the said C D on account of the said purchase:\* And I further declare that I have consented and agreed with the said C D to cancel by mutual consent the said sale, which sale was on the — day of —, 185—, cancelled accordingly: And I further declare that I have not received nor am I to receive from the said C D or any other person any money or other valuable consideration for or in reference to my consent to the cancellation of the said sale: And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled “Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.”

(Signed) A B

Declared before, &amp;c.

## FORM D.

I, C D, do solemnly and sincerely declare that I bought from A B, on the — day of —, 185—, the property following, namely (here describe the property), for the sum of £—; and I declare that I have never given to the said A B any sum of money or other valuable consideration on account of the said purchase:† And I further declare that I have applied to the said A B to consent to cancel the said sale, which sale hath accordingly been cancelled by mutual consent: And I further declare that I have not given nor am I to give, nor has any person on my behalf to my knowledge given, nor is any person to my knowledge to give any money or other valuable consideration for or in reference to the cancellation of the said sale: And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled “Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.”

(Signed) C D

Declared before, &amp;c.

## FORM E.

I, A B, do solemnly and sincerely declare that the sum of £— is the full and entire purchase money for which I have sold (here describe the property) to E F; and I declare that I sold the same to the said E F on the — day of —, 185—, and not before; and that I am not to receive any other valuable consideration for or in respect of the alienation of the said property: And I do further declare that the only person other than the said E F to whom I ever sold the said property, or who at any time

\* Should any interest have been received upon the purchase money, add the words “except certain interest upon the said sum.”

† Should any interest have been paid upon the purchase money, add the words “except certain interest upon the said sum.”

purchased the said property from me, was C D, to whom I sold the same on the — day of —, 185— : And I further declare that the said sale to the said C D has been cancelled by mutual consent, and that the transfer duty thereupon has been remitted : (Or in regard to section 11, “and I further declare that the said sale has been set aside by a judgment of the Supreme Court bearing date the — day of —, 185—, pronounced in a suit wherein — was the plaintiff, and — was the defendant:” or in regard to section 12, “and I further declare that the said C D has, to the best of my knowledge and belief, left the colony,” “or cannot be discovered within it” as the case may be, and that he has not paid me any part of the purchase money agreed to be paid, and that I have received from his Excellency the Governor the permission herewith annexed to make this special declaration.) And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled “Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.”

No 15—1855.

(Signed) A B

Dated before, &amp;c.

In cases of exemption claimed under and by virtue of the 15th section of this Act, the above form shall be altered by changing the word “remitted” into the word “paid.”

No. 16—1855.] AN ACT [June 8, 1855.

To Provide for the Organization of the Inhabitants of the several Divisions of this Colony for the Internal Defence of their respective Divisions.

WHEREAS it is expedient to make provision for enrolling and organizing the able-bodied inhabitants of this colony for the protection of life and property within their respective 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 of the same :

Preamble.

I. Within three months after the promulgation of this Act the several field-cornets throughout the colony shall make out a list containing the names of all the male residents in their respective field-cornets between the ages of twenty and fifty years, distinguishing those who are hereinafter exempted from liability to service under this Act.

Field-cornets to frame lists of persons liable to burgher duty.

II. All persons disqualified for service as burghers by bodily or mental infirmity, all ministers of religion, judges, resident magistrates, all teachers in private schools, and

Who exempt from burgher duty.

constables, all persons serving in any of the military or naval departments of Her Majesty or in the civil service of this colony or in the service of the Honourable East India Company, and all merchant seamen under articles, shall be exempt from serving in the burgher force under this Act, except with their own consent.

How lists to be framed where no field-cornets

III. In any municipality for which no field-cornet is appointed the duties devolving upon that officer under this Act shall be executed by the commissioners of such municipality, with the exception of the municipality of Cape Town, within which the duties devolving upon the divisional councils and field-cornets under this Act shall be executed by the commissioners and wardmasters of the said municipality.

How claims to exemption to be made in cases of age or infirmity.

IV. In every case in which exemption may be claimed on account of bodily or mental infirmity the party so claiming shall be required to furnish a competent medical certificate, and if he claim it on account of age but cannot certify on affidavit nor afford proof of the validity of his claim, the decision of his liability to service shall rest with the divisional council of his division.

Should field-cornet neglect civil commissioner to make out the list.

V. If any field-cornet should neglect to make out the list as hereinbefore mentioned and to furnish it to the divisional council of his division within the time specified, or shall furnish an imperfect list, it shall be the duty of the civil commissioner of the division to make out or to perfect the said list as the case may be.

Duty of divisional council on receiving list.

VI. Every such divisional council shall forthwith upon the receipt of such list cause a copy thereof to be affixed at or near all churches or other places of religious worship, and also at the residence of each field-cornet and at each court-house within the division and at the place of meeting of such council as aforesaid, and shall cause a notice to be served on or at the residence of each person on the list of the day on which the said council 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 place of meeting of the said council.

Divisional council to hold a meeting for correcting each list.

VII. Upon the day and at the place so notified the divisional council shall hold a meeting, at which it shall on due proof 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 meeting 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 divisional council shall be final.

What officers to belong to the burgher force and how to be elected.

VIII. 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-cornet, and of a commandant

in each division, who shall command all the force enrolled therein; and all such officers shall be elected as herein-after enacted; provided that if two or more companies be called out and assembled together and the field-commandant be not present, the field-captains then present shall out of their number elect one to act as provisional field-commandant during the absence of the field-commandant.

IX. Upon the completion of such lists as aforesaid each field-cornet shall by notice served on or at the residence of each person on the said lists 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 in such notice, to elect a field-captain and a deputy to act in the absence of such 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 divisional council.

Field-captains how to be elected.

X. Within one month after the election of the field-captains and their deputies as hereinbefore provided they shall assemble, on a day to be fixed by the divisional council, and shall elect their field-commandant.

Field-commandant how to be elected.

XI. All field-commandants, field-captains, and deputy field-captains elected as above provided shall serve for three years or until other persons be elected in their stead in the manner above provided for their first election, and shall be then re-eligible. If any field-captain or deputy field-captain at any time decline to serve he shall give notice thereof to the field-commandant of his division, and if any field-commandant so decline to serve he shall give notice thereof to the divisional council, who shall respectively proceed in the same manner as above provided to the election of the successor of such officer.

Field-commandants, &c., how long to remain in office.

XII. Within one month after the election of the field-commandant that officer shall assemble with the field-captains and (with the assistance of the field-cornets) shall frame a roll of the burghers of the division, placed in the order in which they shall be called out for service in such division and all burghers shall be called out in consecutive order according to such roll; and no burghers shall be called out a second time for service in such division except with their own consent until all the other burghers on the said roll have been called out; provided that any person considering himself aggrieved by the position of his name on the aforesaid roll may appeal to the divisional council, who shall decide on such appeal.

By whom and how the burgher roll of each division to be framed and burghers to be called out in their order.

XIII. Upon the completion of such roll as aforesaid the field-commandant shall furnish a copy thereof to the divisional council of his division, and the said council shall cause a

On completion of burgher roll every burgher to receive notice of his number.

No. 16—1855.

Burgher roll to be triennially revised.

How names to be annually struck off and added to the burgher roll.

Where no divisional council who to perform its duties.

Governor may call out so many of the burghers as he may consider necessary.

Proceedings in the case in which the Governor shall call out the burghers.

Officers or burghers making default when called out to forfeit any sum not exceeding £3.

notice to be addressed to every burgher in his division, in which shall be stated the number of his name on such roll.

XIV. Every such roll shall be revised at the expiration of every three years in the same manner as is above provided for its original formation.

XV. Every field-cornet shall within the first month of each year furnish to the divisional council of his division a list of all burghers 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 who have reached the age of twenty, 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 divisional council their names shall be added by the said council at the end of the roll; and the names of all such former persons shall be erased from the roll by the said divisional council.

XVI. If in any division no divisional council shall be in existence the civil commissioner of such division assisted by any two justices of the peace shall do all acts required in this Act to be done by the divisional council; and all lists required to be furnished to the divisional council shall be furnished to the civil commissioner: Provided always that nothing herein contained shall be construed to exclude the commissioners and wardmasters in their respective municipalities from performing the duties imposed on them in the third section of this Act.

XVII. Whenever it shall be necessary for the defence of any division of the colony or for the protection of life and property therein, the Governor or the officer administering the government of the colony may by proclamation call out the burgher force of such division or such part of the said force as he may consider necessary, for service within the said division, and not elsewhere except with their own consent.

XVIII. Upon the receipt of such proclamation or in the event of an emergency the civil commissioner shall give notice thereof to the field-commandants and to the field-captain or captains whose companies it may be necessary to call out, who shall thereupon proceed to call out in such manner as they may deem best the required number of burghers in the order in which they stand upon the roll of the division, and shall at the same time appoint a time and place at which the burghers of their respective field-cornetcies shall assemble therein; and if it be required to summon a general assembly of the burghers of the division or the burghers of more than one field-cornetcy the civil commissioner shall in his summons to the field-commandant and field-captains signify at what time or times and in what place or places the several companies shall meet for the service required of them.

XIX. Any commandant, field-captain, deputy field-captain, or burgher who having received due notice 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 the Governor or any officer duly authorized by the Governor, or in the case of a field-captain or burgher the lawful orders of his superior officer, shall upon conviction before the divisional council of his division be liable to a fine not exceeding three pounds, which shall be recoverable by summary process in the court of the resident magistrate and shall be appropriated to the maintenance of the burghers called out and serving under the provisions of this Act.

XX. Each commandant, field-captain, deputy field-captain, and burgher when called out into active service and acting within his division shall receive rations for himself and forage for his horse if mounted, or in lieu thereof the following sums per diem, viz.:

|                |     |     |     |     |         |
|----------------|-----|-----|-----|-----|---------|
| If mounted     | ... | ... | ... | ... | 4s. 6d. |
| If not mounted | ... | ... | ... | ... | 2s. 0d. |

Pay of officers and burghers.

XXI. The widow of any burgher who may be killed in action and any burgher who may receive during his service any wound or injury permanently injurious in its consequences shall receive a pension or allowance of not less than one shilling per diem and not exceeding seventy pounds sterling per annum, the amount whereof shall be fixed by the Governor, subject to the approval of Parliament.

Widows of burghers and burghers permanently injured to be pensioned.

XXII. Every mounted burgher whose 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 saddle, gun, or accoutrements, shall be paid the value of the same at the time of the loss thereof; such value to be certified by the commandant of the force to which the burgher belongs.

Burgher losing horse, &c., to be compensated.

XXIII. When the burgher force of any division or any part thereof is 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.

Equipments of burgher force how to be obtained.

XXIV. When any articles as 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

How equipments to be paid for.

No. 16—1855.

that the same are fairly worth £—; and the civil commissioner shall on presentation of such certificate, if acquiesced in by the owner and not appearing to him excessive in value, proceed to pay the sum stated in such certificate; or shall grant to such owner a certificate payable on demand for all sums under twenty pounds, and for all higher sums either payable on demand or redeemable by Government within a period not exceeding two years, which certificate shall be transferable by cession and secure the said amount with legal interest if not payable on demand from the date of purchase to the date on which such certificate shall be paid: Provided that 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 may be referred to the divisional council, which shall cause such inquiry to be made as it shall see fit into the just and fair value of such articles, and the said divisional council thereupon shall affix such value as it may deem just and fair; and its decision thereon shall be final; and all articles so obtained shall be the property of Government and shall when no longer required be disposed of under such regulations as may be appointed.

Governor may provide arms for burghers who have not arms.

XXV. The Governor or the officer administering the government may in each division take such measures as may be deemed expedient for providing at the public expense arms for such burghers as may not possess arms of their own, and for the due preservation and custody of all public property provided for the use of the burgher force.

Costs of this Act to be borne by the general revenue.

XXVI. The cost and charge of carrying out this Act shall be defrayed out of the general revenue of this colony.

No. 1—1856.] AN ACT [June 4, 1856.  
For Preventing the Spread of Contagious or Infectious Diseases.

Preamble.

WHEREAS it is expedient in case any contagious or infectious disease of a fatal or dangerous character should break out or appear amongst the inhabitants of this colony that stringent and immediate measures should be taken to prevent the spread 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:

Governor may declare this Act in force in towns or other localities.

I. In case any contagious or infectious disease should break out or appear in any of the towns or villages or other localities of this colony it shall be lawful for the Governor thereof, by proclamation to be published in the Government Gazette, to declare this Act in force in such town or village or other locality, and such other towns, villages, or other

localities as the said Governor shall deem needful and describe.

No. 1—1856.

II. As often as any such proclamation as aforesaid shall be published as aforesaid this Act shall be thereupon in force in the place or places described in such proclamation, and shall remain in force therein until such proclamation shall by some other proclamation to be so issued as aforesaid be withdrawn.

Act to remain in force until withdrawn by proclamation.

III. If any such disease as aforesaid shall break out or appear in any town or village other than Cape Town or some town or village in the Cape district it shall and may be lawful for the resident magistrate having jurisdiction in such town or village, by a written or printed notice posted at his office and in any other way in which public notices are usually published in such town or village, to declare this Act in force within such town or village, and thereupon this Act shall be forthwith in force therein precisely as if such notice aforesaid were a proclamation of the Governor: Provided that every resident magistrate issuing any such notice shall without delay report his proceeding to the said Governor in order that such a proclamation may be published as in the first section mentioned, after the publication of which proclamation the notice aforesaid shall, *ipso facto*, become null and void.

Magistrate may by notice put the Act in force until proclamation can be issued.

Proclamation to supersede such notice.

IV. As often as this Act shall be in force in any town or village which shall be a municipality it shall be lawful for any two commissioners or any two wardmasters of such municipality, or for one commissioner accompanied by one wardmaster, or for any two inhabitants who shall produce an authority in writing signed by the secretary or town-clerk of the municipality purporting to be so signed by order of the commissioners authorizing the said inhabitants by name to aid in carrying into effect the provisions of this Act, accompanied by a medical practitioner in case there be one resident within five miles of the town-house or office of the municipality, to demand entrance into any dwelling-house, building, or habitation within such municipality, and in case entrance shall not be afforded to use or cause to be used all necessary force to effect such entrance, and to visit every room, closet, and apartment therein, and if they shall find in such house any person labouring under the contagious or infectious disease in regard to which this Act shall have been put in force in such municipality and who shall not be under medical treatment by some medical practitioner they shall cause such person to be removed with all possible care and all proper speed to any hospital or building open for the reception of such patients, in order that such person may be properly treated for the disease and may not communicate it to others: Provided that any medical practitioner resident as aforesaid who shall without lawful cause refuse when called upon by any two such persons as aforesaid to

Powers of municipality in respect of this Act when enforced.

No. 1—1856.

accompany them for any such purpose as in this section mentioned shall be liable to a fine not exceeding ten pounds; and provided that every medical practitioner accompanying any such persons for any such purpose shall be entitled to his reasonable fee for so doing, such fee in case of dispute to be fixed by the Governor aforesaid.

Filth and other noxious matter to be removed from houses, &c.

Defective drainage, &c., to be remedied.

Liability of owner and occupier.

Overcrowding of dwellings to be prevented or remedied.

V. If any such persons as in the last preceding section mentioned shall discover in any house or building which they shall examine or in any yard, out-house, or other place belonging thereto any accumulation of offensive or noxious matter, refuse, dung, or offal, or any foul or offensive drain, privy, or cesspool, it shall be lawful for such persons to require the occupant of the premises or place in which such noxious, foul, or offensive matter or thing shall be forthwith to do or cause to be done what shall be needful to put such premises as far as may be into a wholesome state; and in case such occupant shall refuse or neglect forthwith so to do then the said persons so visiting the said premises as aforesaid may cause to be done what shall be needful for the purpose aforesaid, and the costs and charges of so doing shall be a debt due by the occupant of such premises and may be recovered by such persons by action in any competent court: Provided that as often as such occupant shall not be the owner then the owner shall also be liable, and both the owner and the occupant may be sued together in the same action, the one of them paying the other to be discharged: Provided however that nothing herein contained shall extend to alter or affect the mutual responsibility of such owner and occupier as between themselves, which shall be determined by the nature of their contract and the circumstances of the case.

VI. Should any such persons as aforesaid in their examination of any house, room, or other place discover or ascertain that so many inmates are crowded together in such insufficient space as evidently to expose them to the ravages of the disease which shall be then in question it shall be lawful for such persons so examining to require that so many of the said inmates as shall be plainly in excess of the number which such house, room, or other place can safely accommodate shall remove to some other fitting place, and the persons so to remove shall be selected by arrangement between such inmates themselves, and failing that, by the decision of such persons so examining as aforesaid, after hearing the parties concerned; and in case the inmates who shall be required to remove shall not be themselves provided with any place approved of by such persons so examining as aforesaid as a fitting place, then it shall be lawful to require them to remove to some building or place which shall be provided by the municipality for the reception of parties so circumstanced: Provided that no charge shall be made for the use by any such parties of such lastmentioned building or place.

VII. If any such inmate as aforesaid shall upon request of such persons so examining as aforesaid refuse to remove either to some fitting place selected by himself or to the building or place provided as aforesaid for the reception of such individuals, it shall be lawful for the resident magistrate of the district (and in regard to Cape Town, for either the resident magistrate of Cape Town or the judge and superintendent of police of Cape Town) to cause such inmate to be brought before him and upon proof that the request aforesaid to remove was reasonable and necessary to commit such inmate to prison, unless and until he shall consent to remove either to some fitting place selected by himself or else to some building or place provided as aforesaid by the municipality: Provided that if he should so consent before imprisonment he shall not be imprisoned, and that upon so consenting he shall, if in prison, be liberated.

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In case inmates refuse to remove.

VIII. In any town, village, or other locality in which this Act shall be put in force, not being a municipality, it shall be lawful for the resident magistrate of the district to nominate and appoint by any writing under his hand so many of the inhabitants as shall appear to be necessary and who shall be willing to serve to aid in carrying into effect the provisions of this Act, and any two such persons shall possess in regard to such town, village, or locality the same powers and authorities which might under the fourth section of this Act be lawfully exercised within a municipality by any two of the persons in the said section mentioned: Provided that in regard to any town, village, or locality not being a municipality the resident magistrate aforesaid shall should it be necessary so to do provide some building or place to be used as a public hospital and some other building or place for the reception of persons whom it shall be necessary to remove from overcrowded rooms or houses; and the provisions of the fourth and sixth sections of this Act shall respectively extend and apply to such buildings or places respectively: And provided that such persons as in this section mentioned need not to be accompanied by a medical practitioner.

Where there is no municipality duties of magistrate.

IX. Any two of the persons authorized under this Act to aid in carrying into effect the provisions thereof in any town, village, or other locality in which this Act shall have been put in force by reason or on account of the appearance of small-pox may require any person within such locality to give proof that such person has been vaccinated, and if any person who shall not give proof of having been vaccinated shall refuse to allow himself to be vaccinated it shall be lawful for the resident magistrate of the district (and in regard to Cape Town for either the resident magistrate of Cape Town or the judge and superintendent of police of Cape Town) to cause such person to be brought before him, and in case such person shall fail to prove that he has been vaccinated and yet shall refuse to allow himself to be vaccinated

In case of small-pox.

Proof of vaccination required.

In case of refusal to be vaccinated.

No. 1—1856.

such magistrate or judge of police may cause such person to be removed to and detained in any building or place appointed for or used as a lazaretto, there to remain until this Act shall be withdrawn from such town, village, or other locality or until he shall allow himself to be vaccinated.

Treatment of infected persons found abroad.

X. All persons found in any road, street, or other public place in any locality in which this Act shall be in force suffering under the contagious or infectious disease in regard to which this Act shall have been put in force therein may be removed by any person authorized as aforesaid to aid in carrying the provisions of this Act into operation to the residence of such diseased person, or if he shall have none such or none in which he could be properly treated for the said disease to any public hospital as aforesaid.

Penalty for resisting.

XI. Any person wilfully refusing entrance to any such persons as aforesaid demanding entrance to any house or building as aforesaid and announcing their character and object, and any person obstructing or using foul, violent, or insulting language to any such persons whilst in the execution of any of the powers or provisions of this Act, shall upon conviction be liable to a fine not exceeding ten pounds, and upon non-payment thereof to imprisonment with or without hard labour for any period not exceeding one month.

Fine how recoverable.

XII. The fine in the last preceding section mentioned shall be recoverable in the court of the resident magistrate of the district in which the offence shall have been committed.

Construction of terms

XIII. In the construction of this Act the term "Governor" shall mean the officer for the time being administering the government; and the term "resident magistrate," the officer acting as such; and words importing the singular number shall include the plural number and words importing the masculine gender shall include females as well as males.

Act when to take effect.

XIV. This Act shall commence and take effect from and after the promulgation thereof, but shall only be in operation in any town, village, or other locality in case it shall be put into force therein in manner and form as hereinbefore provided.

No. 2—1856.]

AN ACT

[June 4, 1856.]

For the Naturalization of Hermann Sebastian von Rönne.

Preamble.

WHEREAS Hermann Sebastian von Rönne, of Port Elizabeth, in this colony, merchant, an alien of good name and fame, and domiciled in this colony, is desirous by an act of naturalization to be naturalized within this colony: And whereas it is expedient that he should be

so naturalized: 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 2-1856.

I. When and as soon as the said Hermann Sebastian von Rönn shall have taken the oath of allegiance to Her Majesty the Queen, which oath any resident magistrate or justice of the peace within this colony is hereby authorized to administer, he, the said Hermann Sebastian von Rönn, shall be to all intents and purposes whatsoever deemed, taken, and esteemed to be naturalized in this colony, and to be in the same plight and condition in all respects as if he had been born within this colony.

Oath of allegiance.

II. The resident magistrate or justice of the peace before whom the said Hermann Sebastian von Rönn shall take the oath of allegiance aforesaid shall forthwith transmit such oath to the registrar of the Supreme Court of the colony, to be by him preserved of record, and such registrar as soon as he shall receive the said oath shall by a notice to be published in the Government Gazette announce that the said oath aforesaid has been deposited in his office in pursuance of this Act.

Oath to be filed in Supreme Court and notice of record gazetted.

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

Act to commence.

No. 3—1856.]

AN ACT

[June 4, 1856.

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

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:

Preamble.

I. 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

Bills due on holidays or fast-days.

No. 3—1856.  
If succeeding day be Sunday.

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.

Notice of dishonour.

II. 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.

III. 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 holder of any such bill or note to give notice of the dishonour thereof until the next succeeding Tuesday.

Notice of dishonour.

Act when to commence.

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

No. 4—1856.]

AN ACT

[June 4, 1856.

To Amend Act 5 of 1855, entitled "An Act for creating Divisional Councils in this Colony."

Preamble.

WHEREAS it is expedient that provision should be made that in the division of Port Elizabeth, as in other divisions, a divisional council should be established; but whereas by Act 5 of 1855, entitled "An Act for creating Divisional Councils in this Colony," it is enacted among other things that "every division of this colony shall be divided into six subdivisions to be called districts," and that "every such district shall 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," whereby the division of Port Elizabeth, as consisting of only two field-cornetcies, is excluded from the application of the aforesaid Act: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant law repealed.

I. So much of Act 5 of 1855 as excludes the division of Port Elizabeth from the application of the said Act is in regard to the said division of Port Elizabeth repealed, and the Governor of the colony is hereby authorized by



proclamation in the Government Gazette to divide the said division into six subdivisions to be called districts; and the said subdivisions shall be districts accordingly for all the purposes of Act 5 of 1855, anything to the contrary contained in the said Act notwithstanding.

No. 4—1856.  
Port Elizabeth to be subdivided by proclamation.

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

Act to commence.

No. 5—1856.]

AN ACT

[June 4, 1856.

For Regulating the Provincial Hospital at Port Elizabeth.

WHEREAS it is intended to establish an hospital to be called the "Provincial Hospital at Port Elizabeth:" And whereas it is expedient that the board of managers of the said provincial hospital should be incorporated and that certain other matters likely to promote the welfare of the said hospital should be provided for by Parliament: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows, that is to say:

Preamble.

I. The hospital aforesaid shall be called the "Provincial Hospital at Port Elizabeth," and shall be managed by a board of managers.

Hospital how to be designated.

II. The civil commissioner of the division of Port Elizabeth for the time being, the commissioners of the municipality of Port Elizabeth for the time being, together with a number of elective members equal to the number of municipal commissioners for the time being, which members shall be elected as hereinafter provided, shall form a board for the management of the said hospital, of which board the civil commissioner for the time being shall be the chairman: Provided always, however, that when the civil commissioner is not present then the managers present shall choose their own chairman; and in case of an equality of votes upon any matter or question submitted to the said board he shall besides a deliberative vote possess a casting vote.

Board of management: civil commissioner, municipal commissioners, and elective members.

III. For the purposes of this Act the said board of managers for the time being shall be a corporation by the name or style of "The Board of Managers of the Provincial Hospital," and shall have perpetual succession, and shall and may sue and be sued in all courts, places, and proceedings by the name or style aforesaid.

Board how to be styled.

IV. The elective members of the said board shall be elected by the life-governors of and the annual subscribers to the said hospital.

Elective members.

- No. 5—1856.*  
**Life-governor.** V. Any person making a donation to the funds of the said hospital of not less than £20 (twenty pounds) shall become a life-governor and be entitled to elect and be elected.
- Donor to the funds entitled to elect and be elected.** VI. Any person making a donation to the funds of the said hospital of not less than twenty-five pounds shall be entitled to nominate some other person as a life-governor who shall be entitled to elect and be elected.
- Subscribers of one guinea.** VII. Any subscriber subscribing annually not less than one guinea shall be entitled to elect and be elected.
- Subscribers of half a guinea.** VIII. Any subscriber subscribing not less than half a guinea annually shall be entitled to elect but not to be elected.
- Board of managers when to be elected.** IX. As soon as there shall be twenty persons entitled to vote at the election of the elective members of the board of managers aforesaid but not sooner the civil commissioner aforesaid shall, by a notice to be published in the Government Gazette for not less than twenty-one days before the day appointed, call a meeting of the life-governors and subscribers to the said hospital, to be held at some place in Port Elizabeth to be specified in such notice, for the purpose of electing so many members of the said board as shall be then to be elected.
- Election how to be made.** X. At the meeting lastmentioned the civil commissioner shall preside, and the election shall be by signed lists, and the civil commissioner shall transmit the names of the members elected to the Colonial Secretary, who shall cause the same to be published in the Government Gazette: Provided that at such meeting all persons entitled to vote who shall be females or who shall reside beyond the limits of the municipality of Port Elizabeth, but no other persons, shall be entitled to appoint by any writing under their hands respectively some other person being himself a person entitled to vote to be the proxy of or for the person by whom he shall have been so appointed and to vote in such person's behalf.
- Who entitled to vote.** XI. 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 when to retire.** XII. On the Monday next before the day on which any body of elective members are appointed to go out of office as aforesaid a meeting shall be holden of the life-governors
- How their places to be supplied.**
- Election of new members.**

and subscribers to the said hospital for the election of elective members for the three years next succeeding, of which meeting a notice of not less than twenty-one days shall be given by the civil commissioner aforesaid in the Government Gazette.

XIII. If any elected member of the said board shall die or resign, or being a subscriber shall cease to subscribe in manner aforesaid an amount not less than one guinea per annum, or shall cease to reside in the division of Port Elizabeth, or shall become incapacitated for fulfilling the duties of his office by mental or bodily infirmity or disease, he shall, *ipso facto*, vacate his office, and the said board shall give notice of such vacancy to the civil commissioner aforesaid, who shall upon the like notice as that in the last preceding section mentioned, call a meeting of life-governors and subscribers for the purpose of filling up such vacancy; and the person elected to fill such vacancy shall be entitled to continue in office till the next general election of elected members but no longer: Provided that every such person shall be eligible to be re-elected.

What constitutes vacation of office.

How vacancy to be filled.

XIV. Should it happen by reason of any failure or neglect or other cause that any such meeting as in the twelfth section mentioned shall not have been duly holden, or that at such meeting the number of elected members which were then to be elected shall not have been duly elected, then the civil commissioner aforesaid upon being informed by the board of managers of such non-election shall forthwith upon the like notice as in the said twelfth section mentioned call a meeting of life-governors and subscribers, in order thereat to elect the members necessary to be elected: Provided that the elected members in office at the time of such non-election of new members shall remain in office till such new members shall be elected: And provided that the new members elected at any such meeting as in this section mentioned shall remain in office as long as members elected at such regular meeting as in the twelfth section mentioned would have remained in office and no longer.

In case of failure to elect.

XV. Until elective members of the board of managers shall be elected the members *ex officio* of the said board shall be deemed and taken to form the said board, and shall possess all and singular the powers and authorities of the said board as fully as if elective members had been elected; and no vacancy or vacancies at any time occurring amongst or in regard to the elective members shall be deemed or taken to render the said board incomplete or to suspend or impair any of its powers.

*Ex officio* members to constitute the board until elective members are chosen.

XVI. Should the number of commissioners of the municipality of Port Elizabeth be increased or diminished in the interval between one general election of elective members and the next succeeding general election such increase or diminution shall not alter or effect the tenure of office of any

Increase or diminution of municipal commissioners before any general election not to affect the board.

No. 5—1856.

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 commissioners shall be diminished so as to fall below the number of elective members for the time being, no casual vacancies occurring in the office of elective members shall be filled up so long as the elected members for the time being shall exceed the number of municipal commissioners for the time being.

Board of managers to hold property for the benefit of the institution.

XVII. The board of managers aforesaid shall stand and be possessed of all lands which may be granted to the said board by Her Majesty the Queen or by any private person for the use and benefit of the provincial hospital aforesaid and of all lands and buildings which may be purchased, erected, or in any manner acquired by the said board for the purposes of the said hospital; and of all funds and moneys granted to the said board from and out of the public revenue of this colony, or given, subscribed, bequeathed, paid, or in any manner coming to the said board for the use and benefit of the said hospital; and generally of all property, movable or immovable, belonging to the said hospital,—more especially of a certain grant of land already made in trust to the municipal commissioners of Port Elizabeth for the use of and benefit of the said hospital.

Board may with sanction of the Governor sell or lease lands held in trust.

XVIII. 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 foregift, for any term not exceeding thirty-three years from the time when such lease shall be made.

Transfers, leases, &c., to be executed by three members of the board.

XIX. All transfers, leases, contracts, or other instruments to be executed by the said board for any of the purposes of this Act or of the said hospital shall be executed by three members of the said board acting for and on behalf of the board, of which three members the chairman of the said board for the time being shall be one.

Gratuitous treatment to indigent persons.

XX. The provincial hospital at Port Elizabeth shall be at all times open so far as its funds will permit to receive all persons standing in need of medical or surgical aid or treatment, and to supply such aid and treatment to all persons in poor or indigent circumstances free of any fee or charge whatever.

XXI. It shall be the duty of the board of managers to make provision for the reception and treatment of patients able and willing to pay for the same, and to frame in regard to such paying patients a scale or tariff of the charges to be made by or on behalf of the said hospital.

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Paying patients to be charged according to tariff.

XXII. It shall be lawful for the board of managers to appoint all such doctors of medicine and surgeons as may be required for the said hospital at such salaries as the said board shall deem expedient, and to discharge any such doctor of medicine or surgeon for immoral or improper conduct or for non-fulfilment of his engagements with the said board: Provided that no such doctor of medicine or surgeon shall be discharged upon any of the grounds in this section mentioned until he shall have been furnished in writing by the said board with a statement of the charges against him and shall have had an opportunity of making his defence, and until a majority of the members present at some meeting of the said board at which not less than three fourths of the members for the time being shall be present shall have resolved that such doctor of medicine or surgeon be so discharged.

Physicians and surgeons appointed by board.

XXIII. All persons other than doctors of medicine and surgeons employed in or about the said hospital shall be engaged by the said board and shall hold their situations at the pleasure of the said board.

Board to appoint other officers.

XXIV. It shall be the duty of the board of managers to frame and from time to time if need be to amend all such rules and regulations as to the said board shall seem necessary touching and concerning the times of meeting and mode of summoning of the members of the said board; how many members shall form a quorum; the recording of the proceedings of every such meeting; the officers of such board and their salaries, if any; the mode in which the moneys belonging to the said board shall be collected, kept, and paid out; the mode in which the accounts of the said hospital shall be kept; the number and the duties of the officers, hospital attendants, and other persons employed in or about the said hospital; the length of notice to be given or received by each doctor or surgeon employed in the said hospital before it shall be lawful for him without mutual consent to vacate his office or for the said board to dispense with his services, unless for some cause in the twenty-second section specified; the regulations under which ministers of religion or others desirous to visit patients for the purpose of religious counsel or consolation shall be permitted so to do; the fees or charges to be paid by the paying patients herebefore in the twenty-first section mentioned; and generally any subject connected with the cleanliness, order, conduct, and management of the said hospital.

Board to frame and amend rules.

Board to regulate duties and salaries of officers.

XXV. The board of managers shall furnish to the Governor for the time being a copy of the rules and regulations

Copy of rules to be sent to the Governor.

No. 5—1856.

Board may purchase, rent, or dispose of lands, buildings, &c., for the benefit of the institution.

aforesaid for the time being, and shall regularly report to the said Governor all amendments thereof and additions thereto.

XXVI. It shall be lawful for the said board to purchase or rent all such lands or buildings as shall be necessary for the purposes of the said hospital, and when it shall be desirable so to do to sell again by public sale, but not otherwise, any lands or buildings which the said board shall have purchased and shall no longer require; and the said board may also contract for the building of any buildings or the supply of any furniture or apparatus which shall be required for such hospital: Provided that no contract for any purpose which shall require an expenditure above twenty pounds shall be entered into, unless tenders for the same shall have been called for by a notice, written or printed, and posted at the office of the resident magistrate of Port Elizabeth for not less than eight days, as also by an advertisement to be published in some one or more of the newspapers of Port Elizabeth for not less than eight days.

Report of proceedings and accounts of expenditure to be submitted to Parliament.

XXVII. The board of managers aforesaid shall cause detailed accounts in writing of all sums of money received by them for any of the purposes of this Act and of all sums expended by them for any purpose thereof to be made up to the thirty-first of December in every year; and the said board shall also frame a full report of the state and proceedings of the hospital up to the same day in each year, and shall cause a copy of such accounts and of such report to be transmitted to the Governor of the colony not later than the first of March in the next succeeding year; and the said Governor shall lay a copy of such accounts and of such report before each House of Parliament should Parliament be sitting at the time of the receipt of such accounts by such Governor; and in case Parliament should not be then sitting the Governor shall lay the copies aforesaid before the said Houses respectively at the then next ensuing session of Parliament; and the said Governor shall also cause the said accounts and report or an abstract of them to be published in the Government Gazette.

To be published in Gazette.

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

Act when to commence.

No. 6—1856.]                      AN ACT                      [June 4, 1856.

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 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:

I. 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.

II. 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.

Civil commissioner, municipal commissioners, and elective members form board of management.

III. 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.

IV. 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.

V. 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 persons 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.

VI. Every such subscriber as already defined of five pounds shall be entitled to one vote; every subscriber of

Number of votes to each.

No. 6—1856.

ten pounds to 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: 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 with twelve months next after the bestowal of such donation.

Donor may vote.

Board when to be elected.

VII. 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.

VIII. At the meeting lastmentioned the civil commissioner shall preside, and the election shall be by signed lists, and the civil commissioner shall transmit the names of the members elected to the Colonial Secretary, who shall cause the same to be published in the Government Gazette: Provided that at such meeting all persons entitled to vote who shall be females or who shall reside beyond the limits of the municipality of Port Elizabeth, but no other persons, shall be entitled to appoint by any writing under their hands respectively some other person, being himself a person entitled to vote, to be the proxy of or for the person by whom he shall have been so appointed and to vote in such person's behalf.

Who to vote.

Elective members to retire and their places to be filled up.

IX. 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.

New members how elected.

X. 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.

XI. 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.

What constitutes vacancy.

Vacancy to be filled.

XII. 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.

XIII. 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.

XIV. Should the number of commissioners of the municipality of Port Elizabeth be increased or diminished in the interval between one general election of elective members and the next succeeding general election such increase or diminution shall not alter or affect the tenure of office of any of the elective members who shall be in office at the

Increase or diminution in number of municipal commissioners before any general election not to affect the board.

No. 6—1856.

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 numbers of municipal commissioners shall be diminished so as to fall below the number of elected members for the time being no casual vacancies occurring in the office of elective members shall be filled up so long as the elected members for the time being shall exceed the number of municipal commissioners for the time being.

Board to hold property for the benefit of the institution.

XV. 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.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. 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 than three fourths of the members for the time being shall be present shall have resolved that such teacher or master be so discharged.

XX. 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.

XXI. 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 nineteenth 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.

XXII. It shall at all times be provided by such rules and regulations that every donor to the said schools of not less than fifty pounds 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 one hundred pounds shall have the right to send and keep at the said schools or any of them, for ever, one free pupil for every one hundred pounds

Right of presentation to scholarships.

No. 6—1856.

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.

Copy of rules and amendments to be sent to Governor.

XXIII. The board of managers shall furnish to the Governor for the time being a copy of the rules and regulations aforesaid for the time being, and shall regularly report to the said Governor all amendments thereof and additions thereto.

Board may purchase, rent, or dispose of lands, buildings, &c., for benefit of institution.

XXIV. 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 twenty pounds shall be entered into unless tenders for the same shall have been called for by a notice, written or printed, and posted at the office of the resident magistrate of Port Elizabeth for not less than eight days, as also by an advertisement to be published in some one or more of the newspapers of Port Elizabeth for not less than eight days.

Report of state and proceedings with accounts of expenditure to be sent to Governor for presentation to Parliament.

XXV. The board of managers aforesaid shall cause detailed accounts in writing of all sums of money received by them for any of the purposes of this Act and of all sums expended by them for any purpose thereof to be made up to the thirty-first of December in every year; and the said board shall also frame a full report of the state and proceedings of the 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 first of March in the next succeeding year; and the said Governor shall lay a copy of such accounts and of such report before each House of Parliament should Parliament be sitting at the time of the receipt of such accounts by such Governor; and in case Parliament should not be then sitting the Governor shall lay the copies aforesaid before the said Houses respectively at the then next ensuing session of Parliament; and the said Governor shall also cause the said accounts and report or an abstract of them to be published in the Government Gazette.

To be published in Gazette.

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

Act when to commence.

No. 7—1856.]                      AN ACT                      [June 4, 1856.  
For Apportioning Quitrents upon the Subdivision of  
Fixed Property.

**W**HEREAS 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.

I. So much of the proclamation of Sir John Francis Cradock, the 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.

II. 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 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 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 five shillings 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. Seller and purchaser to agree upon the respective shares of quitrent.

III. 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. Agreement to be certified by civil commissioner.

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 quitrent.

No. 7—1855.

Several purchasers of one property to agree as to their proportionate shares of quitrent.

IV. 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 second and third sections aforesaid shall, *mutatis mutandis*, apply to this case as well as to the case therein mentioned.

Act applicable to previous purchasers.

V. 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 second 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 third 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.

Each share of the entire property to pay its own proportion of quitrent and no more.

VI. 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.

If any share be again subdivided the quitrent apportioned to it shall be subdivided in proportion.

VII. 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 subdivisions shall continue to be made.

Act not to affect subdivisions of fixed property in regard to which there is no such agreement as is in the second section mentioned.

VIII. 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 quit-

rent to be afterwards payable by or out of their several shares or portions respectively.

No. 7—1856.

IX. 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.

X. 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.

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No. 8—1856.] AN ACT [June 4, 1856.

For Enabling Persons Alien-born to hold Fixed
Property in this Colony.

WHEREAS by the law of this colony persons of alien birth are disabled from purchasing, acquiring, or owning fixed property therein: And whereas the circumstances of this colony are such as to render it expedient that such persons should be enabled to purchase, acquire, and own such 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:

Preamble.

I. All former laws, customs, or usages in force in this colony which shall be repugnant to or inconsistent with this Act are hereby repealed.

Repugnant laws repealed.

No. 8—1856.

Aliens to hold fixed property.

Deeds of burghership not impaired.

Act to commence.

II. From and after the commencement and taking effect of this Act it shall be lawful for persons of alien birth to purchase, acquire, and own fixed property in this colony in like manner as natural-born subjects of Her Majesty.

III. Nothing in this Act contained shall be deemed or taken to naturalize any alien or to bestow upon any alien any of the privileges conferred by deeds of burghership, save and except only the privilege of purchasing, acquiring, and owning fixed property.

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

No. 9—1856.]

AN ACT

[June 4, 1856.]

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.

Preamble.

WHEREAS His Excellency Sir Henry George Wakelyn Smith, K.C.B., the then Governor of this colony, granted on the eleventh 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 rods 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:

I. Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the

Grant to the see of Cape Town annulled.

Legislative Council and House of Assembly thereof, that the said grant of the said 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.

No. 9—1856.

II. 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.

Compensation not barred.

No. 10—1856.] AN ACT [June 4, 1856.

For the Preventing of Cruelty to Animals.

FOR the prevention of cruel and improper treatment of 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.

I. Every person who shall cruelly beat or torture any horse, ox, or other animal, whether belonging to himself or to another, shall be punished by a fine not exceeding one pound sterling, and in case of default by imprisonment in the public gaol for not more than fourteen days.

Penalty for ill-treating an animal.

II. All penalties imposed by this Act shall be recoverable before the resident magistrate of the district in which the offence is committed and shall be paid into the colonial treasury.

Recovery and disposal of fine.

III. The operation of this Act shall be confined to towns and villages in which Act No. 2, 1855, shall be in operation and in municipalities.

Limits of the Act.

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

When to commence.

No. 11—1856.] AN ACT [June 4, 1856.

To Secure Electoral Privileges to the Inhabitants of the Division of Queen's Town.

WHEREAS his Excellency the late Governor Sir George Cathcart, K.C.B., did by proclamations bearing date tenth September and tenth November, 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

Preamble.

No. 11—1856.

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:

Repugnant part of Constitution Ordinance repealed.

I. 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 eleventh 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.

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.

II. 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 eighth 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.

Act when to commence.

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

No. 12—1856.] AN ACT [June 4, 1856.
For Better Securing in Certain Cases the Inheritances
of Minors.

Preamble.

WHEREAS from ignorance, neglect, and other causes it not unfrequently happens that the survivor of two spouses who at the time of the death of the first dying of them had children of their marriage under age not merely fails to settle for or secure in proper time and in the usual way the inheritances accruing to such minor children out of the estate of their deceased parent, but proceeds to marry again without settling for or securing such inheritances, whereby confusion and litigation are likely to be created and such minors are exposed to the risk of injury and loss: And whereas whilst it is the duty of the several matrimonial courts of the colony before which all persons about to be married by special licence are bound to appear to ascertain in the case of widowers and widows having minor children of a former marriage that the inheritances which have devolved upon such minors have been settled for or secured, no provision exists of the same nature or with the same object in regard to surviving spouses who are minded to marry not by special licence but by banns: And whereas it is

expedient to make such provision: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

No. 12—1856.

I. As often as any widower or widow being the parent of any minor child entitled to claim from such widower or widow any inheritance out of the estate of his or her deceased spouse shall be minded to contract another marriage and to that end shall be desirous to have the banns of such intended marriage published by any minister of religion or marriage officer in this colony, such widower or widow or his or her agent shall obtain and deliver to the resident magistrate of the district in which such banns are intended to be published a certificate signed by the Master of the Supreme Court certifying that the amount of inheritance due to such minor child as aforesaid from and out of the estate of his or her deceased parent has been paid into the Guardians' Fund, or otherwise a certificate from the Registrar of Deeds certifying that the customary bond or obligation commonly called a "kinder bewys" is registered in the debt registry, for securing the amount of such inheritance: Provided that should it be necessary to publish the banns of any such marriage in more districts than one then one such certificate as aforesaid shall be delivered to the resident magistrate of each district, or otherwise one such certificate shall be delivered to one of the said magistrates and a copy thereof certified by such magistrate to be correct shall be delivered to the other magistrate: And provided also that the said Master and the said Registrar shall upon request grant such certificates as aforesaid without fee or charge.

A widower or widow shall, prior to re marriage, pay to the Master of the Supreme Court the inheritance due to their minor children, or secure such inheritance by a deed of "kinder bewys."

II. The resident magistrate upon receiving such a certificate or attested copy of certificate as aforesaid shall deliver to the party delivering the same to him a certificate signed by him certifying that it has been made to appear to him that no reason exists arising out of unsecured inheritances of minor children why the banns of marriage of the widower or widow who shall be named in such certificate should not be published.

Magistrate's certificate.

III. In any case in which any widower or widow having any minor child who is alleged not to be by law entitled to any inheritance from or out of the estate of his or her deceased parent shall be minded to contract another marriage, such widower or widow shall apply to the resident magistrate of the district in which banns are desirous or required to be published for a certificate of the like tenor as that in the last preceding section mentioned: Provided that in any such case involving matter of law which the said magistrate shall decline to take upon him to determine without legal advice, he shall require the party applying for such certificate to state under the inspection and subject to the correction of such magistrate a case for the written opinion of the Attorney-

In case of doubt or question as to minor's title to inheritance.

No. 12—1856.

General of the colony, and to obtain such opinion for the information of such magistrate, who shall grant his certificate as aforesaid in case the said Attorney-General shall be of opinion that the minor child or children in question are not by law entitled to any inheritance from or out of the estate of its or their deceased parent; but who shall withhold such certificate in case the said Attorney-General shall not give such an opinion as aforesaid, as also in case no opinion of the said Attorney-General shall be produced: Provided further that when any such banns as in this section mentioned are desired or required to be published in each of two districts a certificate from each resident magistrate shall be necessary; and provided also that it shall be lawful for any such magistrate to grant his certificate although he shall not have received the certain other certificate in the first section mentioned, in case it shall be made to appear to him by the party applying for his certificate that the value of the joint estate in question in such case was under one hundred pounds sterling.

If magistrate refuse certificate, application to judge in chamber.

IV. In any case under this Act in which the resident magistrate shall see cause to withhold his certificate aforesaid it shall be lawful for the person who shall have applied for such certificate to apply to a judge of the Supreme Court in chamber for an order upon such magistrate to grant such certificate, and thereupon it shall be lawful for such judge in the most summary and least expensive manner to inquire into the case, and after inspecting such documents and calling for such proofs as to him shall seem needful to grant or refuse such order as to him shall seem expedient: Provided that in no case shall the cost of making any such order be awarded against the magistrate unless the necessity for such order shall have arisen from his wilful neglect or default.

Certificate has no legal force except as authorizing publication of banns.

V. No such certificate as aforesaid whether made upon a judge's order or not shall be of any force or effect in law except simply to authorize the publication of banns of marriage; and all matters and things regarding the rights, inheritances, estates, or interests of minors and of all others shall be judged of after the granting of such certificate precisely as if the same never had been granted.

Banns not to be published until such certificate is produced.

VI. No minister of religion or marriage officer shall publish the banns of any person whom he shall know to be a widower or widow having a minor child or children of a former marriage until there shall be delivered to him such a certificate as aforesaid signed by the resident magistrate of the district in which such banns are desired or required to be published; and if any such minister or marriage officer shall discover after one or more publications of banns that either of the parties intending to marry is such a widower or widow as aforesaid then such minister or marriage officer shall suspend the further publication of such banns until he shall be furnished with such certificate as aforesaid: Provided

also that if such discovery as aforesaid shall be made after the publication of banns shall have been completed such minister or marriage officer shall not solemnize the marriage until such certificate shall have been delivered to him.

No. 12—1856.

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

Act when to commence.

No. 13—1856.]

AN ACT

[June 4, 1856.]

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.

I. So much of the seventh 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.

II. 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 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.

Tulbagh a fiscal division.

Divisional council of Worcester dissolved.

Separate councils for Worcester and Tulbagh.

III. 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.

Tulbagh to remain part of electoral division of Worcester.

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

Act when to commence.

No. 14—1866.] AN ACT [June 4, 1856.
 For Amending the Act No. 5, 1855, entitled “ An
 Act for Creating Divisional Councils in this
 Colony.”

Preamble.

WHEREAS in the thirty-third section of the Act No. 5, 1855, entitled “ An Act for Creating Divisional Councils in this Colony,” reference is made to a certain section of the Ordinance No. 16, 1847, entitled “ An Ordinance for the better Regulation of Pounds and Prevention of Trespasses:” And whereas the section of the said Ordinance intended to be referred to in the said section of the said Act was the thirty-seventh section, but by mistake the twenty-seventh section has been erroneously mentioned, by reason of which a doubt may be raised regarding the effect and operation of the said thirty-third section of the said Act: Be it enacted and declared by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, that the said thirty-third section of the said Act shall be construed and judged of as if the thirty-seventh section of the Ordinance aforesaid had been therein mentioned in place and in stead of the twenty-seventh section of the said Ordinance.

33rd section of previous Act corrected.

When to commence.

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

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 No. 15—1856.] AN ACT [June 4, 1856.  
 To Amend the Laws regulating the relative Rights and  
 Duties of Masters, Servants, and Apprentices.

Preamble.

WHEREAS it is expedient to amend and consolidate the laws regulating the relative rights and duties of masters servants, and apprentices: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

Repugnant laws repealed.

I. From and after the commencement and taking effect of this Act the Ordinance entitled “ An Ordinance for amending and consolidating the Laws regulating the relative rights and duties of Masters, Servants, and Apprentices,” enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council thereof, and bearing date the first of March, 1841, and all Orders in Council confirming or continuing the said Ordinance (except in so far as the said Ordinance or any of the said Orders repeals any former law or usage), the Act No. 4, 1855, entitled “ An Act for Encouraging the Importation of European Labourers into this

Colony," and all other laws and regulations repugnant to any of the provisions of this Act shall be repealed and the same are hereby repealed accordingly.

II. For the purposes and within the meaning of this Act, unless it be otherwise specially provided or there be something in the subject or in the context repugnant to such construction,—1st, The word "governor" shall mean the officer lawfully administering the government of this colony; 2nd, The word "servant" shall be construed and understood to comprise any person employed for hire, wages, or other remuneration to perform any handicraft or other bodily labour in agriculture or manufactures or in domestic service, or as a boatman, porter, or other occupation of a like nature; 3rd, The word "apprentice" shall be construed and understood to comprise any person indentured or bound by any contract of apprenticeship made according to law as apprentice to any other person; 4th, The word "master" shall be construed and understood to comprise any person whether male or female employing for hire, wages, or other remuneration any persons falling within the beforementioned definition of the word "servant" or to whom any person falling within the beforementioned definition of the word "apprentice" shall have been indentured or bound by any contract of apprenticeship made according to law; 5th, The words "contract of service" and "contract of apprenticeship" shall respectively be construed and understood to comprise any agreement whether oral or written, whether expressed or implied, which any person falling within the beforementioned definitions of the words "servant" or "apprentice" shall respectively have entered into or made according to law with any person falling within the beforementioned definition of the word "master" for the performance of any work or labour of any kind hereinbefore mentioned; 6th, The words "magistrate" and "magistrates" shall be construed and understood to comprise the resident magistrates duly appointed for the different districts of this colony; 7th, The words "this colony" shall be construed and understood to comprise all islands and other territories whatsoever which are dependent on the colony of the Cape of Good Hope, and subject to the government thereof; 8th, The word "month" shall be construed and understood to comprise the period of one calendar month; 9th, The words "father," "parent" "relative," "husband," and "wife" shall be respectively construed and understood to comprise reputed fathers, parents, relatives, husbands, or wives, as well as actual parents and relatives and lawful husbands and wives; 10th, The words "officer" and "proper officer," when used with reference to the attestation or making of contracts of service of apprenticeship or to the transfer and assignment of apprentices, shall be construed and understood to comprise every person who shall have been appointed by the Governor to attest or make such contracts;

Interpretation clause.

No. 15—1856.

11th, All words in this Act and in the various rules and regulations hereinafter enacted importing the singular number or the masculine gender only shall be construed and understood to include several persons as well as one person and females as well as males.

## CHAPTER I.

In cases not provided for, the law of bilateral contracts in general to prevail.

I. Notwithstanding the repeal by the Ordinance aforesaid of the laws thereby repealed, the courts of this colony, in all cases which are now or shall be hereafter depending before the same arising out of or respecting the formation or dissolution of contracts of service or apprenticeship or touching or concerning any rights, duties, obligations, powers, liabilities or other matters or things arising out of or proceeding from any contracts of service or apprenticeship or any of the mutual relations subsisting between masters and servants or apprentices, shall respectively try, judge, and determine the said causes according to the law of this colony respecting and applicable to bilateral contracts in general, except when other provisions touching and concerning any such matter and thing as aforesaid shall have been made in this Act, or by any other Law not repealed by the Ordinance aforesaid.

Repeal aforesaid not to annul contracts entered into previously to the taking effect of this Act.

II. The beforementioned repeal shall not annul or affect any contracts of service or apprenticeship entered into previously to the time when this Act shall take effect, and which under and by virtue of and according to any laws in force within this colony on the day previously to the taking effect of this Act were then subsisting legal and valid contracts.

Contracts liable to be set aside on account of fraud, &c.

III. Nevertheless any such lastmentioned contract of service or apprenticeship to be performed within this colony shall be liable to be set aside by any magistrate having jurisdiction over the parties or any competent court, upon reasonable proof being made to the satisfaction of such magistrate or court that either of the parties to such contract was induced to enter into the same by any fraud, misrepresentation, or concealment.

## CHAPTER II.

*On the Formation of Contracts of Service.*

Contracts entered into out of the colony how to be certified.

I. No contract of service made elsewhere than within the limits of this colony shall be of force or effect within this colony except the same shall have been made in writing and be duly certified by the British consul or other similar officer at the place where the same was made, or if there be no such officer then by such magistrate of such place or other proper authority; but contracts not so certified shall notwithstanding have force and effect in this colony upon other proof of such contract to the satisfaction of the magistrate before whom the same shall come in question.



II. Every contract of service whether oral or written the term of endurance of which shall not have been expressly specified and limited by such contract shall in the absence of sufficient proof to the contrary be deemed and taken to be for the term of one month from the commencement thereof; save and except contracts for service in any trade or handicraft whereby it shall not have been stipulated that the servant shall during the term thereof reside in the house of or on the premises of the master, which shall be deemed and taken to endure only until the night of Saturday of the week on any day of which it shall have been stipulated that the service shall commence; and contracts for executing any particular piece of work specified in the contract, which shall expire so soon as the work is finished, and when the work is not finished within a reasonable time may be put an end to by the master after the lapse of a period of time reasonably sufficient for finishing such work.

III. No oral contract of service shall be valid or binding for any longer term than one year from the period fixed for the commencement of the service stipulated for by such contract; and no such oral contract shall be valid or binding in any case unless it be stipulated in such contract that the service thereby stipulated for shall be entered upon by the servant within one month from the date of the contract.

IV. No written contract shall be valid or binding for a longer period than one year from the date thereof except the same be signed by the name, or in case of illiterate persons with the mark of the contracting parties, in the presence of a magistrate or other proper officer, nor unless such magistrate or other proper officer shall subscribe such written contract in attestation of the fact that it was entered into by the parties voluntarily and with a clear understanding of its meaning and effect.

V. No such contract so entered into before a magistrate or other proper officer shall be valid or binding for a longer period than five years from the date thereof if entered into within this colony; and no such contract shall endure longer than five years from the day of the commencement of the service when such contract shall be entered into elsewhere than in this colony.

VI. All contracts of service entered into before a magistrate or other proper officer within the limits of this colony shall be drawn up as nearly as possible in the following terms:

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_, A. B., of \_\_\_\_\_, and C. D., of \_\_\_\_\_, appeared before me, E. F. (resident magistrate or officer specially appointed by the Governor to attest contracts of service for the district, as the case may be, with his usual description), and in my presence signed their names (or made their marks as the case may be) to the following

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Every contract shall be deemed to be entered into for one month, unless otherwise specified: except the servant be non-resident, or shall work by the piece.

No oral contract to be binding for more than one year, and not valid unless the time to be entered upon shall be stipulated.

No written contract to be valid for a longer period than one year, unless attested by a magistrate or other proper officer.

No contract to be valid or binding for a longer period than five years.

Form of contract of service.

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contract of service: The said A. B. agrees to hire the service of the said C. D., and the said C. D. agrees to render to the said A. B. his service at all fair and reasonable times, and in the capacity of \_\_\_\_\_ for \_\_\_\_\_ commencing on the \_\_\_\_\_ day of \_\_\_\_\_ instant, and terminating on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_. And it is further agreed that the said A. B. shall pay to the said C. D., as such servant as aforesaid, wages after the rate of \_\_\_\_\_ by the day (week, month, or year, as the case may be), and that such wages shall be paid on the \_\_\_\_\_ day of each week (or month, as the case may be).

(Here add any special agreement compatible with the law and not adverted to in this form.)

(Signed) A. B.  
C. D.

The preceding agreement was signed by the abovenamed parties in my presence on the day and year above written, voluntarily the same being as far as I am able to judge understood by them respectively.

(Signed) E. F.,  
Resident Magistrate (or officer specially appointed by the Governor to attest contracts of service for the district).

In the absence of special agreement, one month's notice is required before a contract shall be deemed to have expired.

VII. No contract of service for a month or any longer period shall be deemed and taken to have expired until at least one month's notice, calculated from and inclusive of the day of giving such notice, shall have been given by either of the parties to the other party, unless it shall have been expressly stipulated that no such notice shall be necessary; and when the service shall be a weekly one, a week's notice shall be necessary: Provided that nothing herein contained shall be construed so as to enable any party to any contract of service to determine the same without the consent of the other party before the expiration of the term of service originally agreed upon.

How such notice may be waived.

VIII. When any such notice as is hereinbefore mentioned shall have been given by either of the parties to the other and the master shall suffer the servant to remain or the servant shall remain in his service after the day on which according to the notice given the contract of service should expire, such notice shall be deemed and taken to have been withdrawn and passed from, and the contract of service shall continue to endure as long and in like manner as if no such notice had been given unless it shall have been otherwise expressly and specially agreed between the parties.

Servants hired to reside on the premises to be supplied with food and lodging, unless otherwise agreed upon.

IX. In all contracts whether oral or written by which it is stipulated that the servant shall reside on the premises of his master and wherein it shall not be expressly provided that the master is not to supply food and lodging, the master

shall be deemed and taken to have engaged to provide such servant and such of his family if any as shall have been included in the contract in manner hereinafter mentioned in section twelve of this chapter with lodging and sufficient food of good and wholesome quality during the continuance of the contract.

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X. In case of any action for non-payment of wages due and payable by virtue of any contract of service being brought before any magistrate or other competent court by any servant, and when the rate of wages at which such contract was made shall not be proved to the satisfaction of such magistrate or court, such magistrate or court is hereby required to fix the rate of wages at that usually paid in the district or place in which the service for which the wages are claimed was performed, reference being had to the skill and ability of the servant, and to give decree accordingly.

When rate of wages not specified, the magistrate to fix such rate by custom.

XI. When any servant shall in consequence of any sickness or accident which shall not have been occasioned by his own fault be rendered incapable of performing his master's service, he shall in the absence of any special provision in the contract to the contrary be entitled to receive his full wages during the first month of such incapacity and every other benefit, privilege, or advantage, whether for himself or his family, stipulated for in the contract of service during the whole period of such incapacity, unless the stipulated term of service shall sooner expire or unless the period of such incapacity shall extend to a longer period than two months; in which latter case the master shall be entitled if he shall so think fit, at the expiration of such two months or at any time afterwards during which such incapacity shall uninterruptedly continue, to treat and consider the contract of service as rescinded and determined to all intents and purposes whatsoever, he the said master being however bound before being so entitled to consider the said contract as determined to make good all stipulations therein mentioned and agreed upon up to and for the day on which he shall declare his intention to treat and consider the said contract as rescinded, with, however, the limitation as to wages hereinbefore provided: Provided however that if the master shall not think fit at or after the expiration of such two months as aforesaid to treat the contract of service as determined and rescinded but shall permit the servant to remain in his service, such servant shall not be entitled to claim any portion of the wages beyond wages for the first month as aforesaid or any other benefit or advantage stipulated for in the contract of service (save and except such food and lodging for himself and family as by the contract of service the master had engaged or shall be deemed and taken to have engaged to provide him with) for any period subsequent to such two months during which such incapacity as aforesaid shall continue: And provided always that no

Provision in case of sickness.

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servant hired by any contract expressly to perform service in any trade or handicraft shall be entitled to receive the wages or any other benefit or advantage stipulated in the contract of service for any part of the time during which he shall have been rendered incapable of performing his master's work by any such sickness or accident as aforesaid save and except such food and lodging for himself or family as by the contract of service his master has engaged to provide him with, such food and lodging to be provided during such incapacity as aforesaid unless the contract of service shall sooner expire or unless such incapacity shall extend to a period longer than one month, in which latter case the master shall be entitled if he shall so think fit, under the same powers and conditions in every respect as in this section before set forth, to treat and consider such last-mentioned contract of service as absolutely and to all intents and purposes determined and rescinded.

Contracts for the services of husband, wife, and children how to be entered into.

XII. All contracts of service stipulating for the services of the wife of any servant together with those of her husband shall be made or executed by her in like manner as the same shall be made and executed by her said husband: And it shall be lawful for the father, or in the event of his death or absence then for the mother, of any child under the age of sixteen years to contract for the service of such child together with his own in like manner as such person may contract for his own services; and when such contract shall be in writing the name and age of every such child shall be clearly set forth and specified in the contract: Provided always that nothing herein contained shall give to the master of any such parent any claim on the services of any such child beyond the period for which the parent shall be engaged nor beyond the period when such child shall attain the age of sixteen; nor to the services of any other child of the contracting parent, whether under colour of such lastmentioned child having been fed or clothed by the master or having been born while the parent of such child was in the said master's service or under any other pretence whatsoever.

One month after the death of the husband, contract to be null and void with regard to the services of the wife and children.

XIII. On the death of any person being at the time together with his wife and any child under contract as aforesaid the contract shall become null and void in respect to such wife and children at the expiration of one month after the death of such person.

Wife and children of the servant not to reside on the premises of the master, unless stipulated in the contract, nor the master to claim their services by reason merely of their residence on the premises.

XIV. It shall not be lawful for any person entering into any contract of service by which it is stipulated that the servant shall himself reside on the premises of the master to keep his wife and children on the premises of his master, unless when the master shall have also stipulated in such contract that this shall and may be done: Provided that when the master shall have so stipulated it shall not be lawful for him to claim the services of any such wife or child by reason merely of their residence on his premises.

XV. When in times of public commotion or invasion of the colony the Governor shall deem it expedient to call out for service any portion of the burgher force of any division of the colony under the Act No. 16 of 1855, every person under contract of service under this Act as an agricultural labourer or herdsman for any period not less than one month to any master residing in such division shall, if the period of service contracted for should expire during the persistence of such commotion or invasion, notwithstanding such expiration be bound to continue in the service of his employer on the terms of the contract under which he had been serving, until the cessation of such commotion or invasion and until the services of the burghers of such division shall be dispensed with for the occasion: Provided that if any such servant shall at any time be called out for burgher service under the said Act No. 16, 1855, the master of such servant shall during the absence of such servant on such duty be bound to permit the family and property of such servant to remain upon his premises, and to provide for the same in the same manner as he would have been bound to do by the contract of service if such servant had not proceeded to the performance of such duty.

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An agricultural labourer or herdsman to remain in his master's service during public commotion or invasion of the colony, or if called out for burgher service the master to provide for his family.

## CHAPTER III.

*On the Apprenticeship of Children.*

I. No contract of apprenticeship shall be valid unless at the time of its being entered into it shall have been reduced into writing, and signed with the name, or in case of illiterate persons with the mark of the master and parent or guardian as the case may be of the apprentice, and also of the apprentice if of the full age of sixteen years.

Contracts to be in writing.

II. No contract of apprenticeship by which any child under sixteen years if a female and eighteen years if a male may be apprenticed as an agricultural or domestic servant shall be valid for any longer period than until such child shall have attained the full age of sixteen years if a female and eighteen years if a male.

Children under 16 to be apprenticed to agricultural labour only till that age.

III. Children not being in a state of destitution above the age of ten and under the age of sixteen years may be apprenticed by their fathers, or in the case of fatherless children by their mothers, or in the case of orphans having guardians by their guardians, until they shall have attained their twenty-first year or for any shorter period, and due provision for the maintenance, clothing, and instruction of every such apprentice shall be made in the contract of apprenticeship: Provided always that every contract of apprenticeship whereby any child under the age of ten years not being in a state of destitution shall be apprenticed or attempted so to be shall be null and void to all intents and purposes whatsoever, save and except a contract of apprenticeship executed by the parent or guardian and the master in the presence of a

Children, not destitute, above 10 and under 16 years, may be apprenticed till 21.

No. 15—1856.

resident magistrate, and attested by such magistrate to be a contract which appears to him to be for the benefit of the child.

Persons of 16 years and upwards may by their own consent be apprenticed for five years.

IV. Any minor of the full age of sixteen years or upwards may by his own consent be apprenticed for any term not exceeding five years to any trade in the practice of which any peculiar art or skill is required, but not otherwise: Provided always that in the case of such minor or minors being females they may with such consent be apprenticed to domestic service for any such period as last aforesaid.

Resident magistrate to be the guardian *ex officio* of minors who have no parents or guardians.

V. The resident magistrates of the colony shall be *ex officio* the guardians within their respective districts of all such minors as in the last preceding section mentioned which minors have no parents or guardians within the colony or none discoverable, and such resident magistrates may lawfully indenture such minors.

Destitute children how to be treated in the first instance.

VI. When any parent or parents shall abandon or desert or by death shall leave in a state of destitution any child under the age of sixteen years the person with whom such child shall have been so left or by whom such child shall be found in such state of destitution shall with all convenient speed give notice thereof to the nearest field-cornet or directly to the magistrate, in order that means may be taken for providing for the maintenance and education of such child by apprenticeship in manner hereinafter mentioned; and if any person shall be duly convicted by any magistrate or other competent court of detaining in his possession or employment any such destitute child as aforesaid for a longer period than one month without giving such notice every such person shall forfeit and pay at a rate not exceeding twenty nor less than five shillings for each month that such child shall have been detained; and every such sum so forfeited shall be paid into the public treasury; and all reasonable expense incurred in giving such notice and for the maintenance of such child until removed by the proper authority shall be paid from the said treasury.

Destitute children how to be apprenticed.

VII. The field-cornet or resident magistrate shall upon receiving such notice as aforesaid cause the child to be removed to the residence of such magistrate, and the said magistrate shall, unless when it shall be made to appear to him that the child is actually not in a state of destitution or is able to earn his own livelihood (in either of which events he shall decline to act in the case), cause such child to be lodged and provided for at the public cost until he shall have sufficiently ascertained by inquiry, which he is hereby required to cause to be made, whether such child have any relative fit, proper, and willing to maintain and take care of him, and if he shall discover any such relative or relatives he shall apprentice such child either to the sole relative or to that one among the several relatives of whom it shall appear most for the interests of such child to become the apprentice; and if no such fit and proper relative be found he shall

apprentice him as soon as a suitable opportunity can be found to some fit and proper person until he shall have attained his eighteenth year, or in the case of females until their sixteenth year, or for any shorter period that may be deemed advisable. And every such magistrate shall give public notice in the Government Gazette of the name of every such apprentice and of the person to whom he shall have been apprenticed.

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VIII. Due provision for the maintenance, clothing, and instruction of every destitute child so apprenticed shall be made in every such contract of apprenticeship, and suitable wages shall also be therein stipulated for whenever such magistrate or other proper officer shall deem that the child's service in any part thereof will be worth wages; and in apprenticing every such child either to a relative or stranger it shall be the duty of such magistrate or officer to make the best terms he can for such child.

Maintenance and wages to be stipulated for on behalf of such destitute children when apprenticed.

IX. All such contracts for the apprenticeship of destitute children as aforesaid shall be drawn up as near as possible in the following terms:

Form of contract in apprenticing destitute children.

District of ———.

This contract of apprenticeship of A. B. (here insert the designation of A. B. as accurately as possible), a destitute child, witnesseth that C. D. (here describe C. D. as the resident magistrate or as the officer specially appointed by the Governor to attest such contracts of apprenticeship for the district, as the case may be), pursuant to the Act No. — in that case made and provided, does by these presents apprentice the said A. B., aged — years or thereabouts, to E. F. (here insert the designation of E. F. as accurately as possible), with him to dwell and serve as an apprentice until (or for, as the case may be — here insert the age at which the apprenticeship is to determine or the term for which it is to endure), during all which time the said apprentice shall faithfully and honestly serve and obey his master; and the said E. F., for himself, his heirs, and executors, does hereby covenant and agree with the said C. D., for and on behalf of the said A. B., that he, the said E. F., shall teach and instruct or cause to be taught and instructed the said A. B. in the (here insert the particular trade or occupation) in the best manner that he can during the said term, and shall also duly provide or cause due provision to be made for the education and religious instruction of the said A. B. to the best of his ability, and shall during the said term provide the said apprentice with suitable and sufficient food, washing, lodging, and all other things necessary and fit for such apprentice, and shall also pay as wages to the said apprentice the sum of (here insert the terms at which the wages stipulated are to be payable); and also the said E. F. shall not assign or transfer

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the said apprentice to any other person during the said term without the consent in writing first had and obtained of the magistrate or other proper officer having power and authority to give such consent.

In witness whereof, we, the said C. D. and E. F., have set our hands at — on this the — day of — 18—

(Here insert the signatures or marks of the parties.)

In presence of (here shall be inserted the signatures of at least two witnesses who have witnessed the execution of the contract).

Covenants in such contracts to endure to successor in office of the magistrate in whose favour they are made.

X. In case the magistrate or other proper officer by whom the contract for the apprenticeship of any such destitute child as aforesaid shall have been entered into as aforesaid shall by death or otherwise cease to act as such magistrate or officer, then and in that case all the provisions and covenants in such contract of apprenticeship contained shall endure in favour of the successor of such magistrate or officer duly appointed, and such successor shall and may sue upon and take all other benefit and advantage whatsoever of such provisions and covenants in like manner as if such successor had been himself the person by whom such contract as aforesaid was originally made.

Such contracts of apprenticeship shall be in three parts,—one to be given to the master, one to the apprentice, and the third to be filed in the office of the magistrate.

XI. Every such last mentioned contract of apprenticeship shall be made and signed as aforesaid in three parts, one of which parts shall be given to the master and one to the apprentice and the third shall be filed and registered in the office of the magistrate by whom it is attested; or where it shall have been attested by any other officer specially appointed as aforesaid, an entry of it shall be made in a book to be kept by him for that purpose, and the said third part shall be transmitted by him to the magistrate of the district in which the master by whom such contract has been made usually resides, to be filed and registered in his office.

Apprentice not to be assigned without consent of magistrate, or when apprentice shall be 16 years, without his own consent.

XII. No master shall or may assign or transfer any apprentice having been apprenticed as aforesaid by any magistrate or other proper officer as aforesaid to any other person without the consent in writing first had and obtained of the magistrate or other proper officer of the district in which such master resides; and in case such apprentice shall be of the age of sixteen years or upwards, without the consent of such apprentice himself.

#### CHAPTER IV.

*Respecting the effects of the Death, Insolvency, and change of Residence of the Master; and other circumstances dissolving Contracts of Service without notice.*

I. In the event of the death or insolvency of the master the contract of service shall except as hereafter excepted cease and determine after one month from the date of such death or insolvency, in case the stipulated term of service shall

Effect of death or insolvency of master upon the contract of service.



not sooner expire; and up to the period of such determination of such contract such servant shall be entitled to claim his full wages and every other remuneration specified in such contract, and shall be bound if required to perform his service for the person legally representing the deceased or insolvent master.

II. In the event of the death or insolvency of the master of any apprentice, or in the event of the apprentice being prevented in the manner hereinafter in the sixth section of this chapter particularly mentioned from performing his service or fulfilling his engagement at the place where the same ought to be performed or fulfilled, such death, insolvency, or prevention, shall be a complete discharge of the contract of apprenticeship, and if any sum shall have been really and *bonâ fide* paid by or on behalf of such apprentice as aforesaid it shall be lawful for any magistrate having jurisdiction or other competent court upon proof of such payment to order in a summary manner any sum which to the said magistrate or court shall seem reasonable to be paid to or for the use of such apprentice as aforesaid by any such master as aforesaid or his legal representative; regard being had, however, in estimating such sum to the amount of the sum originally paid by or on behalf of such apprentice and to the time during which such apprentice continued in the service of such master as aforesaid: Provided always that every such apprentice shall be entitled to his full wages or other remuneration which may have become due previous to such dissolution of the contract of apprenticeship.

Effect of death or insolvency of master upon the contract of apprenticeship.

III. In the event of the death or insolvency of the master of any child who having been in a state of destitution shall have been apprenticed by a magistrate or other proper officer in the manner hereinbefore set forth it shall be the duty of such magistrate or other proper officer, in case such apprentice shall at the time of the death or insolvency of his former master be under the age of sixteen years and unable to support himself, to retake the charge and care of such child, and if it shall be deemed expedient to apprentice again the said child for any term within the limits prescribed by this bill for the duration of apprenticeship to such fit and proper person as such magistrate or other proper officer and such child if of the age of sixteen years or upwards shall mutually approve of and agree upon: Provided that when such child has not attained the said age of sixteen years his consent shall not be necessary in any case.

Effect of death or insolvency of master where apprentice is under or of the age of 16.

IV. The wife of the deceased master of every servant or apprentice hired or contracted to perform service as a domestic or agricultural servant is entitled if she shall so think fit to claim the service of such servant or apprentice during the full period of the stipulated term of service, provided she shall consent to perform and shall perform all the stipulations of the contract in favour of the servant or apprentice which the master was bound to perform.

Widow of deceased master may adopt the contract of service.

No. 15—1856.

On death of servant or apprentice, wages to be paid up to period of death.

Effect of change of residence of master upon the contract of service or apprenticeship.

V. In the event of a servant or apprentice dying during the currency of the stipulated term of service his heirs, executors, or other legal representatives are entitled to claim from the master the full wages and other remuneration due to such servant or apprentice for the period which he had served previously to his death, and no more.

VI. No servant or apprentice (save as hereafter provided as to persons apprenticed as destitute children) hired or contracted to perform service at the residence of or at any particular place of trade or business occupied by his master is—in the event of his master's removing his residence or place of trade or business out of the town or (where such place is not in any town) from the place in which by the contract such servant or apprentice was bound to perform his service to any greater distance than two miles from such town or place where by the stipulations of the contract such servant or apprentice is not bound to reside in the house or on the premises of his master, or out of the district of such town or place where such servant or apprentice is bound to reside in the house or on the premises of his master—bound to perform his service at the place to which his master shall have removed his residence or place of trade or business without the consent of such servant or of the parents or guardians of such apprentice; but such consent shall in all cases be deemed and taken to have been given whenever it shall be proved that such servant or apprentice, being one not bound to reside in the house or on the premises of his master, has performed, or in the case of an apprentice been knowingly permitted and allowed by his parent or guardian to perform at the new residence or place of trade or business of his master any service to his master of any kind which he was bound by the contract to perform, or being one bound to reside in his master's house or premises has gone to and remained, and in the case of an apprentice been permitted and allowed by his parent or guardian to go to and remain in such house or on such premises for one week after his master's removal thereto.

The master of an apprentice who shall have been a destitute child may remove such apprentice with permission of magistrate.

VII. The master of any apprentice who has been apprenticed to him in manner hereinbefore provided as a destitute child is entitled without limitation or restraint to remove such apprentice to and to exact the performance of the service stipulated in the contract wherever such master may have removed his residence or place of trade or business within this colony, upon giving notice of his intention so to do before his departure to the magistrate of the district which he is going to leave, and the magistrate upon receiving such notice shall endorse the same on the third part of the contract of apprenticeship registered and filed by him; and on such removal taking place forthwith transmit such third part to the magistrate of the district to which such an apprentice shall be removed, to be by him duly registered and filed in manner hereinbefore provided.

VIII. No servant or apprentice hired or contracted to perform domestic service may lawfully refuse to accompany his master, or any of his family by desire of his master, on any journey within this colony, or in the course of such journey to perform every such service as by reason of his contract of service or apprenticeship he would be bound to perform in his master's house or on his premises; and no servant or apprentice may lawfully refuse to go on any journey within this colony on which his master shall order him to go, or in charge of or to drive, herd, tend, or take care of any carriage, horse, or any kind of cattle, the property or in the lawful possession of or under the lawful control of his master, which such servant or apprentice would by reason of his contract of service or apprenticeship be bound to ride, drive, herd, tend, or take care of or charge of at his master's residence or on his premises: Provided always that there shall be reasonable ground for believing that such journey may and will be performed before the expiration of the stipulated term of the service of such servant or apprentice, and that such master shall be bound to provide such servant or apprentice with food and every other thing which may be necessary and proper to enable such servant or apprentice to perform such journey and to return to the residence or premises of his master before the expiration of the term of service.

IX. No servant or apprentice shall be bound to accompany his master or to go out of this colony without the special agreement or consent of such servant or of the parent or guardian of such apprentice, or when such apprentice is of the full age of sixteen years without also the consent of such apprentice.

X. When any servant not being bound or obliged to accompany his master or go to any place to which the master shall remove his residence or place of trade or business or to which the master shall order such servant to go shall decline or refuse so to do, the contract of service shall from the date on which the servant shall be prevented from performing his stipulated service at the place where the same was to have been performed stand dissolved, and such servant shall be entitled to claim from the master such wages or other remuneration at the rate specified in the contract of service as shall have been earned up to the time of the refusal before mentioned, together with wages and remuneration after the rate aforesaid for the period of one month additional or until the expiration of the contract of service in case it shall expire within one month from the time of such refusal: Provided always that when notice of his intention to remove as aforesaid or to send such servant as aforesaid shall have been given by such master such additional wages and remuneration shall not in any case be due or payable for any period longer than one month from the date of such notice.

No. 15 - 1856.

Certain servants and apprentices bound to make certain journeys, if required.

No servant or apprentice shall be bound to accompany his master or go out of the colony without special agreement or consent.

Where servant not bound to accompany his master to new residence, contract dissolved by master's removal.

No. 15—1856.

Any special agreement touching change of residence to be good.

Effect of marriage of female servant or apprentice, as to right of husband.

Effect of marriage or pregnancy of female servant or apprentice, as to the rights of master.

XI. Nothing herein contained shall annul or affect any special agreement or stipulation made in any contract of service or apprenticeship whereby the servant or apprentice shall be bound to accompany his master or to go to any place to which the master shall remove his residence or place of trade or business, or order such servant or apprentice to go and there perform the service stipulated in such contract.

XII. When any female servant or apprentice shall be lawfully married during the currency of her stipulated term of service her husband may at any time subsequent to such marriage dissolve the contract of service or apprenticeship and remove his wife from her master's service if he shall think fit so to do, and shall be entitled to claim the wages and other remuneration which may have become due to her for services previously to such removal, but shall be liable to her master for all damage which her master may sustain by such removal. But such damages shall in no case exceed the amount of the wages which she would have earned between the time of her marriage and the time of the expiration of her service had she continued in such service until such expiration.

XIII. The master of any female servant or apprentice who during the currency of her stipulated term of service shall marry or enter into any state which in this colony is or shall be reputed to be the marriage state shall, where such servant or apprentice is by her contract of service or apprenticeship bound to reside or to perform domestic service in the house or on the premises of her master, be entitled at any time subsequent to such marriage or reputed marriage to dissolve such contract and dismiss such servant or apprentice, and when such servant or apprentice is not by such contract bound to reside or to perform domestic service in the house or the premises of her master he shall be entitled to dissolve such contract and dismiss such servant or apprentice from his service whenever she shall by reason of her pregnancy or delivery of a child become disabled from performing the service which by such contract she is bound to perform; but any such servant or apprentice so dismissed on account of her marriage or entering into a state so reputed as aforesaid to be the marriage state or of pregnancy or delivery of a child shall be entitled to claim from her master the wages and every other remuneration which shall have become due to her for her services previously to the date of such dismissal; and the master before being entitled to dismiss such servant or apprentice shall be bound to pay and satisfy the same.

## CHAPTER V.

### *Of the Jurisdiction of the Resident Magistrates in cases between Masters and Servants and Apprentices.*

Jurisdiction of resident magistrates in cases between masters and their servants and apprentices.

I. The resident magistrates within the colony have jurisdiction in all cases arising in their respective districts between masters and their servants and apprentices and with reference

to their relative rights and duties, or to any matter or thing, or offence as to which provision is made by this bill.

II. Every resident magistrate has jurisdiction in any such case as aforesaid brought before him against any person being at the time within his district, whether the grounds of such case arose within the district or not or whether the person against whom the case is brought has his usual residence or place of abode in that district or not; but the magistrate shall whenever it shall appear to him that any such case can be more conveniently tried or determined by the resident magistrate of any other district dismiss such case, and in the event of his doing so, when the servant or apprentice is accused of desertion and when he shall have probable cause shown to him by oath or affidavit of any credible person for believing this to be the fact, such magistrate may if he think fit issue a warrant for the conveyance under sure custody of such servant or apprentice to the town or place where the court of such other magistrate is held: Provided the master shall undertake to pay the expense of such conveyance, and the magistrate by whom the cause shall be ultimately tried and decided shall adjudge by which of the parties the said expenses shall be paid.

III. Any servant or apprentice may be imprisoned with or without hard labour for any period not exceeding one month in case he shall be convicted of any of the following acts or instances of misconduct, that is to say:

1. If he shall after having entered into a contract fail or refuse without lawful cause to commence the service at the stipulated time.
2. If he shall without leave or other lawful cause absent himself from his master's premises or other place proper and appointed for the performance of his work.
3. If he shall during working hours unfit himself by becoming or being intoxicated for the proper performance of his work.
4. If he shall neglect to perform any work which it was his duty to have performed, or if he shall negligently or improperly perform any work which from its nature it was his duty under his contract to have performed carefully and properly.
5. If he shall without leave and for his own purposes make use of any horse, vehicle, or other property belonging to his master.
6. If he shall refuse to obey any command of his master or of any person lawfully placed by his master in authority over him which command it was his duty to obey.
7. If he shall make any brawl or disturbance in, at, or near his master's dwelling-house, and after being by his master or by any other person belonging to his master's family desired to desist shall notwithstanding continue making such brawl or disturbance.

No. 15—1856.

Resident magistrates<sup>9</sup> have jurisdiction over all persons within their respective districts.

Definition of punishment for acts of misconduct committed by servants or apprentices.

No. 15—1856.

Definition of punishment for second conviction within the space of six months.

Definition of punishment for acts of misconduct of a more serious nature committed by servants or apprentices.

8. If he shall use any abusive or insulting language to his master or to his master's wife or to any person placed by his master in authority over him calculated to provoke a breach of the peace.

IV. In case of a second conviction under the last preceding section or of more such convictions than a second within the space of six months next after any former conviction, the offender may in regard to such second or any further conviction be imprisoned and kept at hard labour for any period not exceeding six weeks, and shall be liable during such imprisonment (or so much thereof as the convicting magistrate shall adjudge) to be kept in solitary confinement with or without spare diet or on spare diet with or without solitary confinement.

V. Any servant or apprentice may be imprisoned with or without hard labour for any period not exceeding two months and during such imprisonment kept in solitary confinement with or without spare diet or on spare diet with or without solitary confinement in case he shall be convicted of any of the following acts or instances of misconduct, that is to say :

1. If he shall by wilful breach of duty or by neglect of duty or by drunkenness do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge or placed by any other person in his charge for delivery to or on account of his master.
2. If he shall by wilful breach of duty or by neglect of duty or by drunkenness refuse or omit to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by his master in his charge or placed by any other person in his charge for delivery to or on account of his master.
3. If being employed as a herdsman he shall fail to report to his master on the earliest opportunity for so doing the death or loss of any animals placed in his charge which he shall allege to have died or been lost, or if he shall fail to preserve for his master's use or inspection any part or parts of any such animal as he shall allege to have died, which part or parts he shall by his master have been directed and shall have undertaken to preserve, unless such herdsman shall prove to the satisfaction of the court the death of such animals, or if it shall be made by his master to appear that any animal or animals alleged by him to have strayed away or otherwise become irrecoverably lost could not under the circumstances of the case have become irrecoverably lost without his act or default.
4. If being employed in any capacity other than that of a herdsman he shall allege for the loss of any property placed in his charge by or for his master and it shall be made

by his master to appear that the property in question could not have been lost without his act or default.

5. If he shall without lawful cause assault or attempt to assault or threaten to assault his master, his master's wife, or any relation of his master living with him in the same house, or any of his fellow-servants: Provided that nothing herein contained shall prevent a preparatory examination being taken in any case of assault which shall seem to require that form of proceeding, in order to the trial of the offender before the Supreme or some circuit court.
6. If he shall without leave or other lawful cause depart from his master's service with intent not to return again thereto.

VI. In case of a second conviction under the last preceding section or of more such convictions than a second within the space of six months next after any former conviction the offender may in regard to such second or any further conviction be imprisoned and kept at hard labour for any period not exceeding three months, and shall be liable during such imprisonment or so much thereof as the convicting magistrate shall adjudge to be kept in solitary confinement with or without spare diet or on spare diet with or without solitary confinement. And upon a conviction under the last preceding section followed within six months by a conviction under the third section of the present chapter the offender shall be liable to the like punishment as if both convictions had been had under the last preceding section.

Definition of punishment under either the third or the last preceding section, in case of a second or subsequent conviction.

VII. No period of imprisonment undergone under this Act by a servant or apprentice shall have the effect of cancelling the contract of service or apprenticeship.

No period of imprisonment shall have the effect of cancelling a contract.

VIII. Nothing in any of the preceding sections from third to seventh both inclusive shall extend or apply to servants or apprentices under the age of sixteen years or to any apprentice of whatsoever age who shall be apprenticed to learn any branch of the medical or legal profession or to any merchant or dealer, or to any apprentice with whom any fee or premium not less than five pounds shall have been paid.

Certain exceptions, from the third to the seventh sections inclusive.

IX. No servant shall be convicted under the third or fifth sections of this Act unless the master shall lodge his complaint within one month next after the day on which he became cognizant of the offence or alleged offence.

Complaints under the third and fifth sections to be lodged within one month.

X. If any servant or apprentice whose contract of service or apprenticeship still subsists shall upon being discharged from prison after undergoing imprisonment under this Act refuse or neglect upon his master's request to resume his service under his contract, he shall be liable to be imprisoned with or without hard labour for any period not exceeding one month, and so on for successive periods not any of them exceeding one month until he shall consent to resume and shall resume his service under his contract; and

Definition of punishment for servant refusing to resume his service after undergoing imprisonment.

No. 15—1856.

every such period of imprisonment or so much thereof as the convicting magistrate shall adjudge may be with solitary confinement with or without spare diet or with spare diet with or without solitary confinement: Provided however that no servant or apprentice shall under this Act be imprisoned continuously and without any intermediate resumption of service under his contract for longer than six months in all.

Period of imprisonment of servant to be added to the term of service stipulated in the contract.

XI. When any period of imprisonment shall be undergone by any servant or apprentice for any offence under this Act a like period shall be added to the term of service stipulated for in the contract of service or apprenticeship, as it subsisted when such imprisonment was commenced, so that such servant or apprentice shall be obliged to serve a further period equal to the period of his imprisonment, in addition to the term of service originally stipulated.

Period during which any servant shall have absented himself from the service of his master to be added to the term of service originally stipulated.

XII. When the offence of which any servant or apprentice shall be convicted under this Act shall be the offence of absenting himself from or of departing from the service of his master, then the period of his absence shall be added to the term of service originally stipulated in like manner as in the last preceding section directed in regard to the period of imprisonment therein mentioned; and it shall be the duty of the magistrate convicting such servant or apprentice to ascertain at the trial the period of absence and to certify the same by some writing under his hand to be delivered to the master, and the period mentioned in such writing shall by all courts and in all places be deemed to be added to the original term of service.

Compensation by servant for loss of or damage to property of master.

XIII. As often as any property of the master shall be lost or damaged by means of any act or omission of his servant or apprentice which act or omission is by this Act declared to be an offence it shall be lawful for the magistrate, should he so think so fit and the master shall thereto agree, to ascertain whether such servant or apprentice is able to make compensation for such loss or damage, and if so to fix the amount of such compensation and make such order as to the payment thereof, either at once or by instalments out of wages to be yet earned or otherwise, as shall seem reasonable and just, and in the meantime and until default made in such payment or in the payment of some such instalment to defer passing sentence upon the party offending; but such magistrate shall preserve on record the evidence in the case and upon application of the master and proof given upon oath of some such default as aforesaid shall issue his warrant for the apprehension of such servant or apprentice and shall pronounce upon him such sentence as, regard being had to the circumstances of the original offence and to the degree in which such servant or apprentice has made or failed to make the compensation ordered, shall appear equitable and just.

Cancellation of contract for misconduct of servant.

XIV. As often as the master of any servant or apprentice who shall be convicted of any offence under this Act shall



desire the cancellation of the contract of service or apprenticeship the magistrate should he so think fit may order the cancellation of the same and the same shall be cancelled accordingly: Provided that such cancellation shall not prevent the execution of any sentence which the magistrate may pronounce or may have pronounced upon the offender for his offence.

XV. As often as the master shall have caused any servant or apprentice to be brought before the magistrate to answer any charge preferred against him by such master and such master shall fail in obtaining the conviction of such servant or apprentice then the magistrate should he so think fit may at the desire of such servant or apprentice order the cancellation of the contract of service or apprenticeship, and the same shall be cancelled accordingly.

Cancellation of contract on groundless accusation by the master.

XVI. In order to save time and expense the master of any servant or apprentice alleging matter of complaint against such servant or apprentice may warn and order such servant or apprentice to appear before the magistrate of the district on some day and hour to be named by such master, there to answer some certain charge of the nature of which such master shall inform such servant or apprentice; and should the servant or apprentice fail to attend in pursuance of such warning and order the magistrate, upon the application of the master and upon proof by affidavit that such servant or apprentice received such warning or order and received the same a reasonable time before the time fixed for his appearance, and that to the best of the deponent's knowledge and belief such servant or apprentice has no lawful cause for not appearing, may issue his warrant for the apprehension of such servant or apprentice in order to his being tried.

Servant to appear before a magistrate on order of master.

XVII. Should any master who shall have warned and ordered his servant or apprentice to appear as aforesaid himself fail to appear at the time fixed by him for the appearance of his servant or apprentice then and there to prosecute his complaint, the magistrate upon proof by affidavit that such servant or apprentice was warned and ordered by his said master to appear at the said time to answer a charge of a certain nature shall ascertain the distance which such servant or apprentice shall have travelled and the distance which any person or persons shall have travelled whom such servant or apprentice may have brought with him as witnesses, and shall, upon being satisfied that such witnesses would or might have been necessary for his defence make an order in writing against such master for the payment of the expenses of such servant or apprentice and his witnesses if any, at and after the same rate as if each of the said persons had been a witness summoned at the instance of the public prosecutor and attending to give evidence in the court of such magistrate upon a criminal case, and if such master shall

Master having warned and ordered his servant to appear before a magistrate, upon failing to appear himself to be liable to expenses.

No. 15—1856.

upon presentation to him of such order by the person or persons in whose favour the same shall have been made refuse or neglect to comply therewith he shall incur and be liable to a fine not exceeding five pounds: Provided that one such order may include the expenses of all or any of the persons whose expenses are to be paid or separate orders may be delivered to one or more of such persons as may be most convenient.

No servant or apprentice charged with any offence under the third section shall be entitled to an acquittal if he is proved to be only guilty of contravening the fifth section, and *vice versa*.

XVIII. No servant or apprentice summoned or otherwise brought before the magistrate to answer for any offence alleged in the summons or otherwise to be in contravention of the third section of this chapter shall be entitled to an acquittal because the proof given in the case may show that he is only guilty of contravening the fifth section of this chapter; and no servant or apprentice summoned or otherwise brought before the magistrate to answer for any offence alleged in the summons or otherwise to be in contravention of the fifth section aforesaid shall be entitled to an acquittal because the proof given may show that he is only guilty of contravening the said third section: Provided however that the punishment to be awarded upon a conviction in any such case shall not exceed the punishment provided by the said third section: And provided also that the servant or apprentice shall have had in every case sufficient notice of the nature of the charge which he was called upon to answer.

Term of solitary confinement or spare diet fixed.

XIX. In all convictions under this Act no prisoner shall be adjudged to be kept in solitary confinement for more than three days in each week or on spare diet more frequently than every second day.

Actions by servants for wages.

XX. All wages due to servants or apprentices shall be recovered by civil action, and in every case instituted for the recovery of wages in which case the magistrate shall give judgment in favour of the servant or apprentice he shall besides giving judgment for the debt and costs impose at the same time upon the master a fine not exceeding five pounds and not less than one pound, in case it shall be made to appear that the master had no reasonable or probable cause for believing that the wages withheld by him were not really due; and such fine shall be recoverable in and by the same process as the debt and costs, but shall when recovered be applied as by this Act directed in regard to fines in criminal cases.

Actions by servants to compel delivery of property detained.

XXI. The magistrates of this colony have jurisdiction in any civil case instituted by any servant or apprentice to compel the delivery of any of his cattle, sheep, goats, or other animals lawfully running or being upon his master's land, and which his master shall either before or after the expiration of the contract of service or apprenticeship, upon demand made and without lawful cause, have refused to deliver or permit to be taken away; and in case it shall be made to appear that the master had no reasonable and probable cause for believing

that the animals in question were lawfully detained the magistrate shall besides giving judgment for the delivery of such animals and for costs impose at the same time upon the master a fine not exceeding one pound for every animal so unlawfully detained: Provided however that the total amount of the fine so payable shall not exceed the sum of five pounds altogether; such fine to be recoverable in like manner as the said costs, but when recovered to be applied as by this Act directed in regard to fines in criminal cases: Provided that neither the fact that the contract of service or apprenticeship of such servant or apprentice has not yet expired nor the fact that money is due or alleged to be due by such servant or apprentice to the master shall be deemed or taken to be of itself reasonable and probable cause for such detention: Provided however that nothing herein contained shall impair the effect of any express contract of a lawful kind by force of which the master shall claim a right to retain any such animals as aforesaid.

XXII. As often as the master of any servant or apprentice shall fail upon demand to supply or deliver to such servant or apprentice the food, bedding, or other articles stipulated for in the contract of service or apprenticeship or shall supply or deliver food, bedding, or other articles not conformable to the said contract the remedy of the servant or apprentice shall be by civil action, and in case judgment shall be given in such action for the servant or apprentice it shall be lawful for the magistrate besides giving such judgment to impose at the same time upon the master a fine not exceeding five pounds and not less than ten shillings, which fine shall be recoverable in and by the same process as the costs of such action are or would be recoverable, but shall when recovered be applied as by this Act directed in regard to fines in criminal cases.

XXIII. As often as it shall be made to appear to the magistrate in any such civil action as aforesaid instituted by any servant or apprentice against his master that the master has not fairly and faithfully performed his part of the contract of service or apprenticeship, the magistrate may should he so think fit and should the servant or apprentice so desire order the cancellation of such contract and the same shall be cancelled accordingly.

XXIV. As often as any master shall be convicted of wrongfully and unlawfully assaulting his servant or apprentice the convicting magistrate may should he so think fit and should the servant or apprentice so desire order the cancellation of the contract of service or apprenticeship and the same shall be cancelled accordingly.

XXV. As often as any master shall complain against his servant or apprentice for or on account of any offence against any of the provisions of this Act, or a servant or apprentice shall complain against his master for or on account of any

No. 15—1856.

Actions by servants for articles stipulated for in contract.

Contract may be cancelled if the master has not faithfully performed his part thereof.

Contract may be cancelled if the master has wrongfully assaulted his servant or apprentice.

Costs for compelling parties accused to attend the magistrate's court.

No. 15—1856.

wrong or injury of a criminal nature, the process of the court of resident magistrate for compelling the attendance of the party accused and of all necessary witnesses shall be issued at the public charge: Provided always that if at the trial the charge shall appear to have been brought without reasonable or probable cause the party complainant shall be liable to a fine not exceeding five pounds and also to defray the costs of process and of the witnesses in the case, and in default of payment of such fine and costs shall be liable to be imprisoned with or without hard labour for any period not exceeding one month: Provided also that such fine may be imposed upon the occasion of such trial and without any fresh action or proceeding for the recovery thereof.

If the servant is poor, process to be issued at the public charge, and amount recovered from either plaintiff or defendant, as the case may be.

XXVI. When it shall be made to appear to the magistrate that any servant or apprentice desirous to bring a civil action against his master or late master for the recovery of wages alleged to be due or for the fulfilment of any part of the contract of service or apprenticeship, or for damages for any breach thereof, or for assault, is from poverty unable to pay the costs of civil process, then the magistrate shall cause such process as regards parties and witnesses to be issued and executed at the public charge as in criminal cases prosecuted at the public instance, and in case judgment shall be given for such servant or apprentice with costs then the costs first aforesaid shall be recovered from the defendant and refunded to the public: Provided always that if at the trial the action shall appear to have been instituted without reasonable or probable cause and the plaintiff shall fail to pay or give sufficient security for the payment of the said costs, as also for the costs if any awarded to the defendant, then the magistrate may forthwith commit the said plaintiff to prison with or without hard labour for any period not exceeding one month.

Detaining a child under 16 years of age.

XXVII. If any child under the age of sixteen years shall be wrongfully detained by any person as a servant or inmate the resident magistrate of the district in which it shall be so detained shall have jurisdiction to order the restoration of such child to such of its parents as would under this Act be entitled to apprentice such child if then about to be apprenticed: Provided however that should it be made to appear upon the hearing of any such case that the person complained against originally obtained the said child in a lawful manner and when an infant under the age of five years, and that the parent claiming the same has so acted in reference to the said child and to the person bringing it up as to make it a breach of good faith on the part of such parent to seek to take it away as he or she now seeks to do, and that from the character of the said parent the purpose for which he or she appears to desire to obtain possession of the said child, or other circumstances, it will be for the manifest benefit of the said child to remain with the person with whom it is residing

rather than to be delivered to the parent applying, then the magistrate shall refuse to order the delivery of the said child, leaving it to the parent applying for the same to take such other proceedings if any as he or she may be advised; and such magistrate may in the meantime authorize the person rearing up such child to retain possession thereof.

XXVIII. In any case between a master and his servant or apprentice in which the resident magistrate shall have given judgment in favour of such servant or apprentice and such master shall appeal from such judgment or apply to have the same reviewed it shall be the duty of the Attorney-General in case such appeal or application shall be brought before the Supreme Court, and of the clerk of the peace for the district in which such judgment was made in case such appeal or application shall be brought before the circuit court (provided the said Attorney-General or such clerk of the peace shall be called on so to do), to appear for and conduct the case of such servant or apprentice free of all charge or expense whatever, and the judge of the circuit court is hereby empowered upon the motion of any such clerk of the peace to assign counsel to act gratuitously for such servant or apprentice whenever such judge shall be of opinion that it is fit and proper so to do.

No. 15—1856.

Attorney-General and the clerks of the peace to act for servants, respondent in cases of appeal to Supreme or circuit court.

## CHAPTER VI.

### *Respecting Characters given by Masters to Servants or Apprentices.*

I. No master is bound to give a character to any servant or apprentice who is or has been in his service or to assign any reason for refusing to give it.

No master is bound to give a character of a servant.

II. Every master who shall knowingly have given any false character to any servant or apprentice is liable to make compensation for any loss or damages which any third party, who by reason of such character so given has been induced to take such servant or apprentice into his service, has sustained by the misconduct of such servant or apprentice in any respect or with reference to any matter to which such character so given was false.

Consequences of knowingly giving a false character.

III. Every person who for the purpose of giving a character to any servant or apprentice or other person intending to offer himself to be hired as a servant shall forge or counterfeit and utter any certificate of such servant's or apprentice's character, or shall falsely personate any other person, and as such, either personally or by writing, give any false, forged, or counterfeit character or certificate of character of any such servant, apprentice, or other person offering or intending to offer to hire himself as a servant; and every person who shall offer to hire as a servant, asserting or pretending that he has served in any service in which he has not actually served, or with a false, forged, or counterfeit

Penalties for counterfeit certificates of character and false representations.

No. 15—1856.

certificate of character, or shall in any wise add to or alter by effacing, or erasing, or inserting any word or date in any certificate given to him by his present or any former master or by any other person duly authorized by any such master to give the same, and shall use or attempt to use the same as an inducement to hire him, shall on conviction thereof incur and be liable to a fine not exceeding fifty pounds, nor less than ten pounds, or to be imprisoned for any period not exceeding one year nor less than one month, or to both such fine and imprisonment.

## CHAPTER VII.

*Respecting the Constraints of Masters, Servants, and Apprentices.*

Definition and punishment of unlawful interference with servants or apprentices, in order to prevent them from entering into or completing contract of service or apprenticeship.

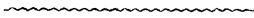
I. Any person who shall by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any servant or apprentice to depart from his service or work or to return his work to his master before the same shall be finished, or to prevent or endeavour to prevent any servant or other person not being hired or employed from hiring himself to or accepting service or work from any person, or force or induce or endeavour to force or induce any such servant or apprentice or other such person to belong to any club or association or to contribute to any common fund, or shall use or employ violence to the property of another, or threats or intimidation, or shall molest or in any way obstruct another on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied or of his refusing to comply with any rules, orders, resolutions, and regulations made to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, business, work, or labour, or the management thereof; or who by any such violence, threats, intimidation, molestation, or obstruction shall force or endeavour to force any manufacturer or person carrying on any trade, business, work, or labour, or engaged in agriculture to make any alteration in his mode of regulating, managing, conducting, or carrying on the same, or to increase or limit the number of his apprentices or servants, shall on conviction thereof before any resident magistrate or other competent court be imprisoned with or without hard labour for any period not exceeding three months.

Definition and protection of lawful acts and associations.

II. Provided always that nothing herein contained shall extend to subject to punishment any persons who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at that meeting or any of them respectively shall require

or demand for his or their service or work or shall pay his or their servants or apprentices for their service or work, or who shall enter into any agreement, verbal or written, among themselves for the purpose of fixing the rate of wages or prices, which rate of wages or prices the persons entering into such agreement or any of them shall require or demand for his or their service or work, or pay to his or their servants or apprentices for their service or work, or of fixing the number of hours of work which he or they will work or will require his or their servants or apprentices to work in any manufacture, trade, business, labour, or agriculture, and that no such persons so meeting together or entering into any such agreement as aforesaid shall be liable to any penalty or prosecution for so doing.

No. 15—1856.



No. 16—1856.]                      AN ACT                      [June 4, 1856.

For Amending the Law relative to the Registration of Voters and to the Taking of Polls.

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:

Preamble.

I. So much of the seventy-sixth 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 seventy-sixth section mentioned is hereby ratified and confirmed.

Repugnant laws repealed.

Postponement of first biennial registration confirmed.

II. 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:

Governor by proclamation to call upon persons in each field-cornetcy to forward their claims for registration to civil commissioner.

“To the civil commissioner of ———

“Please to take notice that I, A.B., residing in the field-cornetcy of ———, in the above electoral division,

Form of claim.

No. 16—1856.

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.

III. 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.

IV. 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 fifteenth of June nor later than the thirty-first of July next after the commencement and taking effect of this Act: Provided that every such proclamation shall be published for not less than thirty-one days before the day named therein as the last day for the delivery of claims.

Civil commissioner to forward list of registered voters to each field-cornet for correction.

V. At some time between the first day of June and the fifteenth 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 for 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.

Field-cornet to correct the list.

VI. 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 send claims to civil commissioner.

VII. As soon as may be after the day named in the proclamation in the second 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.

VIII. When the civil commissioner shall be in possession of a notification or report from each field-cornet touching the matters in the fifth 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-cornet in order that the same may be posted for general information as hereinafter directed.

IX. 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-cornet, except the name of a person notified or reported as aforesaid as dead or as having ceased to reside in that field-cornet 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 have delivered a claim either at the office of such civil commissioner or to the field-cornet of his field-cornet 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.

X. 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-cornet 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:

“ Notice is hereby given that if any inhabitant of the field-cornet 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-cornet 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.”

No. 16—1856.

Civil commissioner to frame list for each field-cornetcy.

List how to be framed.

List to be sent to field-cornet.

Form of notice to be annexed.

No. 16—1856.

Separate list to be framed of persons represented as dead or disqualified.

XI. The civil commissioner aforesaid shall, when transmitting or delivering to such field-cornet the list in the tenth 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.

“(Signed) O.P.,

“Civil Commissioner of the Division of —.”

Lists to be posted.

XII. Every field-cornet receiving any such lists and notices as aforesaid shall forthwith fill up the blank left in such notice as in the tenth 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 tenth section and also such a list as in the eleventh section mentioned he shall post both at the same time and in the same place.

Form of claim in pursuance of above notice.

XIII. 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 :

“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.)

Form of objection.

XIV. 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 :

“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).

XV. 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.

No. 16—1856.  
Claims and objections to be transmitted to the resident magistrate.

XVI. 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 tenth section mentioned transmit to the resident magistrate of each district copies of the lists transmitted to the field-cornets of such field-cornetcies 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 tenth section mentioned.

Copies of lists mentioned in 10th section to be sent to the magistrates of the several districts constituting an electoral division.

XVII. 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 fifteenth 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.

Notices need not be sent.

Duty of magistrate on receiving such list.

XVIII. The list of claimants in the last preceding section mentioned shall be headed thus—

Title of list of claimants.

“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

Form of notice to be appended.

No. 16—1856.

— the — day of —, 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 —.”

XIX. The list of persons objected to as in the fourteenth 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.

“ Given under my hand this — day of —, 185—.

“(Signed) L.M.,

“ Resident Magistrate for the District of —.”

Magistrate to post list.

XX. 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 tenth section mentioned had been posted.

Court to be held for hearing claims and objections.

XXI. The day to be appointed by any such notice as is in the eighteenth and nineteenth 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.

Place where court to be held.

XXII. 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.

XXIII. 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 any person whom he shall deem it necessary to examine; and such magistrate shall finally determine all questions brought before him: Provided that every claimant who shall have claimed in manner and form as in the twelfth 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.

XXIV. 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.

XXV. 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

No. 16—1856.

Manner of hearing and determining questions.

List of claims admitted and objections allowed to be sent to civil commissioner.

How if electoral division contains more than one fiscal division.

No. 16—1856.

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.

XXVI. 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 twenty-first 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.

Completion of general list to be reported to Colonial Secretary.

List of voters for Cape Town and Graham's Town how to be framed.

XXVII. The lists of voters for the electoral divisions of Cape Town 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 twenty-sixth 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 twenty-fifth section of the said Ordinance have claimed in person to be registered: Provided always that the Government notice in the twenty-second section of the said Ordinance mentioned shall be published not more than fourteen days next after the publication of the proclamation in the second section of this Act mentioned.

Provision for a registration in every alternate year.

XXVIII. 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 second and fourth 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.

No. 16—1856.

XXIX. 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: Provided that nothing in this Act contained shall extend to either of the electoral divisions of Cape Town or Graham's Town.

Polling officers at elections.

XXX. 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 single number, unless there be something in the subject or context repugnant to such construction.

Construction of terms

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

Act when to commence.

No. 17—1856.]

AN ACT

[June 4, 1856.]

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

Preamble.

No. 17—1856.

Queen may order pensioners to be enrolled.

Imperial Act to apply to such pensioners.

Act when to commence.

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.

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

No. 18—1856.]

AN ACT

[June 4, 1856.

For Applying a Sum not exceeding Two Hundred Thousand Nine Hundred and Sixty-five Pounds Nine Shillings and Nine Pence for the Service of the Year 1856.

Preamble.

WHEREAS by the Act No. 12, 1855, entitled "An Act for Applying a sum not exceeding Sixty-six Thousand One Hundred and Ninety-two Pounds for the service of the Year 1856," the said sum of sixty-six thousand one hundred and ninety-two pounds was charged upon the revenue of this colony for the service of the Government of the colony until the 30th of April, 1856: And whereas it has become expedient in the present session of Parliament to take into consideration the requirements of the said service for the entire of the year 1856, as well that portion for which provision was made by the said Act as the remaining portion thereof: And whereas it will be expedient in order to prevent confusion to repeal the said Act No. 12, 1855, and to provide by one Act for the service of the year 1856: 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:

I. The Act aforesaid, No. 12, 1855, is hereby repealed.

Act No. 12, 1855,  
repealed.



II. The public revenue of the colony is hereby charged with a sum not exceeding two hundred thousand nine hundred and sixty-five pounds nine shillings and nine pence for the service of the year 1856, in addition to the sums already by law provided for such service, which sum of two hundred thousand nine hundred and sixty-five pounds nine shillings and nine pence shall be applied in the manner following, that is to say:

For the expenditure of the Civil Establishments, a sum not exceeding forty-three thousand five hundred and twenty pounds twelve shillings and three pence.

For the expenditure of the Judicial Establishments, a sum not exceeding fourteen thousand nine hundred and sixteen pounds.

For the expenditure of the Educational Establishment, a sum not exceeding five thousand three hundred and eleven pounds ten shillings.

For the expenditure of the Medical Establishment, a sum not exceeding nine thousand eight hundred and twenty-eight pounds ten shillings.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding thirty-one thousand five hundred and ninety-six pounds seven shillings and six pence.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding forty thousand pounds.

For the expenditure on account of Works and Buildings, a sum not exceeding six thousand two hundred and eighteen pounds.

For the expenditure on account of Roads, Streets, and Bridges, a sum not exceeding sixteen thousand one hundred and ninety-five pounds.

For the expenditure on account of Miscellaneous Services, a sum not exceeding fourteen thousand one hundred and nineteen pounds ten shillings.

For the expenditure on account of Charitable Allowances, a sum not exceeding sixty pounds.

For the expenditure on account of the Maintenance and Discipline of Convicts, a sum not exceeding nineteen thousand two hundred pounds.

Amounting in the whole to two hundred thousand nine hundred and sixty-five pounds nine shillings and nine pence, as detailed in the schedule hereunto annexed.

No. 19—1856.] AN ACT [June 4, 1856.  
To Regulate till the Expiration of the Year 1857 the  
Dealing in Gunpowder, Firearms, and Lead.

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

No. 18—1856.  
Expenditure for 1856.

Civil Establishment.

Judicial do.

Educational do.

Medical do.

Police and gaols do.

Aborigines.

Works and buildings.

Roads, streets, and bridges.

Miscellaneous services.

Charitable allowances

Maintenance and discipline of convicts.

Preamble

No. 19—1856.

twenty-seventh 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 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:

Ordinance of 1853 extended to 1857.

I. 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.

Powder magazines to be guarded at night or otherwise protected.

II. 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.

In case of refusal or neglect.

III. 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.

No appeal from Governor's decision.

IV. 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 shall not be disputed or questioned in any court or by any proceeding whatsoever.

No. 19—1856.

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

Act when to commence.

No. 20—1856.]

AN ACT

[June 4, 1856.

For Amending and Consolidating the Laws relative to the Courts of Resident Magistrates.

**W**HEREAS it is expedient to amend and consolidate the laws relative to the courts, jurisdiction, powers, and duties of the resident magistrates within this colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. Courts of resident magistrates shall be and the same are hereby declared to be erected, constituted, and established for and within each of the following districts, that is to say,—Cape Town and the district thereof, Wynberg, Simon's Town, Malmesbury, Piketberg, Stellenbosch, the Paarl, Worcester, Tulbagh, Clanwilliam, Swellendam, Riversdale, Caledon, Beaufort, George, Aliwal, Uitenhage, Port Elizabeth, Albany, Fort Beaufort, Bathurst, Stockenström, Somerset, Victoria, Fort Peddie, Albert, Queen's Town, Graaff-Reinet, Richmond, Cradock, Colesberg, East London, Alexandria, Prince Albert, Victoria West, Bredasdorp, Calvinia, Middelburg, Aliwal North, Oudtshoorn, and Namaqualand: and the said courts shall be respectively holden by and before the resident magistrates for the districts aforesaid.

Districts in which courts are established

II. It shall and may be lawful for the Governor of this colony by any proclamation to be by him from time to time issued for that purpose and published in the Government Gazette to erect, constitute, and establish courts of resident magistrates to be held for and within such districts respectively as the said Governor shall think fit, which courts shall respectively be holden before such persons as shall respectively be appointed to be resident magistrates of such districts.

Establishment of courts by proclamation.

III. It shall and may be lawful for the Governor of this colony by any proclamation to be by him issued for that purpose and published in the Government Gazette on the passing of this Act, and thereafter from time to time as occasion may seem to him to require, to define, fix, and

Fixing limits of magistracy.

*Revised Act 32/7*

No. 20—1856.

appoint the local limits of the territory which shall be comprehended and included in any of the aforesaid districts, whether in the first section mentioned or such as shall hereafter be created, and within which the resident magistrate for such district shall have and exercise jurisdiction and authority: and whenever the said Governor shall deem it to be inexpedient or unnecessary that any of the said courts shall continue to be holden for and within any of the districts aforesaid, then and in every such case it shall and may be lawful for the said Governor by any proclamation to be by him issued for that purpose and published as aforesaid to abolish such court and the office of resident magistrate for such district, as also to annex any such district or any part thereof to any other district or districts; and every district or part thereof which shall be so annexed as aforesaid to any other district shall thereby become and be within and subject to the jurisdiction and authority of the resident magistrate for the district to which it shall be so annexed; and whenever any court shall be erected under or by virtue of the power and authority in that behalf in the second section of this Act mentioned, and the district assigned for the exercise of the jurisdiction of such court shall comprise territory which was before then either wholly or in part within the jurisdiction of some other court or courts of resident magistrate, then and thereupon such territory shall wholly cease to be within or subject to the jurisdiction of such other court or courts.

IV. Whenever the said Governor shall by any proclamation to be by him issued for that purpose repeal any such proclamation by which the court of and the office of the resident magistrate for any district was abolished, thereupon and by virtue of such repeal such court and such office shall of new become and be created, constituted, and established in like manner and to all intents and purposes as if the same had never been abolished in manner aforesaid.

V. Every person who shall hereafter be appointed the resident magistrate for any district shall be so appointed by the Governor of this colony under the great seal thereof; and it shall and may be lawful for the said Governor when and so often as by reason of the death, sickness, absence, or other incapacity of any resident magistrate it shall appear to him to be necessary or expedient so to do to appoint some fit and proper person to act as and in the stead of such resident magistrate within his district; and all deeds, acts, matters, and things which shall be done and performed by or before any person so appointed to act as aforesaid under and by virtue of such his appointment shall be as legal, valid, and effectual to all intents and purposes as if the same had been done and performed by or before the resident magistrate instead of whom such person shall have been so appointed to act: Provided always that no resident magistrate

Alteration of districts

Revival of abolished magistracies.

Appointment of magistrates.

of any district existing at the time of the commencing and taking effect of this Act and of which the local limits shall not be changed by any such proclamation as is in the third section mentioned need be appointed anew, but shall without any fresh appointment be deemed and taken to be the resident magistrate of such district.

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VI. Every person who shall in manner aforesaid be appointed to be a resident magistrate or to act as or in the stead of any resident magistrate shall before exercising any of the functions of his office take the oath of office set forth in the schedule hereunto annexed marked A before the chief justice or any of the judges of the Supreme Court, or before the clerk of the peace or any justice of the peace for the district for or in which such person is appointed to act, who are hereby empowered and required to administer the same; and every such person shall so soon as he shall have duly taken the oaths aforesaid cause such oaths to be recorded and shall subscribe the same in the record book of the proceedings of his court or of the court in which he shall so have been appointed to act as the case may be.

Oath to be taken by magistrates.

VII. The courts of the resident magistrates aforesaid shall be respectively courts of record, and the pleadings and proceedings of the said courts shall be carried on and the sentences, decrees, judgments, and orders thereof pronounced and declared in open court and not otherwise; and the several pleadings and proceedings of the said courts shall be in the English language; and in all criminal cases the witnesses against and for any accused person or persons shall deliver their evidence *viva voce* and in open court.

Nature of courts.

VIII. Every resident magistrate of the colony shall have in all civil cases brought or instituted against any person residing within the district for which such resident magistrate shall have been appointed the jurisdiction following, that is to say:

Civil jurisdiction of magistrates.

Vide also sections 10, 53, 55, and 56.

1. In all cases founded upon any bill of exchange, promissory note, good-for, or other written acknowledgment of debt commonly called a liquid document, in which the sum demanded shall not exceed forty pounds sterling.
2. In all cases (except as hereinafter is excepted) in which the debt or damages demanded shall not exceed twenty pounds sterling.
3. No such magistrate shall have jurisdiction in or cognizance of any action or suit wherein the title to any lands or tenements or the title to any fee, duty, or office is in question, or any action or suit to try the validity of any will or other testamentary instrument or any action or suit whereby rights in future can be bound: Provided that any such magistrate may in the course of any action or suit to recover damages for criminal conversation with the wife of the plaintiff or for the amount or value of necessaries lawfully supplied to the wife of any

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person determine upon or in regard to the fact of marriage, and may in the course of any action or suit for the amount or value of maintenance lawfully supplied to the child, legitimate or illegitimate, of any person determine upon the question of affiliation so far as may be necessary for the decision of any such action or suit, without thereby binding or being deemed or taken to bind rights in future: Provided however that the evidence in every such case as aforesaid shall be recorded by the magistrate, and that the same may be put in as proof by either plaintiff or defendant in any subsequent suit or action in the same court between the same parties in which the matters in question in the former suit or action shall again come into dispute.

4. As often as any action or suit shall be brought upon any liquid document for any sum exceeding twenty pounds, as first aforesaid the resident magistrate shall have jurisdiction to try any plea of set-off or compensation or any cross case or claim in reconvention not exceeding the amount demanded by the plaintiff in his summons, whether the plaintiff shall or shall not succeed in proving the amount so demanded to be due.

IX. In any action or suit brought in the court of any resident magistrate upon any bill of exchange or promissory note for any sum under twenty pounds against the drawer or any endorser thereof it shall not be necessary to prove the dishonour of such bill or note or notice of such dishonour by a protest made by a public notary; but such dishonour and notice thereof may be proved by the evidence of any competent witness; and no charge shall be allowed in the taxation of costs between party and party for any such protest should one have been made: Provided that as often as notice of dishonour shall be necessary to be proved in regard to any bill or note the reasonable horsehire and other expenses of the person employed to give such notice shall be allowed to the successful party in the cause: Provided however that no horsehire or other expenses shall be allowed in regard to any notice of dishonour given at any place within two miles of the residence of the person causing the same to be given.

X. The resident magistrates aforesaid shall in their respective courts have jurisdiction in all actions of ejectment against the occupier of any lands, tenements, or premises situated within the local limits of their respective districts at the suit of any person (or of his lawful attorney, administrator, or executor) under whom such occupier has holden or occupied the same in virtue of any lease, contract, or agreement; or at the suit of any person (or of his lawful attorney, administrator, or executor) whose name is enregistered in the land register of the colony as the proprietor of any such lands, tenements, or premises against the tenant or occupier thereof; or at the suit of any tenant (or his lawful attorney, administrator,

Protest of bill of exchange or promissory note under £20 not necessary.

Jurisdiction in ejectment.

or executor) holding a subsisting written lease of any such lands, tenements, or premises under the person whose name is enregistered in the land register of the colony as the proprietor thereof against any occupier of such lands, tenements, or premises, whose right or alleged right of occupation is not derived from the person whose name is enregistered as aforesaid as the proprietor thereof: Provided always that the title to the ownership of any of the lands, tenements, or premises aforesaid shall not in any such action be in question, but only the right of occupation: And provided also that it shall not be shown by the defendant that the right to the occupation of any such lands, tenements, or premises during the term or period as to which the right of occupation shall be in dispute is to him of the clear value of forty pounds sterling or upwards.

XI. Every such court as aforesaid may make orders concerning the time or times and by what instalments any debt or costs for which judgment shall be obtained in the said court shall be paid, and all such moneys shall be paid into court, unless the said court shall otherwise direct; and every such order shall be in the form in that behalf in the rules and regulations of the courts of resident magistrates provided.

Payment of debt by instalments.

XII. Whenever any court shall give judgment for the payment of money the amount shall be recoverable—in case of default or failure of payment thereof forthwith or at the time or times and in the manner ordered by the said court—by execution against the movable property of the party against whom such judgment shall be given; which execution shall be sued out and executed in manner and form as in that behalf directed by the rules and regulations aforesaid.

Recovery of sums adjudged.

XIII. Whenever there shall not be found within the district of the resident magistrate from or out of whose court such execution shall issue sufficient movables of such person from which the debt or costs can be levied by virtue of any writ or warrant issued by such magistrate, such writ or warrant when endorsed by the resident magistrate of any other district (and every resident magistrate is hereby authorized and required on production to him of any such writ or warrant to endorse the same) shall have the like force and effect and may be executed by the officer or person to whom such writ or warrant shall be directed within the district of the magistrate by whom it has been endorsed as if it had been issued by such last mentioned magistrate for execution of any sentence or judgment of his court.

Recovery of debts beyond district of magistrate adjudging

XIV. Whenever any such court as aforesaid shall have made any order for the payment of any sum of money by instalment execution upon the judgment recovered against the debtor shall not issue until after default made in the payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid

Effect of failure to pay instalment as adjudged.

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or for such portion thereof as the court shall order, either at the time of making the original order or at any subsequent sitting of the court.

What goods not attachable.

XV. In respect of any process of execution issued against any person out of any such court as aforesaid the wearing apparel and bedding of such person and his family, as well as the tools and implements of his trade, to the value of five pounds in the whole, shall be protected from seizure and shall not be attached or sold.

Decree of civil imprisonment.

XVI. Whenever it shall appear from or by the return of the messenger of any of the courts aforesaid to any process of execution whereby such messenger was required to cause to be levied and raised of the movable property of any defendant the amount of any debt and costs recovered by the judgment of the said court by any plaintiff that such messenger had not found any such movable property or had found sufficient of the same wherewith to satisfy only some part or portion of such debt or costs as aforesaid, then and in that case it shall and may be lawful for the clerk of the said court, and he is hereby required upon the application of the said plaintiff or his lawful agent, to issue and deliver to the messenger of the said court a summons for the said defendant calling upon him to appear and show why a decree of civil imprisonment should not be pronounced against him, which summons shall in substance and effect be in the form in that behalf in the schedule to this Act contained.

Warrant of imprisonment.

XVII. When and as often as any such court as aforesaid shall make a decree of civil imprisonment against any defendant the process for the execution of the same shall be by warrant under the hand of the resident magistrate, which warrant shall in substance and effect be in the form in that behalf in the schedule to this Act contained.

Imprisonment and maintenance during.

XVIII. The keeper of whatever prison shall in any such warrant be mentioned and referred to shall receive into his custody and retain therein according to the tenor of such warrant the person against whom the same shall have been sued out: Provided always that the plaintiff suing out the same shall pay and satisfy the charges for the maintenance of the defendant precisely as if such defendant had been committed under or by virtue of a decree of civil imprisonment made or granted by the supreme or any circuit court: And provided also that it shall and may be lawful for such keeper as aforesaid, in case any such charges shall remain unsatisfied, to discharge the debtor from custody forthwith: And provided further that such charges as aforesaid for maintenance shall be one shilling per day, payable weekly in advance, and shall be paid by the keeper of the prison into the hands of the imprisoned debtor.

Circumstances under which decree of imprisonment may be withheld.

XIX. When and as often as any defendant summoned as aforesaid to show why a decree of civil imprisonment shall not be made or granted against him shall propose terms of



settlement to the plaintiff, which terms the said plaintiff shall agree to accept, or shall propose terms of settlement which although the said plaintiff shall refuse to accept the same shall yet be deemed by the said court to be fair and reasonable, or shall make it appear that he is incapable of paying or settling the amount of the debt or damages or any part thereof, it shall and may be lawful for the said court either to withhold the said decree or to grant the same with such certain stay of execution or other equitable condition as shall best tend to carry into effect or secure the performance of the terms of settlement agreed upon between the parties, when such terms there are, or when there are none such then as shall best tend to carry into effect and secure the performance of any terms proposed by the defendant which by the said court shall be deemed fair and reasonable, and as such be approved and adopted or otherwise, as shall best tend to meet the merits of the case.

XX. No defendant shall be detained in prison under any such warrant as aforesaid in any case in which the debt and costs mentioned in such warrant shall together amount to less than five pounds for any period longer than one month; nor in any case whatever for any period longer than three months; and no defendant once discharged shall ever be again arrested for the same debt or cause of action: Provided always that when any defendant shall be discharged from prison by reason merely that any such period as aforesaid has expired such imprisonment shall not be deemed to be a satisfaction of the debt, damages, or costs for which he was taken in execution so as to prevent the plaintiff from having further execution against the property of such defendant: And provided also that every defendant imprisoned under any such warrant shall be discharged forthwith upon payment of the amount of debt and costs mentioned in the said warrant.

Period of imprisonment and effect of liberation.

XXI. The costs and charges of every summons for civil imprisonment and for the service of the same and of every decree made in pursuance thereof shall be the same as those for the time being respectively fixed in regard to other summonses or judgments by the schedule or table of fees appointed and authorized to be taken by the officers of the courts of resident magistrates respectively, and the costs and charges of every warrant issued upon or by virtue of any such decree and of the execution of the same shall be payable and paid according to the scale in the schedule to this Act set forth.

Costs of proceedings for imprisonment.

XXII. All and singular the costs and charges in the last preceding section mentioned shall be payable and paid by the plaintiff, who shall not (except as hereinafter excepted) recover or have the same or any of them from the defendant: Provided always that if in any case in which any such decree of civil imprisonment shall be made or granted it shall be made to appear to the court at the time of granting the same that the non-payment by the said defendant of the debt and

Costs of proceedings for imprisonment by whom payable.

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costs due by him and then in question is vexatious it shall and may be lawful for such court to allow against such defendant the costs and charges aforesaid or any part thereof which to the court shall seem fit : And provided also that nothing in this section contained shall be construed so as to affect any settlements by means of terms offered by the defendant and accepted by the plaintiff, or to prevent the court from taking such costs and charges into its consideration in any case in which terms are proposed by the defendant as fair and reasonable, for the purpose of being sanctioned by the said court and carried into effect by its authority.

Proceedings for recovery of possession of house, &c., upon return of *nulla bona* to action for rent.

XXIII. When and as often as a judgment of any such court as aforesaid shall have been obtained for the amount of any rent of any house, land, or premises held by the defendant from or under the plaintiff due and in arrear, and it shall appear by the messenger's return to any process of execution issued upon the said judgment that no movable property has been found wherewith to satisfy the debt and costs mentioned in such process or any part thereof, it shall and may be lawful for the clerk of the said court and he is hereby required upon the application of the said plaintiff to issue and deliver to the messenger of the said court a summons for the said defendant calling upon him to appear and show why he should not be condemned to deliver up to the said plaintiff possession of the house, land, or premises by the said defendant held from the said plaintiff and in respect of which the rent recovered as aforesaid shall be due and owing ; which summons shall in substance and effect be in the form in that behalf in the rules and regulations of the courts of resident magistrates contained : Provided always that no claim or demand for the delivery up of such possession shall be made under or by virtue of the provisions of this section in any case in which the lease or contract of hire or the time or term thereof yet to come and unexpired shall be respectively of a nature or value which would exclude the jurisdiction of any court of resident magistrate under or by virtue of the tenth section of this Act.

Decree for delivery of possession and its effects.

XXIV. Upon the hearing of every case in which such delivery up of possession as aforesaid shall be claimed it shall and may be lawful for the court of resident magistrate in which the same shall be pending upon proof of such return as aforesaid to the process of execution, to condemn the said defendant to deliver up such possession forthwith but without costs ; and thereupon such court shall upon the application of the plaintiff grant a warrant authorizing and requiring the messenger of the said court to put the plaintiff into possession of the house, land, or premises in question ; which warrant shall in substance and effect be in the form in that behalf in the rules and regulations of the courts of resident magistrates contained, and which warrant it shall and may be lawful for such messenger to execute as against the defendant and all

persons claiming from, through, or under him; and thereupon every previous contract or agreement for the hire or use of such house, land, or premises by the said defendant from the said plaintiff shall become and be wholly evicted, avoided, and from thenceforth absolutely determined: Provided always that the execution of such warrant shall not operate as a satisfaction or extinguishment of the rent recovered by such judgment.

XXV. If it shall be made to appear to any such court as aforesaid at the time of the hearing of any action brought for the recovery of any such rent as aforesaid, either by the admission of the defendant or otherwise and whether such defendant shall personally appear at any such hearing or not, that there is no movable property to be found against which to execute any process of execution, the said court may then and without the issue of any such process or any fresh summons condemn the defendant to deliver up possession as aforesaid, in like manner as if he had been duly summoned in manner and form as in the twenty-fourth section of this Act mentioned.

XXVI. When and as often as the landlord of any house, land, or premises situate within the jurisdiction of any resident magistrate shall make an oath before such magistrate that an amount of rent not exceeding the amount to which the jurisdiction of the court of such resident magistrate is limited is due and in arrear in regard to the said house, land, or premises, and that the said rent has been demanded for the space of seven days and upwards, or if not so demanded that the deponent believes that the tenant is about to remove the movable property in and upon the said premises in order to defeat and avoid the payment of the rent so due and in arrear and shall enter into security, together with some one as his surety to be approved of by the said magistrate, to prosecute in such court as aforesaid if need be a suit for the recovery of such rent so in arrear and also to pay and satisfy all damages, costs, and charges which the tenant of such house, land, or premises or any other person may sustain or incur by reason of or in connection with the distress or seizure hereinafter mentioned if the said landlord shall fail to prove that the rent aforesaid is really due and in arrear, then and in that case it shall and may be lawful for such magistrate to issue an order in writing directed to the messenger of the said court authorizing and requiring him to seize and arrest if need be so much of the movable property in or upon the place or premises in question and by law distrainable for rent in arrear as may be sufficient to satisfy the amount of rent due and in arrear, together with the costs and charges of the action aforesaid to be afterwards if need be instituted for the recovery thereof; and such affidavit, security, and order respectively shall in substance and effect be in the forms in the rules and regulations of the courts of resident magistrates in that behalf contained: Provided always that

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Court in a certain case may in an action for rent decree delivery up of possession.

Arrest of goods in security for rent.

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whenever any such order shall be applied for at the time of suing out or after having sued out a summons of the court aforesaid for the recovery of the rent in respect of which such order shall be needed the form of such security as aforesaid shall be modified accordingly: And provided also that in case of failure made in fulfilling any of the stipulations or conditions contained in such security, then any order made in reference to the same and everything done under the same shall be *ab initio* null or void, and the landlord and his surety shall be answerable for any damage, loss, or injury which the tenant aforesaid or any other person may have sustained by reason or in consequence of such order.

Execution of arrest in security of rent.

XXVII. The messenger aforesaid in the execution of any such order as aforesaid shall repair to the house, land, or premises in question within such space of time as he would be bound to repair to the same were such house, land, or premises the house of a defendant against whom such order was process of execution on a judgment or sentence of the court, and shall demand payment of the amount of the rent mentioned in such order, and failing to obtain such payment he shall require that so much movable property so distrainable as aforesaid be pointed out as such messenger may deem sufficient to satisfy the exigency of such order: and if such requisition be complied with the said messengers shall make an inventory of such property and lay an attachment thereon; but if no such property be pointed out the said messenger shall attach under inventory as much of such property as he himself may deem sufficient for the purpose aforesaid.

Copy of inventory to be handed to the tenant.

XXVIII. The said messenger shall deliver a copy of the said inventory signed by himself to the tenant, or if he be not present or will not accept it shall leave the same upon the premises; and such inventory shall have subjoined thereto a notice which shall in substance and effect be conformable to the form in that behalf in the rules and regulations of courts of resident magistrates contained.

When security found for rent goods arrested shall be left with the tenant.

XXIX. When any tenant in regard to whose rent in arrear movable property has been arrested under any such warrant as aforesaid will undertake in writing, together with some other person to be approved by such messenger as his surety, that the said movable property shall be forthcoming to answer process of execution in any action for recovery of the rent alleged to be in arrear, if the landlord shall not be sooner satisfied in respect to the said rent, then the said messenger shall leave the said movable property upon the premises where the same was found; and such undertaking as aforesaid shall in substance and effect be in the form in that behalf in the rules and regulations of the courts of resident magistrates contained.

When no such security found goods arrested how to be kept.

XXX. If the tenant will not undertake in manner and form as in the last preceding section mentioned then the messenger aforesaid shall either remove the movable

property arrested to some convenient place of security, or should it be inconvenient to remove the same shall leave it upon the premises in the charge and custody of some person for him, to await the issue of the proceedings taken or to be taken in regard to the rent due and in arrear.

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XXXI. If any person shall dispose of, conceal, embezzle, or receive any movable property attached under and by virtue of any such order as aforesaid knowing the same to have been attached, and with intent to defeat the said attachment, such person shall on conviction thereof be liable to be imprisoned with or without hard labour for any period not exceeding six months.

Embezzlement, &amp;c., of goods arrested how punishable.

XXXII. Where any person whose movable property has been attached under any such order as aforesaid shall admit the amount of rent due and in arrear and shall be minded in order to save expense to consent to an immediate sale thereof, it shall and may be lawful for the resident magistrate by whom the said order was issued, upon such consent being certified to him by such person both in person and in writing, to grant another order directed to the messenger aforesaid authorizing and requiring him to sell, on some convenient day and at some convenient place to be specified in such order, the said movable property or so much thereof as shall be necessary to satisfy the amount of rent due and in arrear together with the charges of the said sale, which shall be the same as would by law be payable if such sale were a sale under process of execution of the resident magistrate's court; and such order shall in substance and effect be in the form in that behalf in the rules and regulations of the courts of resident magistrates contained; and every such sale may be made by the said messenger without taking out any licence as an auctioneer, and shall be made publicly and for ready money to the highest bidder; and a notice of every such sale shall be affixed at the door of the court-house of the said resident magistrate and at or as near as may be to the place where the sale is actually to take place for seven days at least before the day appointed for such sale: Provided always that it shall be competent for the tenant at any time before such sale to pay the amount of rent due and in arrear together with such further sum not exceeding fifteen shillings as the magistrate shall tax and allow for the costs and charges of such messenger about such seizure and arrest as aforesaid, and thereupon the movable property arrested shall be restored.

Goods arrested may with consent of tenant be sold at once.

XXXIII. It shall and may be lawful for any person being a party to any civil suit or action depending in the court of any resident magistrate within this colony to appeal against any final judgment, decree, or sentence of such court, or against any rule or order made by such court in any such civil suit or action having the effect of a final or definitive sentence, to the supreme court or to the circuit court which shall next be holden for the district of such resident magistrate:

Appeal against judgment of magistrates.

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When appeal made judgment may be either executed or suspended.

and in every case in which any such appeal shall be made the resident magistrates shall and are hereby respectively empowered either to direct that the judgment, decree, rule, order, or sentence appealed from shall be carried into execution or that the execution thereof shall be suspended pending such appeal as to the said resident magistrates respectively may in each case appear to be most consistent with real and substantial justice; and in case any resident magistrate shall direct any such judgment, decree, rule, order, or sentence to be carried into execution the person in whose favour the same shall have been given shall before the execution thereof enter in good and sufficient security to be approved by such resident magistrate for the due performance of such judgment or order as the court to which such appeal shall be made shall think fit to make thereupon; and in case any resident magistrate shall direct the execution of any such judgment, decree, rule, order, or sentence to be suspended pending such appeal such resident magistrate shall and may, whenever it shall appear to him necessary and consistent with real and substantial justice so to do, require the person against whom such judgment, decree, rule, order, or sentence shall have been given, before any order for the suspension of any such execution is made, to enter into good and sufficient security to be approved by such resident magistrate for the due performance of such judgment or order as the court to which such appeal shall be made shall think fit to make thereupon: Provided always that every such appeal shall be taken, entered, and made within such time and in such manner as is directed and required by the rules and regulations for the time being of the courts of resident magistrates: And the said supreme court or the said circuit court may reverse or alter the judgment of the said court of resident magistrate as justice shall require; and in case the record of the resident magistrate shall not appear to the supreme or circuit court as the case may be to furnish sufficient evidence or information for the due determination of the case, may remit the said record to the court of the resident magistrate with instructions in regard to the taking or setting out of further evidence or information; or such supreme or circuit court may order the parties or either of them to produce at some convenient time in such court such further proof as shall seem necessary or desirable; or such court may take such other course as may lead to the just, speedy, and as much as may be inexpensive settlement of the case, making such order in regard to costs as justice shall require.

At what time appeal to be taken.

Procedure on appeal.

Costs where action competent before magistrate is brought in superior court.

XXXIV. If any action shall after the commencement of this Act be commenced in the supreme court or any circuit court for or upon any cause of action other than some one of those in the next succeeding section mentioned, for which cause an action might have been commenced in some court of

resident magistrate, and judgment shall be given for the plaintiff for a sum less than forty pounds if such action be founded upon a liquid document as in the eighth section of this Act mentioned, or less than twenty pounds if such action be not founded upon a liquid document, such plaintiff shall not recover any costs exceeding the estimated amount of the costs which he would in the same case have recovered in the court of resident magistrate had he brought his action therein; and if judgment shall be given in favour of the defendant he shall be entitled to his costs as between attorney and client, unless in either case the court trying the action shall find and record that the said action from its nature or circumstances was fit to be brought into such court.

Costs.

XXXV. In all cases in which the plaintiff resides in a district other than that in which the defendant resides and no part of the cause of action arose in such last-mentioned district, and in all cases where a claim or demand is founded upon any notarial or other mortgage bond, or bill of exchange or promissory note, of which the lawful holder for valuable consideration does not reside in the same district with the defendant, and in all cases in which any action shall be brought against any officer of any such court for or on account of anything relating to his conduct in his office, the plaintiff may at his election bring his action in the supreme court or any competent circuit court, although some court of resident magistrate might have had jurisdiction, and the question of the costs in such action shall be judged of by the court in which it is brought in like manner as if it could not have been brought in any other.

Cases in which action may be brought in supreme or circuit court.

Costs.

XXXVI. It shall and may be lawful for every court of resident magistrate to admit and enrol as agents in the said court so many persons of full age and of good fame and character as shall be desirous to be so enrolled, and shall pay for such enrolment, if in the court of the resident magistrate for Cape Town and the district thereof and the Cape district or in the courts of the resident magistrates for Albany and Port Elizabeth respectively, the sum of twenty pounds, and if in any other court of resident magistrate the sum of ten pounds, to be paid by such magistrate into the colonial treasury: Provided that every agent enrolled in any one court shall be entitled to be enrolled in any other without the payment of any further sum, save and except that an agent enrolled in any court other than one of the three in this section mentioned who shall desire to be enrolled in any of the said three courts shall be liable to pay an additional sum of ten pounds.

Enrolment of practitioners.

XXXVII. Every such court shall possess and exercise over or in respect of all agents so enrolled the like powers and authorities as the supreme court possesses and exercises over or in respect of the attorneys thereof, and may

Jurisdiction of court over enrolled practitioners.

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summarily inquire into any charge of misconduct preferred against any agent, and should the same prove to be well founded may remove such agent from the roll of agents either absolutely or conditionally, or may suspend such agent from practice in the said court for a limited period in all cases in which under similar circumstances arising in or out of proceedings in the said supreme court any attorney thereof might lawfully have been by the said court proceeded against and punished in the same manner: Provided always that every resident magistrate shall record the evidence upon which he shall have ordered any such removal or suspension, and that any agent who shall conceive himself to be aggrieved by any such removal or suspension may bring the same in review before the supreme court or any circuit court for the district in which such removal or suspension was ordered, which supreme court or other court may set aside the same; and when and as often as any such removal or suspension shall be set aside no costs shall be awarded against the magistrate ordering the same in case he shall appear to have acted *bonâ fide* and upon reasonable and probable cause: Provided always that although such removal or suspension shall not be brought in review, the magistrate so removing or suspending any agent shall nevertheless transmit to the registrar of the supreme court a certified record of the evidence upon which the said removal or suspension was grounded; and it shall be lawful for the said court in case it should deem such removal or suspension one fit to be rescinded or reconsidered to make such order in the matter as shall to justice appertain.

Fees recoverable by enrolled practitioners from client.

XXXVIII. No agent shall except as hereinafter excepted recover from his client or employer for or on account of the work and labour by such agent expended in and about the prosecuting or defending of any civil action or proceeding in any court of resident magistrate any greater sum than seven shillings and six pence in liquid cases or ten shillings and six pence in all other cases and proceedings: Provided always that nothing herein contained shall be taken or construed so as to render invalid any agreement in writing signed by the party sought to be charged or his lawful agent, whereby any greater or lesser sum than either of the sums aforesaid shall be stipulated or undertaken to be paid.

Fees recoverable from opposite party in regard to employment of an enrolled agent.

XXXIX. The party, whether plaintiff or defendant, in whose favour any judgment of any court of resident magistrate in any civil action or proceeding shall be pronounced shall, subject to the conditions hereinafter mentioned, be allowed in the taxation of costs against the opposite party the expense of the agent if any employed by the party successful, according to the scale aforesaid of seven shillings and six pence in liquid and ten shillings and six pence in other cases: Provided always that nothing herein contained shall be construed so as to deprive any such court of any discretionary



power which it may now by law possess to refuse costs to any suitor to whom it would in the judgment of such court be inequitable to allow the same.

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**XL.** Any advocate of the supreme court may appear and plead in any civil action or proceeding depending in any court of resident magistrate: Provided always that nothing shall be allowed to any plaintiff for the expense of such advocate when the sum recovered shall be under ten pounds, nor to any defendant when the sum demanded was under ten pounds, nor shall the expense of such advocate be allowed in any case without the leave of the said court of resident magistrate, which leave such magistrate shall only grant in case he be of opinion that the action or proceeding was of such a nature as to render the employment of an advocate reasonable and proper: And provided also that the expense of such advocate shall not be allowed unless he shall have been instructed by some such agent as aforesaid or some such attorney as in the next succeeding section mentioned, whose expense shall also be allowed: And provided further that the sum to be allowed for the expense of an advocate in any taxation of costs between party and party shall never be more or less than one pound and one shilling

Advocates may appear.

Costs.

**XLI.** Every attorney duly admitted to practise in the supreme or any circuit court shall be entitled to practise in any court of resident magistrate without payment or enrolment, but shall be considered in the taxation of costs and in other respects as an enrolled agent.

Attorneys to be deemed enrolled agents.

**XLII.** The resident magistrates of the colony shall respectively have jurisdiction without appeal or review in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death, transportation, or banishment from this colony: Provided always that it shall not be lawful for any such resident magistrate to punish any offender in any higher or more severe manner than by fine not exceeding the amount of ten pounds sterling, or by imprisonment with or without hard labour and with or without spare diet and with or without solitary confinement, or either of them, for a period not exceeding three months, or by a whipping privately in prison not exceeding thirty-six lashes: Provided that the punishment of whipping shall not be inflicted except in the case of a second or subsequent conviction of some crime or offence within the space of two years: Provided also that any offender may be punished by both such fine and such imprisonment or by both such imprisonment and such whipping, but the offender shall not for the same offence be punished both by fine and by whipping: And provided also that in regard to the infliction of spare diet or solitary confinement the resident magistrates shall observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences and be by the Governor issued for

Jurisdiction in criminal cases.

Vide also sections 44, 55, and 56.

Punishments.

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their guidance: And provided further that nothing herein contained shall be construed so as to prevent any resident magistrate from inflicting any other or greater punishment than the punishment aforesaid when and as often as he is or shall be authorized so to do by any special Law or Ordinance now in force or hereafter to be enacted.

Females not to be liable to corporal punishment or to labour in a public place.

XLIII. It shall not be lawful for any court of resident magistrate in any case to sentence or adjudge any female to receive personal correction or to hard labour on any road, street, or public place.

Jurisdiction as to offences committed beyond local limits of magistracy.

XLIV. No resident magistrate shall have jurisdiction except as is hereinafter excepted and provided in any case of any crime or offence committed without the local limits of the district within which such magistrate shall have been appointed to exercise jurisdiction: Provided that when any crime or offence shall be committed on the boundary or boundaries of two or more districts or within the distance of two miles of any such boundary or boundaries, or shall be begun in one district and completed in another, every such crime or offence may be dealt with, inquired of, tried, determined, and punished in any of the said districts in the same manner as if it had been actually and wholly committed therein: And provided also that where any crime or offence shall be committed in respect of any property in or upon any cart, wagon, coach, or other carriage whatever employed on any journey through any part of this colony such crime or offence may be dealt with, inquired of, tried, determined, and punished in any district through any part whereof or on or within the distance of two miles of the boundary whereof such coach, wagon, cart, or carriage shall have passed in the course of the journey during which such crime or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such district.

Accused persons may make their defence by counsel, attorney, or agent.

XLV. Every person upon trial on any criminal charge in any court of resident magistrate shall be entitled to make his defence by counsel or by attorney or by any such agent as is hereinbefore in the thirty-sixth section of this Act mentioned: Provided however that nothing herein contained shall extend to alter or affect the law heretofore in force regarding the admission of legal advisers upon any preparatory examination.

Report of summary criminal trials to be forwarded to Attorney-General.

XLVI. Every resident magistrate shall prepare and transmit to the Attorney-General of the colony a report of every criminal case adjudicated upon by such magistrate under and by virtue of his summary jurisdiction, showing the name and occupation of the party accused, the name and occupation of the complainant, the crime or offence charged, the judgment of the court, and in cases of conviction the sentence pronounced.

Certain judgments in criminal cases to be subject to the revision of a judge of the supreme court.

XLVII. When and as often as any court of resident magistrate shall sentence any person upon conviction to be imprisoned with or without hard labour for any period not \*

\* See Section 2, Act No. 9, 1857.

exceeding one month or to pay any fine exceeding five pounds or to receive any number of lashes exceeding twelve, the magistrate pronouncing such sentence shall forward to the registrar of the supreme court not later than one week next after the determination of the case the record of the proceedings in the case, together with such remarks if any as he may desire to append: and such registrar shall with all convenient speed lay the same before one of the judges of the court in chambers for his consideration, and in case the said proceedings shall appear to such judge to be in accordance with real and substantial justice he shall endorse his certificate to that effect upon the said proceedings, and the said proceedings shall then by the registrar aforesaid be returned to the resident magistrate by whom the same shall have been transmitted: Provided always that the execution of any sentence of imprisonment with or without hard labour or to pay a fine shall not be suspended by the transmission of or the obligation to transmit the record aforesaid, unless the person sentenced shall give sufficient bail to surrender himself in order to undergo such imprisonment or to pay the fine imposed upon him as the case may be in case the proceedings in the case shall be approved as aforesaid, and in case a written notice to surrender or to pay as the case may be, signed by the clerk of the court of the convicting magistrate, shall be served upon or for the person at some place to be mentioned in the bail bond or recognizance; and every such notice requiring the surrender of the person or payment of the fine as the case may be shall be served in manner and form as are prescribed and directed by the rules and regulations of the courts of resident magistrates in regard to the service of the summons on a defendant in a civil case. And if in any case a person sentenced to receive any number of lashes exceeding twelve shall not be also condemned to be imprisoned for such a period as shall allow time for the judge's certificate to be received before inflicting the said lashes, such person, in case he shall not give sufficient bail for his appearance after being served at some place to be mentioned in the bail bond or recognizance with a written notice signed by such clerk as aforesaid requiring him so to do, and in case he shall not desire to receive his punishment at once and be thereupon discharged (which desire shall be recorded and signed by the prisoner, and also witnessed), shall be detained in custody until the proceedings in the case shall be returned as aforesaid: Provided always that in every case in which any person sentenced as aforesaid shall give bail as aforesaid it shall be lawful for the magistrate should he so think fit to take bail also for the cost and charge of serving such notice as aforesaid if necessary, which cost and charge shall be the same as that of serving a summons in a civil case against the same person at the same place.

Manner of proceeding in bringing such cases before the judge.

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When questions arise in such cases how the same are to be disposed of.

XLVIII. If upon considering the proceedings aforesaid it shall appear to the judge in chambers that the same are not in accordance with real and substantial justice or that doubts exist whether or not they are in such accordance, then it shall and may be lawful for such judge to lay the same before the supreme court for its consideration; and the said court at any sitting thereof shall have full power, jurisdiction, and authority to affirm, alter, or reverse the sentence of the resident magistrate's court and to set aside or correct the proceedings thereof, and when it shall appear necessary or proper so to do to remit such case to the said resident magistrate's court with such instructions relative to the further proceedings to be had in such case as the said supreme court shall think fit, and to make such order touching the suspension of the execution of any sentence against the person convicted or the admitting such person to bail, or generally any matter or thing connected with such person or the proceedings in regard to him, as to the said court shall seem calculated to promote the ends of real and substantial justice: Provided also that if in any case the said court should desire to have any question of law or fact arising in any such case argued at the bar such court may direct the same to be argued by the Attorney-General of the colony and by such other advocate as the said court may appoint.

The person convicted may cause the case as transmitted to be set down for argument.

XLIX. Every resident magistrate forwarding any such record as is in the forty-seventh section of this Act mentioned shall inform the person convicted of the day upon which such record will be forwarded, and it shall be lawful for any attorney of the supreme court duly acting for such convicted person to peruse and if need be take a copy of such record whilst in the possession of the registrar of the said court or of any of the judges thereof; and it shall be lawful for such attorney should he so think fit, acting as aforesaid, to set down the case contained in such record for argument before the said court in like manner as if such record had been returned or transmitted to such court in obedience to any summons of such court issued in or for an appeal from or review of a judgment of the court of resident magistrate: Provided always that a written notice shall in every such case, whether prosecuted at the public instance or at the instance of a private party, be served upon the Attorney-General of the colony, at his office in Cape Town, not less than forty-eight hours before the hour appointed for the argument, setting forth that such case has been so set down for argument, as well as the grounds or reasons upon which the judgment is sought to be reversed or altered: And provided that whether the said judgment shall be confirmed or shall be reversed or altered no costs shall be payable by the prosecutor to the person convicted or by the person convicted to the prosecutor: Provided also that no sentence contained in any record of proceedings

forwarded as in the forty-seventh section of this Act directed, which sentence shall have been pronounced in regard to what was by law an offence sufficiently charged and proved and lawfully punishable as by the said sentence directed, shall be reversed or altered by reason merely that the degree of punishment awarded by such sentence may appear to the court or judge considering such record to have been unusually or unnecessarily severe: And provided lastly that nothing herein contained shall extend to prevent such court or judge or any other person from making such representation to the Governor of this colony respecting the mitigation of any such sentence as the circumstances of the case may appear to justify.

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L. In actions and proceedings before the respective courts of resident magistrates, whether civil or criminal, it shall and may be lawful for such court before or at the hearing to amend any plaint or summons or other record in regard to the misdescription therein of any written instrument or paper writing relating to such action or proceeding, or of any contract or any other particular or particulars: Provided that no such amendment be made except in some particular which in the judgment of such court is not material to the merits of the case and by which the opposite party cannot be prejudiced in the conduct of his action, prosecution, or defence: Provided also that such amendment shall be made upon the payment of such costs to the other party if any as such court shall judge reasonable: And provided further that no misnomer in regard to the name of any person or any place shall vitiate any summons or other writ, or plaint or proceeding, in case the place or person be therein described so as to be commonly known.

Amendment of plaint or summons.

Costs.

LI. Persons under age and married women shall be entitled to sue in any court of resident magistrate for any cause of action accruing to them without being assisted by their guardians or husbands as the case may be, unless the defendant shall show to the court that any such minor or married woman as the case may be has a guardian or a husband as the case may be resident within the district of such magistrate: Provided also that if after such proof by the defendant the plaintiff shall make it appear that the assistance of such guardian or husband as the case may be has been solicited, and has without just and reasonable grounds been refused, the resident magistrate may disallow the objection of the defendant and permit the suit or action to proceed precisely as if such minor were of full age or such married woman were unmarried.

Suits by minors and married women competent in certain cases

LII. Whenever any person whom it shall be necessary to examine as a witness in the course of any preparatory examination or at the trial of any cause, whether civil or criminal, before any of the resident magistrates aforesaid, shall reside or be for the time within any other district than

Summoning of witnesses resident in another district.

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that of such magistrate, then and in every such case it shall and may be lawful for the said magistrate to issue a summons for the attendance of such person before him in the like form as is by law provided in respect of summonses to be issued in the like cases for procuring or compelling the attendance of witnesses residing or being within the district of the resident magistrate issuing the same; and every such summons when endorsed by the resident magistrate or any justice of the peace for such other district, or by the field-cornet of the field-cornetcy within which the person so to be summoned resides for the time or shall be found (who are hereby respectively authorized and required on production to them of any such summons to endorse the same), and being duly served and returned by any person authorized to serve such a summons in either of the said districts, shall have in law the like effect in requiring the attendance of such person as aforesaid before the magistrate by whom the same was issued and in rendering such person if he shall fail so to attend liable to every penalty provided for the non-attendance of persons summoned as witnesses as if such person at the time when such summons was served had resided or been within the district of such last-mentioned magistrate: Provided that as often as any witness in any civil case brought in any court of resident magistrate shall reside or be in a district other than that under the jurisdiction of such court it shall be lawful for the court in which such civil action shall be brought, should it appear to be for the convenience of the witness and to be consistent with the ends of justice, upon the request of either party and after hearing the other party, to frame or approve of such interrogatories as either party shall desire to have put to such witness, and to forward the same (together with the reasonable expenses of such witness, which shall be advanced by the party desiring his examination) to the resident magistrate of the district within which such witness shall reside or be, who shall summon such witness to appear in his court and upon his appearance shall take his evidence in manner and form as if a witness in a case pending in such last-mentioned court, and shall put to such witness the interrogatories aforesaid and all other questions calculated to obtain full and true answers to such interrogatories, and shall take down or cause to be taken down in writing the evidence of such witness, and shall transmit the same certified as correct to the resident magistrate in whose court such civil case shall be pending; and such evidence (subject to all lawful exceptions) shall be received as evidence in such case: Provided also that every witness so summoned by any resident magistrate to appear to answer any such interrogatories as aforesaid shall be summoned in like manner and be liable to the like penalties in case of non-attendance as if such summons was a summons to give evidence in the court of such last-mentioned resident magistrate:

Examination of witnesses resident in other districts by interrogatories.

Procedure in cases of examination upon interrogatories.

And provided lastly that as often as any such witness as in this section mentioned in any case, civil or criminal, shall after having been summoned to appear in the court of some resident magistrate other than that of the district in which such witness shall reside or be fail to appear, it shall be lawful for the resident magistrate in whose court he shall have been summoned to appear to certify under his hand to the resident magistrate of the district in which such witness shall reside or be that such witness after being summoned to appear to give evidence in the case in question made default in so doing; and thereupon it shall be lawful for such last-mentioned resident magistrate and he is hereby required to proceed against such witness in regard to such default in like manner precisely as if such witness had been summoned to appear as a witness in the court of such last-mentioned resident magistrate and had made default; and such last-mentioned resident magistrate shall certify to the resident magistrate in whose court the actual default was made what shall have been done in regard to the witness so having made default.

LIII. If any claim shall be made to or in respect of any movable property taken in execution under the process whether civil or criminal of any court of resident magistrate or to or in respect of the proceeds or value thereof by any person not being the party against whom such process was issued, it shall and may be lawful for the court issuing such process upon the application of the messenger, as well before as after any action brought against him, to issue a summons calling before the court as well the party suing out such process as the party making such claim, which summons shall be in the form in that behalf in the rules and regulations of the courts of resident magistrates contained; and thereupon any action which may have been brought in any other court in respect of such claim shall be stayed, and the court in which such action shall have been brought or any judge thereof, on proof of the issue of such summons and that the movable property in question was so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of the summons aforesaid, and the court of resident magistrate issuing such summons shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as to such court shall seem just and lawful, and such order shall be deemed to be a judgment of such court and shall be enforced and may be appealed from in like manner and as any other judgment.

LIV. If any person shall willfully insult the resident magistrate during his sitting in any such court or any clerk or messenger or other officer of any such court during his attendance therein, or shall wilfully interrupt the proceedings of such court or otherwise misbehave in such court, it shall

Proceedings where third parties claim goods taken in execution.

Contempts of court, what and how punishable.

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be lawful for any constable or private person by order of the said court to take such offender into custody and to detain him until the rising of the court; and the resident magistrate shall be empowered if he shall think fit, by warrant under his hand, to commit any person so offending to prison for any period not exceeding seven days or to impose upon any such person a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to prison for any time not exceeding seven days unless the said fine be sooner paid. But in any case in which any such court shall commit or fine any person under the provisions of this section for contempt of court the resident magistrate shall without delay (and if in a country district by the next succeeding post) transmit to the registrar of the supreme court for the consideration of a judge in chambers a statement certified by such magistrate to be true and correct of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement, so certified as aforesaid.

LV. All the records and proceedings whatsoever of and belonging to any inferior court which has at any time heretofore existed within this colony shall be kept and preserved where it has been provided by any law in force at the time of the passing of this Act that the same should now be deposited, and shall thereremain until further or other provision respecting the custody of the same shall be made by the Governor of this colony by any proclamation to be by him issued for that purpose; and all parties concerned shall and may have access and recourse to the said records and proceedings and to the records and proceedings of any of the courts created and established by or under this Act; and every judgment and sentence of any inferior court which heretofore existed within any district of this colony shall and may be proceeded upon in the court of the resident magistrate hereby created and established having jurisdiction over a district comprising the town or village in which such former court was holden, precisely as if the complaint or action whereon the same was given or pronounced had been originally commenced and the said judgment or sentence given or pronounced in such last-mentioned court. And if at any time hereafter courts of resident magistrates should be created by any such proclamation as in the second section of this Act mentioned and the district assigned for the jurisdiction of such court by any such proclamation as is in the third section of this Act mentioned should be composed of any territory before then under the jurisdiction of some other court of resident magistrate, any judgment or sentence of such last-mentioned court pronounced previously to the publication of such last-mentioned proclamation and affecting any person or any property in such territory shall be as valid and effectual and may be proceeded upon precisely in the same manner

Records of inferior courts how kept.

Judgments of former inferior courts may be executed.



as if such territory still remained under the jurisdiction of the court by which such judgment or sentence was pronounced.

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LVI. All proceedings prior to judgment or sentence which shall be pending in any court of resident magistrate at the time of the commencement and taking effect of this Act may be proceeded with in any court of resident magistrate established by this Act in case such last-mentioned court be held in the same town or village in which such other court was holden and shall be a court which would have jurisdiction in regard to such proceeding were the same commenced *de novo*.

Proceedings now pending may be continued.

LVII. And whereas a court of resident magistrate exists and is intended to be continued at Simon's Town and it is therefore unnecessary and inexpedient to maintain the police court in the said town, be it enacted that the police court of Simon's Town, as erected, constituted, and established by the Ordinance No. 4 of 1834, entitled "Ordinance for erecting, constituting, and establishing Police Courts to be holden in Cape Town and Simon's Town respectively, and for defining the duties and jurisdiction of the Judge of Police of Cape Town and of the Justice of the Peace of Simon's Town respectively," shall be abolished; and every clause, provision, matter, or thing in the said Ordinance contained relative to the said police court shall be repealed and the same is hereby repealed accordingly.

Police court of Simon's Town abolished.

LVIII. From and after the commencement and taking effect of this Act so much of the Royal Letters Patent commonly called the Charter of Justice as may be repugnant to or inconsistent with any of the provisions of this Act, as also the Ordinances respectively entitled "Ordinance of his Honour the Lieutenant-Governor in Council for creating Resident Magistrates and Clerks of the Peace in certain Districts and Places in this Colony," dated 19th day of December, 1827, No. 33; "Ordinance of his Honour the Lieutenant-Governor in Council for authorizing the Civil Commissioner of the Cape District to act within the District and Residency of Simon's Town and for establishing a Board for the Registration of Marriages therein; and for repealing the Proclamation of the 8th April, 1825, granting Jurisdiction to the Government Residents at Algoa Bay (now Port Elizabeth) and Port Frances in certain Criminal and Civil Cases," dated the 19th day of January, 1828, No. 38; "Ordinance of his Honour the Lieutenant-Governor in Council for establishing and regulating the Court of the Judge of Police and Resident Magistrate for Cape Town and the District thereof and the Cape District and for other purposes," dated the 19th day of March, 1828, No. 44, save and except in so far as by the seventeenth section thereof the messengers of the courts of the resident magistrates are authorized to sell by auction goods taken in execution of the process of such courts; "Ordinance of his Excellency the Governor for establishing Boards for the Registration of

Laws and ordinances repealed.

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Marriages at the Paarl and Port Elizabeth," dated the 29th day of July, 1829, No. 63; "Ordinance of his Excellency the Governor in Council for extending the Jurisdiction of Resident Magistrates, in certain cases of ejectment," dated the 1st day of September, 1829, No. 66; "Ordinance of his Excellency the Governor in Council for annexing the District of Port Elizabeth to the District of Uitenhage and for defining and appointing the local limits within which the Courts of the Resident Magistrates and Matrimonial Courts within this Colony shall respectively have and exercise Jurisdiction," dated the 6th day of February, 1832, No. 89, save and except in so far as by the fourth and fifth sections thereof provision is made touching and concerning the matrimonial courts of this colony; Ordinance No. 11 of 1836, entitled "Ordinance for rendering valid Acts done and Duties performed by Persons appointed to act as and for certain Magistrates and to empower the Governor to appoint Assistant Magistrates;" Ordinance No. 1 of 1837, entitled "Ordinance for erecting certain Resident Magistrates' Courts within the Eastern Division of this Colony and for defining the Jurisdiction thereof;" Ordinance No. 1 of 1839, entitled "Ordinance for erecting certain Resident Magistrates Courts in the Western Division of this Colony and for defining the Jurisdiction thereof;" Ordinance No. 14 of 1847, entitled "Ordinance for empowering the Governor of this Colony to establish Courts of Resident Magistrate," save and except in so far as any of the said Ordinances enact that certain acts done previously to the passing thereof shall be legal, valid, and effectual, and save and except in so far as the said Ordinances or any of them may repeal the whole or any part of any former Law or Ordinance shall be repealed and the same are hereby repealed accordingly.

Rules of court set forth in schedule.

LIX. And whereas it is expedient to add to and in some particulars amend the rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the courts of the resident magistrates respectively of the colony of the Cape of Good Hope, bearing date the 22nd March, 1828: Be it enacted that the same shall be and they are hereby repealed; and that the rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the courts hereby erected or authorized so to be shall be the rules, orders, and regulations in that behalf in the schedule to this Act contained marked B: and that every rule, order, or regulation in the said schedule contained shall be deemed and taken to be of the same force and effect as if the same or the substance thereof had been embodied in so many enacting clauses of this Act: Provided that nothing herein or in the said rules, orders, and regulations contained shall prevent the application to the said rules, orders, and regulations of the Ordinance No. 8, 1852.

LX. In the interpretation of this Act, the rules, orders, and regulations hereunto annexed, the term "Governor" shall be deemed and taken to mean the officer for the time being administering the government of this colony, and the term "resident magistrate" the officer for the time being acting as such; and any word or words importing the singular number or the masculine gender only shall respectively be understood to include several persons, matters, and things as well as one person, matter, or thing, and females as well as males, unless there be something in the subject or context repugnant to such construction.

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Interpretation clause.

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

When Act to take effect.

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SCHEDULE A.

*Form of the Oath of Allegiance.*

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God !

*Form of Oath of Office.*

I, A. B., do promise and swear that I will faithfully and diligently execute to the best of my abilities the several duties of the office of resident magistrate. So help me God !

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SCHEDULE B.

*Rules, Orders, and Regulations respecting the manner and form of proceeding in Civil and Criminal Cases before the Courts of the Resident Magistrates respectively of the Colony of the Cape of Good Hope.*

1. The jurisdiction in regard to civil cases belonging to any court of resident magistrate is exercisable over or in respect of any person residing or inhabiting within the district assigned to or appointed for such resident magistrate.

2. The resident magistrate shall hold a court at such place or places as the Governor shall by proclamation appoint, upon such days as shall in regard to each resident magistrate be from time to time announced by some Government notice or notices published in the Government Gazette. By such proclamation some place shall be fixed and appointed as the stated and ordinary place for the holding of the court, at which place cases of every description may be brought forward. But at the sittings of such court elsewhere than at the stated and ordinary place for holding the same none except criminal cases and cases between masters and servants and apprentices shall be cognizable.\*

\* Repealed by section 4 of Act No. 9 of 1857.

3. The clerk of the said court shall upon entering into his said office take an oath for the faithful performance of his duty in the form following :

I, A. B., do swear that I will truly and faithfully execute the office of clerk of this court without fear, favour, or affection for any one ; and that I will not by myself or any other receive or take for my own use any fee or reward for anything done by me in my said office ; and that I will not take or permit or suffer any person under me to take any other than such lawful fees as I shall be instructed to take or permit to be taken in my said office ; and for all such I will duly and faithfully account to the civil commissioner of this district whensoever I am thereunto required. So help me God !

4. The oath of the messenger of the said court shall be as follows :

I, A. B., do swear that faithfully and diligently I will serve the office of messenger of this court and execute all summonses and process thereof without favour or affection for any one ; and that I will not by myself or any other take, receive, or demand any other than such lawful fees as I may be permitted by this court to receive for anything done by me in my said office. So help me God !

5. The said messenger shall give security to the satisfaction of the resident magistrate for the due fulfilment of the duties of his office and for the due and punctual payment by him to the parties entitled thereto of all moneys which shall come into his hands by virtue of his office.

6. The clerk of the said court shall keep a book, ruled and divided into columns, headed and entitled according to the form set forth in the schedule hereunto annexed marked E, which shall be called "The Civil Record Book of the Court of the Resident Magistrate, District of —," and the said clerk shall enter therein in manner hereinafter set forth all proceedings in the said court ; and the resident magistrate, once in every week, shall before the rising of the court on any court day sign the same.

7. The clerk of the court shall upon the application and statement personally or in writing or by the lawful agent of any one having matter of complaint or demand against another, subject to the jurisdiction of the said court, enter a plaint into the proper column of the said book, setting forth shortly and distinctly the names and places of abode of the said parties, the nature and grounds of the said complaint or demand, and the relief prayed ; and the said plaint shall stand for and be taken as and in the place of a declaration of the cause of action between the parties ; and the said plaint shall be entered as near as is material in the forms and according to the precedents set forth in the schedule hereunto annexed marked C.

8. After entering the plaint of the party complaining the clerk of the said court shall appoint and specify a day for the appearance of the said parties with their witnesses, in order to the hearing of the said complaint at a reasonable time, according to the distance at which the party summoned lives from the said court ; and he shall inform the party complaining thereof ; and the said clerk

shall issue and deliver to the messenger of the said court a summons for the party complained against to appear before the said court with his witnesses if he have any on the said day; and the said summons shall be as near as may be in the form following, that is to say :

Court of the Resident Magistrate  
for the district of Albany.

Messenger of the Court,

Summon C. D., of — (describing him so particularly that the officer of the court may know where to find him), that he appear before the court of the resident magistrate of this district to be holden at Graham's Town on the — day of — next, at — of the clock in the forenoon, with his witnesses if he have any, to show why he hath not paid to A. B., of (describing him as in the plaint) the sum of —, which the said A. B. complains that he owes him for, &c. (following the statement in the plaint); or why he hath not satisfied A. B., of &c., the damage which the said A. B. complains that he has sustained by reason that the said C. D., on or about, &c., broke down the fence, &c., of the said A. B., as the case may be—(following the statement in the plaint); and serve on the said C. D. a copy of this summons (and where the action is founded on any document, a copy of the said promissory note or other document, &c. :—or, and a copy of the account or bill of the said A. B., where the demand is upon account or bill), and return you on that day to the said court what you have done on this summons.

Graham's Town, the 1st May, 185—.

J. M., Clerk of the Court of the Resident  
Magistrate of the district of Albany.

9. Where the party against whom any summons or other process of the said court is issued resides at such a distance from the place where the said court is holden or where from the number of such summonses or other process the said messenger cannot possibly serve or execute the same the said summonses or other process may be served or executed by his sufficient deputy, to be first approved of as such by the resident magistrate, who shall be paid by the said messenger and for whom he shall be responsible.

10. A copy of the said summons, together with copies of any documents, account, or bill upon which the said complaint or demand is founded, shall be delivered to the messenger with the said summons, and shall be served either personally on the said defendant or left for him at his dwelling-house with some one of his household at least forty-eight hours before the time therein specified for his appearance where the party summoned lives within five miles of the place of holding the said court; three days where the said party lives at a greater distance than five miles and not exceeding ten miles; and so on, one day in addition to forty-eight hours for every ten miles of distance at which the party summoned lives from the place of holding the said court. But no case shall be dismissed for or on account of the omission to deliver the copy of any such document, account, or bill as aforesaid in case it shall appear to the court that such omission

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has not in fact and in truth prejudiced the defendant in respect of his defence.

11. If two or more persons jointly sued are partners in trade the like service upon either of them shall be sufficient.

12. The messenger of the said court shall endorse or annex to the summons the manner of his executing the same and shall return the said summons to the clerk of the said court.

13. It shall be permitted to any plaintiff or defendant in the said court to appear and conduct his case by means of any person authorized by writing under his hand, to be filed with the clerk of the said court; and when it shall be made to appear to the satisfaction of such court that by reason of the absence from home of any defendant such written authority could not be obtained, then it shall be permitted to any one of his family or any one having a general authority to manage his affairs in his absence and willing to conduct the said case to appear for the defendant and conduct the same. But nothing shall in the taxation of costs against either party be allowed for the attendance or services of any person not being enrolled in such court to practise as an agent therein, nor an attorney of the supreme or circuit court, and not being an advocate of the supreme court of the colony instructed by such agent or attorney. And every such court of resident magistrate upon being satisfied that any person who appears to have a right of action is from poverty unable to sue out the process of such court may order all such process to issue without fee or charge. Provided always that such person should he recover and receive sufficient from the other party shall be liable to pay and make good all fees and charges so remitted.

14. On the court day appointed for appearance of the parties unless the said summons shall have been withdrawn, the clerk of the said court shall cause the said parties, plaintiff and defendant, to be called; and if they or any one duly authorized on their behalf appear he shall record the same, and the court shall proceed to inquire of and determine the said complaint or demand; and the said clerk shall read over the plaint and ask the defendant or his agent whether he will confess or deny the same; or where the complaint of the plaintiff is in respect of any sum of money alleged to be due to him, if he will make any like counter claim against the plaintiff; and the said clerk shall record his answer in the proper column of the record book.

15. If the defendant deny the said complaint or demand or make claim of any sum of money as due to him by the said plaintiff the said plaintiff or some one on his part shall forthwith produce and exhibit to the court any writings or documents whereon his complaint or demand may be founded, and shall also produce any witnesses he may require to have examined in support of the same.

16. The process of the said court for compelling the attendance of any person to give evidence therein shall be by summons issued by the clerk of the said court and directed to the messenger thereof, and shall be served and returned by him in the same manner as any other summons of the said court; and the said summons may be sued out by either party requiring the attendance

of any witness, and shall be as near as is material in the form following, that is to say :

Court of Resident Magistrate of the District of Albany.

Messenger of the Court,

Summon A. B., of &c., C.D., of &c., and E.F., of &c., that laying aside all and singular business and excuses they and each of them appear in person before this court at Graham's Town, on the — day of — next, at — of the clock in the forenoon, to testify and declare all and singular those things which they or any of them know in a certain case now pending in the said court between I.K., plaintiff, and N.O., defendant; and that they or either of them by no means omit so to do at their peril. Serve on each of them the said A.B., &c., a copy of this summons, and pay to the said A.B. the sum of —, to the said C.D., the sum of —, and to the said E.F., the sum of —, for their travelling expenses respectively, and return to the said court what you have done thereupon.

J. M., Clerk of the said Court.

Graham's Town, 1st May 185—.

17. If any witness have in his possession or control any deed, instrument, or writing which the party requiring his attendance is desirous to show in evidence then the said summons shall be in the form following, namely—(as in the former case to the day of hearing, and then proceed as follows),—“ And also that they bring with them and produce at the time and place aforesaid a certain deed or instrument in writing, bearing date, &c. (describing very accurately the thing to be produced), and then and there to testify and declare, &c.” (as before).

18. There shall be delivered to the said messenger together with the said summons so many copies thereof as there are witnesses to be summoned, and also such sum or sums of money as the party for whom they are to be summoned intends that the said messenger shall pay or offer to the said witnesses respectively for their travelling expenses. And if any person, being duly summoned to give evidence and his reasonable expenses being paid or offered to be paid to him and having no sufficient excuse, shall neglect or refuse to attend or give evidence according to said summons, then the said court shall impose upon the said person a fine for his default not exceeding five pounds sterling, and for non-payment shall commit such person to the gaol of the said district for any time not exceeding fourteen days. Provided that as often as any person duly summoned shall fail to appear it shall be lawful for the resident magistrate, in case no lawful cause for such non-appearance shall seem to him to exist, to issue his warrant for the apprehension of the party making default in order that he may be brought up to give his evidence and to be otherwise dealt with according to law.

19. If it shall appear to the said court upon oath that any person who is a material witness for either party to any cause having been duly summoned doth not attend at the hearing thereof, then the resident magistrate shall at his discretion either postpone the hearing of the said case to another day then to be appointed by him or else shall take the examination of such

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witnesses as appear, and suspend the further hearing of the said case to another day : which postponement or suspension and the cause thereof and the day appointed for the further hearing the said clerk shall note in the column of the said record book entitled " day of hearing the case."

20. All persons examined or giving evidence in the said court shall be examined orally and apart and in open court ; and shall be sworn by the resident magistrate, according to the form of the religion they respectively profess, " to tell the truth, the whole truth, and nothing but the truth : " but all persons entitled by law to affirm instead of taking an oath may so affirm. Nothing herein contained shall extend to or affect the provisions of the sixth section of Ordinance No. 14, 1846.

21. Whenever it shall appear necessary to the resident magistrate before administering an oath to examine the person touching his knowledge of the obligation thereof he shall not merely ask such person generally whether he understands the nature of the oath, but shall, after explaining to the said person that he is about to administer to him such oath and the terms thereof, further ask him :

1st. Whether he believes it to be wicked not to speak the truth ?

2ndly. Whether he understands that the taking of such oath is calling upon God to witness that he does speak the truth ?

3rdly. Whether he believes that God will hereafter punish any one who upon oath does not speak the truth ?

4thly. Whether he considers the oath about to be administered to him binding upon him to speak the truth, and the whole truth ?

22. The said court may at its discretion and for the information of the said court examine the parties upon oath, or either or any of them.

23. Where in the course of any case it may be necessary for either party to produce and show to the court any record, entry, or document of the said court, it shall not be required of the said party to produce any office copy of such record, entry, or document ; but the clerk of the said court shall at his request produce and show or refer to the original.

24. In every civil case the clerk of the court shall take down the evidence and proceedings in writing and shall also note any objections made by either party to any evidence received or to any evidence or any document tendered by either party to the court.

25. The case on the part of the plaintiff having been heard, the defendant or some one on his part shall in like manner produce any writing or documents he may desire to have read to the court and any witness to be examined in support of his answer or denial ; and the plaintiff shall be heard in reply thereto.

26. All judgments and sentences of the said court shall be given in open court and shall be recorded by the clerk in the proper column of the said book.

27. Where any judgment shall be upon any debt payable with interest thereon the said interest shall be given up to the day of suing out the process of the court for the execution thereof.

28. If neither the defendant nor any one admitted for him appear on the court day appointed for that purpose, then the said court, upon the request of the said plaintiff and being satisfied by



the return of the messenger of the said court endorsed upon the said summons that the same hath been duly served, shall proceed to hear the said plaintiff and his witnesses, and cause the evidence to be taken down in writing, and shall give judgment thereon against the said defendant in the full sum due by him or awarded against him by the court; but the said judgment shall be only provisional in its nature, and no execution shall issue upon it until the plaintiff together with some one as his surety to be approved of by the said court shall give security for full restitution of the amount to be levied and raised under such judgment should the same be reversed; and the form of such security shall be the same as that set forth in the thirty-fourth of these rules and regulations, save and except that the words "notwithstanding the said C. D. has noted an appeal against the same" shall be omitted in the body of the said form, and the word "cause" shall be substituted for the word "appeal" in the end thereof.

29. The defendant may at any time within four months\* next after the levy made under any writ of execution issued by virtue of any such provisional judgment take out a summons of the said court calling upon the plaintiff in the original action to show cause why the judgment obtained by him should not be reversed. And if it shall be made to appear to the said court by oath that the defendant was absent from his home at the time when the summons of the said court was served, and that he did not receive the same a sufficient time before the day of the return thereof to be able to obey the same, and that he did not absent himself from home for the purpose of avoiding the service of the said summons, or that having been duly summoned he was by just and reasonable cause prevented from attending the court in pursuance of the said summons, then the said court shall order the said judgment to be opened and shall permit the defendant to answer the said complaint or demand, upon the terms, nevertheless, of payment of the costs incurred by his default, and that the evidence before given by the said plaintiff shall on the re-hearing of the case be read from the evidence and proceedings taken down by the clerk of the said court, the said plaintiff being at liberty to bring further evidence if he think fit; and upon the said re-hearing, the case, except as aforesaid, shall proceed as if the defendant had appeared on the original summons.

30. If the defendant or some one duly authorized on his behalf do not within four months\* next after such levy as aforesaid take out such a summons as aforesaid the provisional judgment shall become final, and the security aforesaid shall become, *ipso facto*, null and void. But if upon the hearing of any such summons the judgment therein mentioned shall be reversed or set aside then the defendant shall be entitled without any cession to sue upon the said security for the recovery of the sums therein mentioned, less the costs incurred by his default.

31. If any person summoned to appear on any day to answer any complaint or demand shall appear according to the said summons and the party complaining shall make default, the court shall adjudge the said plaint to be dismissed; or if he appear and the judgment of the court be for the defendant, the said court shall adjudge to the said defendant his costs, to be taxed by the

\* Four months altered to one month.—See section 5 of Act No. 9 of 1857.

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clerk of the said court in like manner as for the party complaining; and the said defendant shall be entitled to the like process of execution for the same.

32. After judgment of the court against the party complaining for default of appearance, the same may upon payment of costs be admitted to commence a new action for the same cause, and the court may in any case when it shall see fit absolve the defendant from that instance instead of giving judgment in his favour; in which case the plaintiff, upon the payment of the costs awarded against him, may commence a new action for the same cause. But the judgment of the said court given in favour of the defendant, when pronounced after the hearing the cause, is a perpetual bar to any other suit or action for the same cause.

33. Any party against whom any final judgment or sentence of the said court has been given in any civil case (and an absolution from the instance shall be deemed to be such a final judgment or sentence), if he intend to appeal therefrom to any superior court, shall on the next court day make known his intention to the clerk of the said court, who shall note his appeal with the date thereof in the proper column of the record book; and the party appealing shall then deposit and lodge with the clerk of the said court the sum of one pound seventeen shillings and six pence, as security for the costs of conducting the said appeal, and the said clerk shall make a note of the said deposit in the last column of the record book immediately after the note of the said appeal; and thereupon the said appeal shall be allowed, but not otherwise. And any person abandoning his appeal within fourteen days next after he shall have noted the same shall be entitled to receive back the said sum of one pound seventeen shillings and six pence provided he have taken no proceedings in the appeal save the noting thereof.

34. In any case where an appeal may have been duly noted and the proper security for costs given the said court may direct that the judgment or sentence appealed from shall be carried into execution or that the execution thereof shall be suspended pending the said appeal, as to the said court may appear most consistent with justice. And in every case where the said court shall direct such judgment or sentence to be carried into execution the party in whose favour the same shall have been given shall before the execution thereof enter into security, together with some one as his surety to be approved of by the said court, for full restitution of the amount to be levied and raised under such judgment should the same be reversed, as also for the due execution of any such further judgment, order, or decree as shall be afterwards pronounced upon or in respect of the said appeal. And the said security shall be as near as may be in the form following:

Graham's Town, May 1, 185—.

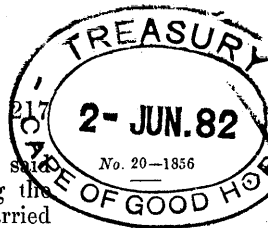
A. B., of &c., Plaintiff,

against

C. D., of &c., Defendant.

Whereas the said A. B., on the — day of —, recovered by judgment of the court of the resident magistrate of the district of Albany, against the said C. D., the sum of —, together with the sum of — for costs in a

RESIDENT MAGISTRATES' COURTS ACT.



certain case before the said court; and whereas the said court has directed the said judgment, notwithstanding the said C. D. has noted an appeal against the same, to be carried into execution upon security being given for restitution: Now, therefore, the said A. B., and L. M., of —, farmer, as surety for him, the said A. B., hereby severally undertake and bind themselves, jointly and severally to refund and make due restitution of the above several sums of — and —, should the judgment of the said court be reversed; and, further, severally to conform to and execute such judgment, order, or decree as shall be given and pronounced upon or in respect of such appeal.

In witness whereof the said A. B. and L. M. have hereunto set their hands on this 1st day of May, 185—.

(Signed)

A. B.

L. M.

E. F., Clerk of the said Court.

35. Where the party who may have deposited with the clerk of the said court the sum required as security for the costs of conducting the said appeal shall not afterwards duly proceed thereon to judgment, the sum so deposited, in case the same shall not have been returned as in the thirty-third rule provided, shall be applied to the payment of the costs incurred by the opposite party; and if there be any surplus the same shall be forfeited and disposed of in the same manner as fines otherwise imposed by the said court.

36. At the time when judgment or sentence of the court is given in any case the clerk of the court shall at the request of the party in whose favour the same is given ascertain and allow the necessary costs and expenses of the said suit against the party to be charged therewith; and in the said taxation he shall charge and allow all such necessary payments and disbursements made in the said case as are provided to be paid by the tariff of charges in the schedule hereunto annexed marked D, and all such other reasonable sums of money as the party in whose favour the said judgment or sentence is given has paid in bringing before the court any necessary witnesses or evidence or otherwise: and where he shall think it reasonable to allow any expense not herein provided for, the same not being prohibited by any rule of the said court, then he shall take the direction of the said court thereon and make his allowance accordingly.

37. Whenever the court shall make an order for the payment of any debt or damages by instalments such order shall be recorded by the clerk of the court in the last column of the civil record book, in manner and form as shown by schedule E hereinafter contained.

38. The party in whose favour any judgment or sentence of the said court shall be given in any civil case in regard to which an appeal shall not have been noted, or having been noted shall have been withdrawn, may sue out of the office of the clerk of the said court the process of the said court for the execution thereof.

39. In all cases of appeal the said court shall conform to and execute such judgments, orders, and decrees as shall be afterwards made and pronounced thereon, in like manner as any original judgment, sentence, or decree by the said court could or might have been executed.

40. The process for execution of any sentence or judgment of the said court shall be by warrant under the hand of the resident magistrate directed to the messenger of the said court, as near as may be in the form following, that is to say :

Court of the Resident Magistrate,  
District of Albany.

E. F., Messenger of the Court.

Whereas in a certain case in this court before me, wherein A.B., of &c., was the plaintiff, and C.D., of &c., was the defendant (describing the parties as in the plaint), the said A.B. on the — day of — last, by the judgment of the court, recovered against the said C.D. the sum of —, together with the sum of — for his costs (which said judgment has been duly affirmed on appeal—if the case so be,—with the further sum of £— for costs thereon), as appears in the proceedings of the said court; this is therefore to require you that of the movable property of the said C.D., in this district, you cause to be levied and raised the debt (or damages) and costs aforesaid together with your charges about the same, and pay to the said plaintiff the debt (or damages) and costs aforesaid, and return to the clerk of this court on or before the — day of — next what you have done by virtue hereof; for which this shall be your warrant.

Given under my hand at Graham's Town,  
this — day of —, 185—.

I. K., Clerk of the Court.

J. L.

41. Where any person against whom any judgment of the court shall have been given shall before any warrant shall have been taken out to levy in execution of the process of the said court appear before the said court and there deliver in to the clerk thereof an inventory of goods, duly proved upon oath to belong to the said person and to exceed in value the amount to be levied under such judgment with the costs thereof, and shall then and there undertake in writing, together with some one as his surety, that the goods or chattels contained in the said inventory shall be brought for sale at such time and place as the court shall appoint, unless the person in whose behalf the said process was issued be sooner satisfied in respect of his debt or damages as the case may be; then no further proceedings shall be had in respect of such judgment of the court until after the day so appointed for the sale of such goods or chattels; and the form of such security shall be in substance and as near as is material according to the form prescribed in respect of the security hereinafter set forth for not making away with goods laid under legal attachment by the process of the said court.

42. The messenger of the said court shall upon receiving the said warrant repair to the house of the defendant within twenty-four hours if he live at the town or place where the said court is holden, or within forty-eight hours if within five miles thereof, or if at any greater distance therefrom within so many days' distance in addition thereto as the said party resides therefrom, and there demand payment of the said debt or damages and costs, or else require that so much movable property be pointed out as

the said messenger may deem sufficient to satisfy the exigency of the said warrant; and if he comply therewith the said messenger shall make inventory thereof and lay a judicial attachment on the same; but if the debtor will not point out such property and the judgment of the court do not declare any to be specially bound, then the said messenger shall immediately lay an attachment under inventory on as much movable property belonging to the debtor as he may deem sufficient to satisfy the execution; and if the judgment of the court declare any particular property to be specially bound and liable to execution for the judgment, then the said messenger shall first take the same.

43. The said messenger shall deliver a copy of the said inventory signed by himself to the debtor, or if he will not accept of it shall leave the same on the premises; which inventory shall have subjoined thereto a notice in the following terms:

C. D.,

May 1st, 185 .

Take notice that I have this day seized and laid under judicial attachment the articles comprised in the above inventory in pursuance of a warrant to me directed under the hand of ———, Esq., resident magistrate for the district of Albany, whereby I am required to cause to be levied and raised of your movable property in this district the sum of ——— and ——— costs, recovered against you by the judgment of the said court in a certain case wherein A. B. was the plaintiff and yourself the defendant (as the case may be); and also for my charges in and about the said warrant.

I. K., Messenger of the said Court.

44. Where any person whose movable property has been attached in execution of the process of the said court will undertake in writing together with some of his neighbourhood as his security that the same shall be produced on the day appointed for the sale thereof, if the person in whose behalf the said process was issued shall not be sooner satisfied in respect of his debt or damages as the case may be, then the messenger of the said court shall leave the said property so attached and inventoried as aforesaid upon the premises where the same was found; and the said security shall be as near as may be according to the form following:

Graham's Town, ———, 185—.

A. B., of &c., Plaintiff,

against

C. D., of &c., Defendant.

Whereas the said A. B. on the ——— day of ——— last, by judgment of the court of the resident magistrate of the district of Albany, recovered against the said C. D. the sum of ———, together with the sum of ——— for costs in respect of a certain case in the said court; and whereas by virtue of a certain warrant under the hand of ———, Esq., resident magistrate of the said district, bearing date on, &c., directed to E. F., messenger of the said court, the said E. F. has seized and laid under attachment in respect of the said

judgment and in respect to the execution thereof the under-mentioned articles, viz. :

One horse,  
One cow,  
Two chairs,  
Two tables.

Now therefore the said C. D., and L. M., of ———, a farmer, as surety for him, the said C. D., hereby severally undertake and promise to the said E. F. that the said goods shall not be made away with or disposed of; but the same shall remain in possession of the said C. D., under effect of the said attachment, and shall be produced to the messenger of the said court on the — day of ——— next (the day appointed for sale), or any other day when the same may be required, in order to be sold in execution of the said judgment and expenses if the same shall not be sooner satisfied to the said A. B.; otherwise the said L. M. hereby undertakes and binds himself to pay and satisfy the said judgment, costs, and expenses for and on behalf of the said C. D.

In witness whereof the said C. D. and L. M. have hereunto set their hands on this — day of ——— 185—.

(Signed) C. D.  
L. M.

E. F., Messenger of the said Court.

45. If the defendant will not undertake together with a surety for the production of the said goods in manner provided for that purpose, then the messenger shall either remove the same to some convenient place of security, or if the same be cattle or such property as it may be inconvenient to remove may leave the same upon the premises in the charge and custody of some person for him until the day appointed for the sale thereof.

46. If it shall appear upon oath to the resident magistrate of the said court that any person has made away with or disposed of any goods so left in his possession under security as aforesaid, the said magistrate shall forthwith issue his warrant for the apprehension of the said person to answer for the said fraud according to law.

47. Any property sold in execution of the process of the said court shall be sold publicly and for ready money by the said messenger or his deputy, so to be approved of by the said court, to the highest bidder, at or as near to the place where the same was taken as may be convenient for the sale thereof; and the said messenger shall affix notice of the said sale and of the day and place thereof on the door of the court-house or on some other like public building in the place where the said court is holden, as also where or as near as may be the place where the said sale is actually to take place, seven days at least before the day appointed for the said sale; which day shall be not earlier than the fourteenth day from the time of seizure or attachment.

48. The form of summons in cases of civil imprisonment shall be as follows :

Court of the Resident Magistrate, District of Albany.

To A. B., Messenger of the Court.

Summon C.D., of (describe the defendant as in the former process), that he appear before the court of the resident magistrate

of this district, to beholden at Graham's Town on the — day of — next at — o'clock in the forenoon, to show why a decree of civil imprisonment should not be made against him at the suit of E.F., of (describe the plaintiff as in the former process), in respect of the non-payment of the sum of £— (insert the joint amount of debt and costs), recovered against the said C.D. by the said E.F., by a judgment of the said court bearing date the — day of —, 185—, and for the recovery of which sum a warrant of execution was on the — day of — last past duly sued out against the movable property of the said C.D., and in regard to which warrant a return has been duly made that no movable property has been found whereof could be made the amount stated in the said warrant or any part thereof (or whereof could be made more than the sum of £— parcel of the amount stated in the said warrant); and serve on the said C.D. a copy of this summons and return you on the said — day of — next what you have done thereon.

Graham's Town, 1st —, 185—.

G. H., Clerk to the Court of the Resident  
Magistrate of the District of Albany.

49. As often as the resident magistrate shall see cause to grant a decree of civil imprisonment the defendant shall be committed to the gaol of the district by warrant under the hand of the resident magistrate in the form following, that is to say :

Court of the Resident Magistrate, District of Albany.

To A.B., Messenger of the Court, and to the Keeper of the  
Public Prison of the District of Albany.

These are to command you, the said messenger, to take C.D., of (describe as in the summons in the last preceding rule), and deliver him to the keeper of the public prison of the district aforesaid, together with this warrant, there to be safely kept until he shall have paid unto E.F., of (describe the plaintiff as in the summons aforesaid), the sum of £—, which the said E.F. recovered for his debt and costs by judgment of this court bearing date the — day of —, 185—, or until the expiration of — months from the day on which the said C.D. shall be received into the said prison by viriue of this warrant, whichever of the two shall first happen, or until the said E.F. shall be otherwise legally discharged; and for your so doing this shall be your warrant.

Dated at Graham's Town this — day of —, 185—.

R.G., Resident Magistrate of the District of Albany.

L.N., Clerk of the Court.

\* \* \* When a decree of civil imprisonment shall be made after an insufficient levy under process of execution against property the words "parcel of the sum of £—" should be inserted before the words "which the said E.F. recovered for his debt and costs," &c.

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50. Every summons sued out for the recovery of possession of premises shall be as near as may be in the form following, that is to say :

Court of the Resident Magistrate  
for the District of Albany.

To ———, Messenger of the said Court.

Summon C.D. of (describe the defendant as in the former process), that he appear before the court of the resident magistrate of this district to be holden at — on the — day of — next at — o'clock in the forenoon, to show why he shall not be condemned to yield and deliver up to A.B., of (describe the plaintiff as in the former process), possession of a certain dwelling-house (or apartment or other tenement or premises according to the fact) situate at (describe the local situation), held by the said C.D. from and under the said A.B., for the amount of certain rent or hire due and in arrear from the said C.D. to the said A.B. in regard to the said dwelling-house (or otherwise as before), amounting together with costs to the sum of £— for which a warrant of execution was on the — day of — last duly sued out under a judgment of this court against the movable property of the said C.D., on which warrant a return has been duly made that no such movable property as aforesaid has been found whereof could be made the amount stated in the said warrant or any part thereof; and serve upon the said C.D. a copy of this summons and return you on the said — day of —, 185—, what you have done thereon.

Dated at Graham's Town this — day of —, 185—.

E. F., Clerk of the Court of the  
Resident Magistrate of Albany.

51. When a decree for the delivery up of possession shall be made the warrant for the execution of the same shall as near as may be in the form following, that is to say :

Court of the Resident Magistrate for the District of —.

To ———, Messenger of the said Court.

It having appeared to this court that C.D. of (describe the tenant as in the summons), holds from and under A.B., of (describe the landlord as in the summons), a certain dwelling-house (or apartment or other tenement or premises according to the fact) situate at (describe the local situation), and that the said A.B., who has recovered judgment and sued out execution against the movable property of the said C.D. for the amount of certain rent of the said (name the sort of premises) due and in arrear, hath not had of the said movable property or otherwise the amount of the said rent or any part thereof; and the said A.B. having afterwards, to wit, on — day of —, 185—, by the judgment of this court, been duly decreed to be put into possession of the said (name again the sort of premises); this is therefore to authorize and require you to put the said A.B. into possession of the same by removing therefrom the said C.D. and all other persons claiming from, through, or under him;



for which this shall be your warrant; and return you on the — day of —, 185—, what you have done in pursuance thereof.

Given under my hand at —, this — day of —, 185—.

Resident Magistrate for the District of —.

E. F., Clerk of the Court.

52. The affidavit of rent in arrear on which to ground an attachment of the movable property of the tenant or upon the demised premises shall be as near as may be in the form following, that is to say :

A. B., of (describe the landlord), maketh oath and saith that C. D., of (describe the tenant), is justly and truly indebted to this deponent in the sum of £— for the arrears of a certain monthly (or yearly, &c., as the case may be) rent due and payable by the said C. D. to the said deponent for the hire and occupation from and under this deponent of a certain dwelling-house (or apartment or other tenement or premises according to the fact) situate at (describe the local situation), which said sum of £— has been demanded from the said C. D. for the space of seven days and upwards reckoned from this day, but has not yet been paid (or when the deponent believes that the property is about to be removed then say, “on which premises there now are certain movables of the said C. D., which this deponent verily believes he is about to remove in order to avoid the payment of the said rent).”

A. B.

Sworn before me this — day of —, 185—, at —.

Resident Magistrate for the District of —.

53. When any person shall apply for an order to seize and arrest movables for rent in arrear the form of security to be entered into on his part and behalf shall be as near as may be as follows, that is to say :

Whereas A. B., of (describe the landlord), hath this day made oath before me that C. D., of (describe the tenant), holds from and under him as tenant or occupant a certain dwelling-house (or apartment or other tenement or premises according to the fact), and that there is now justly due and owing by the said C. D. to the said A. B. the sum of £— for — months' rent of the said dwelling-house (or otherwise as the case may be) and whereas the said A. B. hath applied to me for an order for the seizure and arrest of movable property according to the provisions of the Act in that behalf made and provided; and whereas E. F., of (describe the surety), hath agreed to join the said A. B. in giving the security in the said section mentioned; now therefore the said A. B. and the said E. F. do hereby jointly and severally promise and undertake, to and with the said resident magistrate and his assigns, that the said A. B. shall, not later than the — day of — (date of the next day but one), unless the rent due and in arrear as aforesaid shall be sooner paid and satisfied or unless the said C. D. shall sooner consent under the provisions

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of the Act aforesaid to a sale without suit of the movable property which may be seized and arrested by virtue of the said order, "sue out from the court of the said resident magistrate a summons against the said C.D. for the recovery of the rent or hire aforesaid, and shall prosecute the same to judgment without any unnecessary delay," and that the said A.B. and E.F. or either of them, at the option of the said resident magistrate or his assigns, shall pay, satisfy, and make good to or for the use of the said C. D. or whom else it may concern all damage, costs, and charges which he or they may receive or sustain by reason of or in connection with the execution of the order aforesaid, in case the said A.B. shall fail to prove in the suit or action aforesaid that the said amount of rent to be therein demanded is due and in arrear.

Dated at — this — day of —, 185—,  
before me, —, Resident Magistrate.

(Signed)

A. B.  
E. F.

\* \* \* When a summons shall have been sued out for the rent in arrear at or before the time of applying for the order to arrest, the words within inverted commas should be omitted and the following words inserted in their stead: "Duly and without any unnecessary delay prosecute to judgment the pending suit or action by the said A.B. against the said C.D. for the recovery of the rent aforesaid, commenced by a summons sued out of the court of the resident magistrate of this district this — day of —, 185— (or on the — day of —, 185—, as the case may be)."

54. Every order for arresting movables to meet a demand for rent in arrear shall be as near as may be in the form following, that is to say :

To —, Messenger of the Court of the  
Resident Magistrate for the District —.

This is to authorize and require you to repair as by law provided to the dwelling-house (or apartment or other tenement or premises according to the fact), situate at (describe the local situation), and there demand payment of the sum of £ —, being the amount of certain rent or hire of the said (name the sort of premises) due by C.D. to A.B., of (describe the lessor), and in case such payment shall not be made then require that so much movable property may be pointed out by law distrainable for the rent so in arrear as you shall deem sufficient to satisfy the said sum of £ —, and make an inventory of such property, and lay an attachment thereon under the provisions of the Act in that behalf made and provided ; but if no such property shall be pointed out then seize and arrest according to the provisions of the said Act so much of such property as you shall deem sufficient, and further act in that behalf as by the said Act directed ; and return on the — day of —, 185—, what you shall have done under this order.

Given under my hand at — this — day of —, 185—.

Resident Magistrate for the District of —.

55. Whenever the messenger shall have attached any movables under any such order as aforesaid the notice to be subjoined to the inventory shall be as near as may be, in the form following, that is to say :

C. D.,

Take notice that I have this day seized and arrested the articles comprised in the above inventory in pursuance of an order to me directed under the hand of ———, Esq., resident magistrate for the district of ———, whereby I am authorized and required to seize and arrest movable property distrainable for rent sufficient to satisfy to A. B. the sum of £——, due to him by you for rent in arrear, as well as my legal charges about the said order.

Dated this ——— day of ———, 185—, at ———.

Messenger of the Court of the Resident Magistrate  
for the District of ———.

56. Should the person whose movables have been attached under any such order as aforesaid be desirous to retain possession thereof pending the event of the suit for the recovery of the rent alleged to be in arrear, the form of security to be entered into by and on behalf of such person shall be as near as may be as follows :

Whereas E. F., messenger of the court of resident magistrate for the district of ———, by virtue of an order under the hand of ———, Esquire, resident magistrate of the said district, bearing date the ——— day of ———, 185—, has seized and arrested in security for the sum of £——, being the amount of certain rent due and in arrear from C. D., of (describe the tenant), to A. B. of (describe the landlord) the undermentioned articles, to wit: (here enumerate the movable property arrested). Now therefore the said C. D. and G. H. of (describe the surety) do hereby jointly and severally promise and undertake to and with the said E. F. that the said movable property shall not be made away with or disposed of, but that the same shall remain in possession of the said C. D. under the effect of the said arrest to abide the event of a suit to be brought (or "the event of the suit brought") in the court of the resident magistrate aforesaid by the said A. B. against the said C. D. for the recovery of the said rent or sum of £——; otherwise the said G. H. hereby undertakes and binds himself to pay and satisfy to the said A. B. the amount of any such judgment which he may recover against the said C. D. for the said rent or sum of £——, together with his costs of suit.

In witness whereof the said C. D. and the said G. H. have hereunto set their hands this ——— day of ———, 185—.

(Signed)

A. B.

E. F., Messenger of the said Court.

G. H.

Witness, L. M.

57. In case any person whose movables have been attached under any such order as aforesaid shall both in person and in writing consent to an immediate sale of such movables, the order

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for such sale shall be as near as may be in the form following, that is to say:

To E. F., Messenger of the Court of Resident Magistrate  
for the District of ———.

Whereas you did on the — day of —, 185—, in pursuance of an order to that effect by me issued seize and arrest in security for rent due and in arrear certain movable property then being in and upon certain premises, to wit, a dwelling-house (or apartment or other tenement according to the fact) situated at (state the local situation as in the order for arrest) held and occupied by C. D. from and under A. B. (describe the landlord as in the order for arrest); and whereas the said C. D. hath appeared before me and hath in order to save the expense of prosecuting (or "further prosecuting," as the case may be) an action for the recovery of the said rent admitted that he owes the same, amounting to the sum of £——, and hath also consented that the said movable property now under attachment should be sold in satisfaction or part satisfaction of the said sum: Now therefore these are to authorize and require you to sell in manner and form as by the thirty-second section of the Act No. — of 1855 prescribed, on the — day of —, 185—, at —, the said movable property so attached as aforesaid or so much thereof as may be necessary for the purpose of making of the proceeds the said sum of £—— so due and owing to the said A. B. and your legal charge for holding the said sale; and pay to the said A. B. the said sum and retain your said charges, and return to me in the court of the resident magistrate of the district on the — day of —, 185—, what you shall have done in pursuance hereof.

Given under my hand this — day of —, 185—, at —.

Resident Magistrate of ———

58. If any movable property taken under and by virtue of any process of execution issued out of any court of resident magistrate shall be claimed by any third party as his property and not liable to such execution the court of resident magistrate out of which such process issued, upon which claim being reported by the messenger thereof, shall issue a summons calling upon the plaintiff and the claimant to appear in order to inquire into and determine the question in dispute, and such summons shall be as near as may be in the form following, that is to say:

Court of the Resident Magistrate for the District of ———.

To E. F., Messenger of the said Court.

Summon A. B. of (describe the plaintiff in the former suit), and G. H. of (describe the claimant), that they severally appear before the resident magistrate of this district to be holden at — on the — day of —, 185—, at — o'clock in the forenoon, with their respective witnesses if they have any, then to have it determined and declared by the judgment of the said court whether certain movable property attached on the — day of —, 185—, by you, the said E. F., under and by virtue of a certain writ of execution issued out of the

said court, commanding you, the said E. F., of the movable property of one C.D. to levy and raise certain sums of money in the said writ mentioned, and which movable property is claimed by the said G.H. as being his property and not liable to such execution, be or be not the property of the said G.H. and be or be not so liable; and serve as well upon the said A.B. as upon the said G.H. a copy of this summons, and return you on the said — day of —, 185—, what you have done on this summons.

R. G., Resident Magistrate.

Dated at — this — day of —, 185—.

L.M., Clerk of the Court.

59. Where the judgment or sentence of the said court in any case is appealed from and the said appeal is duly prosecuted and allowed in manner provided for that purpose, the clerk of the said court shall forthwith transmit the proceedings in the said case to the registrar of the supreme court or to the registrar of the next circuit court for the said district as the case may be, together with a certificate under his hand subjoined to the said proceedings in the following terms :

I, L.M., clerk of the court of resident magistrate for the district of Albany, hereby certify and declare that the above are the true proceedings in the case A.B. against C.D.; and that the said proceedings contain true notes of all evidence received by the said court, objected to or offered by either party, and rejected by the said court on the hearing of the said case.

Graham's Town, May 1, 185—.

L.M.

60. The clerk of the said court shall a sufficient time before the holding of any circuit court for the district apprise the parties in appeal of the day and place of the holding thereof; and shall warn them to appear before the said circuit court and prosecute the said case in appeal and hear the determination thereof.

61. All fines imposed by the court in any case civil or criminal shall be paid to the clerk of the said court; and the same together with all fees of office received by him in every month shall be paid over on the first day of the following month to the civil commissioner of the division; and the said clerk shall deliver therewith an account in such form as the civil commissioner shall from time to time direct. And the officers of the said court shall take such fees as are allowed in the tariff hereunto annexed and the same shall be taken at the time when anything is required to be done by any officer for which such fees are allowed, and together with the same shall also be taken and charged the duty imposed by law upon any stamp where the stamp is supplied by such officer.

#### IN CRIMINAL CASES.

62. All crimes and offences against the law within the jurisdiction of the said court and which may have been committed by any person within any district of this colony may be prosecuted in the court of the resident magistrate of the said district.

63. Where the public prosecutor shall by virtue of his office have determined to prosecute any party in the said court for any

crime or offence within the jurisdiction of the said court he shall forthwith lodge with the clerk of the court a statement in writing of the charge or complaint against the said person, describing him by his name, surname, place of abode, and occupation or degree; and setting forth shortly and distinctly the nature of the said crime or offence and the time and place at which the same was committed.

64. Any private person entitled to prosecute for any crime or offence may prosecute summarily for such crime or offence by lodging his complaint in any court of resident magistrate having jurisdiction, nor shall any certificate of any clerk of the peace or any other competent public prosecutor to the effect that he declines to prosecute for such crime or offence be necessary. But any competent public prosecutor may at any time before judgment intervene in any such case and assume the management and conduct thereof, and the clerk of the court shall in the column of the criminal record book hereafter mentioned headed "Remarks, &c.," make an entry of such intervention.

65. The clerk of the court shall keep a book, ruled and divided into columns, headed and entitled according to the form in the schedule hereunto annexed marked F, which shall be called "The Criminal Record Book of the Court of the Resident Magistrate, District of ———," and the said clerk shall enter therein in manner hereinafter set forth all criminal proceedings in the said court, and shall present the said book to the resident magistrate at the first sitting of the court upon every court day; and the resident magistrate shall before the rising of the said court sign the same.

66. The clerk of the court shall upon such complaint being lodged with him either by the public prosecutor or any private party forthwith enter into the proper columns of the criminal record book the name of the prosecutor, the name of the party charged, the crime or offence charged or complained of, the day of commitment of the party charged and by whom committed, and any remarks which it may be proper to record.

67. All persons to be prosecuted upon any criminal charge in the said court shall be brought to trial at the next possible court day; but whenever it shall be made to appear on oath to the satisfaction of the resident magistrate that any criminal case cannot be proceeded in upon the day appointed for that purpose without danger of defeating the ends of justice he shall adjourn the hearing thereof to some future court day, which day shall be specified by him; and the said adjournment and the cause thereof shall be noted by the clerk in the last column of the said criminal record book.

68. The clerk of the said court shall upon or after the lodging of the said complaint at the request of the prosecutor (and at his charge where the prosecution is by a private party) issue and deliver to the messenger of the said court the process of the said court for compelling the appearance of the said party to answer the charge and of the witnesses in support thereof, together with so many copies of the said process as there are persons to be summoned if there be more than one; and the said messenger shall serve a copy thereof on any defendant and shall at the same time explain to him the nature and exigency of the said process; and

the said process shall be by summons under the hand of the resident magistrate, and shall be as near as may be in the form following :

No 20—1856.

Court of the Resident Magistrate, District of ———.

To J. P., Messenger of the Court.

You are hereby required and directed in her Majesty's name on the sight hereof to summon C. D., of &c. (describing him particularly), that he appear personally before this court at Graham's Town, on the ——— day of ——— next, at — o'clock in the forenoon, then to answer and abide the judgment of this court upon the complaint and information of E. F., Esq., who prosecutes in the name and on behalf of her Majesty (or of G. H., of &c., describing him particularly), that the said C. D., on or about the ——— day of ——— last, violently beat and assaulted the said G. H., of &c.; and summon M. N., of &c., O. P., of &c., and such persons if any as you shall be required by the said C. D. to summon on his behalf, that they and each of them be and appear personally at the day and place aforesaid to testify all they and each of them know concerning the said charge. Serve on each of them, the said C. D., M. N., O. P., &c., a copy of this summons, and return to this court on that day what you have done hereon.

Given under my hand at ———, this ——— day of ———, 185—.

J. L., Resident Magistrate

J. M., Clerk of the said Court. of the said District.

69. Either party desiring to compel the attendance of any person to give evidence in any criminal case may take out of the office of the clerk of the said court the process of the court for that purpose ; and in like manner when the party charged with any offence is unable to pay the costs of such process the clerk of the said court shall summon on his behalf such witnesses as he shall desire to have summoned and shall satisfy the said clerk to be material and necessary for his defence ; and the said process shall be as near as may be in one or other of the forms following :

Court of the Resident Magistrate, District of ———.

To J. P., Messenger of the Court.

You are hereby required in her Majesty's name to summon A. B., of &c., C. D., of &c., and E. F., of &c. (describing them particularly), that they and each of them appear personally before this court at ———, on the ——— day of ——— next, at — o'clock in the forenoon, to testify and declare all they and each of them know concerning a certain charge preferred by the public prosecutor against J. A., of (describing particularly the person charged). Serve on each of them, the said A. B., &c., a copy of this summons, and return to this court on that day what you have done hereon.

Given under my hand at Graham's Town,  
the ——— day of ———, 185—.

J. L., Resident Magistrate

L. M., Clerk of the said Court. of the said District.

Court of the Resident Magistrate, District of ———.

To J. P., Messenger of the said Court.

You are hereby required and directed to summon A. B., of &c., C. D., of &c., and E. F., of &c. (describing them particularly), that they and each of them appear personally before this court at ———, on the ——— day of ——— next, at — o'clock in the forenoon, to testify and declare all they and each of them know concerning a certain complaint preferred by G. H., of &c., against J. A., of &c.; and serve on each of them, the said A. B., &c., a copy of this summon, and return to this court on that day what you have done hereon.

Given under my hand at Graham's Town,  
the ——— day of ———, 185—.

J. L., Resident Magistrate.

L. M., Clerk of the said Court. of the said District.

70. The process of any such court for summoning any person whether as a party or a witness to appear before that court when holden at any place other than the ordinary and stated place for the holding of the same may be issued by any justice of the peace resident near the place at which such court is intended to be holden and who shall by any proclamation of the Governor be nominated and appointed to issue the said process; and such process shall in substance correspond with the forms prescribed for process issued and delivered by the clerk of the court, and shall state the place where the said court is intended to be holden, and shall be directed to and be executed by such person as such justice of the peace shall nominate and appoint, and such person so nominated and appointed shall have and possess in regard to the execution and return of such process the like powers and authorities and be entitled to the like fees as the messenger of the said court would have possessed or been entitled to had the same been directed to and executed and returned by him, and such process shall at the foot be signed thus: "J. L., Justice of the Peace, duly authorized," and the same need not be signed by either the resident magistrate or the clerk of the court.

71. All such process as in the last preceding section mentioned shall have the like force and effect in all respects as if the same had been directed to the officer appointed to execute ordinarily the criminal process of the said court, and had been under the hand of the resident magistrate of the district, and signed, issued, and delivered by the clerk of the said court: Provided always that nothing in this rule contained shall be construed so as to prevent the issue and delivery in common form by such clerk of any process for requiring the appearance of any person before the said court at any place where such court shall be appointed to be held.

72. No person shall be summoned to appear before any such court as aforesaid at any place other than the ordinary and stated place for the holding of the said court to answer any charge unless such person shall reside nearer to such other place than to the ordinary and stated place aforesaid; and any summons issued in contravention of the provisions of this rule shall be null and void.

73. If upon the day appointed for the appearance of any party to answer to any charge he shall neglect to appear and the court



shall be satisfied upon the return of the messenger or other person as the case may be that he was duly summoned, then the resident magistrate shall (on the request of the prosecutor) issue his warrant for the apprehension of the said party, and shall also if he think fit impose on the said party for his default a fine not exceeding five pounds sterling.

74. If the prosecutor do not appear on the court day appointed for appearance the charge or complaint shall be dismissed; and where the prosecutor being a private party does not appear, or appearing the court upon hearing the charge or complaint shall pronounce the same unfounded and vexatious, the resident magistrate shall award to the defendant on his request such costs as the said magistrate may think fit. And in case of any such dismissal as aforesaid the accused party shall not be again liable to prosecution on the same charge, save and except only that where the prosecutor was a private person no dismissal upon account of his non-appearance shall prevent the public prosecutor from afterwards should he see fit taking up the case.

75. In case of the non-attendance of any person duly summoned to give evidence and not having any lawful excuse allowed by the court the resident magistrate shall impose upon him the same fine as is provided for such default in civil cases before the said court.

76. Where any person shall upon any court day appear before the said court to prefer any complaint against another who shall also appear thereto, and the said parties shall both be desirous of then proceeding therein, the court shall after the other business of the day has been concluded cause the said complaint to be recorded, and shall forthwith hear and determine the same or adjourn the hearing thereof to some following day if the same be necessary, as the resident magistrate shall see fit.

77. On the day of hearing the magistrate shall inquire into the said charge or complaint by causing the clerk of the court to read over the statement of the prosecutor and by hearing such witnesses as he may produce in support of the charge; and in like manner he shall hear any statement made by the defendant relevant thereto and his witnesses if any in support thereof.

78. The resident magistrate shall hear and summarily decide upon each case, and his judgment and sentence shall be pronounced in open court and shall be recorded by the clerk in the proper column of the criminal record book.

79. If the sentence of the said court be for any higher degree of punishment than such as is prescribed by the Act for erecting and establishing the said court, the said clerk shall also note in the last column of the said criminal record book the particular law authorizing the said punishment and giving jurisdiction to the said court.

80. All persons examined or giving evidence in the said court in criminal cases shall be examined and give evidence in the same manner and form as is provided in civil cases before the said court.

81. Any person acquitted upon any charge or complaint or where the same shall be dismissed for want of prosecution thereof shall forthwith be discharged out of custody. And any person who shall once have been called upon to plead to any charge and who shall have pleaded not guilty thereto shall be entitled to demand that he be either acquitted or found guilty. But nothing herein

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contained shall apply to any such case as is in the twenty-eighth section of Ordinance No. 40 or in the seventh and eighth sections of the Ordinance No. 73 mentioned: Provided however that the court may after a case has been partially heard adjourn the further hearing thereof until some future time in case it should be made to appear by either the prosecutor or the party accused that some witness or witnesses material to the case, and who without neglect or default of the party applying for the adjournment are not present, will probably be present in case an adjournment be granted.

82. All persons sentenced by the court of the resident magistrate in any district to undergo the punishment of imprisonment shall be committed to the gaol of the said district for the purposes aforesaid by warrant under the hand of the said resident magistrate in the form following, that is to say,—

Court of the Resident Magistrate, District of \_\_\_\_\_  
To the Gaoler or Keeper of Her Majesty's Gaol  
for the District of \_\_\_\_\_

Whereas the undermentioned prisoners were this day respectively and duly convicted before me of the several offences undermentioned, and were for the said offences sentenced by me to undergo the several punishments respectively affixed to their names; this is therefore to require you in Her Majesty's name to receive the said several prisoners into your custody and there safely keep them until they shall have undergone the said punishment or shall be otherwise lawfully discharged therefrom:

| Prisoners' Names. | Sentence.                                                                | Of what offence convicted. |
|-------------------|--------------------------------------------------------------------------|----------------------------|
| J. T.             | One month's imprisonment, with hard labour.                              | Theft.                     |
| C. D.             | Fined twenty shillings, and to be imprisoned until fine is paid.         | Assault.                   |
| E. F.             | To be imprisoned one week, and to receive private whipping of 24 lashes. | Theft.                     |

Given under my hand at —, this — day of —, 185—.

Witness, J L.,

Resident Magistrate of the said District.

L. M., Clerk of the said Court.

83. In all cases of crimes or offences prosecuted in the said court where by law there is or shall be an appeal from the judgment or sentence thereof to any superior court, the clerk of the court shall make a note of any such appeal, and shall certify to the said superior court the said proceedings in such cases, in like manner as is provided for certifying the proceedings in appeal from the judgment or sentence of the said court in civil cases.

84. The service of all summonses in criminal cases in the said court shall be made by the messenger of the said court or his lawful deputy in the same manner as is provided to be done in civil cases before the said court.

## SCHEDULE C.

No. 20—1856.

## FORMS OF PLAINTS.

March 1, 185—.

*In case of goods sold.*—A. B. (of Bathurst, of this district), farmer, complains of C. D., of the same place, baker (or if as executor, &c., then "A. B., as executor of E. F. complains of C. D."), that the said C. D. is indebted to him (as executor, E. F.) in the sum of five pounds sterling, for corn (or hay, or other things, briefly describing it) sold and delivered by the said A. B. to the said C. D. (or by E. F. in his lifetime), in or about the month of February last; which sum the said C. D. refuses to pay, and the said A. B. prays that he may be adjudged to pay the same.

*In case of demand for rent.*—For three months' rent, due from the said C. D. to the said A. B. on or about the 1st of February last in respect of the occupation by the said C. D. of a house and garden of the said A. B. (as the case may be), situate at Bathurst; which sum, &c.

*For lodging.*—For meat, drink, washing, lodging, and other things found and provided by the said A. B. for the said C. D. between the months of December and February last; which sum, &c.

*For hire of horses.*—For the hire of a horse (or as the case may be) and cart of the said A. B., hired and used by the said C. D., for three weeks, in or about the month of February last; which sum, &c.

*For agistment.*—For the agistment, depasturing, and keeping fifty oxen and one hundred sheep by the said A. B. for the said C. D. between the months of December and February last.

*For work and labour.*—For the work and labour of the said A. B., performed for the said C. D., at his request, on or about, &c.

*For same by servants.*—For the work and labour of the servants of and belonging to the said A. B., performed for the said C. D., at his request.

*For same by servants, horses, and carriages.*—For the work and labour of the said A. B., by himself (or his servants, or horses, carts, and carriages, as the case may be), performed by the said A. B. (or his servants, &c.), for the said C. D., at his request; and for timber, nails, &c., (as the case may be), provided by the said A. B. for the said C. D., and used in such work and labour.

*For wages.*—For wages due and payable from the said C. D. to the said A. B., for his service performed as the servant of the said C. D. between the months of December and February last.

*For money lent.*—For money lent by the said A. B. to the said C. D. in or about the month of February last.

*On note or bill of exchange.*—For principal and interest due to the said A. B. on a promissory note drawn by the said C. D., payable to one E. F. or order, and by him endorsed to the said A. B. (or on a bill of exchange, drawn by one E. F., and accepted by the said C. D., payable to the said A. B.)

*On a bond.*—For principal and interest due on a bond bearing date the — day of —, made and entered into by the said C. D., for the payment of — and interest on the — day of — last.

*For money due on an agreement.*—For principal and interest upon and by virtue of a certain agreement bearing date, &c. (date

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of agreement), and made between, &c., whereby the said C. D. agreed to pay to the said A. B. the sum of £——, together with lawful interest on the same, on the —— day of —— now past.

*On an award.*—For money due to the said A. B. upon and by virtue of a certain award made by E. F. upon a submission by the said A. B. and the said C. D. to the arbitration of the said E. F., concerning certain matters in difference between them; and upon which reference the said E. F. awarded and ordered that the said C. D. should pay the sum of £—— to the said A. B. on a certain day now past.

*For detention of property.*—A. B., of ——, farmer, complains that C. D., of the same place, farmer, hath possessed himself of a cow (or wagon or horse, or other thing detained), of the value of £—— or thereabouts, which he unjustly detains from the said A. B.; and the said A. B. prays he may be adjudged to restore to him the said cow, &c., or pay him the value of the same.

*For detention of property deposited.*—That the said A. B., in or about the month of —— last, deposited and left several articles of household furniture and wearing apparel, the property of the said A. B., of the value of £—— or thereabouts, with the said C. D., to be safely kept for the said A. B. until he should have occasion for them; and the said A. B. saith that he has demanded the said household furniture, &c. (or caused the same to be demanded for him), but the said C. D. refuses to deliver up, and unjustly detains the same from him; and the said A. B. prays the said C. D. may be adjudged to restore to him the said household furniture, &c., or pay him the value of the same.

*For damage sustained by improper driving.*—That on or about the —— day of —— last the said A. B. (or the servant of the said A. B.) was driving his cart, &c., on the public road between —— and ——, and the said C. D. (or the servant of the said C. D.) was also on the said road with a certain carriage, &c., under his care and direction; and the said C. D. (or the servant of the said C. D.) so improperly drove and directed his carriage and horses that thereby his carriage was forced and driven with great violence against the cart of the said A. B. and broke to pieces one of the wheels thereof; and the said A. B. was thereby damaged to the amount of £——, and the said C. D. refuses to make amends for the same; and the said A. B. prays he may be adjudged to pay the amount of the said damage.

*For wrongfully impounding cattle.*—That the said C. D., on or about the —— day of —— last, wrongfully impounded or caused to be impounded five oxen of the said A. B., and kept the same impounded for five days, to the damage of the said A. B. of forty shillings; and the said A. B. prays, &c.

*For injury done by obstructing a stream of water, the right to the stream not being disputed.*—That the said C. D., on or about, &c., wrongfully obstructed a certain stream of water, which of right ought to run through the land of the said A. B., situate at Bathurst, by making dams in the same (or digging trenches, laying timber, &c., in the said stream), above the land of the said plaintiff; and the said A. B. was thereby deprived of the use of the said stream for the space of —— hours (or days), and hath

sustained damage to the amount of £——; and the said A. B. prays the said C. D. may be adjudged to pay the same.

*For wrongfully breaking down a dam in a stream of water.*—That the said A. B., having by right made a certain dam in a stream of water running near or through the land of the said A. B., situate at, &c., whereby the said A. B. might lawfully pen up and detain the water of the said stream for —— hours in each day, so that the same might run upon the land or premises of the said A. B.; yet the said C. D., whilst the water was lawfully stopped by the said A. B., wrongfully broke down the said dam, to the damage of the said A. B. of £——; and the said A. B. prays, &c.

*For wrongfully keeping back the water of a stream.*—That the said C. D. wrongfully detained and dammed up the water of a certain stream running through or near the land (or premises) respectively of the said A. B. and C. D., situate at, &c., and which, after passing through the land (or premises) of the said C. D., ought to have run into the land (or premises) of the said A. B.; and the said A. B. was thereby deprived of the use of the said stream for —— hours (or days), and hath sustained damage to the amount of £——; and the said A. B. prays, &c.

*For injury to land by cattle.*—That the said A. B. hath a piece of land adjoining to the land of the said C. D., the hedge (fence or ditch) between which belongs to the said C. D., and ought to be repaired by him; yet, through the want of repair of the said hedge, &c., the cattle of the said C. D., on or about the —— day of —— last, broke into the land of the said A. B., and eat up, trampled down, and destroyed the corn of the said A. B., there growing, whereby the said A. B. was damaged to the amount of five pounds sterling; and the said A. B. prays, &c.

*For injury sustained by obstructing a right of water-course, the right itself not being disputed.*—That the said A. B. hath a right of water-course through the land (or premises) of the said C. D.; but the said C. D., on the —— day of ——, obstructed him in the exercise of his right by stopping up the said water-course, and the house (or premises) of the said A. B. were thereby flooded with water, to the damage of the said A. B. of £——; and the said A. B. prays, &c.

*For obstructing a right of water-course.*—That the said A. B. hath the right of discharging dirty water, &c., through a gutter which runs through the land (or premises) of the said C. D., but the said C. D., on or about, &c., obstructed him from using the said right, by stopping up the said gutter, to the damage, &c.; and the said A. B. prays, &c.

*For injury sustained by obstructing a right of road, the right itself not being disputed.*—Hath a right of way to pass and repass on foot (or with horses or other beasts, or with carts and carriages) from and towards the land (or premises) of the said A. B., over the land of the said C. D., to and from the village of Bathurst; yet the said C. D. obstructs and hinders him in the said right; and especially on the —— day of —— prevented him from using the same by digging a ditch across the said way, &c., to damage, &c.; and the said A. B. prays, &c.

*For obstructing a right of road to fetch water.*—Hath a right to use a certain well or fountain of water on the land (or premises) of the said C. D. (as before).

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*Leading water through the land of another.*—Hath the right of a stream of water through the land of C. D. to his own; yet, &c.

*Right of way to fetch water.*—Hath the right to pass over the land of C. D., to fetch water from a fountain, reservoir, &c., situate upon the land of E. F.

*For destroying fences, &c., and of injuries to land or cattle.*—That the said C. D., on or about the — day of —, broke down and destroyed a fence of the said A. B., at Bathurst, in the district of Albany, whereby the said A. B. hath sustained damage to the amount of £—, &c. (or broke down the door of the house of the said A. B., and disturbed him in his peaceable possession thereof; or cut down two trees of the said A. B., of the value of £—; or wrongfully trampled down and destroyed the corn of the said A. B.; or drove about or injured the sheep or cattle; or killed or wounded a dog, horse, &c., of the said A. B., of the value of £—); and the said A. B. prays, &c.

*For an assault or injury to the person, wife, &c.*—That the said C. D., on, &c., assaulted and ill-treated the said A. B. (or the wife, or child, or servant of the said A. B.), to the damage of the said A. B. of £—; and the said A. B. prays, &c.

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SCHEDULE D.

*Fees to be taken by the Officers of the Court of Resident Magistrate, exclusive of Stamp Duty.*

BY THE CLERK.

|                                                                                                    |    |   |   |
|----------------------------------------------------------------------------------------------------|----|---|---|
| Recording any plaint . . . . .                                                                     | £0 | 1 | 0 |
| Issuing any summons . . . . .                                                                      | 0  | 1 | 0 |
| Copy to serve . . . . .                                                                            | 0  | 0 | 6 |
| Copy of bill or note . . . . .                                                                     | 0  | 0 | 3 |
| Copy or other document . . . . .                                                                   | 0  | 1 | 0 |
| Recording appearance of the defendant . . . . .                                                    | 0  | 0 | 6 |
| Warrant of execution . . . . .                                                                     | 0  | 2 | 0 |
| Taking and filing security for restitution . . . . .                                               | 0  | 2 | 0 |
| Filing agent's authority . . . . .                                                                 | 0  | 0 | 6 |
| For every witness examined . . . . .                                                               | 0  | 0 | 6 |
| Entering judgment, interlocutory or final . . . . .                                                | 0  | 0 | 6 |
| For entering the answer of any defendant . . . . .                                                 | 0  | 0 | 6 |
| Taking down evidence, per sheet containing one hundred words . . . . .                             | 0  | 0 | 6 |
| Recording any judgment or order of court . . . . .                                                 | 0  | 0 | 6 |
| Notice of judgment . . . . .                                                                       | 0  | 2 | 0 |
| Copy of judgment, to accompany any messenger's return . . . . .                                    | 0  | 1 | 0 |
| Order of court for opening judgment at request of defendant . . . . .                              | 0  | 1 | 0 |
| Office copy thereof to serve on the plaintiff . . . . .                                            | 0  | 0 | 6 |
| Production of or reference by the clerk to any original record, entry, or document, each . . . . . | 0  | 0 | 6 |

|                                                     |    |   |   |
|-----------------------------------------------------|----|---|---|
| For noting every appeal . . . . .                   | £0 | 1 | 0 |
| For certifying the proceedings on appeal, per sheet | 0  | 0 | 6 |
| Certificate . . . . .                               | 0  | 1 | 0 |
| Taxation of costs, each party . . . . .             | 0  | 1 | 0 |

## BY THE MESSENGER.

|                                                                                                                                                                                            |    |          |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----------|---|
| Service of any summons or notice in the town or place where the court is held . . . . .                                                                                                    | £0 | 1        | 6 |
| Service within five miles of the place of holding the court . . . . .                                                                                                                      | 0  | 3        | 0 |
| For making his return . . . . .                                                                                                                                                            | 0  | 1        | 0 |
| Where the person to be served lives at a greater distance from the place of holding the court than five miles, then, in the country districts, per day, for every day's distance . . . . . | 0  | 4        | 6 |
| Summons to comply with judgment . . . . .                                                                                                                                                  | 0  | 1        | 6 |
| For attendance where defendant makes return under inventory . . . . .                                                                                                                      | 0  | 1        | 6 |
| When the messenger goes to the house of the defendant, the same charges as for service of any summons.                                                                                     |    |          |   |
| Making and signing any inventory of goods attached                                                                                                                                         | 0  | 1        | 6 |
| Making out and signing notice of seizure . . . . .                                                                                                                                         | 0  | 1        | 6 |
| Security for production of goods . . . . .                                                                                                                                                 | 0  | 3        | 0 |
| Affixing notice of sale . . . . .                                                                                                                                                          | 0  | 1        | 0 |
| On the amount of all judgments not paid by the debtor on the summons of the messenger . . . . .                                                                                            | 2½ | p. cent. |   |
| Executing any warrant for putting any party into possession of premises . . . . .                                                                                                          | 0  | 5        | 0 |
| Making his return to any such warrant . . . . .                                                                                                                                            | 0  | 1        | 0 |
| Executing any order for seizing and arresting movable property in security for rent in arrear, when the same is not ultimately sold . . . . .                                              | 0  | 5        | 0 |
| Making and signing inventory of such property, and notice of seizure . . . . .                                                                                                             | 0  | 1        | 6 |
| Taking security for the production of movable property, arrested under any such order as aforesaid                                                                                         | 0  | 2        | 6 |
| Affixing notices of any sale of movable property attached in security for rent, and sold by consent                                                                                        | 0  | 1        | 6 |

\* \* \* When any movables arrested under any such order as is in the twenty-seventh section of the Ordinance aforesaid mentioned shall be afterwards sold, either in execution of a judgment for the rent in regard to which they were attached or under any order made by consent under the provisions of the thirty-second section of the said Ordinance, the fee of five shillings for executing the order for arrest shall not be allowed.

When the place for executing any warrant or order mentioned in the foregoing tariff shall be more than five miles from the place of holding the court of the resident magistrate, then the daily allowance to the messenger shall be the same as if such warrant or order were a summons of the said court.

| CIVIL RECORD BOOK. |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                         |                                                                                                         |
|--------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------------------------------------------------------------------------------------------------------|
| No.                | Parties.                 | Plaint.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Day of issuing Summons. | Day of appearance of parties personally, or by whom.                                                    |
| 1                  | Adams against Johnson.   | <p>March 1st, 1848.</p> <p>John Adams, of Bathurst, in this district, farmer, complains of Thomas Johnson, of the same place, baker, that the said Thomas Johnson is indebted to him in the sum of £5 10s 6d. sterling, for corn sold and delivered by the said John Adams to the said Thomas Johnson in or about the month of December last, which sum the said Thomas Johnson refuses to pay ; and the said John Adams prays he may be adjudged to pay the same.</p>                                     | 1848.<br>March 3rd.     | March 10th, 1848, Plaintiff in person ; defendant by his son, Richard Johnson.                          |
| 2                  | Thompson against George. | <p>March 8th, 1848.</p> <p>Richard Thompson, of Graham's Town, in this district, baker, complains of John George, of the same place, grocer, that the said John George is indebted to him in the sum of £4 sterling, for bread and flour sold and delivered by the said Richard Thompson to the said John George in or about the months of December and February last ; which sum, &amp;c. ; and the said Richard Thompson, &amp;c.</p>                                                                    | March 1st.              | March 3rd.— Defendant in person ; plaintiff made default.                                               |
| 3                  | Berry against Jones.     | <p>John Berry, of Graham's Town, in this district, carpenter, complains of Isaac Jones, of the same place, farmer, that the said Isaac Jones is indebted to him in the sum of £9 sterling, for three months' rent, due from the said Isaac Jones to the said John Berry, on or about the 1st day of February last, in respect of the occupation by the said Isaac Jones of a house and garden of the said John Berry, situate at Bathurst, which sum, &amp;c. ; and the said John Berry prays, &amp;c.</p> | March 4th.              | March 6th.— Plaintiff in person.                                                                        |
| 4                  | Ward against Richards.   | <p>Henry Ward, of Graham's Town, in this district, tailor, complains of John Richards, of the same place, farmer, that the said John Richards is indebted to him in the sum of £9 sterling for three months' rent, due from the said John Richards to the said Henry Ward on or about the 1st February last, in respect of the occupation by the said John Richards of a house and garden of the said Henry Ward, situate at Bathurst, which sum, &amp;c. ; and the said Henry Ward prays, &amp;c.</p>     | March 4th.              | <p>March 6th — Plaintiff in person.</p> <p>March 13th.— Both parties in person (second appearance).</p> |
| 5                  | Thompson against George. | <p>March 8th, 1848.</p> <p>Richard Thompson, of Graham's Town, in this district, baker, complains of John George, of the same place, grocer, that the said John George is indebted to him in the sum of £4 sterling, for bread and flour sold and delivered by the said Richard Thompson to the said John George in or about the months of December and February last ; which sum, &amp;c. ; and the said Richard Thompson, &amp;c.</p>                                                                    | March 6th.              | March 28th.— Both parties in person.                                                                    |



E.

| DISTRICT OF ALBANY.                                                                                                          |                            |                                                                                                                                                                                                                                |                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Defence.                                                                                                                     | Day of hearing the case.   | Judgment of the Court.                                                                                                                                                                                                         | Subsequent proceedings and remarks.                                                                                                                                                                           |
| Debt denied.                                                                                                                 | 1848.<br>March 10th.       | For plaintiff,<br>£5 10 6<br>1 10 6 costs.<br>Ordered, that defendant pay by monthly instalments of £1, the first on the 1st of August, 1848. On default made in any payment, execution to issue for debt and costs still due. | Warrant for execution issued 10th March, 1848.                                                                                                                                                                |
| .....                                                                                                                        | .....                      | Defendant absolved from the instance.<br>Costs adjudged to defendant against the plaintiff, 10s.                                                                                                                               |                                                                                                                                                                                                               |
| Default.                                                                                                                     | March 6th.                 | Judgment to plaintiff, £9.<br><br>Final judgment, March 13th.<br>Costs, £2.                                                                                                                                                    | Appeal noted March 14th.<br>—£1 17s. 6d. deposited.<br><br>March 20th, appeal allowed, May 10th, execution thereon. [or—if the case so be—]<br>March 24th, warrant of execution upon security of restitution. |
| Paid.                                                                                                                        | March 6th.                 | Judgment for plaintiff, £9.                                                                                                                                                                                                    | Notice of judgment served on defendant March 10th, to appear on March 13th.                                                                                                                                   |
| .....                                                                                                                        | Re-hearing,<br>March 13th. | Opened on the appearance of John Richards, on March 13th; final judgment same day for defendant.<br>Costs against plaintiff, £2 10s.                                                                                           | Warrant of execution at the suit of defendant, issued March 16th, 1848.                                                                                                                                       |
| Admitted, but claims £3 for tea and other articles sold by the said John George to Richard Thompson, during the same period. | March 10th.                | For plaintiff, judgment £2.<br>Costs, 10s.                                                                                                                                                                                     | Warrant for execution issued 12th March, 1848.                                                                                                                                                                |

SCHEDULE F.

CRIMINAL RECORD BOOK.

DISTRICT OF ALBANY.

| Prosecutor.                                      | Defendant.                                                       | Crime or Offence charged.                                                                        | Day of commitment for trial, and by whom. | Day of lodging complaint with the clerk. | Day of hearing.      | Judgment.   | Sentence.                                                                                                   | Remarks, &c.                                      |
|--------------------------------------------------|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------------------------------|------------------------------------------|----------------------|-------------|-------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| 1. Public Prosecutor.                            | J. T., of Graham's Town, in this district, labourer.             | Stealing at Graham's Town a coat, the property of A. B., of the same place, shopkeeper           | 1848.<br>March 1st.<br>J. L. Esq.         | 1848.<br>.....                           | 1848.<br>March 20th. | Guilty.     | One month's imprisonment with hard labour.                                                                  |                                                   |
| 2. Public Prosecutor.                            | C. D., E. F., and G. H., of Bathurst, in this district, farmers. | Violently assaulting and beating, at Bathurst, A. B., of the same place, farmer.                 | J. L., Esq.; at large, on bail.           | March 1st.                               | Same day.            | Guilty.     | Fined twentyshillings each.                                                                                 | Discharged on the same day, having paid the fine. |
| 3. A. B., of Bathurst, in this district, farmer. | C. D., of Graham's Town, in this district, shopkeeper.           | Assault at Graham's Town.                                                                        | .....                                     | March 20th.                              | Same day.            | Not Guilty. |                                                                                                             |                                                   |
| 4. Public Prosecutor.                            | Jacob, servant of A. B., of Bathurst, in this district, farmer.  | Stealing at Bathurst a sheep, the property of his master, on or about the 1st of February, 1848. | March 1st.<br>L. M., Esq.                 | March 20th.                              | April 20th.          | Guilty.     | One month's imprisonment with hard labour.                                                                  |                                                   |
| 5. C. D., labourer.                              | E. F., canteen-keeper.                                           | Selling wine at —, at unlawful hours.                                                            | .....                                     | August 10th.                             | Sept. 10th.          | Guilty.     | Fined ten pounds, which, not being paid, defendant sentenced to one month's imprisonment, with hard labour. | Sentence founded on Ordinance No. 29 of 1846.     |

No. 21—1856.] AN ACT [June 4, 1856.

For Better Securing the Efficiency of the Armed and Mounted Police Force upon the Frontier of this Colony.

**W**HEREAS by the Act No. 3, 1855, entitled "An Preamble.

Act for the better organization and regulation of an Armed and Mounted Police Force upon the Frontier of this Colony," provision was made for the organization and regulation of such a force: And whereas it will conduce to the efficiency of the said force that due provision be made by law for prohibiting the sale or other disposal of the horses, arms, and accoutrements required by the members of the said force for the performance of their duties: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. No member of the police force aforesaid shall sell, pledge, or otherwise dispose of any horse, saddle, bridle, gun, clothing, ammunition, or other article or equipment which Members of force shall not sell or otherwise dispose of any article of equipment.

by the regulations of the said force for the time being he shall be required to keep and possess, and every sale, pledge, or other disposition of any of the matters aforesaid shall be null and void; and any member of the said force who shall Penalty for so doing. make or attempt to make any sale, pledge, or other disposition as aforesaid in contravention of this section shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months.

II. If any person shall in consequence of any sale, pledge, or other disposition made by any member of the said force in Persons purchasing or receiving such articles liable to penalty. contravention of the last preceding section knowingly receive or have any animal, article, matter, or thing in the said section mentioned, such person shall incur and be liable to a fine not exceeding twenty pounds, and in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months.

III. No animal, article, matter, or thing mentioned in the Such articles not attachable by writ nor subject to order for sequestration. first section of this Act and therein forbidden to be sold, pledged, or otherwise disposed of shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the said force, nor shall the same pass by or under any order made for the sequestration of the estate of any such member.

IV. Nothing in this Act contained shall extend to the Certain officers excluded from this Act. commandant or to any inspector of the said police force.

V. This Act shall commence and take effect one month Act when to commence. from and after the promulgation thereof.

R

No. 22—1856.] AN ACT [June 4, 1856.

For Securing by Law a certain Allowance or Annual Pension granted to Jan Fredrik de Wet, and to Johanna Catharina Andrea de Wet, his Wife.

Preamble.

WHEREAS in the last session of Parliament a certain allowance or pension amounting to sixty pounds per annum was granted from the public revenue of this colony to one Jan Fredrik de Wet, formerly of Simon's Town, for the term of his natural life, and to his wife, Johanna Catharina Andrea de Wet, if and so long as she should survive him; and whereas it is expedient that the payment of the said allowance or pension should be secured to the said parties by law: Be it therefore 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:

Annuity of sixty pounds to J. F. de Wet and wife or the survivor of them.

I. The Governor of this colony is hereby authorized and required to pay or cause to be paid, from out of the general revenue of this colony unto the said Jan Fredrik de Wet, during the term of his natural life, and unto his wife, the said Johanna Catharina Andrea de Wet, if and so long as she shall survive her said husband, the aforesaid allowance or annual pension of sixty pounds sterling.

Act when to commence.

II. This Act shall take effect from and after the first day of January, 1857.

No. 23—1856.] AN ACT [June 4, 1856.

For Empowering the Governor to regulate the Postage of Letters transmitted to and from Countries beyond the Colony.

Preamble.

WHEREAS it is expedient to empower the Governor to enter into arrangements with the Government of her Majesty and with the Governments of the British dependencies and other countries adjoining this colony for the purpose of establishing a cheap and uniform rate of postage upon letters transmitted by post between and through this colony and such countries and dependencies: Be it enacted, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Governor may with advice of Executive Council make arrangements for a uniform rate of postage on letters between England and this colony.

I. The Governor may, with the advice of his Executive Council, enter into arrangements with the Government of her Majesty for the establishment of an uniform rate of postage on all letters transmitted by sea between this colony and any part of the United Kingdom.

II. The Governor may in like manner enter into arrangements with the Government of any British dependency or other state in South Africa for the establishment of a uniform rate of postage upon all letters transmitted from this colony to any such dependency or state and from such dependency or state to this colony.

No. 23—1856.  
Or between this colony and a British dependency or other state in South Africa.

III. The uniform postage to be established by any such arrangements as aforesaid shall be divided between this colony and the other party or parties to such arrangements in such equitable proportions as shall be agreed upon.

Postage to be divided between this colony and the other party.

IV. In no case shall the rate to be charged upon a letter between this colony and the United Kingdom or between this colony and any such dependency or state as aforesaid exceed the amount set forth in the schedule to this Act which rate shall cover all the postage chargeable upon such letter from the place at which it is posted to the place to which it is addressed.

Rate to be charged according to schedule and to cover all postage from place to place.

V. Letters passing through this colony from the United Kingdom to any such dependency or state as aforesaid shall for the purpose of the arrangements with her Majesty's Government be deemed to be letters from the United Kingdom to this colony and be chargeable as such; and such letters shall for the purpose of the arrangements with the dependency or state to which they are addressed be deemed to be letters from this colony to such dependency or state; and conversely, letters passing through this colony from any such dependency or state to the United Kingdom shall for the purpose of the arrangements with such dependency or state be deemed to be letters from such dependency or state to this colony and be chargeable as such; and such letters shall for the purpose of the arrangements with her Majesty's Government be deemed to be letters from this colony to the United Kingdom.

As to letters passing through this colony.

VI. All proclamations issued by the Governor for giving effect to any such arrangements as aforesaid shall bear the force of law within the colony as if they were incorporated in and formed part of this Act.

Proclamations to have force of law.

VII. So much of the aforesaid Ordinance, No. 1 of 1846, as may be inconsistent with the provisions of the present Act or with the arrangements which may be made by the Governor under the provisions of this Act shall be and is hereby repealed.

Repugnant part of Ordinance No. 1, 1846, repealed.

VIII. Copies of all arrangements made by the Governor under the provisions of this Act shall be laid before both Houses of Parliament within ten days after the opening of the first session ensuing after the completion of such arrangements.

Arrangements under this Act to be submitted to Parliament.

SCHEDULE.

Upon letters not exceeding half an ounce, one rate of sixpence.  
Upon letters exceeding half an ounce and not exceeding one ounce, two rates of sixpence each.

Schedule referred to in section 4.

No. 23—1856.

Exceeding one ounce and not exceeding two ounces, four rates of sixpence each.

And so on, increasing two rates of sixpence each for each ounce or fraction of an ounce.

No. 24—1856.]

AN ACT

[June 4, 1856.

For Reviving the Ordinance No. 15, 1844, entitled  
 “ Ordinance to provide for the Enregisterment in  
 the Land Registers of this Colony of certain Sub-  
 divisions of the Locations and Extensions of the  
 Settlers of 1820.”

Preamble.

**W**HEREAS it is enacted by the Ordinance No. 15, 1844, entitled “ 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,” that no such proclamation as is in the second section of the said Ordinance mentioned should be issued after the 31st December, 1846: And whereas by the Ordinance No. 7, 1853, which bears the same title as this Act, it was enacted that it should and might be lawful for the Governor of this colony, at any time before the 31st December, 1855, to issue any such proclamation as aforesaid, and that thereupon the provisions of the said Ordinance No. 15, 1844, should become applicable to such proclamation, and all proceedings in reference thereto be of the like force and effect as if the 31st December, 1855, had been inserted in the said lastmentioned Ordinance in place and stead of the 31st December, 1846: And whereas it is expedient to define a further period within which such proclamation may be issued and the provisions of the said Ordinance be applied: 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:

Proclamations under Ordinance 15, 1844, may be issued until the end of 1857.

I. It shall and may be lawful for the Governor of this colony at any time before the 31st December, 1857, 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 as 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 the like force and effect as if the said 31st December, 1857, had been inserted in the fourteenth section of the said Ordinance in place and in stead of the 31st December, 1846.

No. 25—1856.]

AN ACT

[June 4, 1856.

## For Promoting the Formation of Volunteer Corps.

WHEREAS the inhabitants have in several parts of this colony manifested a disposition to enrol themselves of their own free will in volunteer corps for the defence of their respective divisions: And whereas it is fitting that every such corps should, as often as the burghers of any division may be called out under the Act No. 16, 1855, entitled "An Act to provide for the Organization of the Inhabitants of the several Divisions of this Colony for the internal Defence of their respective Divisions," be allowed to serve as a separate force under its own officers: 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.

I. So much of the Act aforesaid, No. 16, 1855, as may be repugnant to or inconsistent with this Act is hereby repealed.

Repugnant part of Act 16, 1855, repealed.

II. Whenever any volunteer corps shall be formed in any division, of which corps the rules and regulations for the time being shall have been submitted to and approved of by the Governor of the colony, then in case the burghers of such division shall be at any time called out for the defence of such division, no person liable to perform burgher duty in such division who shall be enrolled in and be a member of such volunteer corps shall be liable to serve except in such corps and under the officers thereof.

Members of volunteer corps not liable to serve otherwise than in such corps.

III. Every such volunteer corps shall be liable to be called out by the Governor of the colony for the defence of the division to which it belongs in manner and form as by the Act aforesaid provided in regard to the ordinary burgher force of such division; and when called out as aforesaid every such volunteer corps shall be regarded as if a part of the burgher force of the division, save and except that such volunteer corps shall serve separately and under its own officers as aforesaid and not under any field-commandant, field-captain, or deputy field-captain in the Act No. 16, 1855, mentioned.

Volunteer corps may be called out under Act 16, 1855.

Corps to be considered part of the divisional burgher force.

Corps to serve separately under its own officers.

IV. From and after the taking effect of this Act the name of every person who shall be enrolled in and be a member of any volunteer corps within any division shall be struck off the burgher roll of such division, nor shall any such member so enrolled be hereafter placed upon any burgher list or burgher roll as in the said Act mentioned, it being the true intent and meaning of this Act that the organization of every such volunteer corps shall be separate and distinct from that of the ordinary burgher force of the division, but that when called out into active service every such corps should be deemed and taken to be, as regards pay, rations, and other particulars in the same plight and condition as so many burghers called out into active service under the said Act.

Name of every member of the corps to be struck off the divisional burgher roll.

Organization of volunteer corps distinct from ordinary burgher force.

No. 26—1856.]

AN ACT

[June 4, 1856.]

## For Amending the Law relating to Rules of Court.

Preamble.

WHEREAS it is expedient to amend the law relating to the manner of framing and establishing the rules, orders, and regulations of the Supreme Court and the circuit courts 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:

Ordinance 32, 1846, and repugnant part of Charter of Justice and other laws repealed.

I. The Ordinance No. 32, 1846, entitled "Ordinance for Amending the Law regarding certain Rules of Court," is hereby repealed; as also so much of the forty-sixth section of the Royal Letters Patent commonly called the Charter of Justice, and of any other Law or Ordinance as shall be repugnant to or inconsistent with any of the provisions of this Act. But the repeal of the Ordinance No. 32, 1846, shall not affect or be taken to be intended to affect the district court of Natal.

Repeal of Ordinance 32, 1846, not to affect Natal.

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

II. It shall be lawful for the Supreme Court aforesaid as often as occasion shall arise to frame and draw up all such rules, orders, and regulations as are in the forty-sixth section of the Charter of Justice mentioned and described; and as often as the said court shall frame or constitute any such rule, order, or regulation the said court shall transmit the same to the Governor of this colony, who shall with the advice of the Executive Council approve of or else disallow the same.

Rules to be submitted to Governor and Executive Council.

Governor to proclaim rules and orders.

III. As often as the Governor aforesaid with the advice aforesaid shall approve of any such rule, order, or regulation as aforesaid the said Governor shall by a proclamation published in the Government Gazette, containing or appending such rule, order, or regulation, declare the same to be established and in force; after which proclamation, but not before, such rule, order, or regulation shall be established and in force and be of the same authority and effect as if it had been enacted by this Act.

Rules after proclamation to be submitted to Parliament, if sitting; if not sitting, then within ten days after opening of session.

IV. Every rule, order, or regulation so proclaimed and established as aforesaid shall by the said Governor be laid before both Houses of Parliament should Parliament be sitting at the time of the proclamation thereof, in order to be confirmed by an Act of Parliament; and should Parliament not then be sitting, such rule, order, or regulation shall be laid before both Houses of Parliament within ten days from the commencement of the then next ensuing session thereof for such confirmation as aforesaid; and unless such rule, order, or regulation shall be confirmed during the session in which it has been laid before both Houses of Parliament by an Act of Parliament such rule, order, or regulation shall cease to have any force or effect.

If not confirmed by Parliament, rule ceases to have effect.

Construction of terms.

V. In the construction of this Act the term "Governor" shall mean the officer for the time being administering the government; and the singular number shall include several



rules, orders, or regulations as well as one rule, order, or regulation.

No. 26—1856.

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

Act when to commence.

No. 27—1856.] AN ACT [June 4, 1856.  
For Constituting the District of Namaqualand a Division.

**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:

Preamble.

I. So much of the seventh section of the Ordinance for constituting a Parliament for this colony as is repugnant to or inconsistent with this Act is hereby repealed.

7th section of Constitution Ordinance repealed in so far as it affects this Act.

II. 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.

Namaqualand to be a separate fiscal division.

Divisional council of Clanwilliam dissolved.

Separate councils for Namaqualand and Clanwilliam.

Registered voters resident in Namaqualand to vote for its divisional council.

III. 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.

For electoral purposes, Namaqualand to form part of Clanwilliam.

IV. 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. 28—1856.] AN ACT [June 4, 1856.

For Applying a Sum not exceeding Sixty-three Thousand Six Hundred Pounds for the Service of the Year 1857.

Preamble.

WHEREAS it is expedient to provide further sums in addition to those by law provided for the service of the government of this colony until 30th April, 1857 :

Expenditure for 1857.

I. 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, that a sum not exceeding sixty-three thousand six hundred pounds be charged upon the revenue of the said colony towards the service of the year 1857, and applied in the same manner and for the same purposes as are set forth as permanent services in the schedule annexed to the Act No. — of 1856 and any other Act passed during the present session for the appropriation of the public revenue, that is to say :

Civil establishment.

II. For the expenditure of the Civil Establishments, a sum not exceeding fourteen thousand five hundred and six pounds seventeen shillings and five pence.

Judicial do.

III. For the expenditure of the Judicial Establishment, a sum not exceeding four thousand nine hundred and seventy-two pounds.

Educational do.

IV. For the expenditure of the Educational Establishment, a sum not exceeding one thousand seven hundred and seventy pounds and ten shillings.

Medical do.

V. For the expenditure of the Medical Establishment, a sum not exceeding three thousand two hundred and seventy-six pounds three shillings and four pence.

Police and gaols do.

VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding ten thousand five hundred and thirty-two pounds two shillings and six pence.

Aborigines.

VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding thirteen thousand three hundred and thirty-three pounds six shillings and eight pence.

Works and buildings.

VIII. For the expenditure on account of Works and Buildings, a sum not exceeding one thousand eight hundred and eighteen pounds six shillings and eight pence.

Roads, streets, and bridges.

IX. For the expenditure on account of Roads and Bridges, a sum not exceeding four thousand five hundred and sixty-five pounds.

Miscellaneous services.

X. For the expenditure on account of Miscellaneous Services, a sum not exceeding two thousand four hundred and five pounds thirteen shillings and five pence.

Charitable allowances.

XI. For the expenditure on account of Charitable Allowances, a sum not exceeding twenty pounds.

Maintenance and discipline of convicts.

XII. For the expenditure on account of the Maintenance and Discipline of Convicts, a sum not exceeding six thousand four hundred pounds.

XIII. Amounting in the whole to sixty-three thousand six hundred pounds.

No. 1—1857.]

AN ACT

[June 29, 1857.

For Transferring from the Colonial Government to the Divisional Councils certain Powers and Functions relating to the Public Pounds of the Colony.

**W**HEREAS it is expedient to transfer to the divisional councils the powers and functions which are by the Ordinance No. 16, 1847, entitled "Ordinance for the better Regulation of Pounds and Prevention of Trespasses," vested in the Colonial Government; and for this purpose to amend the said Ordinance: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

Preamble.

I. So much of the Ordinance aforesaid, No. 16, 1847, as is repugnant to or inconsistent with this Act is hereby repealed.

Repugnant part of Ordinance No. 16, 1847, repealed.

II. The civil commissioner of each division in establishing pounds and in appointing and in dismissing poundmasters shall act with the advice and consent of the divisional council of such division if such there be, and the approval by the Governor of this colony of any such appointment or dismissal shall not be necessary or required.

Civil commissioner, with advice of divisional council, may establish pounds appoint and dismiss poundmasters.

III. The civil commissioner acting with such advice and consent as aforesaid may appoint any field-cornet or assistant field-cornet to be a poundmaster; and no consent of the Governor aforesaid to such lastmentioned appointment shall be necessary or required.

May appoint field-cornets or assistant field-cornets to be poundmasters.

IV. The civil commissioner acting with such advice and consent as aforesaid may abolish any pound which it shall be deemed inexpedient to continue.

May abolish pounds.

V. Advertisements or notices of intended sales of impounded animals, commonly called pound notices, shall be published in manner and form as the divisional council shall from time to time approve of and direct; and the approval by the Governor aforesaid of any particular manner or form of publication shall cease to be necessary or required, anything in the nineteenth section of the Ordinance No. 16, 1847, to the contrary notwithstanding: Provided that the certain notice in the twentieth section of the said Ordinance mentioned shall continue to be published as therein directed, but at the expense of the divisional council in case sufficient funds for the purpose shall have been received by such council under or by virtue of the next succeeding section of this Act.

Pound notices to be published under direction of the divisional council.

VI. All moneys which under or by virtue of the twenty-third section of the Ordinance No. 16, 1847, would but for this Act have become the property of her Majesty the Queen

Notice of pound sales to be published at the expense of the divisional council.

Moneys derived from pounds to be received and disposed of by divisional council.

No. 1—1857.

and have been paid into the colonial treasury shall henceforth be received by the divisional council of the division, to be applied in defraying the cost of publishing the pound notices and other notices connected with pounds: Provided that the surplus of such moneys if any shall be applicable to any purpose to which the divisional council may lawfully apply any funds at its disposal.

Act to extend only to pounds under Ordinance No. 16, 1847.

Act when to commence.

VII. This Act shall extend to all pounds to which the Ordinance aforesaid extends, but to none other.

VIII. This Act shall commence and take effect one month from and after the date of the promulgation thereof.

No. 2—1857.] AN ACT [June 29, 1857.

For Establishing certain Rules of Court.

Preamble.

WHEREAS his Excellency the Governor did under and by virtue of the provisions of the Act No. 26 of 1856, entitled "An Act for amending the Law relating to Rules of Court," issue upon the 31st day of July, 1856, the certain proclamation of which a copy is in the schedule to this Act set forth, establishing certain rules of court: And whereas it is necessary that the said rules so proclaimed as aforesaid should be confirmed by authority 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, that all and singular the rules of court appended to the said proclamation, and numbered respectively from I to XIX, both inclusive, shall be and the same are hereby confirmed, approved of, and finally enacted.

Rules of court in annexed schedule confirmed.

#### SCHEDULE.

PROCLAMATION by His Excellency Sir GEORGE GREY, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-Chief of Her Majesty's Colony of the Cape of Good Hope in South Africa, and of the Territories and Dependencies thereof, and Vice-Admiral of the same, and Her Majesty's High Commissioner, &c., &c., &c.

WHEREAS under and by virtue of the provisions of the Act No. 26 of 1856, entitled "An Act for Amending the Law relating to Rules of Court," the Supreme Court of this colony has framed and constituted, and transmitted to me for my approval, the rules, orders, or regulations appended to this proclamation: And whereas I have, with the advice of the Executive Council, approved of the said rules, orders, or regulations: Now, therefore, under and by virtue of the powers and authorities by the said Act on me bestowed, I do by this proclamation proclaim, declare, and made known that all and

singular the rules, orders, or regulations appended to this proclamation, and numbered respectively from I to XIX, both inclusive, are established and in full force.

GOD SAVE THE QUEEN.

Given under the Public Seal of the Settlement of the Cape of Good Hope this 31st day of July, 1856.

GEORGE GREY, Governor.

By command of His Excellency the Governor,

RAWSON W. RAWSON,

Colonial Secretary.

**RULES OF COURT** made under the Authority of Act No. 26 of 1856, entitled "An Act for Amending the Law relating to Rules of Court."

I. The court will sit in chambers upon Tuesday and Thursday in every week between the usual terms, for the disposal of such business as may competently be brought before it, save the hearing of causes, but including "the questions, matters, and things" embraced by the one hundred and thirty-seventh section of the Insolvent Ordinance, No. 6 of 1843. If either of these days should be a holiday the court will sit on the next following lawful day. The mode of procuring the attendance of any party before the court in chambers shall be that prescribed by the existing rule No. 4.

II. In all cases where by law there can be no arrest of the defendant, a copy of the summons, respect being had to the terms of rule No. 12, shall be served either by delivering such copy to the defendant personally or by leaving the same at his usual or last known dwelling-house or place of business; and in either of these cases such service shall be made so as to admit of the lapse of the following entire periods between it and the time of the defendant's appearance, viz.:

When the dwelling-house or place of business shall be in Cape Town or within twenty-five miles thereof, two days.

When in the Cape division and more than twenty-five miles from Cape Town, or in the divisions of Stellenbosch, the Paarl, or Malmesbury, eight days.

When in the divisions of Caledon, Swellendam, Tulbagh, or the municipality of Worcester, ten days.

When in the division of George, or in the division of Worcester (exclusive of the municipality of Worcester), or the municipality of Graham's Town, or the division of Port Elizabeth, fourteen days.

When in the divisions of Albany (exclusive of the municipality of Graham's Town), Beaufort, Uitenhage, Clanwilliam, Fort Beaufort, Victoria, Somerset, Graaff-Reinet, or Cradock, twenty-one days.

When in the divisions of Namaqualand, Colesberg, Albert, or Queen's Town, twenty-eight days.

III. The notice to a defendant that he must plead, answer, or except, as allowed by the existing rule No. 20, shall in future

No. 2—1857.

be so served as to give the defendant the same entire period between the service and the time within which he must so plead, answer, or except as are by No. 2 of these rules given to a defendant for his appearance.

IV. When the court, a judge thereof, or a circuit court shall impose upon any party whatsoever a fine for contempt of court by default in appearance or otherwise, the registrar of the court or of the circuit court as the case may be shall furnish the High Sheriff or his deputy with the particulars of such fine, and deliver to him a writ in the form following :

*To the Sheriff, &c.*

Whereas at a court holden at ——— on the ——— day of ———, 185—, before ———, A. B., of ———, one of the jurors [or a witness], summoned to attend before the said court for the purpose of serving as a juror [or giving evidence in the trial of C. D., or in the action between E. F. and G. H.] did not accordingly attend at the said court in obedience to the said summons, but made default therein ;

It was therefore ordered and adjudged that the said A. B. be fined, and he was fined accordingly by the said court in the sum of ——— sterling, to be by him forfeited and paid to the use of our Sovereign Lady the Queen for such his default aforesaid.

These are therefore to command you that you cause the same fine to be levied out of the goods and chattels of the said A. B., and that you do forthwith pay over the amount so levied to the colonial treasury ; for which this shall be your warrant.

Given, &c.,

(Signed) ————,

Registrar of Circuit.

In case the contempt be of any other nature than that embraced by the preceding form, the writ issued shall as near as the difference in the nature of the contempt will admit be in the terms of the above form. The Sheriff, immediately on such writ being delivered to him, shall execute the same.

V. The existing rule No. 143 is annulled ; and in lieu thereof for time to come it is ordered that the Sheriff shall on the first day of every term exhibit to the court on oath a statement of all his receipts and payments by virtue of his office during the period between the said day and the first day of the immediately preceding term, distinguishing his receipts and payments under different appropriate heads and specifying what sums remain in his hands and on what account, and for whom the same were received by him : and thereupon the court shall indorse a certificate of such exhibition.

VI. The registrar of court shall on the last day of every month make out and deliver to the Auditor-General an account showing all the fines which within that month shall have been imposed by the court, by a judge thereof, or by a circuit court, specifying therein the names of the parties, the amount of the fine, by what authority imposed, and the date when a writ was

delivered to the Sheriff for its levy or whether the fine was remitted without issue of such writ to any and what extent.

VII. The one hundred and sixty-eighth rule of court shall from the words "but in all cases" to the end thereof be altered so as to stand as follows:

But as to the time of making such service it shall (unless otherwise specially ordered by the court issuing such summons) be made so as to admit the lapse of the following entire periods between it and the time for the party's appearance:

In *liquid* cases, when the party lives or has his usual place of business in the circuit town or within one day's journey thereof, two days, and one day additional to the two days for every day's journey which the dwelling-place or place of business shall be beyond one day's journey from the circuit town.

In *illiquid* cases, seven days, when the party lives or has his usual place of business in the circuit town or within one day's journey thereof, and one day additional to the seven days for every day's journey which the dwelling-place or place of business shall be beyond one day's journey from the circuit town.

VIII. Whenever the circuit court district shall embrace more than one district in which a court of resident magistrate is established the clerk of the resident magistrate of each of such magisterial districts shall within the limits of his district perform the duties devolving on clerks of resident magistrates under the one hundred and sixty-third, one hundred and seventy-first, one hundred and seventy-second, one hundred and seventy-third, and one hundred and seventy-fourth of the existing rules of court.

IX. The resident magistrate in the one hundred and sixty-fourth existing rule mentioned shall be taken and deemed to be the resident magistrate of each magisterial district within the limits of such district.

X. The registrar of every circuit court shall immediately upon the closing of the court in each circuit town make out and transmit to the registrar of the Supreme Court an account showing all the fines which shall during the sittings of the court in that town have been imposed by the said court, specifying therein the names of the parties, the amount of the fine, by what authority imposed, the date when imposed, and the date when a writ was delivered to the deputy sheriff for its levy, or whether the fine was remitted to any and what extent without issue of such writ.

XI. The notice required by the seventieth rule of the previously existing rules may be signed by the clerk of the peace for the district in which the party indicted resides as well as by the Attorney-General.

XII. The notice allowed by the fourth section of the Act No. 7 of 1854, being an Act for extending trial by jury to civil cases, shall be so served as to give the party served two entire days between the time of service and the time for his appearance before a judge.

XIII. The notice allowed by the eighth section of the said Act shall be served within two days after the making of the decision to be reviewed; and shall be for the first day of the sitting of the court, whether in chambers or in open court, after the lapse of the two days.

No. 2—1857.

XIV. The engrossment in the ninth section of the said Act mentioned shall be made within two days after the issues shall have been settled by a judge or by the court as the case may be.

XV. Every witness summoned to attend upon the trial of any cause shall be bound to attend upon the adjournment of such trial as by the twenty-seventh section of the said Act is required of jurymen, and under the like penalty as by the said section is provided in regard to them.

XVI. The court, at discharging a jury as provided by section thirty-one of the said Act, shall fix the day on which such case shall be again set down for trial, having regard to the convenience of all parties concerned and to justice between them.

XVII. Every such motion as is allowed by the thirty-fourth section of the said Act shall be made within the first two sittings of the court, in open court, after the holding of the trial complained of.

XVIII. Every such exception as is allowed by the thirty-sixth section of the said Act shall be moved to the court within the first two sittings of the court, in open court, next after the delivery of the charge excepted to.

XIX. If there shall be sufficient findings whereon to support a judgment of the court as provided by the thirty-ninth section of the said Act, after the disallowance of those findings covered by the charge excepted to as provided by section thirty-six of the Act, a new trial shall not be granted.

No. 3—1857.] AN ACT [June 29, 1857.

For Transferring from the Central Road Board to the Divisional Council of the Cape Division the Revenue arising from the Toll levied at the Entrance of Simon's Town.

Preamble.

WHEREAS a certain toll-gate has been and still is established upon a certain spot on the main road from Cape Town to Simon's Town, at the entrance of Simon's Town, whereat certain tolls are levied, which tolls are now by law receivable by the Central Board of Commissioners of Public Roads: And whereas certain of the branch roads in the district of Simon's Town, more especially the road between Simon's Town and the place Wildschutbrand, are in a very bad and almost impassable state: And whereas it is expedient that the revenue arising from the toll aforesaid should be transferred from the Central Board aforesaid to the Divisional Council of the Cape District, to be by the said Divisional Council employed in repairing or improving the branch roads of the Simon's Town district: 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:

I. So much of the Ordinance No. 8, 1843, entitled "An Ordinance for improving the Public Roads of the

Repugnant part of Ordinance No. 8, 1843, repealed.



Colony," and of any former Law or Ordinance as is repugnant to or inconsistent with this Act is hereby repealed.

II. From and after the taking effect of this Act the toll-gate aforesaid at the entrance of Simon's Town, and the buildings and appurtenances belonging thereto, and the revenue to arise from the tolls levied thereat shall stand transferred to and become invested in the divisional council of the Cape precisely as if the said toll-gate, buildings, and appurtenances had been originally erected and established by the said divisional council in the lawful exercise of the powers and functions vested in such divisional council by the thirty-first section of the Act No. 5, 1855, entitled "An Act for creating Divisional Councils in this Colony."

III. It shall be the duty of the said divisional council to expend the revenue received from the said toll hereby transferred solely and entirely upon the repair or construction of branch roads within the district of Simon's Town, and not otherwise; and such council shall cause to be kept all accounts necessary to show truly and correctly the amounts received from such toll and the road or roads upon the construction or repair of which such amount has been expended.

IV. This Act shall commence and take effect from the first day of the month next succeeding the date of the promulgation thereof.

No. 3—1857.

Simon's Town toll-gate and its revenues transferred to divisional council.

Toll revenue to be appropriated exclusively to the repair and construction of branch roads in the district.

Act when to commence.

No. 4—1857.]                      AN ACT                      [June 29, 1857.  
For Preventing Obstructions and for preserving Good  
Order on the Wharfs in Table Bay.

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:

Preamble.

I. 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.

Management of the wharfs in Table Bay to be under wharfmaster, appointed by Governor and paid out of the wharfage dues.

II. 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

Duties of wharfmaster.

No. 4—1857.

Persons failing to remove goods after due notice from wharfmaster liable to fine of ten pounds.

Wharfmaster may remove goods at the 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 five pounds.

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.

and approaches open for the convenience of all persons requiring to use the same.

III. 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 ten pounds for every such offence.

IV. 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.

V. 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 five pounds.

VI. 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 ten pounds.

No. 4—1857.

VII. 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 third 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 ten pounds.

Wharfmaster may under certain circumstances prevent landing of goods,—penalty ten pounds.

VIII. 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 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 five pounds.

No boat to be made fast to steps of wharf nor to encumber the space allotted to fishermen's boats,—penalty five pounds.

IX. 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 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.

Penalties how recoverable.

X. The seventh section of Ordinance No. 6 of 1851 in so far as it is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant section of Ordinance No. 6, 1851, repealed.

No. 5—1857.] AN ACT [June 29, 1857.

For Establishing more effectually the Settlement in this Colony of certain Military Settlers.

WHEREAS a number of officers, non-commissioned officers, and soldiers of the British-German Legion have recently immigrated to this colony in order to become military settlers therein: And whereas it is expedient that due provision should be made for the preservation of discipline and good order among the said settlers so long as they remain bound to do military service: 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.

I. The military settlers aforesaid, as well officers as men, shall during the term of their engagement to do military service as military settlers be subject to the Articles of War

Military settlers of the German Legion subject to the Articles of War and other laws applicable to her Majesty's troops.

S

No. 5—1857.

Governor may by proclamation declare what parts only of such laws shall apply to such settlers.

and to the Act for punishing mutiny and desertion, and all other laws for the time being applicable to her Majesty's troops in this colony: Provided however that the Governor of the colony for the time being may by proclamation to be published in the Government Gazette direct that all or any of the provisions of the said laws shall not apply to the said military settlers or to such of them as shall be specified and described in any such proclamation: Provided also that the said Governor may by proclamation revoke or alter any former proclamation as circumstances may seem to require.

Governor may by proclamation lay down rules for the conduct of settlers.—Offences against them how to be tried and punished

II. It shall be lawful for the Governor for the time being by any proclamation to be published in the Government Gazette to lay down such rules as he may deem necessary for the conduct and control of the said military settlers, or any of them who may be specified and described in such proclamation, during their term of military service, and to define what shall be offences punishable by such rules, and in what manner, whether by fine or by expulsion from the force, such offences shall be punished, and by what courts or persons offenders against any such rules shall be tried: Provided that no fine exceeding ten pounds shall be imposed by any such rule: And provided also that no act or omission constituting an offence under or against any such rule, which act or omission would also be a violation of the Articles of War or any other of the military laws in the first section of this Act mentioned, shall be prosecuted under the Articles of War or other military law in case such offence shall by the rules aforesaid be punishable only by a fine: And provided that the Governor aforesaid may from time to time by proclamation revoke or alter the rules in force for the time being or any of them.

Limitation of fine.

Offences against such rules punishable by fines not to be prosecuted under Articles of War.

Rules may be revoked or altered by proclamation.

No. 6—1857.]

AN ACT

[June 29, 1857.]

To Reduce the existing Rate of Transfer Dues payable on the Sale of Landed Property.

Preamble.

WHEREAS the rate of transfer duty required to be paid by the purchasers of landed property upon the transfer of the said property has been found to be heavy and oppressive: And whereas it is expedient that the amount of the said dues should be reduced: 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:

Repugnant laws repealed.

I. From and after the first day of July, 1857, so much of Ordinance No. 18 of 1844 and of Act No. 15 of 1855 as is repugnant to the provisions of this Act shall be and the same is accordingly hereby annulled and repealed.

II. From and after the first day of July, 1857, there shall be chargeable upon and payable by the purchaser for and in respect of every sale made on or after that date, whether private or public, of any freehold property or property held of Government upon quitrent or other leasehold tenure, and any opstal of a loan place, a duty of two per centum upon the amount of the price or purchase money paid or to be paid for the said property: Provided always that all and singular the provisions of the Ordinance No. 18 of 1844 and of the Act No. 15 of 1855 in regard to the payment of additional duties and in regard to exemption from the payment of duties in certain cases shall apply to the duty of two per cent. established by this Act, precisely as if the said provisions were herein set forth and word for word repeated.\*

No. 6—1857.

A duty of two per cent. upon the purchase amount payable on transfer of landed property.

Provisions of previous laws in regard to additional duties and exemptions to stand.

No. 7—1857.] AN ACT. [June 29, 1857.

For Regulating the Payment of the Expenses of Field-cornets and other Public Officers attending to give Evidence in certain Criminal Cases.

WHEREAS field-cornets and other public officers are occasionally summoned to attend as witnesses in criminal cases for the purpose of giving evidence regarding matters with which they have been concerned solely in their official capacity: And whereas doubts exist whether when so attending they can lawfully be allowed any expenses other than the ordinary expenses provided by Ordinance No. 59, entitled "Ordinance for regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations:" And whereas it is proper to remove such doubts and to provide that such witnesses shall be considered when so attending to give evidence as officially engaged in the public service, and be paid accordingly: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows, that is to say:

Preamble.

I. As often as any field-cornet, field-commandant, assistant field-cornet, or justice of the peace shall attend as a witness before any court or justice of the peace in this colony, under such circumstances that he would if an ordinary witness be entitled to be allowed expenses under the Ordinance aforesaid, No. 59, at and after the rate therein provided, he shall, in case he shall have been summoned to give evidence regarding matters with which he has been concerned solely in his official capacity, receive and be allowed expenses at and after the rate of remuneration for field-

Field-cornet, field-commandant, or justice of the peace summoned to give evidence in regard to matters with which they have been officially concerned to be remunerated under Ordinance No. 9, 1848.

\* See Act No. 25 of 1861.

No. 7—1857.

cornets when from home on service set forth in the Ordinance No. 9, 1848, entitled "Ordinance for regulating the Duties and Remuneration of Field-cornets;" that is to say, he shall receive as and for his expenses an allowance for horse-hire at the rate of one shilling and six pence per hour, together with a further allowance at the rate of seven shillings and six pence per day.

No. 8—1857.] AN ACT [June 29, 1857.  
For Introducing into this Colony Immigrants from Europe.

Preamble.

WHEREAS it is expedient to make provision for introducing into this colony immigrants from Europe: 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:

Sum to be expended until end of 1858.

I. It shall be lawful for the Governor of this colony to expend from time to time between the commencement of this Act and the expiration of the year 1858 any sum not exceeding fifty thousand pounds sterling in introducing immigrants from Europe.

If ordinary revenue be insufficient, debentures may be issued.

II. In case the state and condition of the ordinary public revenue for the time being shall be such that the sums of money aforesaid cannot be withdrawn therefrom without injury to the public service, it shall be lawful for the said Governor to raise the balance which shall be required by disposing by contract of debentures bearing interest at a rate not exceeding six per cent.

Such debentures a first charge on the revenue.

III. All and singular the said debentures together with interest from time to time to accrue due thereon respectively shall be and the same are hereby charged upon and made payable out of the general revenue of the colony of the Cape of Good Hope as a first charge thereon.

Debentures may be paid off at six months' notice.

IV. It shall be lawful for the Governor from time to time out of the surplus revenue of this colony to pay off and discharge the said debentures: Provided that they shall be paid off and discharged as nearly as may be practicable in the order of the dates of their issue, and that no such debenture shall be so paid off until after six months' previous notice in the Government Gazette of this colony, as also in the London Gazette, of the intention of the Government so to discharge it.

Interest payable half-yearly, in London or Cape Town.

V. The interest upon such debentures as aforesaid shall be payable half-yearly, and either in London or in Cape Town, as the holder shall select.

How scheme to be carried on.

VI. The immigration contemplated under this Act shall be carried on upon the principle and in accordance with the schedule hereunto annexed.

SCHEDULE.

No. 8—1857.

1. The chief objects to be secured under the immigration scheme should be two-fold, namely, to provide a supply of labour and to add to the general population of the colony. Objects of the scheme.
2. The classes of immigrants to be introduced should embrace, first, agricultural labourers of all descriptions, shepherds, and mechanics, and secondly, such other immigrants as will promote the filling up of the country, both in the western and eastern divisions. Classes of immigrants.
3. Provision should be made under proper limitations to enable persons desirous so to do to send for any particular parties whom they may wish to introduce; but such persons shall enter into an engagement with Government that the parties so introduced by them shall from the day of arrival be at their cost and responsibility. Parties may send for particular immigrants.
4. As far as possible and convenient the immigrants to be introduced should be fairly divided between the several portions of the colony, and arrangements should be made for applications for these immigrants being received previously to their arrival and for their distribution through the different divisions of the colony as soon after their arrival as possible. Immigrants to be distributed among the several portions of the colony.
5. Special Government agents should be appointed at Cape Town and Port Elizabeth for the purpose of carrying out the distribution of the immigrants at these points; and these agents should put themselves in communication with the divisional councils or local immigration committees, with a view of arranging to supply the labour which may be required in their divisions. Immigration agents at Cape Town and Port Elizabeth.
6. The agency to be employed in recruiting immigrants for this colony should consist of persons deputed from the colony who are acquainted with its wants, or of persons resident in the mother country but likewise acquainted with the character and capabilities of the colony. Agency to be employed in obtaining immigrants.
7. No portion of the expenditure for immigration should be applied to the defraying of expenses on board any ship or ships beyond the expenses of each immigrant, excepting such charges as may necessarily be incurred in providing a superintending surgeon. Expenses on ship board limited.

*Repealed by Act 52/17*

No. 9—1857.]                      AN ACT                      [June 29, 1857.

For Amending the Act No. 20, 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates."

**W**HEREAS it is expedient to amend the Act No. 20, 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates," by authorizing courts of resident magistrates held elsewhere than at the stated and ordinary place for holding such courts to try civil cases: And whereas, also, it is

Preamble.

No. 9—1857.

expedient to correct a manifest error in the forty-seventh section of the said Act, arising from the accidental insertion of the word “not” where the said word was not meant to be inserted, whereby the construction of the said section might be rendered doubtful and obscure: And whereas, also, it is expedient to make certain other amendments in the said Act and in the rules, orders, or regulations contained in the schedule annexed thereto marked B: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant parts of Act No. 20, 1856, repealed.

I. So much of the Act aforesaid, No. 20, 1856, and of any of the rules, orders, or regulations of court contained in the schedule to the said Act marked B as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Forty-seventh section of Act No. 20, 1856, corrected.

II. In the forty-seventh section of the said Act the word “not,” where it occurs in the third line of the said Act as printed upon vellum between the words “for any period” and the words “exceeding one month,” is hereby struck out and expunged; and all magistrates and other persons who have hitherto acted upon or in reference to the said section as if it had been originally printed and passed as now amended are hereby indemnified and held harmless for having so done.

Periodical courts to have civil jurisdiction.

III. The courts of resident magistrate held elsewhere than at the places fixed and appointed, by proclamation of the Governor as the stated and ordinary places for holding such courts shall henceforth have and exercise the same jurisdiction in civil cases as that possessed by the said courts when held at the stated and ordinary places so fixed and appointed as aforesaid.

Rule 2 in schedule B to Act No. 20, 1856, repealed.

IV. Rule No. 2 as set forth in the schedule aforesaid marked B is hereby repealed, and the rule No. 2 in the schedule to this Act marked A is hereby substituted in its place and stead.

Rules 29 and 30 altered.

V. In the rules numbered twenty-nine and thirty in the said schedule set forth the words “four months” are hereby struck out and expunged and the words “one month” substituted in their room and stead.

Additional rules in schedule B to this Act established.

VI. The additional rules, orders, and regulations contained in the schedule to this Act marked B are hereby established and enacted.

Governor may appoint assistant to resident magistrate.

VII. It shall and may be lawful for the Governor to appoint from time to time by Government notice in the Government Gazette, for any district in which a court of resident magistrate shall be held at more places than one within such district, some fit and proper person to be styled “assistant to the resident magistrate,” to act at the stated and ordinary place for the holding of the said court, but not elsewhere, whilst the resident magistrate shall be absent



from such place for the purpose of holding a court at some other place, but not at any other time; and such assistant to the resident magistrate shall have jurisdiction in criminal cases but in none other: Provided that it shall not be lawful for such assistant to the resident magistrate to punish any offender in any higher or more severe manner than by fine not exceeding twenty shillings or by imprisonment with or without hard labour and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days: Provided also that nothing herein contained shall prevent the Governor from appointing an acting resident magistrate in or for any district as often as circumstances shall require.

His powers.

Right of Governor to appoint acting magistrates reserved.

VIII. The messenger of the magistrate's court serving or executing any summons, warrant, or order mentioned in the schedule marked D to the Act aforesaid, No. 20, 1856, shall be entitled in addition to the fees mentioned in the said schedule as fees to be taken by such messenger to his reasonable horse-hire, to be fixed by the resident magistrate: Provided that no messenger shall be entitled to any horse-hire in any case in which the place for the service of the summons or the execution of the warrant or order shall be within three miles of the place of holding the court: And provided that no messenger shall be allowed horse-hire at a rate exceeding the rate for the time being which would be lawfully chargeable by a deputy sheriff executing in the same district the process of the supreme or of any circuit court.

Messenger of the court to be entitled to horse-hire.

SCHEDULE A.

Rule 2. The resident magistrate shall hold a court at such place or places as the Governor shall by proclamation have appointed, and upon such days as shall in regard to each resident magistrate have been announced by Government notice published in the Government Gazette. The places for the holding of the court as well as the days for the holding of the same may be from time to time increased, diminished, or otherwise changed by proclamation or Government notice, according as the change shall relate to the place or places or to the days of holding such court; and every such court when holden at more places than one within any district shall have and exercise the same jurisdiction, civil and criminal, at every place at which it shall be held. But in all districts in which the court of resident magistrate is appointed to be held at more places than one some one place shall by proclamation be, in case it shall not have already been, announced as the stated and ordinary place for the holding of such court.

Magistrate to hold courts at places and on days appointed by Governor.

Such courts to exercise the same jurisdiction in all places.

Stated and ordinary places for holding court to be appointed for each magistracy.

No. 9—1857.

## SCHEDULE B

ADDITIONAL RULES, ORDERS, and REGULATIONS, respecting the manner and form of proceeding in civil and criminal cases before the courts of resident magistrates respectively of the colony of the Cape of Good Hope.

## IN CIVIL CASES.

Process of periodical court in civil cases may be issued by any person appointed thereto by government notice.

Process to be in due form and may be executed by any person appointed for that purpose.

Process so issued as aforesaid to be of the same force as that issued by clerk of the court.

Clerk of court may issue process for periodical court.

Such process how to be executed.

Defendant residing nearer to district than to periodical court not to be sued before the latter without his consent.

Summons in contravention of this rule to be dismissed with costs.

1. The process of the court of resident magistrate for summoning any person whether as a party or a witness, in any periodical court, may be issued by any person resident at or near the place where such court is intended to be holden who shall be nominated and appointed by any Government notice in the Government Gazette to issue the said process: And such process shall in substance correspond with the forms prescribed by the rules of court for process issued and delivered by the clerk of the court, and shall state the place where the said periodical court is intended to be holden, and shall be directed to and be executed and returned by any such person as the resident magistrate shall from time to time by any writing under his hand nominate and appoint. And any such person so nominated and appointed shall have and possess the like powers and authorities and be entitled to the like fees as the messenger of the said court would have been possessed of or been entitled to had the same process been directed to and executed and returned by him; and such process shall at the foot be signed thus, "A. B., appointed by Government notice of the \_\_\_\_\_, 185—, to issue the process of the periodical court at \_\_\_\_\_."

2. All such process as in the last preceding section mentioned shall have the like force and effect in all respects as if the same had been directed to the officer appointed to execute ordinarily the civil process of the said court, and had been signed, issued, and delivered by the clerk of the said court: Provided always that nothing in this rule contained shall be construed so as to prevent the issue and delivery in common form by such clerk of any process for requiring the appearance of any person before the said court at any place where such court shall be appointed to be held: Provided also that the clerk of the court may at the stated and ordinary place for holding the court of resident magistrate sign and issue process for any periodical court within the district, and may direct and may deliver or transmit such process to the person nominated and appointed as aforesaid by the resident magistrate to execute the process of such periodical court; who shall execute the same, and return the same after execution to the person authorized by Government notice as aforesaid to issue the process of such periodical court.

3. No person shall without his own consent be summoned as the defendant in any civil action or proceeding to appear before any periodical court, unless such person shall reside nearer to the place for holding such periodical court than to the ordinary and stated place for holding the court of resident magistrate; and any summons issued in contravention of the provisions of this rule shall upon the application of the defendant be dismissed with costs.

4. The person so appointed as aforesaid to issue the process for any periodical court shall be furnished with a book, corresponding to the civil record book mentioned in the sixth rule of the courts of resident magistrates, which book shall be called "Civil Record Book of the Periodical Court at \_\_\_\_\_," and in which book such person as aforesaid shall make entries similar to the entries proper to be made in the civil record book kept by the clerk of the court, and the resident magistrate at every sitting of any periodical court after the first sitting thereof shall sign the said book in attestation of its correctness.

No. 9—1857.

Officer issuing process of periodical court to keep civil record book

5. The several duties which are by the rules, orders, and regulations of the courts of resident magistrates appointed to be performed by the clerk of the court shall be performed in regard to any periodical court by the person appointed as aforesaid to issue the process of such periodical court, who shall be entitled to demand and shall receive and account for the same fees which the clerk of the said court would be by law entitled to demand and receive: Provided however that the resident magistrate himself or the clerk of the court of resident magistrate of the district if present shall be entitled to perform in any periodical court such of the duties aforesaid as such magistrate or clerk may see fit to undertake.

To act also as clerk of the court and receive fees.

Magistrate or clerk of district court if present may act.

6. The process for the execution of any sentence or judgment pronounced in any civil case determined in any periodical court shall be issued by the person appointed as aforesaid to issue the process of such periodical court, and shall be directed to and be executed and returned by the messenger of the resident magistrate's court of the district or by such other person as the resident magistrate shall from time to time by any writing under his hand nominate and appoint; and every such lastmentioned person shall have and possess the same powers and authorities, and be burthened with the same duties, and be entitled to the like fees as if such person were himself the messenger aforesaid: Provided that the said messenger shall not be bound to execute the process of any periodical court, but that should any such process be executed by him his fees and charges for executing the same shall be calculated and regulated precisely as if the place of holding such periodical court had been the stated and ordinary place for holding the court of resident magistrate for the district, and such messenger shall not be entitled to claim fees or charges as if the said process had been issued to him from or out of the stated and ordinary court. And a warrant for commitment in civil imprisonment or for the delivery up of possession of premises shall be deemed to be process of execution within the meaning of this rule.

Judgment in civil cases to be issued by the officer issuing process and to be executed by the messenger of the district court or other person thereto appointed.

Messenger of district court not bound to execute process of periodical court, but if so employed not to charge fees as in ordinary court.

7. Any party intending to appeal against any judgment or sentence of any periodical court shall make known his intention so to do to the person aforesaid appointed to issue the process of such court at any time within ten days next after the day on which such judgment or sentence shall have been pronounced; and thereupon the thirty-third, thirty-fourth, and thirty-fifth rules of the courts of resident magistrates shall apply to such appeal precisely as if the said sentence or judgment had been pronounced by the court of resident magistrate at the stated and ordinary

Appeal from periodical court to be notified within ten days to the officer issuing process

How such appeal to be prosecuted.

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place for holding the said court and as if the person so appointed to issue process were the clerk of the court.

Costs in periodical court to be taxed by officer issuing process under control of the magistrate.

8. The taxation of costs and expenses as in the thirty-sixth rule of the courts of resident magistrates directed shall be made in all periodical courts by the person appointed to issue the process of such court, but under the immediate supervision and control of the resident magistrate, who shall sign or place his initials to the bill of costs when taxed, in token that he has examined and approved of the charges therein contained.

In an appeal from periodical court magistrate and not clerk to transmit proceedings.

9. As often as the judgment or sentence of any periodical court shall be appealed from the resident magistrate and not the clerk of the court shall transmit the proceedings in the fifty-ninth rule of the courts of resident magistrates mentioned, and shall also transmit a certificate under the hand of such magistrate, which certificate shall be in substance the same as the certificate in the said rule set forth.

Meaning of term "periodical court."

10. In construing these rules the words "periodical court" shall mean a court of resident magistrate held elsewhere within any district than at the place appointed as the stated and ordinary place for the holding of such court.

IN CRIMINAL CASES.

Process in criminal cases to be issued by any person appointed thereto by Government notice.

11. The process mentioned in the seventieth rule of the courts of resident magistrates may be issued by any person, whether a justice of the peace or not, who shall be appointed by any Government notice in the Government Gazette to issue the said process, and such person, whether a justice of the peace or not, may be appointed by such notice, and a proclamation shall not be necessary.

Officer issuing process may conduct criminal prosecution.

12. The person by whom the criminal process for any periodical court shall be issued shall be entitled, subject to the discretion of the resident magistrate, to assist in conducting the prosecution in any criminal case which shall be pending therein.

No. 10—1857.] AN ACT [June 29, 1857.

For Providing for the Building and Improvement of Public Prisons.

Preamble.

WHEREAS the state and condition of the greater number of the public prisons of this colony are such that the same are wholly unfit not only for the due classification but for the necessary safe custody of the prisoners placed therein: And whereas it is expedient to make provision for raising so much of the several sums in the schedule of this Act set forth as the ordinary revenue of the colony may be insufficient to meet: 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:

If the ordinary revenue be insufficient for the purposes of this Act the deficiency may be raised on debentures.

I. In case the ordinary revenue of the colony shall be found insufficient to satisfy and meet all and singular the several sums of moneys in the schedule to this Act set

forth, amounting together to the sum of thirty-eight thousand four hundred and fifty pounds sterling, then and in that case it shall and may be lawful for the Governor of this colony to raise and take up upon debentures so much of the said sums as the ordinary revenue of the colony for the time being shall be insufficient to satisfy and meet.

II. Such debentures shall be issued for sums not exceeding one hundred pounds nor less than fifty pounds each, and shall be signed by the Treasurer and by the Auditor of the colony, and shall bear interest at the rate not exceeding six per cent. per annum.

Debentures not to exceed one hundred pounds, to be signed by Auditor and Treasurer, and bear six per cent. interest.

III. The Governor shall from time to time out of the current revenue of the colony pay the interest upon the said debentures, and may also from time to time pay off and discharge such debentures: Provided that they shall be paid off and discharged as nearly as may be practicable in the order of the dates of their issue, and that no such debenture shall be so paid off until after three months' previous notice in the Government Gazette of this colony of the intention of the Government so to discharge it.

Interest to be paid out of the general revenue

Debentures may be paid off at three months' notice.

IV. All such debentures as aforesaid shall be disposed of by public tender upon the best terms, not being less than par, that can be thus obtained: Provided that if more tenders than one offering the same terms shall be received for a greater amount of debentures than the amount then about to be issued it shall be lawful to accept any one or more of such tenders or any part of any such tender as circumstances may make expedient.

To be disposed of by tender.

One or more tenders may be accepted.

SCHEDULE.

|                                                                                                    |           |   |   |
|----------------------------------------------------------------------------------------------------|-----------|---|---|
| Somerset East, enlarging and repairing gaol                                                        | . £1,000  | 0 | 0 |
| Colesberg, do. do.                                                                                 | . 800     | 0 | 0 |
| Alice, new gaol                                                                                    | . 2,000   | 0 | 0 |
| Fort Beaufort, enlarging and repairing gaol                                                        | . 1,500   | 0 | 0 |
| Cradock, new gaol                                                                                  | . 2,000   | 0 | 0 |
| Burghersdorp, do.                                                                                  | . 2,000   | 0 | 0 |
| Fort Peddie, do.                                                                                   | . 1,500   | 0 | 0 |
| Stockenstrom, do.                                                                                  | . 1,500   | 0 | 0 |
| Graaff-Reinet, do, with purchase of ground, less amount to be realized by the sale of old premises | . 5,000   | 0 | 0 |
| Uitenhage, alterations                                                                             | . 800     | 0 | 0 |
| Bathurst, new gaol                                                                                 | . 800     | 0 | 0 |
| Richmond, do.                                                                                      | . 1,000   | 0 | 0 |
| Malmesbury, do.                                                                                    | . 1,500   | 0 | 0 |
| Stellenbosch, repairs to gaol                                                                      | . 350     | 0 | 0 |
| Paarl, do.                                                                                         | . 300     | 0 | 0 |
| Clanwilliam, do.                                                                                   | . 200     | 0 | 0 |
| Carried over                                                                                       | . £22,250 | 0 | 0 |

No. 10—1857.

|                                                                                                                                          |                           |         |   |   |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|---------|---|---|
|                                                                                                                                          | Brought forward . . . . . | £22,250 | 0 | 0 |
| Worcester, repairs to gaol . . . . .                                                                                                     | . . . . .                 | 500     | 0 | 0 |
| George, do. . . . .                                                                                                                      | . . . . .                 | 800     | 0 | 0 |
| Beaufort, do. . . . .                                                                                                                    | . . . . .                 | 800     | 0 | 0 |
| Mossel Bay, new gaol . . . . .                                                                                                           | . . . . .                 | 1,800   | 0 | 0 |
| Swellendam, additions and repairs . . . . .                                                                                              | . . . . .                 | 1,500   | 0 | 0 |
| Tulbagh . . . . .                                                                                                                        | . . . . .                 | 800     | 0 | 0 |
| Queen's Town, new gaol . . . . .                                                                                                         | . . . . .                 | 2,000   | 0 | 0 |
| Hope Town, Victoria, Prince Albert, Bredasdorp,<br>Alexandria, Bedford, Middelburg, Knysna,<br>Aliwal, and Calvinia, each £800 . . . . . | . . . . .                 | 8,000   | 0 | 0 |
|                                                                                                                                          |                           | <hr/>   |   |   |
|                                                                                                                                          |                           | £38,450 | 0 | 0 |

No. 11—1857.] AN ACT [June 29, 1857.  
For Promoting the Construction of a Harbour of  
Refuge in Table Bay.\*

Preamble.

WHEREAS the construction of a Harbour of Refuge in Table Bay would tend in a very high degree to secure the safety of life and property and to advance the interests of trade and commerce: And whereas a comprehensive plan for the construction of such a harbour was some time since prepared by Captain James Vetch, R.E., F.R.S., engineer to the Admiralty in England, and was, after being submitted to and approved of by the Right Honourable the Lords Commissioners of the Admiralty, transmitted to this colony by the Right Honourable the Secretary of State for the Colonies for the consideration of the Colonial Parliament, which plan has in all its main features deservedly met with universal approval in this colony: And whereas there is reason to believe that her Majesty's Government taking into consideration the advantages which would be secured by the proposed harbour to the shipping engaged in the great trade carried on round the Cape of Good Hope as well as to this colonial possession in particular, will be disposed to undertake at once the construction of the said harbour, and to advance to such an extent as shall be requisite the necessary funds upon condition that the cost of constructing the said harbour shall be repaid by this colony in payments of not less by the year, and in any one year, than twenty-five thousand pounds sterling; such payments to commence with and be reckoned from the commencement of the work, and to be continued yearly and every year until the whole cost of constructing the said harbour shall be defrayed: And whereas it is necessary to provide by law for such payments as aforesaid, which may most expediently be done by devoting to the construction of the said harbour all wharfage and crantage dues levied in Table Bay, as well as all

\* Repealed by Act No. 20 of 1858.

moneys to arise from the sale or from the leasing of all or any Crown land which will be reclaimed or be made valuable by means of the said harbour: And whereas it is further necessary that the general revenue of the colony should be charged with the payment of all sums which may from time to time be required in addition to the revenues aforesaid to make good to her Majesty's Government annual payments of not less than twenty-five thousand pounds sterling: And whereas it is expedient that the Ordinance No. 1, 1848, entitled "An Ordinance for Improving the Port of Table Bay," should be repealed, and that the land and ground described by the second and third sections of the said Ordinance, and thereby vested in the board of commissioners mentioned in the said Ordinance, should be vested in her Majesty the Queen in her Colonial Government, and that the wharfs and harbour of Table Bay should be placed under the direct management and control of the Colonial 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:

I. When and as soon as the Governor of this colony for the time being shall by proclamation in the Government Gazette announce and make known that the construction of a harbour of refuge in Table Bay has been commenced, then all and singular the existing dues of wharfage and crantage payable in Table Bay shall from and after such date as shall be fixed for that purpose in and by such proclamation be doubled, and such increased dues shall thenceforth be payable and be paid: Provided that nothing in this Act contained shall extend to alter or affect the dues of wharfage and crantage payable at Simon's Town.

As soon as the Governor shall announce that the construction of harbour of refuge has commenced the wharfage dues to be doubled.

Act not to extend to Simon's Town.

II. The Ordinance aforesaid, No. 1, 1848, 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 in the said Ordinance mentioned at the time of the taking effect of this Act are hereby vested in her Majesty the Queen in her Colonial Government.

Ordinance No. 1, 1848, repealed.

Lands vested in harbourboard transferred to the Government.

III. 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 aforesaid, and which shore or land is now vested in the commissioners of the Municipality of Cape Town, is hereby vested in her said Majesty the Queen in her said Colonial Government.

Certain beach and other waste lands vested in the colonial Government.

IV. All moneys which shall have arisen from the accumulations of dues of wharfage and crantage 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 crantage 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

Wharfage dues and revenues from waste and reclaimed lands vested in the Government for the purposes of the harbour.

No. 11—1857.

But may be disbursed in repairing wharfs in Table Bay.

Separate accounts of such moneys to be kept.

On commencement of harbour the accumulated wharfage dues to be paid over to her Majesty's treasury.

Wharfage dues and revenues from lands to be similarly from time to time paid over

If such payments fall short of twenty-five thousand pounds annually difference to be paid out of the general revenue.

If the annual collections exceed twenty-five thousand pounds the excess not to be deducted from the payments to H.M.'s treasury.

grounds in the second and third 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 the construction of the harbour, 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 harbour so much of the moneys arising from wharfage and crantage dues for the time being as shall be needful for extending or for keeping the present wharfs in Table Bay or any of them in sufficient repair.

V. 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 crantage from the proceeds of the sales or leases of land.

VI. At and upon the commencement of a harbour of refuge in Table Bay there shall be payable and be paid from and out of the treasury of this colony to the Right Honourable the Lords Commissioners of her Majesty's Treasury, through the officer in charge of the military chest in this colony or in such other manner as their lordships shall direct, all the then accumulated proceeds of wharfage and crantage previously levied in Table Bay.

VII. From time to time after the payment over of the accumulations aforesaid and at such periods as shall be arranged between her Majesty's Government and the Government of this colony there shall be payable and be paid by the Government of this colony to her Majesty's Government in manner aforesaid the net proceeds of the wharfage and crantage dues for the time being, as well as the net revenue which shall have arisen from sales or leases of any of the land or ground aforesaid.

VIII. In case it shall at any time happen that the accumulations so to be paid over aforesaid and the other payments to be made as in the last preceding section mentioned shall fall short of a sum equal to the aggregate amount of a series of annual payments of twenty-five thousand pounds sterling each reckoned from the date of the commencement of the said harbour, then the difference or deficiency shall from time to time and at all times be a charge upon the public revenue of the colony, and shall by warrant of the Governor for the time being be paid in manner aforesaid to her Majesty's Government: Provided that if the net proceeds of the dues and revenues aforesaid should in any or every year exceed the sum of twenty-five thousand pounds the whole of the said proceeds shall nevertheless be paid to her Majesty's Government, without any deduction for or on account of any sum or sums which may previously have been paid out of the public revenue in aid of the said dues and revenues for the



purpose of making good to her Majesty's Government payments amounting on the average to not less than twenty-five thousand pounds per year, reckoned from the date in that behalf aforesaid.

IX. When and as soon as the whole cost and charge of constructing the harbour aforesaid shall have been repaid to her Majesty the Queen, who will it is believed be graciously pleased to forego any claim for interest upon the amounts by which the periodical payments to be made as aforesaid by this colony may fall short of the sums for the time being expended in the execution of the work, the rates of dues of wharfage and crantage to be afterwards levied in Table Bay for the purpose of maintaining the said harbour and of gradually repaying therefrom and from the land revenues aforesaid for the time being such sums if any as shall have been paid by or out of the public revenue for the purpose of making good the annual payments aforesaid to her Majesty's Government shall be fixed and settled by some Act or Acts to be hereafter in that behalf enacted.

X. The fifth section of the Ordinance aforesaid, No. 6, 1851, is hereby repealed, and the management of the wharfs in Table Bay and of the dues of wharfage and crantage levied in Table Bay and to be applied to the construction of the harbour of refuge aforesaid are hereby vested in the Colonial Government.

No. 11—1857.  
When cost of constructing the harbour shall have been repaid, a new tariff of wharfage dues to be fixed by law.

Fifth section of Ordinance 6, 1851, repealed, and management of wharfs vested in Colonial Government.

No. 12—1857.]                      AN ACT                      [June 29, 1857.  
For Constituting certain Districts of this Colony  
Divisions.

**W**HEREAS 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.

I. So much of the Ordinance for constituting a Parliament in this colony, and commonly called the Constitution

Repugnant parts of Constitution Ordinance repealed.

No. 12—1857.

Ordinance, as is repugnant to or inconsistent with this Act is hereby repealed.

Certain districts to be fiscal divisions.

II. 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 re-constituted in each of the new divisions.

III. 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.

IV. 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.     |

No. 13—1857.] AN ACT [June 29, 1857.

For Removing all Doubts regarding the Validity of  
the Marriages of certain Military Settlers.

WHEREAS certain of the men belonging to the British-German Legion and about to emigrate to South Africa as military settlers were married in England upon the eve of embarkation, whilst certain other members of the same force were married as soon as they had put out to sea: And whereas the said marriages were all of them entered into in good faith, and solemnized by chaplains of the said force or by other ministers of religion; and it is just and expedient, for the sake of the said married people and their issue, to prevent any doubts or questions being raised at any future time in regard to the validity of such marriages, grounded upon the want or supposed want of certain formalities with which by reason of haste and other circumstances it was impracticable to comply: And whereas it has been found impracticable to obtain for the purpose of being embodied in this Act a correct list of the marriages aforesaid: And whereas it is expedient that the Governor of this colony should be empowered by any proclamation or proclamations to be by him published in the Government Gazette to proclaim the names of the married people whose marriages shall by this Act be declared valid: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

Preamble.

I. It shall be lawful for the Governor aforesaid as soon as he shall have obtained a correct and authentic list of the marriages described in the preamble of this Act to publish the same by proclamation or proclamations in the Government Gazette, and the marriage of each husband and wife whose names shall be set forth in any such proclamation or in any schedule to any such proclamation as married people, married to each other, is hereby declared to have been and to be a legal, valid, and effectual marriage to all intents and purposes, precisely as if such names had been inserted in this Act and such marriage had been by this Act declared valid: Provided always that nothing in this Act contained shall be construed so as to render valid any marriage which would by reason of the consanguinity or affinity of the parties to such marriage or a former and still subsisting marriage of either of them be void, *ab initio*, by the law of England, notwithstanding that such marriage had been solemnized in manner and form in every respect as by the law of England prescribed and required.

Governor to proclaim the names of the married parties. Such marriages declared valid.

Unless illegally contracted.

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No. 14—1857.] AN ACT [June 29, 1857.

To Regulate till the Expiration of the Year 1858 the Dealing in Gunpowder, Firearms, and Lead.

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 obnoxious portions thereof, to continue until end of 1858.

I. 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.

II. 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: 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.

III. 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 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.

Form of permission.

Licensed dealer receiving such permission may have 100 lbs. of gunpowder.

IV. 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.

V. 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 purpose 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 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

No. 14—1857.

Provided it be safely stored.

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, Ord. 2, 1853, to apply to every fresh application.

No. 14—1857.

Solemn declaration to be made.

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 for perjury to apply to false declaration.

VI. 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.

VII. 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.

VIII. 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 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 fifty pounds or to imprisonment with or without hard labour for any period not exceeding six months.

All gunpowder mentioned in such certificate to be removed within three days.

Penalty for contravention.

IX. 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.

No. 14—1857.

In indictments, not necessary to quote any other laws than Ordinance No. 2, 1853, as amended by this Act.

No. 15—1857.]                      AN ACT                      [June 29, 1857.

For Enabling Municipalities to obtain additional Police by contributing towards the Expense thereof.

WHEREAS in certain of the municipalities of this colony the want of an adequate and efficient body of police for the prevention of crime and the preservation of peace and order has for some time been seriously felt by the inhabitants: And whereas whilst the expense of some policemen at each of the several seats of magistracy, to be employed in the execution of criminal warrants, the safe keeping of offenders, and the conduct of the criminal business of the courts held in and for the several districts of this colony, may fitly and properly be borne by the public revenue, it will be necessary that the inhabitants of such municipalities as may desire the advantage of a body of police sufficiently numerous to patrol their streets, prevent drunkenness and disorder, and perform other duties of a like nature within the municipal limits should contribute towards the expense of such police: And whereas from the claims upon the public revenue which the inhabitants of municipalities, regarded as contributors thereto, must be considered as possessing, it would not be just to require such municipalities to contribute towards the expense of such additional police more than one half of the cost and charge thereof, leaving the other half of such cost and charge to be borne by the public revenue: And whereas there is reason to believe that certain municipalities would be desirous to obtain a more efficient police force upon the terms just referred to: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

Preamble.

I. It shall be lawful for the municipal commissioners of any municipality acting in pursuance of the vote or decision of a meeting of the resident householders thereof to communicate to the resident magistrate of the district that such

Municipal commissioners acting upon a decision of a meeting of householders may intimate to the magistrate their desire to co-operate for the purposes of this Act.

No. 15—1857.

Such meeting to be called in due form.

Magistrate, on receiving such intimation, to ascertain, by conference with the municipality, the number and probable cost of the additional police required, who shall be provided for under this Act.

Number and cost of such police to be reported to the Governor, who may desire the number to be reduced, if excessive.

If approved by Governor, such approval to be communicated to municipality.

Municipal commissioners, after receiving Governor's approval, may call a meeting of householders to assess a police rate.

Rate assessed to be for one year, or annually for not exceeding three years.

Such meetings may be called so long as this Act is availed of.

municipality is desirous of availing itself of the provisions of this Act: Provided that no such meeting shall be held unless upon a notice setting forth the object of such meeting, and published in whatever manner shall be by law directed in regard to the meetings of resident householders in such municipality for not less than twenty-one days.

II. Every resident magistrate receiving any such communication as aforesaid shall by conference or correspondence with the municipal commissioners ascertain what number of policemen in addition to the police force for the time being such commissioners desire; and such magistrate shall in conjunction with the said commissioners frame a detailed estimate of the probable cost per year of such additional policemen: Provided that, thereafter, the police force for the time being to be maintained exclusively from and out of the public revenue in the district of which such seat of magistracy is or shall be a municipality shall be the number set forth as regards such seats of magistracy in the schedule annexed to this Act, leaving all additional policemen to be provided for under this Act.

III. As soon as the number and the estimated cost of such additional policemen shall have been agreed upon between the resident magistrate and the municipal commissioners the resident magistrate aforesaid shall report the particulars for the consideration and approval of the Governor of the colony, who may in case the number or cost shall appear to him to be unnecessarily large communicate through the said magistrate with the municipal commissioners, for the purpose of agreeing upon some smaller number or reduced cost.

IV. As often as the Governor aforesaid shall approve of the number and cost of additional policemen as originally submitted or as subsequently reduced he shall signify such approval to the resident magistrate, who shall in writing communicate the same to the municipal commissioners.

V. It shall be the duty of any municipal commissioners to whom any such approval as in the last preceding section shall have been communicated, should they not already have been placed in possession of funds applicable to and sufficient for defraying one half of the cost of such additional policemen for a period of not less than one year, to call upon a notice of not less than fourteen days a meeting of resident householders for the purpose of assessing a police rate for defraying one half of the cost of the said policemen, and such rate shall be regarded as a rate duly assessed by virtue of the Ordinance or Law under which such municipality shall have been established: Provided that at such meeting as aforesaid a police rate may be assessed for one year only or successive annual police rates may be then assessed for any number of years not exceeding three: And provided that meetings of resident householders



shall and may be called in manner aforesaid for the purpose of assessing the necessary police rate so long as such municipality shall continue to avail itself of the provisions of this Act.

No. 15—1887.

VI. When and as soon as the municipal commissioners aforesaid shall have paid to the civil commissioner of the division acting for and on behalf of the colonial treasury one half of the estimated cost of such additional policemen for one year, the resident magistrate of the district shall with all convenient speed nominate and appoint the additional policemen agreed to by the municipal commissioners and approved of by the Governor.

When half the estimated cost for one year has been paid by the municipal commissioners the magistrate to appoint the additional police.

VII. Such additional policemen shall be deemed and taken to be appointed under the Ordinance No. 25 of 1847, entitled, "An Ordinance for Improving the Police of the Colony," and shall possess all the powers and perform all the duties belonging to the members of the police force in the said Ordinance mentioned: Provided however that the stated and ordinary duties of a number of the police force of the district not less than the number of such additional policemen shall be confined within the limits of the municipality which shall have desired to have such additional policemen: Provided however that every member of the police force aforesaid, whether his stated and ordinary duties be confined within the municipal limits or not, may proceed and act beyond the said limits when engaged in the pursuit of an offender flying from justice or when the exigency of some particular occasion shall induce the resident magistrate, or in his absence the chief constable, to order one or more of the members of the said police force to repair to and perform duty at some place other than the said municipality within the district of such magistrate.

Duties of additional police.

Proportion of ordinary police to be retained for duty within the municipality.

VIII. A true and correct account shall be kept of the cost in each respective district of the additional policemen desired by and employed in any municipality within such district, and a copy of such account or an abstract thereof shall be furnished to the municipal commissioners of such municipality at the expiration of one year from the date of the payment by the civil commissioner in the sixth section mentioned; and so on from year to year as long as such municipality shall continue to avail itself of the provisions of this Act and shall pay to the civil commissioner of the division from year to year, in advance, one half of the estimated annual cost of the additional policemen.

Civil commissioner to furnish an annual account of the expense of such additional police to commissioners of municipality, who will pay one half in advance.

IX. Should the actual expenditure in any year have fallen short of the estimated expenditure so that the sum paid in as aforesaid exceeds in amount one half of such actual expenditure the excess shall be repaid by the Colonial Government to the municipality; and *vice versa*, should the actual expenditure have exceeded the estimated expenditure the municipality shall make good to the Colonial Government one half of such actual expenditure.

If the actual expenditure falls short of the estimate, difference to be restored to municipality, and *vice versa*.

No. 15—1857.

Municipality to give three months' notice before ceasing to avail itself of this Act.

X. Should any municipality which shall have availed itself of the provisions of this Act become afterwards desirous to cease to do so it shall be necessary for the municipal commissioners of such municipality to give to the Colonial Government through the resident magistrate of the district, not less than three months before the expiration of the year for which such municipality shall have made its latest payment under this Act, notice in writing that at and after the expiration of the current year the said municipality will cease to avail itself of the provisions of this Act; and thereupon steps shall be taken to dismiss at the expiration of the said year all additional policemen or a number of the police force for the time being equal to the number of additional policemen.

If municipality neglect to give such notice, police to be continued for three months at its expense.

XI. Should any municipality neglect to give such notice as aforesaid then it shall be lawful for the Colonial Government to continue in employment such additional policemen as aforesaid until the expiration of three months from the last day of that month on any day of which month notice shall be given by such municipality to the resident magistrate aforesaid that such municipality desires to cease to avail itself of the provisions of this Act, and one half of the cost of all additional policemen employed by desire of such municipality down to the expiration of such three months shall be payable by such municipality to the Colonial Government, and may be recovered by the Colonial Government from the municipal commissioners for the time being by action in any competent court.

Municipality may, with the consent of householders, add to or reduce the additional police.

XII. It shall be lawful for any municipality which shall have desired and received in manner aforesaid any particular number of additional policemen afterwards to add to or reduce that number as circumstances may require, and thereupon the provisions of this Act shall apply to such altered number: Provided that the number of additional policemen for the time being shall not be altered except in pursuance of the vote or decision of a meeting of resident householders, called upon a notice similar to that in the first section of this Act mentioned: Provided further that as often as the number of additional policemen for the time being shall be increased, one half of the estimated cost of such increase shall be paid by the municipality to the civil commissioner before such increased number shall be employed: And provided also that as often as the number of additional policemen shall be reduced the provisions of the ninth and tenth sections of this Act shall apply to the number of policemen proposed to be reduced, precisely as if the number proposed to be reduced were the whole number of additional policemen for the time being and as if such municipality were desirous to cease altogether to avail itself of the provisions of this Act.

Moiety of expense to be paid before any addition takes place.

Sections 9 and 10 to apply in respect of policemen proposed to be reduced.

XIII. The provisions of this Act shall apply to all the municipalities within this colony for the time being except the municipality of Cape Town.

No. 15—1857.  
Act to apply to all municipalities except Cape Town.

SCHEDULE.

| District.          | Municipality.      | Number and Description of Police Force.                 |
|--------------------|--------------------|---------------------------------------------------------|
| Albany.....        | Graham's Town..    | 1 chief constable and 9 constables, including turnkeys. |
| Port Elizabeth...  | Port Elizabeth...  | 1 do. and 7 do. do.                                     |
| Graaff-Reinet....  | Graaff-Reinet....  | } Each 1 do. and 5 do. do.                              |
| Uitenhage .....    | Uitenhage.....     |                                                         |
| Albert .....       | Burghersdorp....   | }                                                       |
| Beaufort West...   | Beaufort West...   |                                                         |
| Caledon.....       | Caledon.....       | }                                                       |
| Cradock .....      | Cradock.....       |                                                         |
| Colesberg.....     | Colesberg.....     | }                                                       |
| Fort Beaufort ...  | Fort Beaufort ...  |                                                         |
| George .....       | George .....       | } Each 1 do. and 4 do. do.                              |
| Paarl.....         | Paarl.....         |                                                         |
| Queen's Town...    | Queen's Town...    | }                                                       |
| Somerset .....     | Somerset .....     |                                                         |
| Stellenbosch ..... | Stellenbosch ..... | }                                                       |
| Swellendam .....   | Swellendam .....   |                                                         |
| Victoria .....     | Alice .....        | }                                                       |
| Worcester .....    | Worcester.....     |                                                         |
| Mossel Bay.....    | Aliwal South ....  | } Each 1 do. and 3 do. do.                              |
| Middelburg.....    | Middelburg .....   |                                                         |
| Riversdale .....   | Riversdale .....   | } Each 1 do. and 2 do. do.                              |
| Aliwal North....   | Aliwal North....   |                                                         |
| Richmond.....      | Richmond.....      |                                                         |

No. 16—1857.] AN ACT [June 29, 1857.  
To Consolidate the Laws relating to Quarantine and Port Regulations.

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 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.

I. 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

Ordinance 65 and Ordinance 4 of 1844 repealed.

No. 16—1857.

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.

Interpretation of terms.

II. 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.

#### QUARANTINE REGULATIONS.

Act to apply to her Majesty's ships and ships of foreign nations.

III. 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 regulations contained in this Act concerning quarantine and the prevention of infection.

Penalties for communicating with the shore before pratique.

IV. Any commander or master of a vessel arriving at any port or place in this 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 has received pratique from the port-captain or health officer or other person duly authorized by the port-captain in the manner hereinafter mentioned, and before the health flag has been hoisted in token thereof, shall forfeit for every such offence the sum of twenty pounds; and if it be proved that any malignant disease of a contagious or infectious nature existed on board the said vessel when such communication or attempt at communication took place, then every commander, master, or other person so offending shall be liable to the penalty of one hundred pounds.

Penalty for boarding or going alongside before pratique.

V. Any person from the shore, or from any vessel in any of the ports of this colony, or from any fishing or other boat, except the officers authorized under this Act, boarding or going alongside any 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 herein-after described shall forfeit for every such offence a sum not exceeding twenty pounds, and in default of payment shall be imprisoned for six months.

VI. The foregoing provisions shall not extend to any vessel arriving coastwise from any other port or place of this colony and not having had any intercourse by means of boats during the voyage with any other vessel than a vessel on a coasting voyage.

Foregoing provisions not to affect vessels coastwise.

VII. If at any time it should be necessary for the port-captain 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, every such person or 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-captain or boat's crew have communicated as aforesaid be afterwards placed under quarantine by a competent authority the said port-captain or boat's crew shall remain in quarantine also and become subject to all the provisions of this Act relating thereunto.

Port captain or other person, in case of distress, boarding before pratique, to remain in quarantine until vessel is released therefrom.

VIII. On the arrival of any vessel in any port of this colony the commander or master thereof shall upon being furnished by the port-captain or health officer or other person duly authorized with a printed declaration of health, according to the form in schedule A hereunto annexed, 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.

When declaration of health is signed by the master, pratique to be given.

IX. If after the commander or master of any vessel arriving as aforesaid has signed the declaration of health as aforesaid it should appear that any malignant disease of a contagious or infectious nature had shown itself on board of such vessel during the voyage to this colony with the

Signal that pratique is granted.

Penalties for false declaration of health.

No. 16—1857.

knowledge of such commander or master, or if it should appear that the statement made in the declaration or in the answers to questions therein inserted in any way wilfully misrepresented the facts of the case, such commander or master shall forfeit the sum of fifty pounds; and if it be proved that any malignant disease of a contagious or infectious nature actually prevailed on board the said vessel at the time that the declaration was signed and with the knowledge of the commander or master the said commander or master so offending shall forfeit the sum of one hundred pounds.

If master shall not feel warranted to sign declaration of health, or if troops or convicts be on board, or if vessel has visited African or adjacent coast, health officer to make inquiry, and grant or withhold pratique.

X. 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 aforesaid declaration of health, or if such vessel have troops or convicts on board or have touched at any of the ports or places on the coast of Africa or adjacent islands not within the limits of this colony, the health officer or other person duly authorized to act for him shall in every such case make every necessary inquiry into the state of health of the officers, passengers, crew, troops, and convicts; 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 out-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 reasonable doubt or suspicion vessel to be placed in quarantine, and reported to Colonial Secretary or other local authority.

How if vessel is placed in quarantine.

XI. If the 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 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-captain 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 of twenty pounds; and during the night the commander or master of any vessel so placed in quarantine shall in lieu of such yellow flag hoist or cause to be hoisted at the fore-top-gallant-mast head two lighted lanterns, one over the other, under a similar penalty of twenty pounds.

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Penalty for failing to show quarantine signal.

XII. In case of the illness or other necessary absence of the officer of health the captain of the port may give pratique to any vessel whereof the commander or master has signed the health certificate as aforesaid, provided such vessel has not troops or convicts on board and has not touched at or communicated with vessels coming from any of the ports or places on the coast of Africa or adjacent islands not within the limits of this colony; in any of which cases the port-captain shall not give pratique, but a competent officer shall be expressly appointed to act for the health officer, and shall proceed as has been directed in the foregoing ninth section of this Act.

Port-captain may in the absence of health officer, give pratique.

Except in cases mentioned in tenth section

XIII. At any out-port of this colony for which no health officer or port-captain 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 out-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-captain; 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-captain respectively, and is to be considered and obeyed as such.

Who may act as health officer at out-ports.

XIV. The Governor for the time being of this colony, by and with the advice of his Executive Council or of any two members thereof, may with respect to any vessel arriving in a port thereof and having any malignant disease of an infectious or contagious nature on board, or on board of which any such disease may have appeared in the course of the voyage, or arriving under any alarming or suspicious circumstances as regards the public health, give directions through the health officer or other competent officer acting for him for cutting off all communication between such vessel or any persons infected with such disease and the rest of her Majesty's subjects or inhabitants of this colony, by placing the said vessels, together with their crews, passengers, letters, goods, wares, and other merchandise, in quarantine, according to the circumstances of each particular case; and likewise may give orders for shortening the period of quarantine or for mitigating it or for wholly releasing the said persons, letters, goods, or vessels from quarantine, as to him may seem proper.

Governor with the advice of the Executive Council may prohibit all communication between a vessel and the inhabitants of the colony.

Such prohibition to extend to crews, passengers, goods, mails, &c.

But may be mitigated or cancelled.

XV. The resident magistrate, or in the absence of such officer any justice of the peace, at or near any out-port of

Magistrate or other officer at an out-port may impose quarantine.

No. 16—1857.

But report to Colonial Secretary.  
Health officers and port-captains may do likewise.

this colony 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 out-port), and shall forthwith report the same to the Colonial Secretary; and the health officers and port-captains 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.

Persons in quarantine to be under the orders of health officer, &c.

XVI. 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-captain 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 knowingly and wilfully attempting to escape or to evade the performance of quarantine, or landing or attempting to land any letters, goods, wares, or merchandise so placed under quarantine, shall on conviction thereof be liable to a penalty of one hundred pounds.

Penalty for disobeying or neglecting such orders.

Guards may be placed over ships or persons in quarantine.

XVII. If in the case of any person placed in strict quarantine, either on board ship or in any lazaretto 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 strict 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.

And may use arms in enforcing the performance thereof.

Penalties for breaking quarantine regulations or connivance thereat.

XVIII. Any person not authorized under this Act who may wilfully and knowingly communicate with any vessel placed under quarantine, or with any persons under such quarantine, whether on board ship or on shore, or may carry away any goods, letters, wares, or merchandise placed under quarantine, and any officer, superintendent, guardian, or other person placed in charge of or as a guard over any vessel, persons, or goods under quarantine who may wilfully connive at or assist in any breach of the



quarantine regulations established under this Act, shall be liable to a penalty of one hundred pounds.

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PORT REGULATIONS.

XIX. 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 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 fifty pounds.

Ship's papers, &c., to be produced.

Penalty.

XX. The master of every merchant vessel arriving as aforesaid shall deliver all public mails intrusted 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 twenty pounds 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 two pounds.

Public mails, &c., to be delivered.

Penalty.

XXI. The respective port captains of the ports of Cape Town, Simon's Town, and Port Elizabeth shall upon the arrival of any vessel in the said ports between sunrise and sunset board her immediately, and if practicable previously 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.

Vessels arriving at Cape Town, Simon's Town, and Port Elizabeth to be boarded immediately and berths assigned them

XXII. 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 and 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

Port-captain to offer his services to her Majesty's ships and national vessels of foreign states.

No. 16—1857.

commander he shall point out a proper berth for such vessel.

Commander of such vessels to be supplied with a copy of this Act and port instructions.

XXIII. 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 transmit report of arrival to certain civil and naval authorities.

XXIV. 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.

Bond to be entered into by master at Cape Town, Simon's Town, and Port Elizabeth.

XXV. 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 one hundred pounds, 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 one hundred pounds: 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 against the master.

The like bond at other ports.

XXVI. 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.

On entering port, vessels' guns to be unloaded.

XXVII. 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 five pounds; 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 twenty pounds for every such offence; and any person discharging a

No firearms or rockets to be discharged or blue-lights burned, except in distress or with the permission of the port-captain.

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 two pounds, or in default of payment to imprisonment for a period not exceeding eight days.

No. 16--1857.

XXVIII. 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 his vessel during the removal of such gunpowder into or out of his vessel, under a penalty of not exceeding fifty pounds; 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 fifty pounds. 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.

Regulations to be observed when shipping or unshipping gunpowder.

XXIX. 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 fifty pounds.

No ballast, &c., to be cast into the harbour below high-water mark.

XXX. 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 five pounds for every death which may not have been so reported.

Deaths on board to be reported.

XXXI. 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 ten pounds.

No vessel to shift her berth without permission.

XXXII. The port-captain of each of the ports of Cape Town, Simon's Town, and Port Elizabeth is hereby empowered and required to use his utmost endeavours to recover as speedily as possible all anchors and cables which may have been parted with by merchant vessels riding at anchor in the aforesaid ports respectively, 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

Port-captain to recover parted anchors and cables and retain them until salvage is paid.

No. 16-1857.

the recovery thereof, in conformity with the rates fixed in the schedule B hereto annexed or with any other scale that may hereafter be appointed by the Governor; and no person except the port-captain or the master of any such vessel as aforesaid or any person duly authorized by either of them may attempt to perform such service under a penalty not exceeding ten pounds: Provided always that the master of any such merchant vessel which has parted from an anchor 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 the port-captain shall not before the expiration of such period proceed to recover any such anchor or cable except at the request of the master or his agent.

But the master may recover the same within five days.

If salvage be not paid within a specified time article to be sold.

XXXIII. If the salvage due in respect of any such anchors or cables be not paid to the port-captain by or on behalf of the party claiming or owning the same within seven days after the recovery thereof, the port-captain shall cause a notice to be published in the Government Gazette notifying the recovery of such article or articles, and stating that if the salvage due on account thereof be not paid within seven days from the date of the publication thereof the same shall be publicly sold.

How proceeds of such sale to be applied.

XXXIV. If the salvage together with any necessary expenses incurred be not paid within the time prescribed in such notice the port-captain may publish a notice of sale in the Government Gazette (not being less than seven days), and may cause such anchor or cable or other articles to be sold by public auction to the best bidder; and the produce thereof shall be applied—first to the payment of custom duties if liable thereto; next of salvage, charges of sale, and other necessary expenses; and 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 proceeds be claimed within one year after such date.

When proceeds of sale inadequate to cover salvage Government may supply the deficiency.

XXXV. If the produce of the sale so held as aforesaid be not sufficient after payment of the necessary charges to defray the salvage due in respect thereof, the Governor shall pay out of the colonial treasury to the port-captain the amount of salvage due or such portion thereof as such proceeds as aforesaid may not be adequate to cover. And also in such cases where search has been made by the port-captain for anchors or cables or other articles or things whatsoever which might obstruct the anchorage-ground the Governor may pay out of the colonial treasury such remuneration for such service as to him may seem reasonable.

Port-captains shall not sell anchors or cables or supply ships with anything for profit.

XXXVI. 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 Government 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.

Except in cases of distress.

XXXVII. 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, lodging-house-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.

XXXVIII. 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.

XXXIX. 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 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 fifty pounds.

Pilots must be licensed.

XL. 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

Mode of licensing pilots.

No. 16—1857.

Governor may cancel 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.

Employment of pilot optional with the master.

XLII. 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.

No specific rates of pilotage established.

XLIII. 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 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

XLIII. 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 ten pounds 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, lodging-house-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, &amp;c., to ships.

XLIV. 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

Moorings not to be laid down without permission of port-captain.

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 fifty pounds.

XLV. Every owner of a boat in this colony, whether used in the transport of merchandize 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 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 five pounds; and in case of the proprietor not being forthcoming such boat so employed without a licence shall be confiscated.

Boats to be licensed annually.

Penalty on boat without licence.

XLVI. No licence shall be granted for any boat as aforesaid until the owner thereof has given bond in the penal sum of twenty pounds 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

XLVII. 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.

XLVIII. If the owner of any boat licensed as aforesaid or if any boatman or any 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 two pounds for the first offence, the sum of five pounds for the second offence, and the sum of ten pounds for the third or any further like offence.

Penalty for carrying wines or spirits to a ship at anchor.

XLIX. 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.

L. On the transfer by sale or otherwise of any licensed boat as aforesaid the licence for such boat shall become

On transfer of licence becomes void.

No. 16—1857.

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.

How if fine be not paid on conviction.

L.I. 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.

Governor may remit fine.

L.II. The Governor if he shall see reason so to do may remit or mitigate any fine or forfeiture incurred under this Act.

Offences against the Act where cognizable

L.III. 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 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.

How fines to be applied.

#### SCHEDULE A.

##### FORM OF DECLARATION OF HEALTH.

###### *Questions.*

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. Any troops or convicts on board, and what number?
6. With what vessel communicated during the voyage?
7. Date or dates of such communication?
8. Has any person on board suffered any illness of any kind during the voyage? If so, what are the symptoms of the complaint?

I do hereby solemnly and truly declare to the best of my knowledge and belief that the vessel under my command is in a perfectly healthy state; and that during the voyage neither measles, small-pox, cholera morbus, nor any other malignant disease of a contagious or infectious nature has made its appearance on board, and that I have not touched at any port excepting as above mentioned, or been boarded by or communicated



with any vessel having to my knowledge and belief any of the above diseases on board; and I am ready to make this declaration on oath whenever I may be called upon so to do.

Given under my hand this — day of —, 18—.  
 \_\_\_\_\_, Commander or Master.

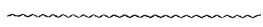
SCHEDULE B.

TARIFF OF SALVAGE CHARGES

*Payable for the recovery of Anchors and Cables parted with and for searching for the same.*

|                                                                                                                                                                                                                                                                                                   |    |    |   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|---|
| For every anchor having a buoy attached thereto, for every British hundredweight thereof ..                                                                                                                                                                                                       | £0 | 5  | 0 |
| For every chain cable above one inch, for every British hundredweight thereof .. ..                                                                                                                                                                                                               | 0  | 2  | 6 |
| For every chain cable of one inch or under, for every British hundredweight thereof .. ..                                                                                                                                                                                                         | 0  | 5  | 0 |
| Hemp or coir cables, warps, or hawsers to be charged in proportion to the relative size of chain cables.                                                                                                                                                                                          |    |    |   |
| For every anchor or cable not having a buoy attached thereto there shall be payable in addition to the above rate the following further charges for the services of the port-captain and his crew, and for the use of the boat and tackle employed in searching or sweeping for the same, namely: |    |    |   |
| For the superintendence of the port-captain, for each day so employed .. .. .                                                                                                                                                                                                                     | 0  | 5  | 0 |
| For each man of the crew .. .. .                                                                                                                                                                                                                                                                  | 0  | 2  | 6 |
| For the use of the boat and tackle .. .. .                                                                                                                                                                                                                                                        | 0  | 10 | 0 |

But in no case shall the above daily charges be made for any greater period than three days unless with the previous sanction of the Governor.



No. 17—1857.]                      AN ACT                      [June 29, 1857. Preamble.  
 To Incorporate the South African Museum.

WHEREAS the specimens of natural history and other public property deposited in the South African Museum have now become of considerable value: And whereas it is deemed expedient for public convenience and the promotion of literature and science that the books, coins, specimens of natural history, and other objects which this colony now possesses or may hereafter acquire by gift, bequest, purchase, or exchange should be deposited in the custody of trustworthy persons: And whereas his Excellency the Governor

No. 17—1857.

has already appointed a committee for the management and guardianship of the said museum and of the collections therein, and it is now deemed necessary that the members of the said committee should be incorporated as a board of trustees: Be it therefore enacted by his Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Board of trustees appointed.

I. A board of trustees composed as hereinafter mentioned shall be and is hereby constituted a body politic and corporate, by the name of "The Trustees of the South African Museum," by which name such body corporate shall have perpetual succession, and shall have a common seal, and shall by the same name from time to time sue and be sued, implead and be impleaded, answer and be answered unto in all courts of the said colony, and shall be able and capable in law to take, purchase, and hold to them and their successors all goods, chattels, and personal property whatever, either now deposited within the precincts of the South African Museum or hereafter to be acquired by gift, bequest, purchase, or exchange; and shall also be able and capable in law to take, purchase, and hold to them and their successors, not only such lands, buildings, hereditaments, and possessions as may from time to time be exclusively used and occupied for the immediate requirements of the said South African Museum, but also any other lands, buildings, hereditaments, and possessions whatever, situated in the said colony or elsewhere; and they and their successors shall be able and capable in law to grant, demise, alienate, and otherwise dispose of all or any of the property, real or personal, belonging to the said museum; and also shall be able and capable to borrow and take up moneys for the use and purpose of the said museum upon mortgage of the lands, tenements, books, coins, specimens of natural history, and other said objects belonging to the said museum, and upon the security of the moneys granted and payable to the said museum under this present or any future Act; and also to do all other matters and things incidental to or appertaining to a body politic and corporate.

To hold fixed and other property.

May raise money on loan.

Not sell or otherwise alienate lands without consent of Governor.

II. Provided always that it shall not be lawful for the said trustees to alienate, mortgage, lease, charge, or demise any lands, tenements, or hereditaments to which they may become entitled by grant, purchase, or otherwise, unless with the approval of the Governor of the said colony for the time being.

Museum when to be open free of charge.

III. The said South African Museum shall be kept open free of charge to visitors during at least four days in the week.

Who to be trustees.

IV. The said body corporate shall consist of three trustees, and shall consist of the following gentlemen,—

The Honourable Rawson William Rawson, Esq., Colonial Secretary, Thomas Maclear, Esq., Astronomer Royal, Ludovic Pappe, Esq., Doctor of Medicine,—being members of the present committee for the management of the said museum.

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V. All vacancies which may occur by death, resignation, absence from the colony, removal from office by the Governor or otherwise in the trustees aforesaid or in the trustees for the time being shall be filled up as they may occur by the said Governor, who shall announce every appointment by him of any trustee as aforesaid by proclamation in the Government Gazette.

Vacancies how to be filled.

VI. At every meeting of the said trustees two trustees shall form a quorum, and all questions shall be decided by the majority of votes of the trustees present, and in all cases of difference of opinion between the trustees when only two trustees are present the question shall be deferred till another meeting when all the trustees shall be present.

Quorum.

VII. The said trustees shall have the entire management and superintendence of the affairs, concerns, and property of the said museum; and in all cases not provided for by this Act it shall be lawful for the said trustees to act in such manner as shall appear to them best calculated to advance the objects of the said institution.

Duties of trustees.

VIII. The said trustees shall have power and authority to make and also repeal or alter all such by-laws, rules, and orders touching and concerning the management and good government of the said museum and the income and property thereof and any other matter or thing relative to the same as to them may seem fit for the effectual attainment of the objects of the institution, the security of its property, and the administration of its concerns; and all such by-laws, rules, and orders shall be presented to the Governor: and on confirmation and allowance thereof by his Excellency shall come into force and be binding; and all such by-laws, rules, and orders shall within one month from the date thereof be published in the Cape of Good Hope Government Gazette.

May frame rules and by-laws.

IX. The said trustees shall once at least in every year and also whenever the pleasure of the Governor shall be signified in that behalf report their proceedings and the progress of the said institution to the said Governor; and a copy of every such report shall be laid before the Parliament within one month after the commencement of each session thereof.

To be approved by Governor and published in Gazette.

Trustees to furnish annual reports to be laid before Parliament

X. Accounts of the expenditure of the museum shall be furnished annually by the trustees to the Government for examination and audit and in order that an abstract thereof may be published in the Government Gazette.

Accounts of expenditure.

No. 18—1857.] AN ACT [June 29, 1857.

For Applying a Sum not exceeding Two Hundred and Fifty one Thousand Eight Hundred and Eighty-two Pounds Seven Shillings and Eleven Pence for the Service of the Year 1857.

Preamble.

WHEREAS by the Act No. 28 of 1856, entitled “An Act for Applying a Sum not exceeding Sixty-three Thousand Six Hundred Pounds for the Service of the Year 1857,” the said sum of sixty-three thousand six hundred pounds was charged upon the revenue of this colony for the service of the Government of the colony until the 30th April, 1857: And whereas it has become expedient in the present session of Parliament to take into consideration the requirements of the said service for the entire of the year 1857, as well that portion for which provision was made by the said Act as the remaining portion thereof: And whereas it will be expedient in order to prevent confusion to repeal the said Act No. 28, 1856, and to provide by one Act for the service of the year 1857: 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 28, 1856, repealed  
Expenditure for 1857

I. The Act aforesaid, No. 28, 1856, is hereby repealed.

II. The public revenue of the colony is hereby charged with a sum not exceeding two hundred and fifty-one thousand eight hundred and eighty-two pounds seven shillings and eleven pence for the service of the year 1857 in addition to the sums already by law provided for such service, which sum of two hundred and fifty-one thousand eight hundred and eighty-two pounds seven shillings and eleven pence shall be applied in the manner following, that is to say:

Civil establishment,

For the expenditure of the Civil Establishments, a sum not exceeding forty-four thousand nine hundred and fifty-two pounds thirteen shillings and nine pence.

Judicial do.

For the expenditure of the Judicial Establishments, a sum not exceeding twenty thousand five hundred and forty-two pounds.

Educational do.

For the expenditure of the Educational Establishment, a sum not exceeding nine thousand two hundred and forty-two pounds ten shillings.

Medical do.

For the expenditure of the Medical Establishment, a sum not exceeding ten thousand eight hundred and thirty-six pounds ten shillings.

Police and gaol do.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding thirty-three thousand two hundred and sixty-eight pounds two shillings and six pence.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding forty thousand one hundred and four pounds.

No. 18—1857.  
Border department (aborigines).

For the expenditure on account of Pensions, Charitable Allowances, and Gratuities, a sum not exceeding two hundred pounds.

Pensions, gratuities, &c.

For the expenditure on account of Works and Buildings, a sum not exceeding nine thousand and forty pounds.

Works and buildings

For the expenditure on account of Roads and Bridges, a sum not exceeding fifty-two thousand four hundred and fifty-five pounds.

Roads and bridges.

For the expenditure on account of Miscellaneous Services, a sum not exceeding nineteen thousand seven hundred and forty-one pounds eleven shillings and eight pence.

Miscellaneous services.

For the expenditure on account of Immigration, a sum not exceeding eleven thousand five hundred pounds.

Immigration.

Amounting in the whole to two hundred and fifty-one thousand eight hundred and eighty-two pounds seven shillings and eleven pence, as detailed in the schedule hereunto annexed.

Total.

The said aids and supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act.

Restrictive clause.

No. 19—1857.] AN ACT [June 29, 1857.

For Applying a Sum not exceeding Seventy-six Thousand Nine Hundred and Forty Pounds for the Service of the Year 1858.

WHEREAS it is expedient to provide further sums in addition to those by law provided for the service of the government of this colony until 30th April, 1858 :

Preamble.

I. 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, that a sum not exceeding seventy-six thousand nine hundred and forty pounds be charged upon the revenue of the said colony towards the service of the year 1858, and applied in the same manner and for the same purposes as are set forth as permanent services in the schedule annexed to the Act No. 18 of 1857, and any other Act passed during the present session for the appropriation of the public revenue, that is to say :

Expenditure, 1858.

II. For the expenditure of the Civil Establishments, a sum not exceeding fourteen thousand three hundred and seventeen pounds.

Civil establishments.

|                                 |                                                                                                                                                                                                          |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| No. 19—1857.                    | III. For the expenditure of the Judicial Establishment, a sum not exceeding six thousand eight hundred and forty-seven pounds.                                                                           |
| Judicial Establishment.         |                                                                                                                                                                                                          |
| Educational do.                 | IV. For the expenditure of the Educational Establishment, a sum not exceeding three thousand and eighty-one pounds.                                                                                      |
| Medical do.                     | V. For the expenditure of the Medical Establishment, a sum not exceeding three thousand six hundred and twelve pounds.                                                                                   |
| Police and gaol do.             | VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding eleven thousand and eighty-nine pounds.                                                                               |
| Border department (aborigines). | VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding thirteen thousand three hundred and sixty-eight pounds.                                                   |
| Works and buildings.            | VIII. For the expenditure on account of Works and Buildings, a sum not exceeding one thousand four hundred and ninety pounds.                                                                            |
| Roads and bridges.              | IX. For the expenditure on account of the Roads and Bridges, a sum not exceeding seventeen thousand one hundred and forty-six pounds.                                                                    |
| Miscellaneous.                  | X. For the expenditure on account of Miscellaneous Services, a sum not exceeding five thousand nine hundred and ninety pounds.                                                                           |
| Total.                          | XI. Amounting in the whole to seventy-six thousand nine hundred and forty pounds.                                                                                                                        |
| Restrictive clause.             | XII. The said aids and supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act. |

No. 20—1857.]

AN ACT

[June 29, 1857.]

For the Construction of a Railway from Cape Town  
to Wellington.\*

Preamble.

**W**HEREAS it is desirable that a railway should be constructed from Cape Town, through Stellenbosch and the Paarl, to Wellington, which railway there is reason to believe would yield a remunerative return on the capital to be expended in constructing it and in working it when constructed: And whereas whilst it is expedient that the said railway should be constructed by a company or co-partnership of private individuals rather than by the Colonial Government it is at the same time necessary in order to induce such a company to undertake the construction and working of the said railway that the Colonial Government should guarantee to the shareholders of the

\* See Act No. 10 of 1862.

said company an annual interest of not more than six per cent. per annum on the capital expended in constructing the said railway, such guarantee to continue for a certain term of years: And whereas it is expedient to empower the Governor of this colony to conclude a contract with some joint-stock company for the construction and working of the said railway, provided that the sum of five hundred thousand pounds shall be fixed and settled as the highest sum upon which the Colonial Government shall guarantee the annual interest aforesaid: And whereas in consideration of the advantages which will directly and immediately accrue to the owners of landed property in those divisions of the colony through which the said line of railway will run it is just and expedient that the fixed property of the said divisions, namely, the Cape, Stellenbosch, and the Paarl, should be rated so far as may be necessary to make up one half of any amount which the Colonial Government may be called upon to pay in virtue of the guarantee aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. It shall and may be lawful for the Governor of this colony for the time being to make and conclude with any joint-stock company and upon the best terms for the colony which the said Governor shall be able to secure a contract for the construction and working of the railway herebefore in the preamble to this Act described: Provided that it shall be stipulated in such contract that the sum upon which the annual interest aforesaid of six per cent. per annum shall be guaranteed by the Colonial Government shall not exceed the sum actually expended in the construction of the said railway nor exceed in any case the sum of five hundred thousand pounds sterling: And provided also that such interest shall not be guaranteed for any longer term than ninety years, computed from the day of the opening for traffic of the first portion of the line of railway.

II. All interest guaranteed by such contract as aforesaid is hereby declared to be a charge upon the public revenue of this colony, and the Governor of this colony for the time being is hereby authorized to issue warrants to the Treasurer-General of the colony for the payment of such interest.

III. One half of all such sums of money as shall be paid or payable by or out of the public revenue of this colony upon or by virtue of the guarantee aforesaid is hereby declared to be a charge as hereinafter mentioned upon the immovable property of or belonging to the divisions of the Cape, Stellenbosch, and the Paarl; provided that the municipalities of Cape Town and Green Point shall for the purposes of this Act be included in the division of the Cape.

Governor may contract with a company to construct a railway

Stipulation as to the sum upon which interest shall be guaranteed by Government.

Term of years for which interest guaranteed.

Interest to be a charge on the public revenue

A moiety of the guarantee to form a charge on landed property in certain divisions.

No. 20—1857.

If there be a valuation for road purposes it shall also be the basis of an assessment for the purposes of this Act.

IV. In case there shall be in existence at the time when the Governor aforesaid shall find it necessary to take measures for assessing a rate upon the three divisions aforesaid for the purposes of this Act a valuation of the immovable property thereof for road purposes effected under or by virtue of any Act or Acts to be hereafter passed, then and in that case the said valuation shall be fixed and binding for the purposes of this Act.

In case there be no such valuation Governor to appoint valuers.

V. In case there should not be at the time in the last preceding section mentioned any such valuation as in the said section referred to it shall be lawful for the Governor for the time being to appoint, when he shall find it needful, one or more competent valuers for the purpose of valuing all and singular the immovable property situated in the divisions of the Cape, Stellenbosch, and the Paarl, excepting such immovable property as may have been then already valued for the purposes of any municipality within such divisions, and excepting certain other immovable property hereinafter specially exempted from such assessment.

What properties exempt from assessment

VI. All immovable property belonging to her Majesty the Queen whether vested in her Colonial Government or otherwise and all immovable property vested in or belonging to any municipal board within the said divisions, and all buildings appropriated to the purposes of public worship or gratuitous education, and all burial-grounds shall be exempt from the liability to be assessed or rated under the provisions of this Act so long as they continue to be so vested or appropriated as aforesaid.

Laws relating to valuation for road purposes to apply to valuation under this Act.

VII. All and singular the provisions of the Ordinance No. 8, 1843, entitled "Ordinance for Improving the Public Roads of the Colony," and of the Ordinance No. 12, 1844, entitled "Ordinance to Amend the Ordinance No. 8, 1843, entitled 'Ordinance for Improving the Public Roads of the Colony,'" so far as such provisions relate to the making and correcting of the valuation in the said Ordinances mentioned, shall extend and apply, *mutatis mutandis*, to the valuation mentioned in the fifth section of this Act precisely as if the valuation in the said fifth section mentioned were the valuation mentioned in the Ordinances aforesaid: Provided that the municipal valuation of property in any municipality in force or existence at the time of the assessment of each successive rate under this Act shall be the valuation of such property for the purpose of such rate.

Valuation in municipalities.

VIII. It shall be lawful for the Governor of this colony for the time being, after and as often as any sum shall be paid or be payable out of the public revenue under or by virtue of the guarantee aforesaid, to assess and impose upon all the immovable property of or in the three divisions aforesaid not exempted from assessment and being

Rate imposed to be equal to one half of the sum payable out of the guarantee.



according to the valuation in the fourth or fifth section of this Act mentioned as the case may be of the value of not less than twenty-five pounds, such a rate as shall be estimated by the said Governor to yield or produce one half of the amount so paid or payable out of the public revenue under or by virtue of the guarantee aforesaid.

No. 20—1857.

IX. Every such rate as is in the last preceding section mentioned shall become due and payable upon some certain day to be fixed by the Governor aforesaid, of which day and of the amount of the rate to become payable on that day not less than forty-two days' previous notice shall be given in the Government Gazette; and all and singular the provisions of the Ordinance No. 8, 1843, as amended by an Ordinance No. 12, 1844, relative to the mode in which notice of rates assessed by the Central Board of Commissioners of Public Roads should receive publicity and to the payment, receipt, and recovery of such last-mentioned rates shall extend and apply, *mutatis mutandis*, to the rates assessed by the Governor for the purposes of this Act precisely as if the rates assessed for the purposes of this Act had been rates assessed by the said Central Board.

Notice to be given of the amount of rates and the day when payable.

X. In any suit or proceeding at law which may be necessary for the recovery of any of the rates to be assessed as aforesaid for the purposes of this Act such suit or proceeding shall be instituted by or in the name of her Majesty's Attorney-General for the Cape of Good Hope for the time being or the officer for the time being acting as such.

Attorney-General to sue for the recovery of rates.

XI. All and singular the powers and authorities which are by the Ordinance No. 8, 1843, bestowed upon the Central Board of Commissioners of Public Roads in regard to taking or acquiring lands and materials necessary for the making or repairing of any such main road as is in the said Ordinance mentioned are hereby bestowed upon whatever company shall have contracted as aforesaid for the making of the railway aforesaid precisely as if the same were, *mutatis mutandis*, herein again set forth.

Powers of Central Road Board in regard to acquisition of lands &c., vested in railway company.

XII. An exact and particular account shall be kept of all moneys if any paid by or out of the public revenue under or by virtue of the guarantee aforesaid and of all moneys if any received under or by virtue of the assessments aforesaid for the purpose of making good to the public revenue one half of all moneys which shall be paid or payable therefrom; and a copy of such account made up to the latest date which shall be practicable, together with full information concerning the progress, working, cost, and revenues of the railway, shall be laid before each House of Parliament not later than twenty-one days next after the opening of each session.

Amount of assessment and expenditure to be laid before Parliament.

XIII. The provisions of the fifty-fifth and fifty-sixth sections of the Ordinance aforesaid, No. 8, 1843, relative to injuries done whether wilfully or carelessly to the main

Laws relating to injuries to main roads to extend to railways.

No. 20—1857.

roads of the colony shall extend and apply to injuries done to the line of railway aforesaid precisely as if the said railway were a main road and as if the company constructing the same were the Central Board.

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No. 21—1857.] AN ACT [June 29, 1857.
To Amend the Ordinance No. 1, 1846, entitled
“Ordinance for the Regulation of the Post
Office and Postage.”*

Preamble.

WHEREAS it is expedient to amend the Ordinance No. 1, 1846, entitled “Ordinance for the Regulation of the Post Office and Postage:” Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant part of Ordinance 1, 1846, repealed.

I. So much of the Ordinance aforesaid, No. 1, 1846, as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Prepayment of postage by stamps compulsory.

II. From and after the taking effect of this Act no letters or newspapers liable to the payment of postage and not being letters or newspapers received in this colony from some country or place beyond the limits of this colony shall be transmitted by the post unless the postage payable upon such letters or newspapers shall be paid at the time of the posting of the same by means of postage stamps affixed or impressed on such letters or newspapers and of equal value or amount with the postage payable upon such letters or newspapers.

Unstamped letter to be returned to the writer.

III. Should any letter the postage of which ought to have been prepaid in manner aforesaid be delivered or deposited at or in any post office within this colony without being so prepaid such letter shall not be transmitted by the post but shall be returned to the writer thereof, who shall be liable to pay in respect of such letter such rate of postage as would have been payable upon such letter for or in respect of its transmission from any one place to any other place within this colony: Provided that in order to ascertain who such writer is such letter may be opened by the Postmaster-General, to whom if delivered or deposited at any post office other than the general post office in Cape Town it shall be transmitted without delay; and all newspapers delivered or deposited without being prepaid may be destroyed.*

Letter may be opened to ascertain the writer

Newspapers unstamped to be destroyed.

Letters unclaimed or refused must be returned to the writer, who shall pay postage

IV. As often as any letter shall remain undelivered and unclaimed at any post office within this colony by reason that the person to whom the same is directed is dead or has

* See Act No. 15 of 1858.

refused to receive it such letter may be opened by the Postmaster-General in order to ascertain the writer thereof; and in case such writer shall be known and be resident within this colony such letter shall be returned to him, and he shall be liable to pay in respect of such letter the same postage which would have been payable upon such letter for or in respect of its transmission from any one place to any other place within this colony. And in case any such letter shall have been received from some country or place beyond the limits of this colony the Postmaster-General shall transmit such letter with such explanation as he may deem necessary to the post office authorities of the country or place from which it shall have been received: Provided that in case any such letter as aforesaid shall remain undelivered and unclaimed at any post office within this colony by reason that the person to whom it is directed is unknown or cannot be found the said letter shall not be opened, or if a letter received from some country or place beyond the limits of this colony shall not be transmitted to such country or place, until after the expiration of two months from the date at which such letter was posted in or received in this colony: Provided also that all newspapers remaining from any cause whatever undelivered or unclaimed for the space of two months may be destroyed.

No. 21—1857.

If from beyond the colony it shall be returned to the country whence it came.

If the person to whom addressed be unknown letter not to be opened or returned until after two months

Newspaper undelivered for two months to be destroyed.

V. All letters which shall have been opened under or by virtue of either of the two last preceding sections, and which by reason of the death or absence of the writers thereof or by reason that the said writers cannot be found or for any other cause remain in the post office undelivered and unclaimed for the space of twelve calendar months next after the date of the opening thereof, may by the Postmaster-General be lawfully destroyed: Provided that a description of all such letters shall be published by the Postmaster-General in the Government Gazette and in such other mode or modes if any as he may deem fitting for not less than three months before the destruction of such letters.

Letters opened under the two preceding sections or undelivered for twelve months to be destroyed after due notice in Government Gazette.

VI. Printed newspapers received in this colony from abroad when forwarded by the inland post shall, whether they shall or shall not have been opened in this colony, be chargeable with a postage of one penny each and no more, without reference to their weight.*

Rate of postage on foreign newspapers transmitted inland.

VII. It shall be lawful for the Governor of this colony for the time being to regulate the postage of letters to and from seamen and soldiers: Provided that the rate of postage upon any such letter shall not at any time exceed the rate or rates specified in regard to such letters in the Ordinance aforesaid, No. 1, 1846.

Postage on seamen's and soldiers' letters.

VIII. The provisions of the Ordinance No. 23, 1847, entitled "Ordinance for Reducing the Postage upon Religious Publications of or under a certain Weight," shall extend to

Ordinance 23, 1847, to extend to other than "religious publications" if prepaid by stamp.

* See Act No. 15 of 1858.

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all other publications printed in this colony and not exceeding one ounce in weight: Provided that all such publications as are in the said Ordinance and in this and the next succeeding section mentioned shall from and after the taking effect of this Act be prepaid by means of postage stamps as in the second section of this Act described.

Rate of postage on colonial publications.

IX. Publications printed in this colony exceeding one ounce and not exceeding six ounces in weight and all printed almanacs printed in this colony shall be received and conveyed by post, and every such publication shall be chargeable with postage at and after the rate of one penny for every ounce or fraction of an ounce of the weight thereof.

Act when to commence.

X. This Act shall commence and take effect from and after the first day of January, 1858.

No. 22—1857.]

AN ACT

[June 29, 1857.]

For more effectually preventing the improper Introduction into this Colony of Children belonging to Native Tribes resident in Territories beyond the Land Boundaries thereof.

Preamble.

WHEREAS in some instances persons visiting the territories lying beyond the land boundaries of this colony have there procured, and have thence brought into the colony to be made servants of, children of tender age belonging to native tribes resident in the territories aforesaid: And whereas there is reason to believe that if the practice of procuring such children were suffered to grow up evil consequences may arise therefrom: And whereas the existing laws of the colony do not sufficiently provide against the introduction of such children under such circumstances: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Native children under sixteen years of age not to be brought within the colonial land boundary without previous sanction of the Governor.

I. No person' except as hereinafter excepted shall without the previous sanction of the Governor of this colony for the time being first had and obtained bring into this colony across the land boundary thereof any child under the age of sixteen years belonging to any native tribe or people in Africa resident beyond the said land boundary. Any person contravening this section of this Act shall upon conviction be liable for and in respect of every child so brought into this colony to a fine not exceeding twenty pounds, together with and in addition to the sum of one shilling per day for every day during which any such child shall have been harboured or kept by such

person within this colony: Provided that nothing in this section contained shall extend to any parent of any such child as aforesaid lawfully entering this colony and bringing such child into the same nor to any person whomsoever bringing into the colony any such child as aforesaid who shall deliver over such child to any resident magistrate of the colony within the space of fourteen days next after the day upon which such child shall have been brought into the colony: Provided however that every such last-mentioned child shall be placed under the guardianship of the Governor of the colony for the time being as in the fifth section of this Act provided, and that no such child shall be apprenticed to or left with the person by whom such child shall have been brought into the colony as in the sixth section of this Act provided: Provided also that nothing herein contained shall apply to any inhabitant of any territory beyond the land boundaries of this colony visiting this colony for a temporary purpose and bringing into this colony any such child or children as aforesaid, in case such inhabitant shall produce and exhibit to some resident magistrate of this colony within one calendar month next after the date of his arrival in this colony a certificate in writing signed by some magistrate of the territory in which such inhabitant usually resides certifying that the child or children brought into the colony by such person is or are lawfully in the service of such person and that the services of such child or children are required by such person during or upon his journey: Provided also that the resident magistrate to whom such certificate shall be produced or exhibited shall endorse thereon the date at which the same was so produced to him.

II. If any child brought by any person into this colony in contravention of the last preceding section shall without the previous sanction of the Governor of this colony for the time being be received, kept, or harboured whilst under the age of sixteen years by any other person within this colony such lastmentioned person knowing when so receiving, keeping, or harbouring such child that such child had been brought into this colony without the previous sanction of the said Governor from beyond the land boundary thereof, then such lastmentioned person shall upon conviction be liable to the same penalty as that in the last preceding section mentioned: And any person receiving, keeping, or harbouring within this colony any child brought into this colony by any such inhabitant of another territory as in the first section mentioned shall be liable to the same penalty.

III. In every prosecution for a contravention of any of the sections of this Act the court in which such prosecution shall be pending shall judge from the appearance of the child in question in such prosecution, and also if needful

No. 22—1857.

Except by the parent of the child or by persons delivering the same to a resident magistrate within fourteen days.

Such child to be under the guardianship of the Governor and may not be apprenticed to the person by whom it is brought in.

Children may accompany visitors from beyond the land boundary for a temporary purpose upon a certificate from a competent authority.

Any resident magistrate receiving such certificate to note the date of its production.

Penalty for keeping or harbouring any child brought into this colony in contravention of the last preceding section.

How to judge of the age of such children.

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from the opinions given under oath of persons skilled in ascertaining the age of such children, and from any other evidence which may be adduced on the subject, whether the child referred to in such prosecution was when brought into this colony or received, kept, or harboured therein as the case may be under the age of sixteen years or not.

It is to judge of the age if child has died.

IV. When by reason of the death of such child before the hearing of such criminal case as aforesaid or other cause the court in which such case shall be pending shall be unable to inspect the child in question in such case, then such court shall judge of the age of such child when it was brought into the colony or received, kept, or harboured therein as the case may be by the knowledge or opinion of persons acquainted with such child.

Every child brought into the colony in contravention of the first section placed under the guardianship of the Governor and may be apprenticed or placed at an industrial school.

V. Every child brought into this colony in contravention of the first section of this Act, whether the person who brought such child into the colony be convicted or not, and every child brought into this colony by any inhabitant of another territory as in the first section mentioned, which child shall be received, kept, or harboured by any other person within this colony, is hereby placed under the guardianship of the Governor of the colony for the time being, and may by any person acting under the authority of the said Governor be apprenticed in like manner as is or shall be by law provided in regard to destitute children; or the said Governor may without or before apprenticing such child cause such child to be placed at any industrial school within this colony and to be there maintained and instructed so long as may be necessary or as the said Governor shall think fit: Provided that the guardianship of the Governor aforesaid shall not extend to nor shall he cause to be apprenticed or placed at an industrial school as aforesaid any person who shall be of the age of eighteen years or upwards.

Guardianship not to extend beyond the age of eighteen.

No such child to be apprenticed or left with the person by whom introduced or harboured in the colony.

VI. No such child as aforesaid shall in any case be apprenticed to or left with the person by whom in contravention of the first section of this Act such child was brought into this colony, or any person by whom in contravention of the second section of this Act such child was received, kept, or harboured, after being brought into this colony.

Operation of this Act in regard to children already brought into this colony.

VII. All children brought into this colony before the taking effect of this Act, the bringing in of whom if effected after the taking effect of this Act would have been a contravention thereof, shall if under sixteen years at the time of the taking effect of this Act, and not already apprenticed as or as if destitute children or by some public officer acting by authority of the Governor for the time being, fall under the provisions of the fifth section of this Act and the guardianship of the Governor aforesaid

precisely as if such children had been brought into this colony after the passing of this Act.

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VIII. Every such child as is in the last preceding section mentioned and thereby placed under the provisions of the fifth section of this Act and the guardianship of the Governor aforesaid shall within one month next after the taking effect of this Act be delivered up by the person having or keeping the said child to the resident magistrate of the district in which such child shall reside, who shall report to the Governor aforesaid that such child has been delivered up. If any person having or keeping any such child shall fail or neglect to deliver up such child as aforesaid within the month aforesaid such person shall upon conviction be liable to a fine of or equal to one shilling per day for every day reckoned from the expiration of the said month during which such person shall have or keep the said child: Provided that such fine shall not be incurred for or in respect of any time after a child who was under sixteen years at the time of the taking effect of this Act shall attain the age of eighteen years.

Every such child as in the last preceding section mentioned to be delivered up to a resident magistrate within one month after the passing of this Act.

Penalty for failing to do so.

Penalty not chargeable in respect of any time beyond the age of eighteen.

IX. All indentures of apprenticeship whereby any such children as aforesaid have been heretofore apprenticed under or according to the provisions of Ordinance No. 49, entitled "Ordinance for the Admission into this Colony under certain restrictions of Persons belonging to the Tribes beyond the Frontier thereof and for regulating the manner of their Employment as Free Labourers in the Service of the Colonists," are hereby declared to be good and valid.

Indentures under Ordinance 49 declared valid.

X. So much of the fourteenth section of the said Ordinance No. 49 as is repugnant to or inconsistent with this Act is hereby repealed, and all and singular the other provisions of the said Ordinance declared to be and to have been since the promulgation thereof in full force and effect.

Repugnant part of Ordinance 49 repealed

No. 23—1857.] AN ACT [June 29, 1857.

For more effectually preventing Kafirs from entering the Colony without Passes.*

WHEREAS certain officers have been appointed by Her Majesty's High Commissioner administering the affairs of British Kaffraria, which officers are stationed at or near the main drifts and roads leading from British Kaffraria into this colony, from any of which officers any Kafir desirous to be permitted to enter this colony for a

Preamble.

* See Acts No. 24 of 1859 and No. 23 of 1860.

No. 23—1857.

lawful and sufficient purpose may obtain without difficulty or expense a pass authorizing him so to do: And whereas the fact that it is contrary to law for any Kafir to enter this colony without a pass is so well known and so generally acted upon by the inhabitants of Kafirland that few Kafirs if any do now enter this colony without a pass, except Kafirs who enter the colony with the design of committing thefts or of disturbing the public peace: And whereas Basutos, Barolongs, Mantatees, and other natives resident in territories adjacent to Kafirland and commonly regarded and spoken of as belonging to the Kafir family are like the inhabitants of Kafirland fully cognizant of the law of the colony requiring them to supply themselves with passes; whilst moreover it is the desire of their chiefs that unless supplied with passes they should not be permitted to enter the colony: And whereas the provisions of the Ordinance 49 in regard to Kafirs and others found in this colony without a pass are insufficient to deter the evil-disposed amongst them from entering this colony without passes: And whereas it is expedient to make other and more effectual provision in that behalf: 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 Kafir or native foreigner to be molested who can produce a pass signed by a proper officer.

I. No justice of the peace, field-cornet, constable, or landholder as in the twelfth section of the said Ordinance No. 49 mentioned shall except as in the next succeeding section be excepted apprehend or molest any Kafir or other native foreigner described in the sixth section of this Act who shall produce for the inspection of such justice of the peace, field-cornet, constable, or landholder a pass signed by any officer or functionary named in any Government notice in the Government Gazette as an officer or functionary empowered to grant passes to Kafirs and other native foreigners authorizing them to enter this colony.

If found with a pass of which the time has expired or if found in any place not contemplated in his pass he may be arrested.

II. If any Kafir or other native foreigner as in the sixth section of this Act described having and producing such a pass as aforesaid shall be found within this colony at any time after the expiration of the time if any mentioned in such pass as the time during which such pass should be of force, or shall be found during the time for which such pass was conditioned to subsist at any place not being a place at which according to the expressed object, terms, or conditions of his pass it was reasonably necessary or proper for him to be, then such lastmentioned Kafir or other native foreigner may lawfully be apprehended by the justice of the peace, field-cornet, constable, or landholder by whom such Kafir or other native foreigner as aforesaid shall have been found in order that such Kafir may be dealt with according to law.

III. If any justice of the peace, field-cornet, constable, or landholder as in the twelfth section of Ordinance No. 49 mentioned shall discover or meet any Kafir or other native foreigner described in the sixth section of this Act who shall fail to produce for inspection a pass signed by some such officer or functionary as aforesaid, it shall be lawful for such justice of the peace, field-cornet, constable, or landholder to apprehend such Kafir or other native foreigner as aforesaid and convey him or cause to be conveyed to or before the resident magistrate of the district in which such Kafir or other native foreigner as aforesaid shall have been found; and such Kafir or other native foreigner shall upon conviction of the offence of contravening this Act by entering this colony without a pass be liable to be imprisoned with hard labour for any term not exceeding twelve months.

IV. Every Kafir or other native foreigner described in the sixth section of this Act apprehended for the cause and under the circumstances in the second section of this Act set forth shall upon conviction of the offence of contravening this Act be liable to be imprisoned with hard labour for any period not exceeding six months.

V. Every resident magistrate by whom such Kafir or other native foreigner as in the third or fourth section of this Act mentioned shall be convicted shall, as soon as may be after such conviction and not later than the next post but one after such conviction, transmit to the Colonial Secretary in Cape Town, in order to be by the Governor of this colony laid before the officer administering the affairs of British Kaffraria, a report of the proceedings in the case, including the sentence pronounced, in order that should circumstances be discovered to justify a commutation or mitigation of the sentence the same may by the Governor aforesaid be mitigated or commuted.

VI. In the construction of this Act the term "Kafir" shall mean any of the people commonly called native foreigners and resident in or entering this colony from or through either British Kaffraria or Kafirland; and the words "other native foreigner" described in the sixth section of this Act shall mean any Basuto, Barolong, Mantatee, or other native resident in any territory adjacent to Kafirland and commonly regarded and spoken of as belonging to the Kafir family.

VII. So much of the Ordinance No. 49, entitled "Ordinance for the admission into the Colony under certain restrictions of Persons belonging to the Tribes beyond the Frontier thereof and for regulating the manner of their Employment as Free Labourers in the service of the Colonists," as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

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Kafir or native foreigner failing to produce a proper pass may be conveyed for trial to the nearest magistrate.

Penalty upon conviction of entering the colony without a pass.

Penalty for contravening second section of this Act.

Report of the proceedings in each case of conviction to be sent to the Colonial Secretary to be submitted to the officer administering the affairs of British Kaffraria.

Interpretation of the terms "Kafir" and "native foreigner."

Repugnant part of Ordinance No. 49, repealed.

No. 24—1857.] AN ACT [June 29, 1857.
 For Preventing Colonial Fingoes and certain other
 Subjects of Her Majesty from being mistaken
 for Kafirs and thereby harassed and aggrieved.

Preamble.

WHEREAS by the Ordinance No. 49, bearing date the 14th July, 1828, as well as by an Act passed during the present session of Parliament, entitled "An Act for more effectually preventing Kafirs from entering this Colony without Passes," all Kafirs and other aliens of the class commonly called native foreigners are subjected to certain restrictions, and amongst others to that of being obliged to receive a written pass and of being liable to be apprehended by any justice of the peace, field-cornet, constable, or landowner in case they, the said foreigners, should be found without such pass: And whereas the Fingo people settled and domiciled in this colony are in consequence of their outward resemblance to the foreigners aforesaid liable to be mistaken for such foreigners and to be made prisoners of and otherwise harassed and aggrieved: And whereas whilst it is necessary in order to the detection and apprehension of Kafir thieves and marauders who enter the colony for purposes of plunder, that the obligation upon all Kafirs and other native foreigners to obtain such passes as aforesaid should be established and enforced, it is at the same time necessary for the due protection of colonial Fingoes that means should be devised for clearly distinguishing them from the foreigners aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Governor may appoint officers to issue certificates of citizenship.

I. It shall and may be lawful for the Governor aforesaid by notice in the Government Gazette to nominate from time to time such a number of officers as he may deem necessary, who shall issue to all Fingoes who shall apply for the same (being persons settled and domiciled in this colony) certificates of citizenship as hereinafter mentioned.

Certificates to be in English and Dutch.

II. Such certificate shall be written or printed upon parchment or paper both in the English and in the Dutch languages, and shall be signed by the officer issuing the same, and shall be in the following form:

CERTIFICATE.

Form of certificate.

Know all men who shall see this that the bearer (name him), a Fingo, residing at (name the place and division), is an inhabitant of this colony and a subject of her Majesty the Queen, and is not to be obstructed or impeded by any person upon the

ground or supposition that he is a Kafir without a pass, but is on the contrary to be privileged to go and come freely and without hindrance or molestation.

No. 24—1857.

Dated at _____, this _____ day of _____, 185—.

(Signed) A. B.,

Officer appointed to Issue to Fingoes
Certificates of Citizenship.

III. Every Fingo who shall be supplied with such a certificate as aforesaid shall also be supplied with a case or other receptacle or covering for the purpose of carrying his certificate about his person safely and conveniently.

A case or covering for certificate provided.

IV. The said certificate and the means of carrying the same shall be supplied to the Fingo applying for it free of all cost or charge.

Certificate and receptacle for carrying it to be free of expense.

V. If any person shall wilfully deprive any Fingo of his certificate of citizenship, such person so offending shall upon conviction be liable to a fine not exceeding ten pounds or to imprisonment with or without hard labour for any period not exceeding three months.

Penalty for depriving a Fingo of his certificate.

VI. If any person shall upon the allegation or pretext that any Fingo who shall produce for inspection his certificate of citizenship is nevertheless a Kafir without a pass apprehend or obstruct such Fingo after he shall have produced his certificate aforesaid for inspection, such person so offending shall upon conviction be liable to a fine not exceeding ten pounds or to imprisonment with or without hard labour for any period not exceeding three months, and shall moreover pay to such Fingo his reasonable damages, to be assessed and adjudged in a summary manner by the court in which the criminal prosecution shall be brought; and unless such damages as well as the fine shall be forthwith paid the person convicted shall be liable to be imprisoned as aforesaid until the same shall be paid or until the term of imprisonment shall expire, whichever shall first happen: Provided that nothing herein contained shall be construed so as to prevent any such Fingo from being apprehended for or on account of any crime or offence which he may be charged with having committed, and for which alleged crime or offence any other subject of her Majesty might by the same person and in the like case have lawfully been apprehended.

Penalty for interrupting a Fingo after production of his certificate.

Certificate not to bar the arrest of its holder for a crime or offence.

VII. If any Fingo who shall have neglected to supply himself with, so as to be able to produce, such a certificate of citizenship as aforesaid shall be apprehended by any justice of the peace, field-cornet, constable, or landholder acting in pursuance of the twelfth section of the Ordinance No. 49 aforesaid, such lastmentioned person acting *bonâ fide* without malice and having reasonable and probable cause for mistaking such Fingo for a Kafir without a pass,

Fingo without certificate if mistaken for a Kafir without pass and apprehended as such not to have ground of action for false arrest.

No. 24—1857.

such Fingo shall be deemed and taken to have been lawfully apprehended and shall not be entitled to have or maintain any action or suit, criminal or civil, against the person by whom he shall have been so apprehended.

Penalty for transferring certificate with intent to deceive.

VIII. If any Fingo who shall have received a certificate of citizenship as aforesaid shall deliver such certificate or cause or procure the same to be delivered with intent that the same should be used as a certificate of citizenship by any other person, whether a Kafir or an inhabitant of the colony, then such Fingo so delivering the said certificate or causing the said certificate to be delivered as also the person if any who shall have received the same with intent to make use of it as a certificate of citizenship shall each be liable to a fine not exceeding ten pounds or to imprisonment with or without hard labour for any term not exceeding three months.

Tambookies.

And whereas divers of the Kafir people called Tambookies recently located in this colony are not yet as a community in such a social state and condition as to be capable of being relieved without danger from the restrictions to which they are now subject: Be it enacted as follows:

To have passes if beyond the limits of their locations.

IX. No Tambookie shall go out of or beyond the limits of the location to which he belongs unless furnished with a pass, which pass shall be of such a nature and in such a form as the Governor aforesaid shall approve of and direct, and shall be signed by such officer as the said Governor shall by any Government notice published in the Government Gazette from time to time appoint for that purpose.

Act No. 23 of 1857 to apply in regard to Tambookies.

X. All and singular the provisions of the first, second, third, fourth, and fifth sections of the Act aforesaid, entitled "An Act for more effectually preventing Kafirs from entering the Colony without Passes," shall extend and apply to Tambookies when absent from their locations precisely as if the passes mentioned in the last preceding section were the passes mentioned in the said Act, and as if such Tambookies were such Kafirs as are in the sixth section of the said Act mentioned.

Officers may be appointed to issue certificates of citizenship.

XI. It shall be lawful for the Governor aforesaid as often as circumstances shall permit to authorize any officer nominated in manner and form as in the first section of this Act mentioned to issue to any Tambookie or other person belonging to any kindred race settled and domiciled in this colony such a certificate of citizenship as is in the second section of this Act described; and thereupon such Tambookie or other person receiving such certificate shall be in the same condition in every respect as is hereinbefore provided in regard to Fingoes receiving such certificates.

No. 25—1857.] AN ACT [June 29, 1857.

To Provide for the Imprisonment in this Colony of certain Criminals sentenced in British Kaffraria.

WHEREAS owing to the state of destitution to which Preamble.
 very many of the inhabitants of Kafirland have recently reduced themselves robberies and thefts are likely to become prevalent and the peace of the colony may be seriously endangered unless steps be at once taken to employ all Kafirs willing to work for their maintenance, and to punish summarily and severely thieves and robbers: And whereas her Majesty's High Commissioner has, after trial and conviction in British Kaffraria, sentenced certain Kafirs for offences committed in British Kaffraria to transportation for certain specified terms of years, and has caused the said criminals to be sent into this colony in pursuance of their sentences: And whereas it is necessary to make provision for authorizing the imprisonment with hard labour within this colony of the said prisoners, as well as of any other prisoners who may hereafter under similar circumstances be ordered by the said High Commissioner to be transported as aforesaid: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. Every Kafir or other person belonging to any native tribe or people in South Africa who may heretofore have been or who may hereafter be sentenced by the High Commissioner aforesaid at any time within twelve months next after the promulgation of this Act for any crime or offence committed in British Kaffraria to be transported for any certain term of years, and who shall be sent into this colony in pursuance of such sentence, shall and may be imprisoned, detained, and treated in every respect and such person shall be deemed and taken to be within this colony in precisely the same plight and condition as if the term for which such person was sentenced to be transported were a term of imprisonment with hard labour which such person had been sentenced to undergo by the Supreme Court of this colony in respect of some crime or offence committed within the jurisdiction of the said court.

Kafirs or other natives sentenced by High Commissioner to transportation to be deemed in the same condition as if sentenced by the Supreme Court.

II. 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 by the High Commissioner aforesaid to be transported for such term as shall be mentioned 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 under and by virtue of the provisions of this Act.

Certificate of Colonial Secretary sufficient evidence that such sentence has been passed.

No. 26—1857.] AN ACT [June 29, 1857.

For Punishing Emissaries from Kafirland and others
delivering in this Colony to Kafirs resident therein
Messages dangerous to the Public Peace.

Preamble.

WHEREAS many Kafirs have been and now are employed as servants in the frontier districts of this colony: And whereas owing to recent events in Kafirland it is likely that the number of Kafirs who shall find employment in this colony will be much increased: And whereas from time to time heretofore Kafirs have come from Kafirland into this colony charged or pretending to be charged with messages from the chiefs of the Kafirs resident in this colony, ordering such lastmentioned Kafirs to quit this colony and repair to Kafirland there to aid or meet their chiefs: And whereas such messages and the obedience ordinarily yielded to them tend to create and keep up alarm and excitement throughout the frontier districts aforesaid and seriously to endanger the public peace: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Any person conveying or delivering a message to a Kafir within the colony tending to entice him beyond the boundary shall be imprisoned.

I. If any Kafir or other person, whether ordinarily resident in this colony or not, shall within this colony deliver by word of mouth or otherwise convey to any Kafir or other person belonging to or reputed to belong to any native tribe or people resident beyond the land boundary of this colony any message, order, or request purporting to have been sent by any native chief or other person belonging to any such native tribe or people, and calculated and intended to induce the Kafir or other person to whom such message, order, or request shall be delivered or conveyed to quit this colony and repair to any place beyond the land boundary thereof in order to aid, visit, or meet any native chief or to attend any meeting of any native tribe or people, such Kafir or other person delivering or conveying such message, order, or request shall upon conviction be liable to be imprisoned and kept at hard labour for any period not exceeding two years: Provided that nothing in this Act contained shall extend to any message, order, or request which any Kafir or other person shall by any writing under the hand of any magistrate or other functionary in British Kaffraria appointed by her Majesty's High Commissioner or other the Chief Governor of British Kaffraria for the time being to grant passes to Kafirs or other natives to come into this colony be authorized to deliver.

Excepting any message or order authorized to be delivered by an officer competent to grant native passes.

Duration of Act.

II. This Act shall continue in force until the 31st December, 1858, and no longer.*

* Continued by subsequent Acts.

No. 27—1857.] AN ACT [June 29, 1857.

For Regulating the Terms upon which Natives of Kafirland and other Native Foreigners may obtain Employment in this Colony.*

WHEREAS under the influence of the strong delusion Preamble.
 which recently prevailed throughout Kafirland on both sides of the Great Kei River multitudes of Kafirs slaughtered all their cattle and wholly abstained from cultivating the ground, whereby they now find themselves reduced to a state of destitution bordering on famine: And whereas it is probable that many of these Kafirs will be willing to enter into and take service in this colony: And whereas it is expedient to make regulations for the introduction and employment of such Kafirs as well as other native foreigners who may desire to seek service in this colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. So much of Ordinance No. 49, entitled, "For the Admission into the Colony under certain restrictions of Persons belonging to the Tribes beyond the Frontier thereof and for regulating the manner of their Employment as Free Labourers in the Service of the Colonists," and so much of any other former Ordinance or Law as shall be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed. Repugnant laws repealed.

II. It shall be lawful for any magistrate or other functionary resident either within or beyond the land boundaries of this colony, and who shall from time to time be named in any Government notice published in the Government Gazette, to grant passes to Kafirs and to other native foreigners to enter this colony or to remain therein for the purpose of taking service therein; but not except as hereinafter excepted for any other purpose: Passes may be granted to Kafirs intending to enter the colony for service.
 Provided that every such magistrate or functionary may also grant passes to Kafirs and other native foreigners to enter this colony for any temporary and lawful purpose not being that of taking service: Or other lawful purposes. And provided that every pass granted by any such magistrate or functionary shall be in such form as the Governor of this colony shall approve of and appoint, and shall be of the same force and effect in all respects as a pass granted under the provisions of the Ordinance aforesaid, No. 49. Form of pass to be appointed by Governor.

III. No contract of service entered into by any such person as is in the last preceding section mentioned shall be of any force or effect unless such contract shall be entered into in the presence of some resident magistrate, or if not in the presence of such magistrate then in the Contract of service to be entered into before a proper officer.

* See Acts No. 24 of 1859 and No. 23 of 1860.

No. 27- 1857.

Term of such contract

Resident magistrates
to receive applications
for Kafir servants.To be forwarded to
Colonial Secretary.

Form of contract.

presence of some other officer specially appointed by a Government notice in the Government Gazette of this colony to attest contracts of service made under this Act; in which case said contract may be lawfully entered into for any term not exceeding five years.*

IV. It shall be the duty of the respective resident magistrates of the colony to invite and receive from the inhabitants of their respective districts who may be desirous of employing any such Kafirs or other native foreigners as aforesaid applications in writing stating the number and description of such persons whom the applicants are willing to employ, the term of service for which they are willing or desirous to engage such servants, specifying the shortest term for which they would be content to receive such servants in case no longer term could be agreed upon, the wages which they are prepared to pay, and the other advantages which they will undertake to afford; and the said resident magistrate shall from time to time transmit such applications or the substance of them to the Colonial Secretary in Cape Town, for the information of the Governor.

V. The forms of all contracts of service entered into before any resident magistrate or other officer aforesaid under this Act shall in substance correspond with the form following, that is to say :

Be it remembered that on this the —— day of ——, 185 ——, A. B., of ——, farmer, and C. D., a Kafir, appeared before me, E. F., specially appointed by Government notice of the —— day of ——, to attest contracts of service under the Act No. ——, of 185 , and in my presence and with my concurrence and approval entered into the following contract of service in pursuance of the said Act :

The said A. B., agrees to hire the services of the said C. D., in the capacity of a (herdsman), and the said C. D. agrees to give his services in such capacity for the term of —— commencing on the —— day of —— instant and terminating on the —— day of —— in the year 18——.

It is further agreed that the said A. B. shall pay to the said C. D. as such servant as aforesaid wages after the rate of —— by the (day, week, month, or year, as the case may be), and that such wages shall be paid on the —— day of each (week or month, as the case may be).

(Here add any special agreement compatible with the law and not adverted to in the above form,—such, for example, as an agreement for the supply of food and clothing to the wife and children of the servant, or for the services of such wife or any of such children who shall be under sixteen years of age).

* See Act No. 1 of 1858.

The preceding agreement was entered into between the said A. B. and the said C. D. in my presence, on the day and in the year above mentioned, the same being so far as I am able to judge understood by them.

(Signed) E. F.,

Officer specially appointed to attest contracts of service under the Act No. — of 1857.

No. 27—1857.

VI. In all cases in which a contract of service shall have been entered into in the presence of any such magistrate or other officer as aforesaid it shall be lawful for the master of any such servant, with the consent of such servant and the approval of some such magistrate or other officer as aforesaid but not otherwise, to assign the contract of service of such servant, and thereupon the said contract shall in reference to so much of it as shall be then unexpired be regarded as if the same had been originally entered into with the person to whom the same shall have been assigned.

Contracts may be assigned.

VII. And whereas it is desirable to prevent any Kafir or other native foreigner who shall have been permitted to enter this colony under this Act for the purpose of taking service therein from violating within this colony the understanding upon which he received such permission by refusing in this colony to take service: Be it enacted that if any Kafir or other native foreigner introduced into this colony for the purpose of taking service under the provisions of this Act shall within this colony refuse to execute a contract of service for a term of one year, which contract shall as regards the proposed master, the proposed wages, and the other terms thereof be approved of by any such magistrate or other officer as aforesaid, and which contract such Kafir shall by such magistrate or other officer have been requested to execute, such Kafir so refusing shall be liable to be imprisoned and kept at hard labour until he shall be conveyed out of the colony: Provided that he shall not be so imprisoned for any period longer than one month: And provided that if he shall whilst so imprisoned consent to fulfil the conditions upon which he was introduced into this colony and execute a contract of service under this Act he shall be thereupon discharged from custody and permitted and assisted so to do.

How if Kafir refuses to execute a contract.

VIII. All and singular the provisions of the Act No. 15, 1856, entitled "An Act to Amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices," except in so far as the same may be repugnant to or inconsistent with any of the provisions of this Act, shall apply to the contracts of service entered into under this Act, precisely as if the said contracts had been entered into under the Act aforesaid, No. 15, 1856.

Masters and Servants Act applicable to contracts under this Act.

No. 27—1857.

Interpretation of term
"native foreigner."

IX. In the construction of this Act the term "native foreigners" shall mean foreigners from or belonging to any native tribe or people in Africa as such foreigners are described in the Ordinance aforesaid, No. 49.

Contracts executed
before the passing of
this Act.

X. All contracts of service executed by any such native foreigner as aforesaid before the taking effect of this Act in the presence of any resident magistrate of this colony for any term exceeding twelve calendar months but not exceeding five years are hereby ratified and confirmed, anything in the Ordinance aforesaid, No. 49, to the contrary notwithstanding.

Act not to extend to
contracts with Kafirs
already in the colony.

XI. This Act shall not extend to the existing or any future contracts of service entered into or to be entered into in this colony by Kafirs or other native foreigners who shall be already in this colony at the time of the taking effect of this Act, which contract may lawfully be made precisely as if this Act had not been passed: Provided however that every such Kafir may if so disposed enter into contracts of service for any period not exceeding five years: Provided also that every such Kafir or other native foreigner shall be supplied with a pass signed by some such magistrate or functionary as aforesaid, which pass shall be in such form as the Governor of this colony shall approve of and direct, and which pass shall serve in place and stead of the pass mentioned in the second section of the Ordinance No. 49.

Such Kafirs or native
foreigners to have
passes.

And to be subject to
Ordinance 49 and Act
23, 1857.

XII. Every such Kafir or other native foreigner, whether one already in this colony at the time of the taking effect of this Act or one to be hereafter introduced into this colony, shall be at all times subject to the provisions of the twelfth section of the Ordinance No. 49 and of an Act passed during the present session of Parliament, entitled "An Act for more effectually preventing Kafirs from entering the Colony without Passes," the penalties of which lastmentioned Act shall attach to and be incurred by any Kafir or other native foreigner who shall be apprehended under the provisions of the said twelfth section for any of the causes or grounds for apprehension which are set forth in the said twelfth section.

Limitation of passes
to Kafirs entering the
colony for service.

XIII. The first pass granted to any Kafir or other native foreigner not already in this colony at the time of the taking effect of this Act authorizing him to enter this colony to take service therein shall not be so framed as to endure longer than till such Kafir or other native foreigner shall enter into his first contract of service in this colony, at which time such Kafir or other native foreigner shall receive a fresh pass, framed so as to endure for the term stipulated in such contract of service and for fourteen days afterwards; and no third pass shall be granted to such Kafir or other native foreigner except for the purpose of enabling him to enter into a fresh

contract of service, either with his former or with some other employer; in which case he shall receive a fresh pass, framed so as to endure for the term of such fresh contract and for fourteen days afterwards; and so on from fresh contract to fresh contract so long as such Kafir or other native foreigner shall see fit to remain in this colony.

No. 27—1857.

XIV. As often as any Kafir or other native foreigner, whether one already in this colony or one to be hereafter introduced into this colony, shall have remained in this colony for five consecutive years and shall have been during that time in employment, and shall not have been convicted of any crime or offence for or in regard to which he shall have been sentenced to any punishment exceeding three months' imprisonment, he shall be entitled to receive a certificate of citizenship as the same is described in an Act passed during this present session of Parliament, entitled "An Act for Preventing Colonial Fingoes and certain other Subjects of Her Majesty from being mistaken for Kafirs and thereby harassed and aggrieved;" and thereupon the Kafir or other native foreigner receiving such a certificate of citizenship shall come under the provisions and protection of the said Act and shall be capable of entering into any contract of service which might lawfully be entered into by the ordinary inhabitants of this colony.

When Kafirs may receive certificate of citizenship.

XV. If any inhabitant of this colony shall admit into his service any Kafir or any other native foreigner unless under and by virtue of a contract of service executed before some resident magistrate or other officer according to the provisions of this Act such inhabitant shall incur and be liable to a fine not exceeding five pounds, and in default of payment to imprisonment for any term not exceeding one month: Provided that nothing in this section contained shall extend to any inhabitant admitting into his service any Kafir or other native foreigner who shall in manner aforesaid have received a certificate of citizenship.

Penalty for admitting into service Kafirs without contract.

No 1—1858.] AN ACT [May 6, 1858.

For Correcting an Error or Misprint in the Act No. 27, 1857, entitled "An Act for Regulating the Terms upon which Natives of Kafirland and other Native Foreigners may obtain Employment in this Colony."

WHEREAS in the third section of the Act No. 27 of 1857, entitled "An Act for Regulating the terms upon which Natives of Kafirland and other Native

Preamble.

Y

No. 1—1858.

Foreigners may obtain Employment in this Colony," a mistake or misprint has occurred in respect that it is therein set forth that a contract of service may be lawfully entered into for any term not exceeding five years; whilst the words "not less than one year and" have in the printing of said Act been accidentally omitted: And whereas the words as adopted by both the Legislative Council and the House of Assembly were that such contract may be lawfully entered into for a term of not less than one year and not exceeding five years: And whereas it is necessary that the said accidental mistake or misprint be amended: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Section 3 of Act 27, 1857, repealed.

I. The third section of the said Act No. 27, 1857, is hereby repealed; and instead thereof the following shall stand as and be the third section of the said Act:

"No contract of service entered into by any such person as is in the last preceding section mentioned shall be of any force or effect unless such contract shall be entered into in the presence of some resident magistrate, or if not in the presence of such magistrate then in the presence of some other officer specially appointed by a Government notice in the Government Gazette of this colony to attest contracts of service made under this Act; in which case said contract may be lawfully entered into for any term not less than one year and not exceeding five years."

Contract to be for not less than one year.

This Act not to affect existing contracts.

II. Nothing in this Act contained shall extend to invalidate or affect any contract of service entered into under and by virtue of the said Act No. 27, 1857, before the taking effect of this Act, all which contracts shall be judged of as if this Act had not been passed.

No. 2—1858.] AN ACT [June 5, 1858.

For Transferring to one of Her Majesty's Principal Secretaries of State the Powers and Properties vested in this Colony in the Officers of the Ordnance.

Preamble.

WHEREAS by divers grants, transfers, leases, contracts, or other means divers lands, tenements, and properties within this colony have been and now are vested in the officers of Her Majesty's Ordnance: And whereas her said Ma'esty hath been pleased to signify her royal

wish and desire that all such lands, tenements, and properties as aforesaid should be transferred from the officers of Ordnance and be vested in one of Her Majesty's Principal Secretaries of State: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

I. All lands, tenements, and properties of every sort and description lying and being within this colony and now vested in or belonging to the officers of Her Majesty's Ordnance, whether by the name of the principal officers of Ordnance or by the name of the respective officers of Ordnance or by any other name or description whatsoever, and whether held by freehold, quitrent, leasehold, or any other tenure, are hereby transferred to Her Majesty's Secretary of State for the time being to whom Her Majesty shall think fit to intrust the seals of the War Department and to such last-mentioned Secretary of State for the time being for ever.

All lands, &c., vested in officers of Ordnance transferred to Secretary of State for War.

II. All contracts, covenants, and agreements heretofore made or entered into by any person or persons whomsoever with the said principal officers of the Ordnance or with the said respective officers of the Ordnance or any person or persons on their behalf as to or concerning any lands, hereditaments, estates, and property vested in or agreed to be purchased by the said principal officers or by the said respective officers, or in any wise relating to the public service, shall in this colony be deemed and taken to have been made or entered into with such Principal Secretary of State as last aforesaid, and shall be executed and enforced by him in like manner as if he had originally been party thereto instead of the said officers of the Ordnance or other person or persons; and all proceedings whatsoever which have been or might or may have been commenced, taken, or done in the names of the said officers on behalf of Her Majesty shall and may hereafter be commenced, continued, taken, and done in the name of such Principal Secretary of State as aforesaid, in like manner (in the case of proceedings already commenced, taken, or done) as if he had originally been party thereto instead of the said officers of the Ordnance.

Contracts, &c., made by such officers to be enforced by Secretary of State.

III. In every contract, conveyance, grant, transfer, lease, or other assurance of any lands, tenements, or property, with, unto, or by the lastmentioned Principal Secretary of State for the time being, and in every other deed or instrument relating to any lands, hereditaments, estates, or property, or in any wise to the public service, to which the lastmentioned Principal Secretary of State for the time being shall be or shall be intended to be a party, it shall be sufficient to call or describe him by the style or title of "Her Majesty's Principal Secretary of State for the War Department," without naming him.

How such Secretary of State to be styled.

No 2—1858.
 Commanding Royal
 Engineer to represent
 Secretary of State in
 the colony.

IV. All deeds, instruments, and writings of every sort or kind whatsoever relating to any lands, tenements, or properties within this colony or to any suits or proceedings at law instituted in any of the courts of this colony or to any matter or thing belonging to or connected with the administration of the War Department in this colony, and to which deeds, instruments, or writings the Secretary of State aforesaid shall be or shall be intended to be a party, may be executed for and on behalf of the Secretary of State aforesaid for the time being by the Commanding Royal Engineer for the time being commanding in this colony: Provided that nothing herein contained shall be construed so as to prejudice or affect the validity of any deed, instrument, or writing signed by the said lastmentioned or by any other Secretary of State or by any attorney lawfully appointed by the said Secretary of State to act for him in his official capacity within this colony.

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No. 3—1858.]                      AN ACT                      [June 5, 1858.

To Declare the Consent of the Parliament of the Cape of Good Hope to the Erection of certain Light-houses in the said Colony, and to the Collection of Dues in respect of such Light-houses, as well as of certain other Light-houses already erected.

Preamble.

WHEREAS by the "Merchant Shipping Act Amendment Act, 1855," it is enacted that in any case in which any light-house has been or is hereafter erected on or near the coasts of any British possessions by or with the consent of the legislative authority of such possession, Her Majesty may by order in Council fix such dues in respect thereof to be paid by the owner or master of every ship which passes the same or derives benefit therefrom as Her Majesty may deem reasonable, and may in like manner from time to time increase, diminish, or repeal such dues, and from the time specified in such order for the commencement of the dues thereby fixed, increased, or diminished the same shall be leviable throughout Her Majesty's dominions in manner in the said Act mentioned; and that no such dues shall be levied in any colony unless and until the legislative authority in such colony has either by address to the Crown or by an Act or Ordinance duly passed signified its opinion that the same ought to be levied

in such colony: And whereas heretofore from time to time the following light-houses have been erected upon or near the coast of this colony, namely, the light-house at Cape Agulhas, the light-house at Cape Receife, the light-house on Bird Island, the light-house on Green Point, and the light-house on Mouille Point, which light-houses still subsist: And whereas a light-house is now about to be erected upon South Point and another light-house upon the Roman Rock: And whereas it is expedient that the Parliament of this colony should declare by an Act thereof its consent to the erection of the two lastmentioned light-houses, and its opinion that such dues as Her Majesty may by any Order in Council to be issued in pursuance of the "Merchant Shipping Act Amendment Act, 1855," fix in respect of all and singular the various light-houses aforesaid or of any of them ought to be levied in this colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The assent and consent of the legislature of the colony of the Cape of Good Hope to the erection of the proposed light-houses upon South Point and upon the Roman Rock are hereby attested and declared.

Light-houses on South Point and Roman Rock consented to.

II. The said legislature hereby signifies its opinion that any dues which may hereafter be fixed by Her Majesty by Order in Council in respect of either of the two light-houses in the last preceding section mentioned respectively or in respect of the light-houses at Cape Agulhas, at Cape Receife, on Bird Island, on Green Point, and on Mouille Point respectively, ought to be levied in the colony in the manner provided by the "Merchant Shipping Act Amendment Act, 1855," on all ships arriving or touching at any port or place in this colony, which ships shall by the said Act be liable to the payment of such dues as shall by any such Order in Council be fixed in respect of any such light-houses.

Light-house dues to be levied on ships touching at ports in this colony.

No. 4—1858.]

AN ACT

[June 5, 1858.]

For Creating a Board of Public Examiners in Literature and Science.\*

**W**HEREAS for the better advancement of learning among all classes of Her Majesty's subjects in this colony and in order to render more complete and satisfactory the courses of education to be followed by students and scholars in the several colleges and other educational

Preamble.

\* See Act No. 18 of 1860.

No. 4—1858.

institutions it is fit and necessary that provision should be made by which such students and scholars should be enabled to obtain and receive such distinctions as are granted and conferred for acquirements in literature and science in other countries: And whereas it is expedient to adopt other means than have hitherto existed for examining into the competency of candidates for admission into the public service of the colony: And whereas it is further expedient to provide means for the examination of candidates for admission to the exercise of certain professions: Be it enacted by the Governor of the Colony, by and with the advice and consent of the Legislative Council and House of Assembly, as follows:

APPOINTMENT AND CONSTITUTION OF BOARD OF  
EXAMINERS.

Board of examiners to be appointed.

I. It shall be lawful for the Governor from time to time to appoint seven persons to be a board of examiners, for granting certificates of merit and attainment in literature and science, of qualification for admission into the public service, and of proficiency in the principles of law and jurisprudence, and in the theory and principles of civil engineering, of land surveying, and of navigation.

Branches of examination assigned to certain sections of the board.

II. Three members of this board shall be examiners in ancient and modern languages, literature, and history,—three in the various departments of science,—and one in law and jurisprudence.

What number of official persons to be members of the board.

III. No more than three members of the board of examiners shall be persons holding offices of emolument under the Colonial Government.

Members how appointed and how long to hold office.

IV. The appointment of the members of the board shall be by proclamation of the Governor; and the members so appointed shall remain in office for five years. But it shall be lawful for the Governor by proclamation to dissolve the board before the expiration of that period if he shall see sufficient cause for doing so, and to appoint other members in their stead: Provided that all the members shall be re-eligible.

How in cases of vacancy or absence.

V. In case of any vacancy by the death or resignation of any member of the board it shall be lawful for the Governor to appoint by proclamation some fit and proper person to fill such vacancy. And in case of the unavoidable absence of one or more examiners upon the occasion of an approaching examination of candidates it shall be the duty of the board to inform the Governor of such absence or anticipated absence, and the Governor shall thereupon by proclamation appoint some one or more fit and proper persons to act at such examination in the place of such absent examiner or examiners.



VI. The members of the board shall elect one of their members to be the president; and the board shall provide for the due preservation of all records, which shall be kept in the custody of the secretary,—such secretary to be one of the members of the board, chosen by the majority for that office, or some person appointed by the Governor upon the recommendation of the board.

No. 4—1853.  
Proceedings and records of the board.

VII. It shall be the duty of the board of examiners to frame such by-laws and rules as to the said board shall seem fit for fixing the subjects and regulating the conduct of the several examinations; and likewise touching the times of meeting, and mode of summoning of the members of the said board, the number of members who shall form a quorum; and generally concerning any subject connected with the due performance of the functions of the said board: Provided that all examinations by the board shall be public; and provided that all such by-laws and rules shall be submitted to the Governor for approval and shall not be of force until they have been confirmed by the Governor.

By-laws and rules

Examinations to be public and by-laws confirmed by Governor.

#### CERTIFICATES OF MERIT AND ATTAINMENT IN LITERATURE AND SCIENCE.

VIII. The board shall hold an examination in Cape Town once in each year, notice whereof shall be given at least six months previously in the Government Gazette and such other newspapers as to the board shall seem fit, for the granting of certificates of merit and attainment in literature and science, in accordance with such by-laws and rules as shall have been made and approved by the Governor in the terms of the last preceding section; and it shall be lawful for the board to provide in such by-laws and rules for the appointment of fit persons to examine candidates upon subjects regarding which they consider that an examination conducted by any individuals from their own number would not be satisfactory: Provided that all such examinations shall take place in the presence of the board.

Examinations where and how to be held.

IX. There shall be two classes of certificates in literature and science, a higher and a lower, the qualifications for which shall correspond as far as the circumstances of this colony will admit to the qualifications required for degrees in the Faculty of Arts granted by the universities of the United Kingdom; and all the acquirements demanded for the attainment of the lower of these two certificates shall be included in the examination for the higher of them, with such additions as to the board shall seem fit.

Classes of certificates to be given.

X. Such of the by-laws and rules as shall be made in accordance with the seventh section of this Act and

By laws and subjects of examination to be published.

No. 4—1858.

approved by the Governor which relate to the subjects of examination and degree of proficiency required from candidates shall be published for general information immediately upon approval; which publication shall be made at least twelve months before the first examination shall take place: and the subjects for examination shall be in all cases published for general information at least twelve months before any examination for certificates of merit and attainment in literature and science shall take place.

If alterations be made in by-laws how they shall apply.

XI. Alterations from time to time made in the by-laws and rules in the last preceding clause mentioned and in the subjects for examination shall not apply to examinations taking place within twelve months after the publications therein mentioned.

## PUBLIC SERVICE EXAMINATION.

Examinations for the public service.

XII. The board of examiners shall meet twice in each year for the purpose of conducting the examination of candidates for certificates of qualification for admission into the public service, notice of which examination shall be given at least six months previously.

By-laws and rules referring to such examinations.

XIII. All by-laws and rules of the board having reference to the subjects of examination for certificates of qualification for admission into the public service and to the degree of proficiency required thereto shall be published as soon as they shall have been approved by the Governor, and shall not take effect in respect to any such examination before the lapse of six months after such publication; and the subjects for examination shall be in all cases published for general information at least six months before any examination for admission into the public service shall take place.

## CERTIFICATES IN LAW AND JURISPRUDENCE.

Examinations in law and jurisprudence.

XIV. At the annual examination in the eighth section mentioned the board shall likewise grant certificates of proficiency in law and jurisprudence.

By-laws and rules regarding such examinations.

XV. The by-laws and rules which relate to the subjects of examination and degree of efficiency required from candidates for certificates of proficiency in law and jurisprudence and the subjects of examination shall be published for general information at least twelve months before the date of any examination in law and jurisprudence.

Classes of certificates of proficiency to be granted.

XVI. There shall be two classes of such certificates of proficiency in law and jurisprudence, a higher and a lower; and the acquirements demanded for the attainment of the higher of these certificates shall include all the acquirements demanded for the attainment of the lower of them, with such additions as to the board shall seem fit.

## CIVIL ENGINEERS AND LAND SURVEYORS.

No. 4—1858.

XVII. The board shall likewise at the annual examination grant certificates of proficiency in the theory of civil engineering and of land surveying respectively.

Examinations for civil engineering and land surveying.

XVIII. The by-laws and rules which relate to the subjects of examination and degree of efficiency required from candidates for certificates of proficiency in the theory of civil engineering and of land surveying respectively and the subjects of examination shall be published for general information at least twelve months before the date of any examination in the theory of civil engineering and land surveying.

By-laws and rules regarding such examinations.

XIX. The subjects for examination in the theory of civil engineering shall include the subjects required for the examination in the theory of land surveying, in addition to such other subjects as shall be fixed by the board.

Subjects for examination.

XX. The certificate of proficiency in the theory of land surveying shall be previously held by all persons who shall present themselves for the purpose of passing such further examination in the practice of that profession as shall for the time being be required from persons desirous of being admitted land surveyors, entitled to be employed by Government.

Previous certificates required of candidates for Government surveyors.

## NAVIGATION.

XXI. The board shall make provision for examining candidates for certificates of proficiency in the theory and principles of navigation, in accordance with such by-laws and rules as shall be from time to time made, approved by the Governor, and published for general information.

Examination in the science of navigation.

## CANDIDATES.

XXII. Every candidate for any of the certificates hereinbefore mentioned shall if required submit to a preliminary examination in the elementary branches of education, in such cases as any by-law or rule shall from time to time provide; such examination to be conducted by any two members of the board commissioned for such purpose.

Preliminary examination may be required of candidates.

## FUTURE CONSTITUTION OF THE BOARD.

XXIII. As soon as the persons holding certificates of proficiency in literature and science as provided for in the ninth section of this Act shall have reached the number of fifty the place of the board of examiners created by this Act shall be supplied by an educational council, which shall be constituted as hereinafter provided.

Board of examiners to be eventually succeeded by an educational council.

XXIV. The educational council shall consist of six members, three of whom shall be nominated by the

Constitution of such council.

No. 4—1858.

Governor and three shall be elected by the majority of votes of the holders for the time being of the certificates in the twenty-third section mentioned.

Election and appointment of members.

XXV. The voting for the three elective members of the said council shall take place by written papers, transmitted to the Governor within one month after he shall by proclamation have notified the intended election; and the Governor shall, so soon as the names of the persons elected shall have been ascertained, issue a proclamation naming these three persons and likewise the three persons nominated by himself the educational council of the colony.

Regulations to be framed for admitting to the election of the council graduates of universities and persons practising medicine and law in the colony.

XXVI. The said council shall within six months after its constitution frame regulations for the admission of graduates of European and other universities, and of persons who shall have been admitted to practise in this colony as physicians or surgeons, as also of persons who shall have been admitted to practise as advocates of the supreme court, being resident in this colony, as electors jointly with the holders of certificates in literature and science before mentioned in the future election of members of such council: Provided that no such regulations shall come into force until they shall have been confirmed by an Act of the legislature of this colony.

Vacancies how to be supplied.

XXVII. In the event of a vacancy by refusal to accept the office, by death, resignation, departure from the colony or from other incapacity, or any moral disqualification occurring among the members nominated by the Governor as aforesaid, the Governor shall by proclamation name some fit and proper person to supply such vacancy; and in the event of any such vacancy occurring among the elected members as aforesaid, such vacancy shall be supplied by election in the manner hereinbefore provided.

How long council shall remain in office.

XXVIII. The said council shall remain in office for three years, unless previously dissolved by a proclamation of the Governor, at the expiration of which period a fresh election shall take place according to the provisions hereinbefore made for the original election of such council: Provided that all members shall be re-eligible.

Governor may dissolve the council.

XXIX. The Governor may by a proclamation when he shall see cause for so doing dissolve the said council, and thereupon direct the necessary measures to be taken for the election of a new council.

Board of examiners to continue in office until their successors are appointed.

XXX. Until the proclamation by the Governor of the names of the members of the educational council the board of examiners shall continue their functions under this Act; and upon such proclamation all records in their custody and all property and rights vested in them shall pass to the said educational council.

Council to nominate examiners and frame by-laws and rules.

XXXI. The educational council shall upon the proclamation aforesaid at once proceed to the nomination of

examiners, subject however to the approval of the Governor, and shall have the power of making all such by-laws and rules as may be necessary for the summoning and proper conduct of their own meetings, and touching the functions and duties of the examiners, the form and manner of granting the certificates in literature and science and the several professions, and of qualification for the public service, the conduct of the examinations, and all other matters and things touching the due carrying out of the objects of this Act: Provided that none of the by-laws and rules aforesaid shall be of any force until they shall have been confirmed by the Governor.

## ENDOWMENTS.

XXXII. It shall be lawful for the said board and educational council successively to hold and employ for carrying out the objects of this Act any such moneys or other property as may be assigned or bequeathed for the endowment of bursaries or the payment of prizes or otherwise for the advancement of learning in this colony.

Board of examiners or educational council to hold and administer all endowments for the purposes of this Act.

No. 5—1858.]                      AN ACT                      [June 5, 1858.

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

**W**HEREAS 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.

I. 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.

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

Act when to commence.

No. 6—1858.]

AN ACT

[June 5, 1858.

For Enabling Courts of Resident Magistrate, commonly called Periodical Courts, to be held by and before some Resident Magistrate other than the Resident Magistrate of the District within which such Periodical Courts are held.

Preamble.

WHEREAS there are places in certain districts of this colony at which places it is desirable that courts of resident magistrate commonly called periodical courts should be held, and at which places such courts could be more conveniently held by and before the resident magistrate of an adjoining district than by and before the resident magistrate of the district in which such places are situate: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant portions of the rules of court repealed.

I. So much of the rules, orders, and regulations of the courts of resident magistrate as shall be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Magistrate of any one district may be appointed to hold periodical courts in any other district.

II. It shall be lawful for the Governor by any writing under the hand of the Colonial Secretary, of which notice shall be given in the Government Gazette, to appoint the resident magistrate of a district other than that in which any periodical court shall be held to hold such periodical court, and such periodical court held before such magistrate and all proceedings had therein shall be of the same force and effect as if such periodical court had been held by or before the resident magistrate of the district within which such court shall hold its sittings: Provided that the term "resident magistrate," as often as it occurs in schedule B to the Act No. 9 of 1857, shall be held to apply to the resident magistrate so appointed as aforesaid to hold any periodical court and not to the resident magistrate of the district within which such court shall be held: And provided also that as often as any sentence pronounced at or by a periodical court held before any resident magistrate not being the resident magistrate of the district in which such court was held shall be a sentence coming under the provisions of the forty-seventh section of the Act No. 20, 1856, the record in such case shall be forwarded to the Registrar of the Supreme Court by the resident magistrate by or before whom such court was held and not by the resident magistrate of the district, and shall by such Registrar be returned to the

Records of certain cases tried in periodical courts to be transmitted to Registrar of Supreme Court by the adjudicating magistrate and not by resident magistrate of the district.

resident magistrate from whom he shall have received the same; and in case the Supreme Court should see cause to remit such case with instructions relative to further proceedings therein the said case shall be remitted to the resident magistrate by whom the record was forwarded and not to the resident magistrate of the district: And provided further that it shall be lawful to hold in the same district at the same time any number of courts of resident magistrate, duly authorized and appointed, which the convenience of the public shall require.

No. 6 - 1858.

Several courts may be held in one district at the same time.

No. 7—1858.] AN ACT [June 5, 1858.

For Amending the Law relative to the Payment of Transfer Duty.\*

**WHEREAS** by the Act No. 6, 1857, entitled "An Act to reduce the existing rate of Transfer Dues payable on the Sale of Landed Property," the rate of transfer duty payable upon the sale of landed property was reduced: And whereas it is expedient to reduce in like manner the transfer duty payable upon landed property changing proprietors otherwise than by sale, as also to reduce the additional duties, commonly called fines, payable in certain cases for or by reason of neglect or failure to pay the primary and proper transfer duty within the time in that behalf by law prescribed: And whereas it is expedient to repeal the said Act No. 6, 1857, and to re-enact the substance thereof with the necessary additions and amendments: 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.

I. The Act aforesaid, No. 6, 1857, and also so much of the Ordinance No. 18, 1844, and of the Act No. 15, 1855, as is repugnant to or inconsistent with the provisions of this Act are hereby repealed.

Act 6, 1857, and other laws repealed.

II. For and in respect of every sale whether private or public of any freehold property or property held of Government upon quitrent or other leasehold tenure or of any opstal of a loan-place there shall be chargeable upon and payable by the purchaser a duty of two per centum upon the price or purchase money paid or to be paid for the said property.\*

A duty of two per cent. on sales of landed property.

III. An equal duty to that aforesaid, to wit, a duty of two per centum, shall be payable upon the value of any such property as aforesaid by every person becoming entitled to the same in every case in which it shall

Similar duty on transfer in any other way than by sale.

\* See Acts No. 25 of 1861 and No. 8 of 1861.

No. 7—1855.

change proprietors by way of exchange, donation, legacy, testamentary or other inheritance, or generally in any manner otherwise than through the medium or by means of purchase and sale.

Tariff of fines under Ordinance 18, 1844, reduced.

IV. The scale or tariff of additional duties, commonly called fines, set forth in the eighteenth section of the Ordinance No. 18, 1844, and every item or article in such scale or tariff, shall be and the same are hereby reduced by one half.

Exemptions under Ordinance 18, 1844, to apply to cases under this Act.

V. All and singular the provisions of the Ordinance No. 18, 1844, and of the Act No. 15, 1855, relative to exemption in certain cases from payment of transfer duty shall apply to the duty of two per centum provided by this Act.

Collectors who have acted on the principle of this Act indemnified.

VI. All collectors of the public revenue who have in the collection of transfer duty acted since the commencement and taking effect of the Act aforesaid, No. 6, 1857, as if the said Act had been identical with this Act, and who have accordingly received transfer duty at and after the rate of two per centum upon property changing proprietors otherwise than by means of purchase and sale, and received additional duties, commonly called fines, at one half of the rates established by the eighteenth section of the Ordinance No. 18, 1844, are hereby indemnified for having so done.

Exemptions in favour of surviving spouses.

In regard to the exemption for the payment of transfer duty to be enjoyed by surviving spouses: Be it enacted as follows:

Clause D, schedule 1, Act 15, 1855, repealed.

VII. The seventeenth section of the Act No. 15, 1855, and the clause marked D of schedule No. 1 annexed to the said Act are hereby repealed.

Surviving spouse acquiring property from joint estate with deceased spouse to be exempt from duty.

VIII. No surviving spouse who had been married to his or her deceased spouse in community of property shall be chargeable with any transfer duty upon any purchase or other mode of taking over from and out of the joint estate of the deceased and such surviving spouse of the immovable property of the said estate or of any part of such immovable property, or upon any immovable property or share in such property inherited by such surviving spouse from his or her deceased spouse as the heir or one of the heirs of such spouse, or upon any immovable property legated or pre-legated by the deceased spouse to such surviving spouse; nor shall any such duty become payable upon any property inherited from or legated or pre-legated by such deceased spouse by reason that the survivor has been charged by the will or other testamentary disposition of such deceased spouse with the payment of portions to children or others or with the payment of some amount of money into the joint estate.



IX. Every purchase or other contract concluded by any surviving spouse with any heir or legatee of the deceased spouse whereby such surviving spouse shall acquire from such heir or legatee his or her share or portion of any of the immovable property of or which had been of the joint estate shall be exempt from duty in like manner as if such purchase or contract had been concluded by such surviving spouse with the administrators of the joint estate, so long as such heir or legatee shall not have received transfer from or out of the joint estate of the property so sold or otherwise disposed of to such surviving spouse, but no longer.

No. 7—1858.

Or purchasing the share in the estate of any heir or legator of deceased spouse.

In regard to the time at or within which all such valuations as are mentioned in the Ordinance No. 18, 1844, shall be made: Be it enacted as follows:

Time within which certain valuations shall be made.

X. No valuation of any immovable property under the provisions of either the fifteenth or the sixteenth sections of the Ordinance No. 18, 1844, shall be capable of being made at any time after any sum of money shall have been received as being the transfer duty payable upon such property and after a receipt shall have been granted for such duty: Provided that nothing in the last preceding section contained shall apply to any sum of money received by way of a deposit for securing the payment of any amount of transfer duty to be afterwards fixed and ascertained nor to any receipt given for any such deposit.

Not after transfer duty is paid.

Deposit not payment.

No. 8—1858.] AN ACT [June 5, 1858.

To Regulate till the Expiration of the Year 1859 the Dealing in Gunpowder, Firearms, and Lead.

WHEREAS the Act No. 14, 1857, entitled "An Act to Regulate till the Expiration of the Year 1858 the Dealing in Gunpowder, Firearms, and Lead," will expire with the expiration of the said year: And whereas it is expedient that the provisions of the said Act should be continued in force down to the expiration of the year 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:

Preamble.

I. The Act aforesaid, No. 14 of 1857, shall continue and be in force and operation from the expiration of the year 1858 till the expiration of the year 1859.\*

Act 14, 1857, continued to 1859.

II. This Act shall commence and take effect at and upon the expiration of the said Act No. 14 of 1857, and not sooner.

When this Act to commence.

\* Continued by subsequent Acts.

No. 8—1858.

Contraventions  
against previous Acts  
to be referred to as  
against this Act.

III. Every offence against the Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14 of 1857, committed after the commencement and taking effect of this Act and before the 31st December, 1859, 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 of 1857, and continued 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.

No. 9—1858.]                      AN ACT                      [June 5, 1858.

To Provide for the Management of the Public Roads  
of the Colony.\*

Preamble.

WHEREAS it is expedient to make other and better provision for the maintenance and improvement of the public roads of this colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

Previous laws  
repealed.

I. Except as hereinafter provided, Ordinance No. 8, 1843, entitled "An Ordinance for Improving the Public Roads of the Colony," and Ordinance No. 12, 1844, amending the aforesaid Ordinance, and Ordinance No. 17, 1847, declaring the meaning and construction of the twenty-first section of the aforesaid Ordinance, and Ordinance No. 7, 1848, amending and continuing certain provisions of the aforesaid Ordinance, shall be repealed from and after the last day of December next.

Main roads to be under  
the charge of the  
general Government.

II. From and after the first day of January next the several roads of the colony which may by any Act of the Legislature of this colony be declared to be a main road shall be under the charge of the general Government as hereinafter provided, whose duty it shall be to make, maintain, and improve such main roads so far as the funds placed at its disposal by this or any future Act will enable it.

Central Road Board  
dissolved and its  
affairs to be wound  
up by certain com-  
missioners appointed  
by Governor.

III. From and after the passing of this Act the Central Board of Commissioners of Public Roads, as constituted under Ordinance No. 8 of 1843, shall cease to exist; and for the purpose of settling and winding up the affairs of the said board the Governor shall and may appoint three fit and proper persons as commissioners for carrying on the duties of the aforesaid board until they be relieved thereof under the provisions of the preceding section of this Act, and for closing the accounts and

\* See Acts No. 11 of 1859 and No. 5 of 1860.

finally transferring to the general Government the assets and liabilities of the aforesaid board: Provided that they do not without the authority of Parliament commence any new work or incur any fresh debts or disburse any moneys not accruing to them under this Act.

No. 9—1858.

Such commissioners to undertake no new liabilities without authority of Parliament.

IV. The commissioners aforesaid while they hold office, and at the expiration of that period the chief commissioner hereafter appointed, shall and may recover all road-rates, tolls, moneys, matters, or things due and owing to or legally demandable by the aforesaid board at the time of the passing of this Act; but the said commissioners or officers may not assess or impose any road-rate or establish any new toll.

Commissioners may collect all rates or other moneys demandable by the Road Board but may not assess any new rate or toll.

V. The commissioners aforesaid may demand, receive, and apply all tolls not leased or farmed, and the rent or hire of any toll payable to the aforesaid board under any lease in existence at the time of the passing of this Act; but the said commissioners may not enter into any fresh contract for letting or farming any such toll for any period beyond the last day of December next.

May not make new leases of tolls for longer than the present year.

VI. All loans and other debts due and owing by the aforesaid board at the time of the final settling and winding up of its affairs are hereby declared to be guaranteed by the public revenue of the colony; which revenue is hereby charged with the due and punctual payment of the interest accruing upon the loans negotiated and still unpaid by the board, until provision be made by an Act or Acts to be hereafter passed for the payment and liquidation of such loans.

Debts owing by Road Board guaranteed by the public revenue.

Public revenue charged with repayment of loans and interest thereon.

#### MAIN ROADS.

VII. The main roads of the colony shall, subject to the direction and control of the Governor, be under the charge of a chief commissioner and three assistant commissioners; and the Civil Engineer for the time being shall be the chief commissioner, and the Governor may appoint such assistant commissioners with salaries not exceeding four hundred and fifty pounds a year each, and may from time to time for sufficient cause suspend or remove such assistant commissioners; and the said assistant commissioners shall have charge of such parts of the main roads as shall from time to time be assigned to them by the chief commissioner, and shall be bound to superintend and execute all works placed under their management by the chief commissioner; and the duties of assistant civil engineer may be conjoined with those of assistant commissioner of roads.

Main roads under control of Governor and under charge of Civil Engineer as chief commissioner and assistant commissioners.

Duties of commissioners.

VIII. No new line of main road shall be commenced nor any deviation made from any existing line of main

Main roads may not be commenced or abandoned except with previous sanction of Parliament.

Z

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road nor any new work undertaken upon any existing main road, the cost of which work shall be estimated to exceed two hundred pounds (unless such new work shall be absolutely necessary to prevent the interruption of the communication on such road), except with the previous sanction of Parliament; and in like manner the charge of any line of main road shall not be abandoned without such previous sanction.

Chief commissioner to furnish annual reports for presentation to Parliament.

IX. The chief commissioner of roads shall on or before the 15th of February in each year submit to the Governor for presentation to Parliament a statement of all moneys received and disbursed by him for road purposes during the preceding year; showing the amount received at each toll and from every separate source of revenue and the amount expended on each separate road or work, and the division of the colony in which the same was expended; together with an estimate of the moneys receivable from each toll or other source of revenue, and of the amount required for the maintenance and improvement of each road during the current year, and a report upon the state of the several roads under his charge—of the works executed upon them during the past year—of works contemplated during the current year—and of lines of road which he may recommend to be declared main roads, and of any works which he may recommend for execution upon them.

Commissioners may take possession of and use public lands for purposes of main roads.

X. The chief commissioner or any assistant commissioner or any officer duly appointed by the Governor, and acting under the authority of the Governor, may enter upon and take possession of so much of any land belonging to Her Majesty the Queen as may be required for the purpose of any main road and for the erection of toll-houses, toll-bars, residences for workmen, or for any other purpose relating to the execution of this Act; and they may enter upon all such land lying convenient to a main road, and there dig, get, and carry away any stone, clay, or other materials which may be required or serviceable for making or repairing any main road.

Commissioners invested with powers of Colonial Government in regard to the taking of land or using materials for road purposes

XI. For the purpose of making any such main road and of providing any such toll-houses and residences as aforesaid, and generally for any of the objects of this Act, the aforesaid commissioners of roads or other officer by them duly authorized are hereby invested for the purpose of so doing with all and singular the legal rights if any belonging to the Government of this colony in respect to the taking of any land and the raising and carrying away materials for making and repairing public roads, whether such rights have been preserved to the said Government by the proclamation of his Excellency Sir John Francis Cradock bearing date the 6th day of August, 1813, permitting the conversion of lands on loan into places

on perpetual quitrent, or have been created by express stipulation or condition in any grant of freehold property, or exist in any other way or manner whatsoever: Provided that no land be taken or materials be raised or carried away as aforesaid without previous notice to the proprietor thereof.

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XII. If any of the aforesaid commissioners of roads acting under the authority of the Governor should require to take or use any land or to dig, get, or carry away any materials situated as aforesaid belonging to any person who may not be bound by law to allow the said commissioner so to do without requiring any recompense or payment, and who may think proper to require compensation from the said commissioner—or if he should require to use any land or to take materials from any land that the Government may have a legal right to use, but which has been improved by cultivation, irrigation, or otherwise,—he may treat and agree with every such person for the purchase or hire as the case may be of any such lands or materials, and may enter into any contract relative to the obtaining of such land or materials and for compensation for the use of such improved land upon such terms and conditions as he shall judge expedient. And if any such person and the commissioner should not agree upon the purchase-money or hire or other recompense to be respectively given and accepted then the said commissioner shall cause to be served upon such person a written notice offering as recompense or compensation whatever sum of money he shall deem sufficient, and requiring such person to state in writing to the said commissioner or to some person by him appointed, within a certain limited time to be specified in the said notice, whether he is willing to accept the sum therein mentioned or not. And if such person should refuse to accept the sum offered or neglect to reply to said notice then the said commissioner shall by another notice in writing call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said commissioner, and for that purpose to transmit to the said commissioner within a certain reasonable time to be specified in the said last-mentioned notice the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said commissioner upon receiving the name of the person so selected shall nominate a second arbitrator and shall cause a deed of submission to be prepared, which shall be signed by the said commissioner and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and shall contain amongst other things a direction to the said arbitrators to set off against and

May treat for lands and materials.

Disputes to be settled by arbitration.

No. 9—1858.

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 road in regard to which the question has arisen, together with a power to the said arbitrators in case of a difference of opinion to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire as the case may be shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject-matter.

How if the other party neglect or refuse to appoint arbitrator.

And if such person as aforesaid claiming such recompense or compensation should neglect or refuse to name some persons to be such arbitrator as aforesaid or to sign the said deed of submission, then the said commissioner may lodge in some joint-stock bank in the colony the sum of money offered by him as aforesaid in his first notice in this section mentioned for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property: and the said commissioner upon so lodging the said sum shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid or had been awarded by arbitrators or an umpire under the provisions of this section, and as if all acts by law required for vesting in the said commissioner a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

How to proceed if the owner be a minor.

XIII. In case any of the said commissioners shall require to take or use any land or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator as the case may be shall be authorized in his capacity as such guardian or curator to treat and agree with the said commissioner for the purchase or hire of the land or materials required and to execute any contract which may be needful for carrying out any agreement which may be made; and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said commissioner for or on account of any land or materials in this section mentioned shall be paid by the said commissioner to the Master of the Supreme Court administering the Guardians' 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.

Moneys in such case to be paid to Master.

How if land be partly under fidei commissary trust.

And if in any case any person of full age shall by way

of fidei-commissary limitation or any limitation of a like nature be entitled to a life or other limited interest in any such land as aforesaid in which a minor or other such person as aforesaid under guardianship or curatorship shall be also interested in remainder or expectancy, then the whole value of the land or materials as fixed by contract or by appraisement shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest in the land shall be entitled for life or for the other period limited to draw the interest payable upon the sum so paid in: Provided however that if any such person shall desire to have his share of such sum apportioned and paid out it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such court shall in a summary manner upon hearing the parties interested apportion the said sum, and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in like manner as moneys in the Guardians' 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.

XIV. All toll-bars established on any main road by authority of any Act of the legislature of the colony shall be maintained, and such persons as shall be authorized by the Governor so to do shall be entitled to demand and receive thereat the several tolls authorized in such Act until the said toll-bars or tolls or any of them be abolished, removed, or changed with the consent of Parliament; and no new toll-bar may be established or any new toll demanded upon any main road except with the consent of Parliament.

XV. The person entitled to demand and receive the toll payable at any toll-bar or toll-gate may prevent the passing through such toll-bar or toll-gate of any vehicle or animal on which any toll shall be payable until such toll be paid; and if any person liable to any toll from whom it has been duly demanded, or who by any act of his own intended to prevent a due demand from being made may have succeeded in preventing such due demand from being made, and who without paying the said toll and without the consent of the person entitled to demand the same or without some other lawful authority may have proceeded through or beyond the place where the same is of right demandable, shall incur a fine of not less than twenty shillings and not more than ten pounds, to be recovered by suit or action in any competent court; and

Tolls and toll-bars established by Act of Parliament.

Toll-keeper may prevent passage through the toll until rate is paid.

Penalty for wilfully evading toll.

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in default of payment thereof shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month.

Who exempt from payment of tolls.

XVI. No toll shall be demanded at any bar to be established after the taking effect of this Act on account of the use of any road by any vehicle or animal employed in conveying or in returning from conveying any gravel, stone, or other material for making or repairing the roads, or any buildings, matters, or things belonging thereto, or for any vehicle or animal used by any officer or soldier being in proper staff or regimental or military uniform, dress or undress, and on duty; or for any vehicle or animal used by any officer or member of any volunteer corps in uniform and on duty: and, further, no more than one full toll in any one day to be computed from twelve of the clock at night to twelve of the clock of the next succeeding night shall be demanded in respect of the same vehicle or animal for passing and re-passing through the same toll-bar.

Chief commissioner may let or farm tolls.

XVII. The chief commissioner aforesaid, acting under the authority of the Governor, may from time to time if he shall deem fit, let or farm the tolls to be payable at any toll-bar on any main road by tender or by public auction to the highest and best bidder for any term not exceeding one year in any case: Provided always that previously to every letting of such tolls the said commissioner shall give in some convenient manner a public notice of the time and place at which tenders will be received or any such auction as aforesaid will take place; and that the person who at any such auction is declared to be the highest bidder or whose tender is accepted shall be required to produce two sufficient sureties for the payment of the stipulated hire; and provided also that in every letting of such tolls, whether by tender or by auction, the said commissioner shall require the farmer or renter thereof to enter into a bond with not less than two responsible sureties, each binding himself as principal debtor for the payment of the whole rent or hire of the said tolls at the time and in the manner in that behalf to be in the said bond specified; and if any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same may have become due, then the said commissioner, acting under the authority aforesaid, may enter upon and take possession of the said tolls, and of all toll-houses or other buildings of which the renter or farmer in default would otherwise be entitled to the use, and to relet the said tolls or otherwise to place a collector or collectors in receipt thereof and in possession of the said houses and buildings as to him may seem fit; and the sum for which the said renter or farmer may have been in default together with all further instalments or payments

Tenders to be invited and certain securities to be required for fulfilment of contract.

How if renter makes default in payment of hire.



stipulated to be made by the said farmer or renter shall be due and demandable from him in like manner and form as if he still remained in receipt of the said tolls, credit being given to him for whatever sums may be received on account of the said tolls, less the expense of collecting, in respect of the term for which the said tolls were let to the renter or farmer making default.

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XVIII. The chief commissioner, or in case of any letting to hire every renter or farmer of any tolls, shall affix or cause to be affixed in a conspicuous place at each toll-bar whereat any toll is payable a table of the tolls to be taken thereat, plainly and legibly painted or printed in the English and Dutch languages, under a penalty not exceeding five pounds, to be sued for by any person whatever in any competent court for his own use.

Table of rates to be affixed at toll-bar.

## CONVICTS.

XIX. As often as the Governor may in the exercise of his discretion and of the power in that behalf by law reposed in him order any number of convicts sentenced to imprisonment with hard labour to be employed upon the public roads in any division, the chief commissioner aforesaid or the divisional council of such division may receive such convicts and retain the control and management of their labour: Provided that the chief commissioner aforesaid and every such divisional council shall in regard to the particular road or place at which such convicts may be put to work strictly conform to such instructions as the Governor may give in that behalf, and shall moreover yield obedience to all such rules, orders, and regulations touching the management, conduct, and discipline of the convicts so employed under them respectively as the Governor may from time to time issue for their guidance: Provided also that the chief commissioner aforesaid and divisional councils shall not have any power to interfere with the training or discipline of any such convicts, which shall at all times continue to be regulated immediately and exclusively by the Governor.

Convicts may be employed under Chief Commissioner or divisional council.

But their discipline to be directed by the Governor.

## DIVISIONAL ROADS.

XX. The several divisional councils constituted under Act No. 5 of 1855 shall, with such funds as are by this or any other Act placed at their disposal for such purpose, be charged with the duty of superintending, making, improving, and preserving all divisional or branch roads within their respective divisions.

Divisional or branch roads to be under divisional councils.

XXI. All roads which have at any time been proclaimed as branch roads shall be deemed and taken to be divisional roads; and the Governor may from time to time at the request of any divisional council and by a proclamation

What roads to be divisional roads.

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to be by him issued in that behalf declare any road in the division wherein such council is constituted not being a main road to be a divisional road, or any divisional road or branch road proclaimed before the passing of this Act to cease to be a divisional road.

Divisional council may with sanction of Governor establish tolls on divisional roads.

XXII. Every divisional council may, after having given six weeks' previous notice in the Government Gazette of their intention to establish a new toll, erect and establish at such places as it may deem fit upon any divisional road under its charge as many toll-bars as it may deem requisite, and may demand and receive thereat such reasonable tolls as it may deem proper, to be appropriated to the maintenance and improvement of any such roads: Provided always that no toll-bar shall be erected or established and no toll shall be demanded or received without the previous sanction of the Governor, to be published in a proclamation to be by him issued in that behalf.

Tolls on divisional roads to be under control of divisional council.

XXIII. All toll-bars established on any other than a main road at the time of the passing of this Act shall continue to be legally established; and all tolls leviable thereat shall continue to be leviable and receivable by the divisional council of the division as if the same had been established under this Act; and every divisional council may from time to time with the sanction of the Governor, published in a proclamation to be by him issued in that behalf, abolish or remove any such toll-bar or abolish or alter any of the rates of toll now or hereafter existing within its division.

Certain powers and rights conferred on Governor or Chief Commissioner conferred *mutatis mutandis* on divisional councils respectively.

XXIV. The several divisional councils shall respectively possess and enjoy in regard to divisional roads within their division all and singular the various rights, powers, and authorities in regard to the appointment and removal of all necessary officers, the taking possession of lands and materials, whether of Her Majesty the Queen or of private persons, the erection of toll-houses or toll-bars, the taking of tolls, the renting or farming of tolls, and the protection of the tolls by penalties, and shall be bound to the performance of every duty and condition which have been hereinbefore severally conferred and imposed upon the Governor or the chief commissioner of roads aforesaid in regard to main roads, in the same manner as if such rights, powers, authorities, duties, and conditions, conferred or imposed under the provisions of the ninth, tenth, eleventh, fourteenth, fifteenth, sixteenth, and seventeenth sections of this Act had been herein set forth at length, and conferred or imposed, *totidem verbis*, on the several divisional councils.

Certain roads in the Cape division declared divisional roads.

XXV. The following shall be included among the divisional roads of the Cape division for the purposes of this Act, namely: Sir Lowry-street, from the toll; through

the Imhoff, Strand-street, down Bree-street, to the North Wharf; from the Lower Toll to the Town Market. And in consideration of the commissioners of the Cape Town municipality keeping in repair those thoroughfares the divisional council of the Cape division shall pay to the aforesaid municipality out of every levy to be made under this Act one half of the amount raised from the property within the municipality of Cape Town.

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#### VALUATION AND ASSESSMENT.

XXVI. All persons owning immovable property within any division or any municipality within such division, excepting such property as is hereinafter specially exempted from assessment, shall be liable to be rated on account of such property for the maintenance of the public roads in such manner and to such extent as is hereinafter provided by the forty-third section of this Act.

Assessment of immovable property for road purposes.

XXVII. Within three months after the passing of this Act each divisional council shall appoint one or more competent valuers for the purpose of valuing all and singular the immovable property situate in such division.

Divisional council to appoint valuers.

XXVIII. All immovable property belonging to Her Majesty the Queen, whether vested in her Colonial Government or otherwise, and all immovable property vested in or belonging to any municipal board within this colony, and all buildings appropriated to the purposes of public worship or gratuitous education, and all burial-grounds, shall be exempt from the liability to be assessed or rated under the provisions of this Act so long as they continue to be so vested or appropriated as aforesaid.

Certain properties exempt from assessment.

XXIX. The municipalities of Cape Town and Green Point are hereby declared to be within the Cape division for the purposes of this Act, and the resident householders within the said municipalities voting together as one constituency shall be entitled to elect four persons, who in regard to all functions, powers, and matters by this Act to be exercised or done by the divisional council of the Cape division shall be entitled to sit, deliberate, and vote with the members of the said divisional council precisely as if they were ordinary members thereof.

Municipalities of Cape Town and Green Point to be within the Cape division for purposes of this Act and to elect four members to the divisional council.

XXX. The four persons in the last preceding section mentioned shall be triennially elected in like manner as the ordinary members of the divisional council: Provided that the three persons already elected under the provisions of the Act No. 5, 1855, commonly called the Divisional Councils Act, shall remain in office until the next ensuing election for members of the divisional council of the Cape division.

Members to be elected triennially.

But not disturb seats occupied under previous law.

XXXI. If any of the said persons so from time to time elected for the purposes aforesaid shall die, or resign, or

What to constitute a vacancy.

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refuse to act, or cease to reside in the Cape division as defined for the purposes of this Act, or become insolvent, or accept any office of profit under Her Majesty, his office shall, *ipso facto*, become vacant.

How triennial election of such members to be announced and conducted.

XXXII. The civil commissioner of the Cape division shall, when or as soon as may be after publishing a notice for any triennial election of members of the divisional council of his division, by another notice to be published in the Government Gazette appoint a day and hour and fix a place for taking the poll of the resident householders aforesaid for the four persons to be elected as aforesaid, at which place and hour the said civil commissioner shall attend to take the poll; and such civil commissioner shall cause the names of the four persons who are elected by a majority of votes to be published in the Government Gazette: Provided that the notice aforesaid shall be published for not less than fourteen days before the day named for the taking of the poll: Provided also that every such resident householder shall have four votes, but shall not be entitled to give more than one vote to one person: And provided further that the four persons so elected as aforesaid shall receive due notice of all meetings of the divisional council of the Cape division for the consideration of all matters relative to the road administration vested in such council, according to such standing rules and orders in that behalf as shall be framed by the divisional council and approved by the Governor.

In case of a vacancy how election to proceed.

XXXIII. In case of any such vacancy as in the twenty-ninth section of this Act mentioned the civil commissioner of the Cape division shall forthwith, upon a notice which shall be, *mutatis mutandis*, the same as the notice in the last preceding section mentioned, call a meeting of the resident householders aforesaid for the purpose of filling up such vacancy or vacancies, and at such meeting every resident householder shall have as many votes as there are members to be then elected, but shall not be entitled to give more than one vote to one person. And the person or persons chosen to fill such vacancy or vacancies shall be capable of remaining in office till the then next ensuing triennial election of members of the divisional council, but no longer.

Divisional council to give notice for hearing objections to valuation of immovable property.

XXXIV. As soon as the valuation aforesaid shall have been completed in any division the divisional council of such division shall by public notice in the Government Gazette announce for general information that the said divisional council will, upon some day and at some hour and place to be fixed in such notice, hold court for the purpose of hearing and determining objections to such valuation: Provided that such notice shall be published in the Government Gazette for not less than thirty days before

the day appointed therein for the holding of such court: Provided also that the same or a similar notice shall be published in at least one of any newspapers which may be published within such division, and shall be posted upon or near the court-house of every resident magistrate's court, whether stated or periodical, situated within such division, and in some conspicuous place at all public markets within such division; and the divisional council of such division shall adopt such other means of giving publicity to such notice as circumstances shall permit: Provided however that it shall not be necessary in any suit or proceeding for the recovery of any rate to prove anything further in the nature of due notice of any such valuation as aforesaid than the publication of the notice aforesaid in the Government Gazette.

XXXV. Upon the day and at the place mentioned in such notice the divisional council shall hold a court and shall hear all objections which may be urged to any valuation by any owner or other person on his behalf, and shall inquire into the merits of such objections, and for that purpose may take the oath or affirmation of any person whom it shall see fit to examine (which oath or affirmation the presiding member of such divisional council is hereby authorized to administer), and shall confirm or correct any valuation objected to as truth and justice shall require: Provided that the said court may if necessary be adjourned from time to time upon the application of any person objecting, who shall show reasonable grounds for not being ready with his proofs or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

Divisional council to hear and decide objections.

XXXVI. It shall not be necessary in any notice given under the thirty-fourth section of this Act, to set forth the name of the owner or occupier of the property described in such notice, but it shall be sufficient to address such notice to the owner or occupier of the said property; and no mistake in the name of any owner or occupier of such property shall vitiate the notice in case such property be by name or otherwise sufficiently described and distinguished; and no mistake in the name or the description of the property shall vitiate the notice provided the name of the owner or occupier as the case may be of such property be correctly given; and if any such property has not received or acquired any distinctive name, and the name of the owner or occupier be not correctly given so as thereby and by reference to the same as his to fix and determine the property meant and intended, it shall be sufficient to describe such property in substance as it is described in the title-deed thereof or in such other manner as sufficiently to a common and reasonable intent to distinguish it from other property.

Omission or mistake in describing or naming the property or proprietor not to vitiate notice under 34th section.

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Decision of divisional council to be final.

After valuation divisional council may assess a rate on the immovable property in the division.

Day to be fixed for collecting the rate and notice thereof to be given.

Legal proceedings to be instituted if rate not paid on day fixed.

In suing for recovery of rates owner or occupier may be proceeded against.

XXXVII. The decision of the divisional council upon any objection to any valuation shall be final and conclusive and shall not be capable of being reviewed or reversed by any court or proceeding whatsoever.

XXXVIII. As soon as the valuation of the whole of the immovable property in any division shall have been completed the divisional council may proceed to assess and impose upon all persons liable thereto such a rate as it may deem necessary and expedient for the purposes of this Act: Provided that no such rate shall be assessed until after the expiration of thirty days from the issue of a notice to the several members of the divisional council which shall express the intention to propose such assessment, and after the publication of such notice for a similar period in the Government Gazette and in at least one of any newspapers that may be published in the division; and provided also that no such rate shall exceed one penny in the pound upon the value of the property liable to be rated; and that no general rate shall be imposed in the same division more frequently than once in twelve months.

XXXIX. Every rate so assessed as aforesaid shall become due and payable upon a certain day to be fixed by the divisional council; of which day and of the amount of which rate the said council shall give at least thirty-one days' previous notice in the Government Gazette: Provided that the same or a similar notice shall also be published and posted in like manner as is hereinbefore directed in the thirty-third section in regard to the certain notice therein mentioned: Provided further that it shall not be necessary in any suit or proceeding for the recovery of any such rate to prove anything further as to due notice thereof having been given than the publication of the announcement thereof in the Government Gazette.

XL. Whenever any divisional council has announced in the Government Gazette as hereinbefore required the day on which any rate duly assessed under this Act will become due and payable it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due by him to the civil commissioner of the division or to any person whom the divisional council may have authorized to receive the same on or before the day fixed in the said announcement for the payment of the same, on pain of being forthwith liable to legal proceedings for the recovery of the amount.

XLI. The several divisional councils may in suing for the recovery of rates proceed against the owner or occupier, either separately or both of them in one and the same action, each for the whole rate, in any competent court, and recover the same by the judgment and process of such court: Provided that any occupier of property on which a rate has been assessed who is not the owner thereof, and who

has not entered into such occupation in pursuance of any agreement for becoming the owner thereof, shall in the absence of any agreement to the contrary be enabled to retain or recover from such owner the amount of any rate which he may have so paid, but not any costs or expenses which he may have incurred or been condemned to pay in the course of any suit or action brought against him by the divisional council for non-payment of any such rate: Provided also that no occupier of any immovable property shall be liable for any rate which had become due and payable thereon at any time before he entered upon the occupation thereof: And provided further that any person who as occupier may have become liable for any rate as aforesaid shall continue to be liable for such rate, although he may have ceased to occupy the property in respect of which the rate had been imposed.

XLII. The first valuation to be made as aforesaid in each division for the purposes of this Act shall subsist and be in force for five years from the date of the first assessment under this Act; at the expiration of which term and of each successive term of five years a fresh valuation shall be made, in the same manner as is hereinbefore directed with regard to the first valuation.

Valuation every five years.

#### APPLICATION OF FUNDS.

XLIII. All moneys raised or received by any divisional council from any source whatever for the purposes of this Act shall be appropriated, firstly, to defraying the expenses of valuation and assessment of property within its division and the collection of rates under the foregoing provisions of this Act; secondly, to the making, improving, and maintaining the several divisional roads within its division and the public dams upon such roads; and may also be appropriated, thirdly, to contributing towards the making or improving of any main road which the divisional council may desire to have opened or improved in such division and which work the Colonial Government may have agreed to undertake; fourthly, to the making or improving of any public road within the division not being a main or divisional road; fifthly, to contributing towards the making or improving of any road or bridge, proposed to be made or improved in any adjoining division, which would be of so much benefit to the inhabitants of the division to which such divisional council belongs as to make it desirable that it should contribute to such work; and, sixthly, in asserting by legal process the right of the public to any public road within the division not being a main road, which the divisional council shall ascertain to exist and shall find to have been stopped up or otherwise obstructed by any person or persons whomsoever:

How funds of divisional council to be applied.

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Provided however that nothing herein contained shall be construed so as to require any divisional council to resort to legal process for the purpose aforesaid in any case in which they shall deem it expedient not to do so, nor to prevent any of Her Majesty's subjects from resorting to legal process in any such case as he may be advised or think fit.

Certain divisions to contribute proportions of rates failed to be levied for main roads under previous laws.

XLIV. Whereas under Ordinances No. 8 of 1843 and No. 7 of 1848 one or more rates, not exceeding five in any case, have been assessed and levied in several divisions of the colony and have been expended by the late Central Board of Commissioners of Public Roads in the construction, or improvement, or maintenance of main roads in those or other divisions; and whereas it is just that those divisions in which no rates or a smaller number of rates than five have been levied should contribute in the same proportion as other divisions to the construction, improvement, and maintenance of main roads, but that at the same time the roads to which such rates are to be appropriated should be within the division in which the rates are levied, according to the intention of the aforesaid Ordinances; it is hereby enacted that every division in which a less number of rates than five has been assessed and levied shall be required to contribute towards the construction, improvement, or maintenance of the main roads opened or to be opened within such division a sum equal to that which it would have been required to contribute for such purpose if five rates had been levied in it, after deducting therefrom the amount of road-rates actually paid in such division and received by the Central Board of Commissioners of Public Roads under the aforesaid Ordinances: Provided always that no such division shall be required to contribute more than one half of the expense to be incurred by the Colonial Government on any main road within such division; and every such contribution to the extent of the amount of one year's rate shall be payable in advance as soon as any such road is declared a main road, and shall be paid by the divisional council of the division out of the road-rates leviable therein to the Colonial Government, which if more than three months elapse after the receipt of such money before the commencement of the work for which it was contributed shall pay interest to the divisional council by whom it was contributed at the rate of six per cent. per annum during such further time as may elapse before the commencement of the work or during which the Colonial Government, after having commenced, may stop or delay the further prosecution of the work: Provided also that if in any division any rates have been assessed and levied but not expended therein, the amount so levied

Such contributions not to exceed half the expense of main road.



and not expended shall together with an addition of six per cent. interest per annum upon such amount, calculated from the expiration of six months from the date of the assessment of each such rate, be accounted as levied under this Act and shall entitle such division to receive an equal amount from the public revenue, to be expended upon the main roads of such division, before any further rate be levied therein.

**XLV.** Before any divisional council may contribute to the opening of any new line of main road within the division to which it belongs or to the making or improving of any road or bridge in any other division otherwise than according to the provisions of the forty-third section, it shall by a notice to be published in the Government Gazette and in every newspaper published in the division call a meeting of the owners of immovable property liable to be assessed under this Act, to be held at some convenient place and time to be named in such notice, such time to be at least thirty-one days after the issue of such notice, for the purpose of deciding whether any and if so what sum shall be contributed by such divisional council to such road or bridge and upon what terms and conditions; and if at such meeting the majority in value of rateable property resolve that the divisional council be authorized to contribute a certain sum, then such divisional council may pay over to the Colonial Government or the divisional council of the division in which such road or bridge may be any sum not exceeding the sum named in such resolution, upon the terms and conditions approved at such meeting: Provided however that any divisional council may call such meetings as aforesaid from time to time for the purpose of increasing the amount of the contribution to any such road or bridge or of varying the terms or conditions of such contribution; and that if any such meeting as aforesaid should reject the proposal to contribute or to add to any previous contribution no similar meeting shall be again called to consider the same proposal until the expiration of six calendar months from the day on which such previous meeting was held.

Before contributing to any main roads divisional council to call meeting of landed proprietors.

**XLVI.** Whenever any divisional council may decide upon making or improving in its division any line of road which leads to or through any other division the said council shall communicate to the divisional council of the other division the course of the proposed line and the public purposes which the proposed work is meant to serve, and shall desire the concurrence of the last mentioned divisional council in the making or improving of such road; and any two or more divisional councils agreeing upon the making or improvement of a road which passes through any part of their several divisions may arrange together as to the execution of the work on such road and as

When line of road passes through more than one division respective councils to agree as to its construction, maintenance, &c.

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Chief commissioner to arbitrate if councils cannot agree.

to the contribution from one to the other of funds in aid of the execution of such work; and if any such divisional councils cannot agree as to the making or improvement or maintenance of a road in which they are jointly interested, or in which one of the divisions is interested and the other divisions do not consider themselves to be interested, and if they are willing to submit to the arbitration of the chief commissioner aforesaid, the said commissioner shall consider and arbitrate in such matter, and his arbitration, confirmed by the Governor, shall be binding upon the parties and final.

How if divisional council neglect roads.

XLVII. Whenever any divisional council should refuse or neglect to maintain in proper repair any divisional road within the division, any number of persons liable to be assessed to road-rates in any field-cornetcy or in any two or more field-cornetcies through which such divisional road may pass, being not less than three fourths in value of the persons so liable within the said field-cornetcy or field-cornetcies, may apply in writing to the said divisional council and demand that such divisional road may be put in proper repair; upon the receipt of which demand the said divisional council shall be bound within a reasonable time to put such road into proper repair; and no fresh road-rates levied after the receipt of such demand within such field-cornetcy or field-cornetcies shall be appropriated to any other purpose than the repair of such road until the repair thereof be completed: Provided always that the foregoing provision shall not apply in any case in which any divisional council may prove that it has expended in the repair of other roads in the said field-cornetcy or field-cornetcies within the preceding three years the sums which it has received as road-rates leviable therein during that period.

With consent of landed proprietors a special rate may be levied for roads other than main or divisional roads.

XLVIII. Whenever the majority of any persons liable to be assessed to road-rates in any field-cornetcy or in any two or more field-cornetcies in a division, being not less than three fourths in value of persons so liable within such field-cornetcy or field-cornetcies, should desire to have a road situate therein which is not a main or divisional road, made, improved, or repaired, they may apply to the divisional council in writing, setting forth their wishes, and request that a special additional rate not exceeding in any one year the amount of one penny in the pound upon the value of the immovable property within such field-cornetcy or field-cornetcies liable to be rated may be levied upon such property for the purpose of being appropriated by the divisional council or by a committee of the inhabitants of such field-cornetcy or field-cornetcies, to be approved by the divisional council, to the purpose aforesaid; and every such divisional council

shall be bound to comply with such application within three months after it has received an application for its imposition.

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MISCELLANEOUS.

**XLIX.** Every divisional council acting in pursuance of the provisions of this Act may from time to time enter into any contract with any person or company for any work to be done or for any materials or things to be furnished for the purposes of this Act; and all contracts upon which the price or sum to be paid may exceed ten pounds sterling shall be in writing, and shall specify the work to be done or the materials or things to be supplied and the price or sum to be paid for the same respectively; and in the case of work to be done the time within which the same shall be completed; and shall provide some penalty to be suffered in case of non-performance of the contract, and shall be signed by not less than two members of the divisional council and also by the person or persons contracting; which contract or a copy thereof shall be entered in a book to be kept for that purpose.

Divisional council may enter into contracts.

**L.** No member of any divisional council shall be eligible to become a contractor with the divisional council of which he is a member for the doing of any work or for the supply of any materials or things contemplated by this Act, nor shall any such member directly or indirectly be interested or concerned in any such contract as last aforesaid, under a penalty not exceeding one hundred pounds, to be forfeited to Her Majesty the Queen.

No member of divisional council to be a contractor or be interested in any contract.

**LI.** The chief commissioner aforesaid acting under the authority of the Governor may enter into a contract with any divisional council for the making, improving, repairing, or maintaining of any main road or part of a main road within the division to which such council belongs: and any divisional council may enter into a contract with the said chief commissioner for the making, improving, repairing, or maintaining of any divisional road being in immediate connection with a main road in such division.

Chief commissioner may enter into contract with divisional council for making or repairing certain divisional roads.

**LII.** Whenever the funds at the disposal of any divisional council may exceed the amount immediately required for carrying into effect the objects of this Act every such council may deposit the surplus in any joint-stock bank or banks in the colony or may lay it out at interest upon Government debentures.

Disposal of surplus moneys.

**LIII.** Whenever any sum of money may be granted from the public treasury to any divisional council in aid of any specific work upon a public road within such division such money shall be applied to the special purpose stated in such grant, and to none other; and the accounts

Grants from public treasury to be applied to specific works only.

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of the divisional council shall be so framed and kept as to show such application.

Divisional council to furnish annual accounts of receipts and expenditure.

LIV. Every divisional council shall cause an exact and particular account to be kept and to be made up and balanced at the end of each year of all moneys raised, collected, or otherwise received by such divisional council or by any person on its behalf under the provisions of this Act, and of all disbursements made and expenses incurred by the said divisional council, distinguishing the amount derived from each source of receipt; and to furnish a copy of such account together with all necessary vouchers to the Governor, in order that the same after having been audited by the Auditor of the colony may be laid before both Houses of Parliament.

To be presented to Parliament.

Assets and liabilities of divisional road boards transferred to divisional councils.

LV. All the assets, claims, and demands of the lately existing divisional road board of any division, and not realized or recovered by the divisional council of the said division by virtue of the thirty-first section aforesaid of the Act No. 5, 1855, shall vest in such divisional council for the purposes of this Act; and all liabilities of such divisional board not paid or satisfied by such divisional council under the said thirty-first section shall survive against such divisional council and be recoverable from such divisional council in like manner as it could have been recovered from the former divisional board in case the Ordinance No. 8, 1843, were still in force.

Penalties on persons wilfully injuring property protected by this Act.

LVI. If any person maliciously cut, break down, destroy, or injure any public road, whether main road or divisional road, or any toll-bar or toll-house, building, or work of any kind whatever erected or made under the authority of this Act or being upon or belonging to any public road within the colony, it shall be lawful for any person who may see the offence committed to apprehend and also for any other person to assist in apprehending the offender, and by the authority of this Act and without any warrant to deliver him to any field-cornet, constable, or peace-officer, who is to keep him in safe custody and with all reasonable dispatch to convey him before the resident magistrate within whose district the offence has been committed; and if the person or persons accused be convicted of any such offence by any such resident magistrate he or they shall forfeit severally and respectively any sum not exceeding three pounds for every such offence and shall also make full satisfaction for the damage which may have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender or offenders and the other moiety shall be paid, in case of damage or injury to any road not being a main road, to the divisional council of the division in which such offence was committed, to be by it applied for

the purposes of this Act, and in case of damage or injury to any main road, to the colonial treasury; and if any such offender do not upon such conviction pay the said forfeiture and satisfaction such magistrate shall commit him to prison, there to be kept to hard labour if such magistrate so order for any time not exceeding three calendar months, unless the said forfeiture and satisfaction be sooner paid: Provided always that nothing herein contained shall prevent the chief commissioner, acting for the Colonial Government, or the said divisional council from bringing any action for damages before the supreme or circuit court having jurisdiction should it consider the amount of such damages to exceed the jurisdiction of any resident magistrate: Provided that the said divisional council shall be competent to prosecute in any case of damage or injury to any road not being a main road without previously applying to the public prosecutor: Provided also that any person who shall maliciously and without reasonable and probable cause apprehend any person without warrant for an alleged contravention of this section shall upon conviction be liable to the same penalty as that by this section provided for the contravention thereof.

LXVII. If any person should through carelessness do damage or injury to any of the matters or things in the last preceding section mentioned, any resident magistrate having jurisdiction shall upon the application or complaint of any commissioner, chief or assistant, or of the divisional council within whose division such damage or injury may have been done, according as such damage shall have been done to a main road or some road other than a main road, summon the party complained of, and upon hearing the parties on both sides or on the non-appearance of the party complained of examine the matter of complaint, and may award such sum of money by way of satisfaction to the party complaining for such damage as to such resident magistrate may appear reasonable; and in case of neglect or refusal forthwith to pay such money together with all expenses attending the recovery thereof such resident magistrate may sentence the party so neglecting or refusing to any period of imprisonment not exceeding fourteen days: Provided however that nothing herein contained shall prevent the chief commissioner, acting for the Colonial Government, or any such divisional council from bringing any civil action for damages against any person doing such damage or injury as aforesaid before the supreme court or any circuit court having jurisdiction should he or they consider the amount of such damages to exceed the jurisdiction of any resident magistrate.

Injuries inflicted through carelessness how to be redressed.

No. 9—1858.

Certain properties  
vested in Colonial  
Government and  
divisional councils  
respectively.

LVIII. The right to and property in all and singular the public roads in any division and to and in all gates, bars, sheds, houses, buildings, toll-houses, public dams upon or belonging to any public road within any division, and to and in all materials for road-making, horses, oxen, implements, utensils, and things whatsoever which may be provided or taken over by the Colonial Government or the divisional council of any division and used in the performance of the trust by this Act reposed in them respectively, shall vest in the said Government or divisional council, who respectively shall be authorized and entitled to administer and dispose of any of the said matters or things in whatever mode shall seem most beneficial.

Commencement and  
duration of Act.

LIX. This Act shall commence and take effect from and after the 1st of January, 1859, except in so far as is otherwise provided by the third section of this Act, and shall be and continue in force until the 31st December, 1863, and no longer.

No. 10—1858.] AN ACT [June 5, 1858.

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 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 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

\* See Act No. 17 of 1862.

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:

I. 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 twenty thousand and five hundred pounds in the whole as may be necessary for constructing such works in or at Algoa 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.

Harbour board may effect certain loans with sanction of Governor and upon security of the general revenue.

II. 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 Algoa 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 Algoa Bay

May levy certain rates on goods landed and shipped in Algoa Bay.

No. 10—1858.

Person landing or shipping goods to state to principal customs officer the value thereof.

III. 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 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.

Bond to be taken if wharfage not paid forthwith.

Penalty for false declaration.

IV. 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.

Sums collected under this Act to be paid over to harbour board.

V. 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.

Clerk or other person may be employed and paid out of dues collected.

Act when to commence.

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

#### SCHEDULE No. 1.

Schedule 1.

1. Upon all wool shipped or landed in Algoa Bay there shall be payable and be paid three pence 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 five shillings for every one hundred pounds of value thereof.

No. 10-1858.

*Exemptions.*

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

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). Schedule 2.

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.

No. 11—1858.] AN ACT [June 5, 1858.

For Regulating Weights and Measures in the Colony of the Cape of Good Hope.

WHEREAS it is necessary for the security of commerce and the good of the community that weights and measures should be just and uniform and that true standards should exist, by means of which the accuracy of the weights and measures in public use may be tested and ascertained: And whereas in regard to certain of the weights and measures in general use in this colony no standard thereof exists, either in this colony or in any other part of the world, and the same or many of them are inconsistent with each other and obviously erroneous, which is the cause of great confusion and manifest frauds: And whereas such evils will be best remedied and the recurrence thereof will be best prevented by establishing in this colony standard weights, in accordance Preamble.

No. 11—1858.

with the standard pound weight now established in and for the United Kingdom of Great Britain and Ireland and the standard of certain of the measures now established in the said United Kingdom, commonly called the imperial weights and measures: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Previous laws repealed.

I. The Ordinance No. 13 of 1848, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance for regulating Weights and Measures," and bearing date the 11th day of July, 1848, and the Ordinance No. 1, 1849, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, entitled "An Ordinance to postpone the time of the taking effect of the Ordinance No. 13 of 1848," and all former laws, customs, or usages repugnant to or inconsistent with any of the provisions of this Act shall be repealed and the same are hereby declared to be repealed accordingly.

Governor to procure copies of the standard weights and measures used in the United Kingdom.

II. It shall and may be lawful for the Governor of this colony to procure as soon as may be after the taking effect of this Act a copy or model of the standard pound avoirdupois, of the standard yard, and of the standard gallon, as respectively defined in and for the United Kingdom of Great Britain and Ireland by an Act of the Parliament thereof made in the fifth year of his late Majesty King George the Fourth, entitled "An Act for ascertaining and establishing Uniformity of Weights and Measures," together with a copy or model of every multiple or sub-multiple of such standard pound specified in the schedule to this Act annexed, and also a copy or model of every multiple or sub-multiple of such standard yard and standard gallon, made and verified under the direction of the Lord High Treasurer or the Commissioners of the Treasury, or any three of them, and deposited in the office of the Chamberlains of the Exchequer at Westminster, as in the said Act of the Parliament of the United Kingdom provided; and all copies or models procured under this Act shall be made of such metal or materials as shall be best calculated to resist the action of the atmosphere and wear and tear.

Such copies to be made of most durable materials.

Standard or model bushel.

III. It shall and may also be lawful for the said Governor to cause to be made of such metal or material as shall be deemed best fitted for the purpose a measure of capacity for a standard or model bushel, to contain or consist of two thousand two hundred and eighteen cubic inches and one hundred and ninety-one thousandth parts of a cubic inch equal to eight imperial gallons.

IV. The several copies and models aforesaid so procured or caused to be made as aforesaid shall be deposited and carefully preserved for custody and inspection in the office of the Treasurer-General of this colony or of such other officer as the said Governor may appoint, and be kept by him in a chest, whereto there shall be two locks with separate and distinct keys, whereof one shall remain with the Governor and the other with the Treasurer-General or such other officer as aforesaid; and such copies and models shall be and the same are hereby declared to be the original and genuine standards in and for this colony of all weights and measures by this Act established and made necessary. And the said Treasurer-General or other officer as aforesaid shall with the permission of the Governor, upon reasonable notice and at all reasonable times, produce or cause to be produced for inspection or for testing the correctness of any measure of weight, extension, or capacity such one or more of the said copies or models as any resident magistrate shall in writing desire him to produce.

V. If any copy, model, or standard for the time being so deposited as aforesaid shall be lost or destroyed or if the same shall be injured or supposed or suspected so to be it shall and may be lawful for the Governor aforesaid to procure and substitute a fresh copy, model, or standard in place and stead thereof; and thereupon such fresh copy, model, or standard shall be deemed and taken to be the same standard of weight or measure as the case may be which the copy, model, or standard that it replaced would have been deemed and taken to have been had the same been duly preserved and none other substituted for it.

VI. It shall and may be lawful for the Governor aforesaid to provide from time to time such and so many sets of standard weights and measures, verified as in the second section of this Act mentioned or otherwise verified by comparison with the copies or models deposited as aforesaid, as the said Governor shall deem to be required for the comparison and adjustment of the weights and measures to be in use in the several districts of this colony; and the said Governor shall cause one or more of such sets to be deposited with and be preserved by the resident magistrates respectively of the several districts of this colony or by such other person or persons as he shall direct and appoint; and every weight and measure so provided and preserved as in this section set forth shall until the contrary be proved be deemed and taken to conform to and correspond with the copy or model of the standard weight or measure of the same description or denomination

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Copies or models to be deposited with the Treasurer-General or other officer and to be standards for this colony.

And may be produced for inspection, &c.

Such copies or models if lost or injured to be replaced.

Several sets of standards may be obtained and deposited with the respective resident magistrates.

No. 11—1858.

Such standards need not be of the same material as the original copies.

Resident magistrate shall upon notice and payment of fee produce standard for inspection or comparison.

Dutch weights and measures abolished.

Penalty for using weights and measures not in accordance with standards hereby declared.

Except in transactions previous to the passing of this Act, or relating to lands, precious metals, or minerals, or the sale of drugs.

deposited as aforesaid in the office of the Treasurer-General or other officer as aforesaid, and to be fit and proper for testing and ascertaining the correctness of other weights and measures as the case may be: Provided always that such standard weights and measures so to be provided as aforesaid shall not be deemed or taken to be unfit for the purposes aforesaid by reason that they or any of them are not made of the same materials as the copies or models deposited as aforesaid in the office of the Treasurer-General or other officer as aforesaid.

VII. Every resident magistrate or other person intrusted with the preservation of the said copies or models in the sixth section of this Act mentioned shall upon reasonable notice and at all reasonable times cause such of them to be produced for inspection or for testing the correctness of any measure of weight, extension, or capacity as any person shall in writing request him to produce for that purpose; such person paying in respect of every such copy or model produced the sum of six pence, which shall be paid over by such resident magistrate or other person into the colonial treasury.

VIII. From and after the date of the taking effect of this Act the use of all weights commonly called "Dutch weights," as also of the lineal measure called the "ell," and the measure of capacity known as the "old gallon," and the measures of capacity called "schepel" and the "muid," shall be abolished; and if any person shall after the said date sell by or according to any standard of weight other than the standard pound as hereinbefore described and deposited in the office of the resident magistrate or other person as aforesaid or some multiple or sub-multiple thereof, or by or according to any measure of extension other than the standard yard aforesaid deposited as aforesaid or some multiple or sub-multiple thereof, or by or according to any measure of capacity other than either the standard bushel aforesaid so deposited as aforesaid or some multiple or sub-multiple thereof, or the standard gallon aforesaid so deposited as aforesaid or some part or multiple thereof, such person shall upon conviction be liable to a penalty not exceeding forty shillings: Provided that all bargains, sales, and other contracts *bonâ fide* made before the day of the taking effect of this Act shall be performed and judged of in like manner as if this Act had never been passed; and provided also that nothing herein contained in regard to the measures of extension shall apply to any land or any sale thereof; and provided further that nothing in this Act contained shall apply to the use of any weights in the sale of gold, silver, or precious stones or in the sale of drugs by retail.

IX. All bargains, sales, or contracts concerning any goods, wares, or merchandize which shall after the taking effect of this Act be made with reference to weight, and which shall specify a price or sum for or by "the hundred" or for or by the "hundred pounds," or any multiple or sub-multiple thereof, shall be deemed and taken to be for or by one hundred pounds or the multiple or sub-multiple named thereof of the standard weight by this Act established; unless there shall be a special agreement to the contrary in which the proportion of the weight or measure agreed upon to the standard weight or measure ascertained by this Act shall be mentioned.

X. From and after the taking effect of this Act it shall and may be lawful for any resident magistrate, justice of the peace, or chief constable of police at all reasonable times to enter any place within the limits of his district wherein goods shall be exposed and kept for sale or wherein any trade or dealing by weight or measure shall be carried on, and therein to examine all weights, measures, balances, steelyards, or other weighing machines there being and to compare and try such weights and measures with the copies of the standard weights and measures authorized to be provided as in the second and third sections of this Act mentioned.

XI. If upon such examination as in the preceding section mentioned it shall appear that any weight or measure is not formed according to the standard weights and measures by this Act established and is not of some one of the denominations in the schedule to this Act annexed, or is light or otherwise unjust, the same shall be liable to be seized, and the person or person in whose possession the same shall be found shall upon conviction incur the forfeiture thereof and also a penalty not exceeding five pounds.

XII. Any person who shall have in his possession any balance, steelyard, or other weighing machine which shall on such examination as in the tenth section mentioned be found incorrect or otherwise unjust, or who shall refuse or neglect to produce for such examination when thereto required all weights, measures, balances, steelyards, or other weighing machines which shall be in his possession, or shall otherwise obstruct or hinder such examination, shall incur the forfeiture of such balance, steelyard, or other weighing machine as shall have been found to be incorrect or unjust or of such of them as he shall have refused or neglected to produce for such examination or have hindered or obstructed the examination of, and also a penalty of any sum not exceeding five pounds.

XIII. Nothing in this Act contained shall be deemed or taken to prevent any person from being prosecuted in ordinary course of law for any fraud or other crime

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Sales by "the hundred" or "hundred pounds" to be judged of with reference to the standard weights hereby established unless under special agreement to the contrary.

Resident magistrate or other officers may enter any place to compare the weights and measures in use with the standards.

Penalty if found to be at variance with the standards.

Penalty for obstructing officers in their examination of weights, measures, &c.

Nothing in this Act to bar action for fraud by false weights, balances, &c.

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How penalties and forfeitures to be recovered and disposed of.

If penalty and costs of suit be not paid offender may be imprisoned.

Limitation as to amount of costs.

Goods may be attached to satisfy costs.

Offender to be released if penalty and other expenses are paid.

Weights, &c., when forfeited to be destroyed or sold.

Denomination and value of weight to be stamped upon it.

Lead or pewter not to be used except for purposes of adjustment.

punishable by law committed by means of false weights, balances, or measures.

XIV. All penalties and forfeitures imposed by any of the provisions of this Act shall be recoverable in the court of the resident magistrate within whose jurisdiction the act or omission entailing such penalty or forfeiture shall have been done or committed and may be proceeded for by any person who shall sue for the same; and one moiety of every penalty or forfeiture recovered shall be paid to the party suing for the same, together with his costs as hereinafter mentioned, and the other moiety to the colonial treasury: and it shall be lawful for such magistrate to commit the offender to prison for any term not exceeding one month in case the party convicted shall not forthwith pay the amount of the penalty imposed together with the reasonable costs incurred by the party suing for the same or secure such payment to the satisfaction of such resident magistrate: Provided always that such costs shall not exceed the amount of costs which by the rules of the said court for the time being would have been payable to the party suing had the prosecution by him instituted been a civil action or proceeding for the recovery of an amount equal to the penalty so recovered: Provided always that whether such offender shall be committed to prison or not it shall and may be lawful for the party who shall have prosecuted such offender to sue out, but at his own expense, a warrant under the hand of such magistrate authorizing the levy by distress and sale of the movable property of such offender of the amount of such penalty and costs, together with the expense of such distress and sale: Provided also that any such offender if committed to prison shall be forthwith discharged therefrom in case he shall pay or cause to be paid the amount of such penalty and costs or in case such amount together with such expenses as aforesaid shall have been fully levied and made by force or virtue of the said distress and sale.

XV. Any weight, measure, balance, steelyard, or weighing machine adjudged under any of the provisions of this Act to be forfeited shall be broken up, and if saleable, sold, and the proceeds thereof after deducting the expenses of breaking up and selling the same shall be paid, one moiety to the party who shall have proceeded for such forfeiture and the other half to the colonial treasury.

XVI. Every weight used under this Act shall have upon its upper part and in legible figures, cast or stamped, the number of pounds, multiple, or sub-multiple of a pound which it is intended to represent.

XVII. It shall not be lawful except as hereinafter is excepted to make use of weights in the manufacture of which lead or pewter shall have been used: Provided

always that nothing herein contained shall prevent the insertion of such plug of lead or pewter into weights as shall be *bonâ fide* necessary for the purpose of adjusting them: Provided however that no lead, pewter, or other soft metal shall be allowed to be used for the purpose of adjustment to a greater extent than as follows, namely: In weights from ten pounds to fifty pounds to the extent of a two hundredth part of such weight so to be adjusted, and in weights under ten pounds to the extent of one hundredth part of such weight so to be adjusted; and any person contravening this section shall incur and be liable to a penalty not exceeding five pounds.

No. 11—1858.

In what proportions.

XVIII. As soon as the standard weights and measures ordered to be obtained for the purposes of this Act shall have been obtained and be in this colony the Governor shall by proclamation to be published in the Government Gazette give notice thereof and of the several descriptions and denominations of the same, and fix the day upon which this Act shall come into operation and have effect, which day shall be not earlier than twelve nor later than eighteen months from the date of such proclamation; and this Act shall come into operation and take effect from and after the day so fixed accordingly.

This Act when to come into operation.

SCHEDULE of Weights referred to in the second section of this Act.

| Weight 50 lbs. | Weight 1 lb.     |
|----------------|------------------|
| 25 "           | $\frac{1}{2}$ "  |
| 15 "           | $\frac{1}{4}$ "  |
| 10 "           | $\frac{1}{8}$ "  |
| 5 "            | $\frac{1}{16}$ " |
| 4 "            | $\frac{1}{32}$ " |
| 3 "            | $\frac{1}{64}$ " |
| 2 "            |                  |

Schedule of multiples and sub-multiples of the pound weight.

and every decimal fraction of a pound.

No. 12—1858.] AN ACT [June 5, 1858.

For Regulating the Admission of Barristers, Attorneys, Notaries, and Conveyancers.

WHEREAS it is expedient to make provision for the admission as advocates of the Supreme Court of such persons in addition to those at present by law entitled to be so admitted as shall be duly qualified thereto by general acquirements and by a sufficient knowledge of law and jurisprudence: And whereas it is further expedient to make additional regulations regarding the admission of attorneys of the Supreme Court and persons desirous of

Preamble.

No. 12—1858.

practising as notaries and of obtaining authority to prepare deeds of transfer and of hypothecation in this colony: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant laws repealed.

I. So much of the Royal Letters Patent of his late Majesty King William the Fourth bearing date at Westminster the 4th May, in the second year of his reign, commonly called the Charter of Justice, and so much of the Ordinance No. 14 of 1844, and so much of any other law, usage, or ordinance as shall be repugnant to or inconsistent with any of the provisions of this Act are hereby repealed.

Certain persons may be enrolled as barristers, &c., in the Supreme Court in addition to those admitted under the Charter of Justice.

II. In addition to the persons who may by the seventeenth section of the said Charter of Justice be approved, admitted, and enrolled by the Supreme Court as barristers or advocates in the said Supreme Court, authority is hereby given to the said Supreme Court to approve, enrol, and admit all such persons as shall have obtained either of the two certificates of merit and attainment mentioned in the ninth section of an Act made and passed in this present session of Parliament for creating a board of public examiners in literature and science; and in addition to such certificate the certificate of the higher class in law and jurisprudence in the sixteenth section of the said Act mentioned, to act and practise as barristers or advocates of the said Supreme Court.

Persons holding certificates in law may after a service of three years as apprentice or clerk be admitted as an attorney.

III. Every person who shall previously to the time of his application to be approved, admitted, and enrolled an attorney to the Supreme Court have obtained either of the certificates in law and jurisprudence in the sixteenth section of the said Act mentioned shall upon having actually served as an apprentice or clerk by contract in writing to any advocate, attorney, solicitor, or proctor throughout the term of three consecutive years, be eligible to be approved, admitted, and enrolled an attorney of the Supreme Court as fully and effectually to all intents and purposes as any person having been bound and having served for five years is eligible to be approved, admitted, and enrolled an attorney by virtue of the twentieth section of the said Charter of Justice and the one hundred and forty-ninth rule of the Supreme Court.

Authority of the Supreme Court required to practise as notary public.

IV. It shall not be lawful for any one to take upon himself to practise as a notary public within the colony until he shall have obtained authority to that effect from the Supreme Court, without prejudice always to the right of such persons so to practise as may before the taking effect of this Act have obtained the previously existing legal authority in that behalf.

Who may be admitted as notaries.

V. It shall be lawful for the Supreme Court of the colony to grant authority to practise as notaries public to



the following persons only, that is to say: To every attorney of the Supreme Court and to every person who shall have been bound by contract in writing to serve within this colony as a clerk to a notary duly authorized to practise during the term of four consecutive years subsequent to the date of such contract, and who shall during the whole of such term of service have continued to be actually employed within the colony as clerk in the proper employment and business of such notary as a notary: Provided however that if any such last-mentioned person shall have obtained either of the certificates in law and jurisprudence in the sixteenth section of the Act aforesaid mentioned it shall be lawful for the Supreme Court to grant authority to such person to practise as a notary public after a service of one year only instead of the service of four years as hereinbefore required: Provided also that no person shall be authorized as aforesaid to practise as a notary public unless he shall have attained at least the age of twenty-one years and unless it shall be certified to the Supreme Court in writing, by the examiners in the next succeeding section described, that such person has been duly examined by the said examiners and that he is in the opinion of such examiners qualified to be admitted to practise as a notary public.

Limitation as to age,  
&c.

VI. The examiners in the last preceding section mentioned shall be appointed from time to time by the Supreme Court and shall be three in number, of whom one shall be an advocate of the Supreme Court of not less than seven years' standing and two shall be public notaries, duly admitted and of not less than seven years' standing; and a certificate under the hands of any two or more of such examiners shall be sufficient.

Who to be examiners  
in last preceding  
section mentioned.

VII. Notwithstanding this Act it shall be lawful for the Supreme Court to cause to be examined in regard to his qualification to be admitted to practise as a notary public any person who shall at any time before the taking effect of this Act apply to be so examined, whether such person shall or shall not have served as clerk to a notary; and if upon such examination such person shall be found qualified it shall be lawful to admit him to practise: Provided that every such person shall be examined by such examiners as are in the sixth section of this Act mentioned.

How as to applicants  
for admission before  
the passing of this  
Act.

VIII. No person not being an advocate of the Supreme Court shall receive authority to draw and prepare transfer deeds and deeds of hypothecation which shall be entitled to registration by the Registrar of Deeds unless he shall have attained the age of twenty-one years and unless it shall be certified to the Supreme Court in writing, by three examiners to be appointed from time to time by the said

Who may draw deeds  
of transfer and hypo-  
thecation.

No. 12—1858.

Supreme Court, of whom one shall be an advocate of the Supreme Court of not less than seven years' standing and two shall be persons who shall have received authority to draw and prepare such deeds as aforesaid, that such person desirous of receiving such authority as aforesaid has been duly examined by the said examiners and that he is in the opinion of such examiners qualified to receive authority to draw and prepare such deeds as aforesaid; and a certificate to that effect under the hands of any two or more of such examiners shall be sufficient.

Examinations mentioned in preceding sections how to be held.

IX. Every examination in the three last preceding sections mentioned shall be held with open doors at such time and place as the examiners appointed to conduct such examination shall find convenient and appoint.

Fee to be paid by persons authorized to draw deeds of transfer and hypothecation.

X. Every person applying to be admitted to practise as a notary public or to be authorized to draw and prepare deeds of transfer and hypothecation shall before such examination pay into the hands of the Registrar of the Supreme Court the sum of ten pounds; and such sum shall by such officer be divided amongst the examiners who shall have examined such person share and share alike; and such payment shall be in lieu or stead of every other fee or charge now by law payable to the public revenue by any person admitted to practise as a notary or authorized to draw or prepare deeds of transfer or hypothecation.

Supreme Court to make rules and regulations for notaries, &c.

XI. It shall be lawful for the Supreme Court to make such rules and regulations as may insure the due performance of their duties by notaries public and conveyancers, whether appointed under this Act or previously, and to suspend such of them as may fail therein for such period and upon such terms as to such court shall seem to be proper in the circumstances: Provided that the fourth section of the Act No. 26 of 1856, entitled "An Act for Amending the Law relating to Rules of Court," shall extend and apply to all such rules as aforesaid.

No. 13—1858.]

AN ACT

[June 5, 1858.]

For Releasing the Estate Constantia, otherwise called Great Constantia, from the Burthen of an Entail or Fidei-Commissary Trust.

Preamble.

WHEREAS Jacob Pieter Cloete, senior, proprietor of the estate Constantia, otherwise called Great Constantia, did on the third day of December, one thousand eight hundred and twenty-four, enter into a contract or

agreement with his mother, Anna Catharina Scheller, widow of the late Hendrik Cloete, senior, since deceased, executed at Cape Town, before the notary public, Rynier Beck, and witnesses, whereby it was agreed between them (*inter alia*) that the estate or homestead called Constantia, otherwise called Great Constantia, purchased by the said Jacob Pieter Cloete, senior, from his said mother, should be and remain heritable, to devolve by succession upon such son of him, the said Jacob Pieter Cloete, senior, as he should nominate, or if no one be so nominated then upon the eldest son, and such failing, to the next male descendant of the said Jacob Pieter Cloete, senior, or such failing to the next male descendant of the said deceased Hendrik Cloete, senior, but that the said estate should not so descend or be made over until the widow of the said Jacob Pieter Cloete, senior, should re-marry or die unmarried, subject to which conditions, transfer and conveyance of the said estate Constantia, otherwise called Great Constantia, was made and given to the said Jacob Pieter Cloete, senior, on the said third day of December, one thousand eight hundred and twenty-four: And whereas the said Jacob Pieter Cloete is desirous to have the estate released from the beforementioned condition, which burthens it with an obligation partaking of the nature of an entail or fidei-commissary trust, and hath for that purpose obtained the consent in writing of his eldest son and of such other male descendants of himself and the other male descendants of the said deceased Hendrik Cloete, senior, who may have under the aforesaid contract an expectant right of succession, as also of his wife, Catharina Cornelia van Reenen, agreeing that the aforesaid condition and all and every other condition which may prevent the said Jacob Pieter Cloete from having, using, and enjoying the said estate Constantia, otherwise called Great Constantia, as free property should be revoked, cancelled, and annulled, as if they had never existed: 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:

I. The estate Constantia, otherwise called Great Constantia, shall be and the same is hereby released from the burthen of the entail or fidei-commissary trust imposed upon it under and in terms of the beforementioned contract.

Estate "Great Constantia" released from entail.

II. It shall and may be lawful for the said Jacob Pieter Cloete to hold, possess, and enjoy the said estate Constantia, otherwise called Great Constantia, 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 before mentioned contained in the said contract had never existed; and

Estate to be held and be alienable as free property.

No. 13—1858.

the conditions of such contract so mentioned and referred to in the deed of transfer of the third December, one thousand eight hundred and twenty-four, and subject to which such transfer was executed, shall be deemed and taken to be null and void and of no force and effect whatever.

No. 14—1858.] AN ACT [June 5, 1858.

For the Creation of Educational Boards in the Field-cornetcies, Villages, and Towns of this Colony on which the Local Regulations of each shall be founded.

Preamble.

WHEREAS it is expedient that due provision should be made for the establishment and maintenance of public schools in the several field-cornetcies, villages, and towns in this colony, and that educational boards should be constituted and established therein for that purpose: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof:

Meeting of resident householders to be convened for determining upon regulations for educational districts.

I. From and after the first day of July next it shall and may be lawful for any field-cornet, resident magistrate, or justice of the peace, within the limits of his jurisdiction, and he is hereby required upon a requisition made to him in writing to that effect by any number of resident householders not less than fifteen in towns and villages and not less than ten in rural field-cornetcies, and resident respectively within the limits of any such field-cornetcy, village, or town, or any ward or wards within the same, which shall be specified in the said requisition, to call a meeting of householders resident within the limits aforesaid to determine whether educational regulations shall be adopted for the field-cornetcy, village, town, or place intended to be erected into an educational district.

Notice of such meeting to be given.

II. Three weeks' notice at the least of the time and place of holding such meeting shall be given by the field-cornet, resident magistrate, or justice of the peace calling the same, by a printed or written notice affixed to some conspicuous place or places of public resort within the limits aforesaid.

Proceedings at such meeting.

III. The chairman who shall preside at any meeting assembled as hereinbefore directed shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require such resident householders as aforesaid assembled thereat to determine by a

majority of votes whether educational regulations shall or shall not be adopted and acted upon within the said intended school district.

No. 14—1853.

IV. If at any such meeting it shall be determined by a majority of votes that educational regulations shall be adopted then such meeting shall elect and appoint a committee of so many of such resident householders as aforesaid as the said meeting shall deem expedient to frame and draw up educational regulations.

Committee to be appointed to draw up educational regulations.

V. The committee so to be elected and appointed shall be chosen by such resident householders assembled at such meeting by a majority of votes; and every person qualified to vote at the election of members of Parliament shall be deemed and taken to be a resident householder within the meaning of this Act.

Committee how to be chosen, and who electors.

VI. The committee so chosen as aforesaid shall forthwith proceed to frame and draw up such educational regulations as they may deem expedient and shall submit the same when prepared to a meeting of such resident householders as aforesaid, to be called by the said committee upon fourteen days' notice, to be given in manner aforesaid: Provided always that such committee shall submit such regulations to such meeting as aforesaid within one month from the date of their appointment, otherwise the said committee shall be *ipso facto* dissolved, and a new committee shall then and in every such case be chosen in manner and for the purpose aforesaid at a meeting to be called by any such field-cornet, resident magistrate, or justice of the peace as aforesaid to whom such dissolution of the committee shall have been notified.

Duties of committee.

VII. In such regulations it shall be the duty of such committee to fix upon or name or describe a convenient site or sites within the intended school district on which to provide a commodious house for the school and residence for the schoolmaster; the way and manner by and in which the necessary funds shall be raised for the erection and maintenance or hiring of such school-house and residence and for the salary or remuneration for the services of the master, teachers, or instructors employed in the work of instruction, and for all other necessary expenses and charges for the establishment and support of the intended institution, by fees or other contributions, and to fix the number of commissioners for the several purposes herein-after mentioned.

Regulations to fix upon site for school, &c., and manner of raising funds.

VIII. At the meeting to which such regulations as aforesaid shall be submitted by such committee any field-cornet, resident magistrate, or justice of the peace residing at or near such proposed school district shall preside as chairman; provided however that such field-cornet, resident magistrate, or justice of the peace shall not be a member

Who to preside at meeting of householders called to consider regulations.

No. 14—1858.

of the said committee; and when there shall not be any such field-cornet, resident magistrate, or justice of the peace not being a member of such committee present, then and in every such case any such resident householder as aforesaid not being a member of such committee present at such meeting may be elected to preside as chairman at such meeting.

Manner of proceeding at such meeting.

IX. At such meeting the question shall be put by the chairman on each and every clause contained in the regulations submitted by the committee *seriatim*, and afterwards on the whole of the regulations jointly, and a majority of votes shall decide whether such clause or the whole of the regulations jointly as the case may be shall or shall not be adopted.

Regulations to be submitted to divisional council.

X. The regulations adopted at such meeting shall forthwith be transmitted by the chairman of such meeting to the divisional council, for the approval, amendment, or disallowance thereof of the said council; and in the event of the said regulations being amended by the said divisional council the regulations so amended shall be forthwith transmitted to the chairman of such meeting as last aforesaid, and in his absence to any field-cornet, resident magistrate, or justice of the peace residing in or near the said intended school district, who shall forthwith upon a notice of not less than fourteen days call a meeting of such resident householders as aforesaid, and who shall by a majority of votes decide whether the said regulations so amended shall be adopted or not; and if the regulations be adopted the chairman of such meeting shall forthwith cause the same to be published in the Government Gazette, and upon such publication the same shall become as legal, valid, and effectual as if the same had been inserted herein.

If finally adopted, to be published in the Gazette.

Regulations may be amended at a meeting of resident householders.

XI. At any time within one month after the expiration of each year from the publication of any such regulation as aforesaid it shall be lawful for the commissioners of any school district, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid not less than fifteen, to call a meeting of such resident householders as aforesaid, upon fourteen days' notice to be given in manner aforesaid, for the purpose of adding to, amending, or repealing the existing regulations or any of them by a majority of votes of persons present and entitled to vote at such meeting, and such regulations after being so reformed shall be forthwith transmitted by the said commissioners to the divisional council within whose division the said school district shall be included for the approval or disallowance thereof or of any part thereof of the said council, and such of the said reformed regulations as shall be

approved by the said divisional council shall be published in the Government Gazette forthwith, and the said reformed regulations so approved of as aforesaid shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall become null and void: Provided always that nothing in any district school regulations contained shall be repugnant to or inconsistent with the true intent and meaning of the provisions of this Act.

XII. So soon as such original regulations as aforesaid shall have appeared in the Government Gazette the resident magistrate within the limits of whose jurisdiction the said school district shall be included, and he is hereby required, by a notice of not less than fourteen days in manner hereinbefore provided, to call a meeting of such resident householders as aforesaid residing within the limits of such school district to be holden for the election and choice of so many commissioners as shall have been specified in the said regulations to carry the same into effect; and the said commissioners shall be elected by a majority of votes of such resident householders as aforesaid present at such meeting: and any such resident magistrate, field-cornet, or justice of the peace shall preside at such meeting.

Commissioners for school districts.

How to be elected.

XIII. Any person residing in the school district shall be eligible to be elected a commissioner for the purposes of this Act, and shall be proposed to the said meeting by some person duly qualified to vote thereat and shall be seconded by some other person in like manner qualified.

Who eligible as commissioners.

XIV. Every person who shall be elected a commissioner in any school district in manner aforesaid shall go out of office at the end of the third year from the said first election; and in place of such commissioners so going out of office a like number of other commissioners to be elected as hereafter provided shall come into office, and remain in office for three years, and at the expiration of such lastmentioned term of three years shall in like manner go out of office and be succeeded by other commissioners, who shall remain in office for a like term of three years, and so on for ever: Provided always that any of such outgoing commissioners shall be re-eligible and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

Commissioners to be elected triennially.

XV. On the Monday immediately preceding the day on which any such term of three years shall expire a meeting shall be holden at such hour and place as shall be duly notified by the said commissioners for the election of commissioners for the three years next succeeding: and such

Such elections when and how to take place.

No. 14—1858.

What to constitute vacancy, and how to be filled up.

election shall proceed in such manner as is hereinbefore provided for the election of the first commissioners.

XVI. Any commissioner who shall cease to possess the qualification in the thirteenth section required for the eligibility of commissioners or shall cease to be a resident householder within the district for any period exceeding three months or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease, shall *ipso facto* vacate his office; and in case any person so elected a commissioner shall die or become disqualified in manner aforesaid or shall resign or refuse to accept the office of commissioner, or in the case of any casual vacancy happening in any manner whatever in such office, notice shall forthwith be given by the acting commissioners to any such field-cornet, resident magistrate, or justice of the peace as aforesaid, who shall forthwith in manner hereinbefore directed by this Act call a meeting of such resident householders as aforesaid for the purpose of filling up such vacancy or vacancies.

How if such vacancy be not filled up.

XVII. If at the expiration of any such term of three years as aforesaid, and if in the case of any vacancy or vacancies occurring in the board of commissioners, the resident householders shall not have elected and appointed other commissioners or other commissioner to succeed or to fill up such vacancies, then and in every such case the commissioners last elected or any number of them shall have full power and authority and they are hereby required to remain in office and continue to act as such commissioners until their successors are duly elected and appointed as hereinbefore provided.

Commissioners to hold meetings, where complaints may be preferred.

XVIII. The said commissioners shall meet at such times as are specified in the school district regulations respectively, at some convenient place or office previously publicly notified; and at such meetings it shall be lawful for any person to appear and to prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Act or of the school district regulations.

To hold ordinary and special meetings.

XIX. Such commissioners shall meet at all other times and so often as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner when three commissioners shall have been appointed, and in all other cases for any two commissioners, by writing under his or their hands to summon upon at least three days' notice the commissioners for any special purpose therein named; and at all meetings of such commissioners any number not less than one third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners

What to constitute a quorum at such meetings.



shall have been appointed then not less than two commissioners, shall constitute a quorum for transaction of business.

No. 14—1858.

XX. The board of commissioners at their first meeting after their election and at their first meeting after each general triennial election, which shall be holden within ten days after such election, shall elect from among themselves a chairman for the period of three years next ensuing, that is to say, until the next general election, who when present shall preside at the meetings of the said commissioners; and when such chairman shall be absent from any such meeting the said commissioners shall elect another commissioner to act as chairman of such meeting; and in case the votes of the said commissioners shall at such meeting be equally divided, the chairman or the commissioner acting as chairman shall have a casting vote in addition to his own vote.

Commissioners to elect a chairman.

XXI. It shall be lawful for the said commissioners elected in the school district for the time being acting in pursuance of any school district regulations to that effect, and they are hereby authorized and required to appoint during pleasure such treasurer and other officers as shall be specified in such regulations and to remove and displace the same.

May appoint or remove treasurer and other officers.

XXII. It shall be lawful for the said commissioners or any two of them, and they are hereby required, to take security from the treasurer to be appointed by virtue of this Act before he enters on the duties of his office for the due execution of his office as treasurer, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time, and in case any such treasurer shall neglect or refuse for the space of one week next after his appointment to give such security to the satisfaction of the said commissioners then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said commissioners shall within three weeks then next assemble and appoint some other fit and proper person to the office of treasurer instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

Treasurer to give security.

XXIII. No person elected and appointed under and by virtue of this Act a commissioner for the purpose of carrying into effect the provisions thereof shall have or receive or be entitled to have or receive any salary, or shall exact, take, or accept any fee or reward whatsoever for or on account of anything done or to be done by him by virtue of this Act or on any account whatsoever relative to putting this Act into execution.

No commissioner to receive salary, fee, or reward.

No. 14—1858.

Commissioners how  
to sue and be sued.

XXIV. In any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act or for or in respect of any property, movable or immovable, vested in the said commissioners, or for any other matter or thing relating to this Act, by or against the said commissioners, it shall and may be lawful for the said commissioners to sue or be sued by the style or description of "The Commissioners for the School District of \_\_\_\_\_:" Provided always that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action or suit either for or against the said commissioners; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding shall and may be lawfully made by any such commissioner; and provided also that the said commissioners shall always be reimbursed and paid out of the moneys to arise by virtue of this Act all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the same or any part thereof unless such action or suit shall arise in consequence of their or any of their own wilful neglect or default.

Commissioners to  
keep records of pro-  
ceedings.

Such records may be  
produced in evidence.

XXV. All acts, orders, and proceedings of the said commissioners at any of their meetings shall be entered in a book to be kept by them for that purpose and shall be signed by the chairman or by two of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *prima facie* evidence of all such acts, orders, and proceedings upon any appeal or trial or information, or any proceeding, civil or criminal, and in any court or courts of law whatsoever.

Books to be kept of  
receipts and disburse-  
ments under this  
Act.

XXVI. The said commissioners shall and they are hereby required from time to time to order and direct a book or books to be provided and kept in which shall be entered true and regular accounts of all sums of money received, paid, or expended for or on account of the purposes of this Act and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of every such resident householder as aforesaid without fee or reward; and the said commissioners and other persons aforesaid or any of them shall or may take copies of or extracts from the said book or books without paying for the same;

and in case the said commissioners shall refuse to permit or shall not permit the said persons aforesaid to inspect the same or take copies or extracts as aforesaid such commissioners shall forfeit and pay any sum of money not exceeding five pounds for each default.

No. 14—1858.

Penalty for refusing inspection of such books.

XXVII. In the month of September of every year a true account shall be made in writing of all moneys received and paid by virtue of this Act during the preceding year, ending on the 31st day of August in every year, and a copy or duplicate of such accounts verified on affirmation or oath before any justice of the peace by the said commissioners or any two of them shall be deposited with the said commissioners and shall be open to the inspection of all parties interested.

Annual accounts, duly attested, to be deposited with commissioners and be open for inspection.

XXVIII. The said commissioners acting in pursuance of such regulations as aforesaid may from time to time enter into any contract with any person or company whatsoever for any work to be done and performed or any materials and things to be furnished to and for the said commissioners for the purposes of this Act: Provided always that the sum or sums of money specified in such contract or contracts shall not exceed in amount the sum or sums in the custody of their treasurer at the time of entering into such contract and available for the work or purposes specified in such contract.

Commissioners may enter into contracts.

XXIX. The said commissioners may treat with the owner or owners and occupier or occupiers of any houses, buildings, lands, or grounds for the purposes of this Act, for such sum of money or yearly rent or for such time as to them shall appear reasonable.

May treat for lands, buildings, &c.

XXX. All lands, houses, and other immovable or movable property, and all moneys accruing from grants, donations, legacies, fees, or from any other sources whatsoever, made or conveyed to the said school district in furtherance of the purposes of this Act, shall be vested in the commissioners of such district for the time being.

May hold lands and other property for the purposes of this Act.

XXXI. The said commissioners shall nominate and appoint the schoolmaster; fix the hours and periods when the school shall be kept open for elementary instruction; the rate of fees if any to be charged; hear and decide on all complaints or charges brought before them regularly and in writing by any resident householder against the said schoolmaster, relating to his conduct in the school, or his moral character, and shall be empowered to censure, suspend, or dismiss him, as the facts proved before them may require.

Commissioners to appoint schoolmaster, fix hours of instruction, fees, &c.

XXXII. In each and every school established under this Act provision shall be made for instruction in the following branches,—that is to say, reading, writing, arithmetic, and the outlines of geography and history.

Certain branches to be taught.

No. 15—1858.] AN ACT [June 5, 1858.

For Amending the Act No. 21, 1857, entitled “An Act to Amend the Ordinance No. 1, 1846, entitled ‘Ordinance for the Regulation of the Post Office and Postage.’” \*

Preamble.

WHEREAS by the sixth section of the Act No. 21, 1857, entitled “An Act to Amend the Ordinance No. 1, 1846, entitled ‘Ordinance for the Regulation of the Post Office and Postage,’” it is enacted that printed newspapers received in this colony from abroad, when forwarded by the inland post, shall, whether they shall or shall not have been opened in this colony, be chargeable with a postage of one penny each and no more, without reference to their weight: And whereas it is expedient to relieve newspapers received in this colony from the United Kingdom of Great Britain and Ireland from the postage of one penny in the said sixth section mentioned; and to further amend the Act aforesaid by making compulsory the prepayment of the postage upon letters posted in this colony for transmission to the said 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:

Newspapers received from United Kingdom to be free of postage.

I. Printed newspapers received in any port or part of this colony from any part of the United Kingdom of Great Britain and Ireland shall not whether forwarded by the inland mail or not be chargeable in this colony with any postage whatsoever, anything in the said sixth section of the said Act to the contrary notwithstanding: Provided that if any such newspaper shall have been opened in this colony it shall not be capable of being thereafter forwarded by post unless a postage stamp of the value of one penny be affixed to such newspaper.

Except when opened before transmission inland.

II. No letters or newspapers liable to the payment of postage and posted in this colony for transmission to any part of the United Kingdom aforesaid shall be so transmitted unless the postage payable upon such letters or newspapers shall be paid at the time of the posting of the same by means of postage stamps affixed or impressed upon such letters or newspapers, and of equal value or amount with the postage payable upon such letters or newspapers.

Letters and newspapers to United Kingdom to be prepaid by stamp.

III. The third section of the Act aforesaid, No 21, 1857, shall extend and apply, *mutatis mutandis*, to any such letter

Third section of Act 21, 1857, to apply to letters when not prepaid.

\* See Act No. 2 of 1859.

as is in the last preceding section mentioned which shall be delivered or deposited at any post office within this colony without being prepaid.

No. 15—1858.

IV. The Governor shall have power to fix by proclamation the date at and from which the several provisions of this Act shall be carried into effect.

When the provisions of this Act shall take effect.

No. 16—1858.] AN ACT [June 5, 1858.

For Introducing into this Colony Immigrants from Europe.

WHEREAS by the Act No. 8 of 1857, entitled

“An Act for Introducing into this Colony Immigrants from Europe,” the Governor of this colony was authorized to expend from time to time between the taking effect of the said Act and the expiration of the year 1858 any sum not exceeding fifty thousand pounds in introducing immigrants from Europe: And whereas it is expedient that the said Governor should be authorized to expend for the same object during the year 1859 a further sum of thirty thousand pounds: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. It shall and may be lawful for the Governor of this colony to expend from time to time during the year 1859 any sum not exceeding thirty thousand pounds in introducing immigrants from Europe.

Sum to be expended in 1859.

II. In case the state and condition of the ordinary public revenue during the said year 1859 should be such that the sum or sums of money required for the purpose aforesaid could not be withdrawn from such ordinary public revenue without injury to the public service it shall be lawful for the said Governor to raise the balance or sum which shall be required to be made good by disposing by contract of debentures bearing interest at some rate to be agreed upon, not exceeding six per cent.

May be raised on debentures.

III. The provisions of the third, fourth, and fifth sections of the Act aforesaid, No. 8 of 1857, shall apply to all debentures issued under this Act in like manner precisely as if the said sections were herein again set forth and word for word repeated.

Certain sections of previous Act to apply to debentures under this Act.

IV. The immigration contemplated by this Act shall be carried on upon the principle and in accordance with the provisions and regulations contained in the schedule annexed to the Act aforesaid, No. 8 of 1857.

Immigration to be conducted on the principle of Act 8, 1857.

No. 17—1858.]

AN ACT

[June 5, 1858.]

To Provide for Paying off Loans heretofore contracted  
by the Central Board of Commissioners of Public  
Roads.

Preamble.

WHEREAS the Central Board of Commissioners of Public Roads, appointed under the Ordinance No. 8, 1843, entitled "Ordinance for Improving the Public Roads of this Colony," has from time to time raised by way of loan divers sums of money required by the said board for the improvement of the main roads of the colony: And whereas loans contracted by the said board, amounting in all to the sum of twenty-one thousand two hundred and fifty pounds, remain at the present time due and unpaid: And whereas it is expedient to make provision for paying off the said loans: 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:

Debentures may be issued to pay off certain loans of Central Road Board.

I. In case the ordinary revenue of the colony shall be insufficient to pay off the loans aforesaid, amounting together to the said sum of twenty-one thousand two hundred and fifty pounds, then and in that case it shall and may be lawful for the Governor of this colony to raise and take up upon debentures so much of the money required to pay off the said loans as the ordinary revenue of the colony for the time being shall be insufficient to satisfy and meet.

For what sums and how to be issued.

II. Such debentures shall be issued for sums not exceeding one hundred pounds nor less than fifty pounds each, and shall be signed by the Treasurer and by the Auditor of the colony, and shall bear interest at a rate not exceeding six per cent. per annum.

Interest on debentures to be paid out of general revenue.

How debentures to be paid off.

III. The Governor shall from time to time out of the current revenues of the colony pay the interest upon the said debentures: Provided that they shall be paid off and discharged as nearly as may be practicable in the order of the dates of their issue, and that no such debentures shall be so paid until after three months' previous notice in the Government Gazette of this colony of the intention of the Government so to discharge the same.

How such debentures to be disposed of.

IV. All such debentures as aforesaid shall except as hereinafter excepted be disposed of by public tender upon the best terms that can be thus obtained, not being less than par for debentures bearing interest at the rate of six per cent. per annum: Provided that if more tenders than one offering the same terms shall be received for a

greater amount of debentures than the amount then about to be issued it shall be lawful to accept any one or more of such tenders or any part of any such tender, as circumstances may make expedient: Provided that it shall be lawful to dispose of to the Master of the Supreme Court, in his capacity as administrator of the Guardians' Fund, so many of such debentures as he may apply for, which debentures shall be disposed of to the said Master at par, and shall bear interest at the rate of six per cent. per annum.

No. 17—1858.

May be disposed of to the Master of the Supreme Court, as administering the Guardians' Fund.

No. 18—1858.] AN ACT [June 5, 1858.

For Enabling the Master of the Supreme Court to lend upon Government Securities Moneys belonging to the Guardians' Fund.

WHEREAS by the thirty-second 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 "Guardians' 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:

Preamble.

I. 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 Guardians' 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.

Moneys of Guardians' Fund may be invested in Government debentures.

No. 19—1858.]                    AN ACT                    [June 5, 1858.  
To Continue the Ordinance No. 11, 1837, entitled  
“An Ordinance for establishing, regulating, and  
providing for the South African College.”

Preamble.

WHEREAS the Ordinance No. 11, 1837, entitled  
“An Ordinance for establishing, regulating, and  
providing for the South African College,” ceases and expires  
by effluxion of time on the 21st day of December now next  
ensuing: And whereas it is expedient that provision should  
be made to continue for a limited period the said Ordinance  
No. 11, 1837: 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:

Ordinance 11, 1837,  
continued to end of  
1861.

I. The said Ordinance, No. 11, 1837, for establishing,  
regulating, and providing for the South African College,  
shall continue and remain in force until the 31st day of  
December, 1861.

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No. 20—1858.] AN ACT [June 5, 1858.
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.

I. The Act aforesaid, No. 11 of 1857, is hereby
repealed.

* See Acts No. 6 of 1860 and No. 16 of 1861.

II. 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 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.

Governor may direct the construction of breakwater on plan of Captain Vetch;

And the improvement of existing wharfs, &c.

Accounts of expenditure to be laid before Parliament.

III. When and as soon as the Governor of this colony for the time being shall by proclamation in the Government Gazette announce and make known that the construction of an outer pier or breakwater in Table Bay has been commenced then all and singular the existing dues of wharfage and crantage payable in Table Bay shall from and after such date as shall be fixed for that purpose in and by such proclamation be doubled, and such increased dues shall thenceforth be payable and be paid: Provided that nothing in this Act contained shall extend to alter or affect the dues of wharfage and crantage payable at Simon's Town.

As soon as the Governor shall announce that the construction of the breakwater has commenced, the wharfage dues in Table Bay to be doubled.

Act not to extend to dues payable at Simon's Town.

IV. 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 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.

V. 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.

VI. All moneys which shall have arisen from the accumulations of dues of wharfage and crantage which shall be in the colonial treasury or other depositories at

Accumulated wharfage dues and other revenues vested in the Government.

No. 20—1858.

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.

Separate accounts of such revenues to be kept.

VII. 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.

Management of the wharfs, &c., vested in Colonial Government.

VIII. The fifth section of the Ordinance No. 6 of 1851 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, acting under authority of Governor may treat for lands and materials required for purposes of this Act.

IX. 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 any such person and the engineer or other person aforesaid should 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

Disputes as to value to be settled by arbitration.

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 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.

Arbitrators may choose an umpire.

How in case of failure to appoint arbitrator.

X. 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

If property treated for belong.

No. 20—1858.

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 Guardians' 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 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 Guardians' 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.

XI. 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.

XII. 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.

No. 20—1858.

Debentures charged upon the revenues described in this Act.

XIII. 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.

Debentures for what amounts and how to be issued.

XIV. 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.

Loans otherwise than by debentures.

No. 21—1858.]

AN ACT

[June 5, 1858.

For Further Providing for the Building and Improving of Public Prisons.

WHEREAS provision was made in the last session of Parliament for applying certain moneys to the building and improving of certain public prisons of this colony: And whereas it is expedient to apply certain further sums to the same 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.

I. The Governor may apply from and out of the ordinary revenue of the colony to the building or enlargement of the several public prisons enumerated in the schedule annexed to this Act the several sums therein set forth, amounting to fourteen thousand two hundred and ninety-nine pounds.

Certain sums to be applied out of the ordinary revenue for improvement of prisons.

SCHEDULE.

SOMERSET (EAST)	Provided by Act No. 10 of 1857, for enlarging and repairing.....	£1000
	Required further to build a new prison	£1300
BEAUFORT	Provided as above	800
	Required as above	1200
CALEDON	Provided as above	300
	Required as above	1200

No. 21—1858.

GEORGE	Provided as above	£800	
	Required as above		£1200
COLESBERG.....	Provided as above	800	
	Required to meet Civil Engineer's Estimate		500
ALICE	Provided as above	2000	
	Required as above		200
FORT BEAUFORT	Provided as above	1500	
	Required as above		200
CRADOCK	Provided as above	2000	
	Required as above		200
BURGHERSDORP.	Provided as above	2000	
	Required as above		200
FORT PEDDIE ..	Provided as above	1500	
	Required as above		287
STOCKENSTROM .	Provided as above	1500	
	Required as above		287
GRAAFF-REINET	Provided as above	5000	
	Required as above		225
UITENHAGE	Provided as above	1100	
	Required as above		300
BEDFORD	} Provided as above, each	800	
MIDDELBURG..			
HOPE TOWN...	} Required further for each £400		2000
ALIWAL			
CALVINIA			
GRAHAM'S TOWN			
MURRAYSBURG.	} New gaols, each £1200		2400
ROBERTSON ...			
HUMANSDORP .			
FRASERBURG ..	} New gaols, each £800		1600
			£14299

No. 22—1858.]

AN ACT

[June 5, 1858.

To Fix the Amount to be contributed by the Municipality of Cape Town towards the Expense of the Executive Police of Cape Town.

Preamble.

WHEREAS the fiftieth section of the Ordinance No. 1, 1840, entitled "Ordinance for the better Regulation of the Municipal Board for Cape Town and the Vicinity thereof," is as follows:

"And whereas by a new organization of the police in Cape Town to be shortly arranged and established under the superintendence of the Colonial Government the necessity for watch-house-keepers, sergeants of the night, watchmen, and patrols to be provided by the municipality will be altogether

superseded: And whereas it is fit and proper that the municipality should reimburse to the said Colonial Government a fair and reasonable proportion of the cost and charge of such police force: Be it therefore enacted that the commissioners for the time being shall annually pay and hand over to the Treasurer and Accountant-General of this colony or to the officer acting as such whatever sum shall from time to time be fixed and ascertained by the vote of the Legislative Council of this colony as a just and proper proportion of the whole expense of the said police force in Cape Town which the said municipality should pay over and make good."

And whereas the new organization of police in the said section mentioned was effected by the Ordinance No. 2, 1840, entitled "Ordinance for Improving the Executive Police of Cape Town and the District thereof, for defining the Powers and Duties of the said Police in certain cases, and for promoting the peace and good order of the said Town;" And whereas the Legislative Council mentioned in the fiftieth section aforesaid of the Ordinance No. 1, 1840, aforesaid, has for some time ceased to exist, whereby the provisions of the said section have become inapplicable, so that no contribution of the Cape Town municipality towards the expense of the Cape Town police has been made since the 30th June, 1853: And whereas it is expedient in reference to certain questions which had arisen between the commissioners of the municipality of Cape Town to be fixed by law a certain sum as the amount to be paid by the said municipality as and for its contribution to the Cape Town police from the 30th June, 1853, down to the 31st December, 1857, and also to fix by law a certain proportion of the annual cost of the said police as the proportion which the said municipality should annually contribute: 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:

I. There shall be payable and be paid by the commissioners of the municipality of Cape Town from and out of municipal funds and revenues to her Majesty's local executive Government in this colony a sum of three thousand seven hundred and fifty pounds sterling, which sum shall be in full discharge and satisfaction of all claims for contribution towards the expense of the police force of Cape Town and the district thereof established under the Ordinance aforesaid, No. 2, 1840, down to the 31st December, 1857.

Certain claims in arrears to be settled by municipality.

II. The commissioners aforesaid for the time being shall yearly and every year pay and hand over to the

Annual contribution to be made by municipality.

No. 22—1858.

Treasurer and Accountant-General of this colony or to the officer acting as such one fourth part or share of the expense incurred for the maintenance of the said police force for and during the year then last past.

When and how such payments to be made.

III. The first of the said yearly payments shall be made for and on account of the year 1858 and shall be made on or before the 31st of March, 1859, and in like manner the yearly payment for each succeeding year shall be made on or before the 31st of March in the year next after that for which payment is to be made.

Items of expenditure and number of police employed not to exceed those provided for in 1858.

IV. The items which shall for the purpose of such contribution as aforesaid be included in the expense of the police force aforesaid shall be the same as those which were included in such expense for the purpose of the several annual contributions towards such expense formerly made under the Ordinance aforesaid by the municipality of Cape Town. And the said municipality shall not be liable for any charge for any police engaged by the Government in addition to the number fixed under the Appropriation Act of 1858 which shall be so engaged without the concurrence of the commissioners of the municipality.

Certificate of Auditor-General to be sufficient proof of expense to be contributed by municipality.

V. A certificate signed by the Auditor-General of the colony or the officer acting as such certifying that a certain sum to be specified in such certificate has been the expense for the purposes of this Act of the police force aforesaid for the year mentioned in such certificate shall be deemed and taken to be *prima facie* evidence of the amount of such expense: Provided that the commissioners of the said municipality shall should they require it be supplied with a detailed statement showing the particulars of such expense.

But municipality may require detailed statements of such expense.

No. 23—1858.] AN ACT [June 5, 1858.

For Declaring Main Roads and Regulating Tolls.*

Preamble.

WHEREAS by the second section of an Act made and passed during this present session of Parliament, entitled "An Act to Provide for the Management of the Public Roads of the Colony," it is provided that from and after the first day of January next the several roads of the colony which may by any Act of the Legislature of this colony be declared to be main roads shall be under the charge of the general Government as by the said Act provided, whose duty it shall be to make, maintain, and improve such main roads so far as the funds placed at its disposal by the said Act or any future Act will enable

* See Acts No. 3 of 1859 and No. 10 of 1861.

it: And whereas by the thirteenth section of the said Act it is further provided that all toll-bars established on any main road by authority of any Act of the Legislature of the colony shall be maintained, and such persons as shall be authorized by the Governor so to do shall be entitled to demand and receive thereat the several tolls authorized in such Act, until the said toll-bars or tolls or any of them be abolished, removed, or changed with the consent of Parliament; and no new toll-bar may be established or any new toll demanded upon any main road except with the consent of Parliament: And whereas it is expedient to describe and declare what roads within this colony shall for the purposes of the Act aforesaid be main roads, as also what toll-bars shall be established on such main roads and what tolls shall be demandable at such toll-bars: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. All and singular the several roads mentioned and set forth in the schedule to this Act marked A are hereby declared for the purposes of the Act aforesaid, entitled "An Act to Provide for the Management of the Public Roads of the Colony," to be for the time being, and until the Legislature by some Act thereof shall otherwise provide, the main roads of the colony.

Certain roads declared main roads.

II. All and singular the several toll-bars mentioned and set forth in the schedule to this Act marked B are hereby established, and such persons respectively as shall be authorized by the Governor aforesaid so to do shall be entitled to demand and receive at every such toll-bar the several tolls which in and by the said schedule marked B are mentioned and set forth as the tolls to be demanded and received at such toll-bar.

Toll-bars described in schedule established. Tolls to be collected thereat by persons appointed by Governor.

SCHEDULE A.

MAIN ROADS.

I. ROAD BETWEEN CAPE TOWN AND SIMON'S TOWN.

1. From the Upper Toll at the Military Lines, by Mowbray, Rondebosch, Claremont, Wynberg Hill, Plumstead, Muizenberg, Fish Hoek and Elsjes Bays, to the Toll-gate at Simon's Town.

Main road between Cape Town and Simon's Town.

II. MAIN TRUNK LINE TO GRAHAM'S TOWN, AND FURTHER EASTWARDS, 9 SECTIONS.

2. *First Section.*—From the Lower Toll at the Military Lines, including the branch running into the upper road, opposite the farm Roodebloem, over Montagu Bridge, through Kuils River Village to Eerste River Bridge, forming the portion called the Maitland Road; from Eerste River Bridge to the village of Somerset West, by the Lourens River Bridge and Sir Lowry's Pass, to Steenbrazem's River, over Palmiet River Bridge to Houw Hoek

From Cape Town to Graham's Town, and eastwards.

First section.—To River Zonder End.

No. 25—1858.

Pass, to the Bot River, by Lange Hoogte, Boontjes Kraal, &c., to the town of Caledon; thence by Bath, Speel, and Steenbok's River, to the farm of the Field-cornet Eksteen, on the River Zonder End.

Second section.—To Duivenhok's River.

3. *Second Section.—From Field-cornet Eksteen's to Duivenhok's River.*—From the farm of Mr. Eksteen, by Storms Vley and Leeuwe River, over the Breede River Ferry and Causeway, to the town of Swellendam; by the Buffeljacht's River Bridge, Riet Kuil, Karnmelk's River, and Slange River, to the village of Heidelberg, on the Duivenhok's River.

Third section.—To Hartenbosch River.

4. *Third Section —From Duivenhok's River to Hartenbosch River, through Mossel Bay.*—From Duivenhok's River to the town of Riversdale, by Krombeek's River, Melk Boom, Kweek Kraal, and Brak River; thence by Vette River, Kafferkuil's River, Zoetmelk's River, Zwaart Water, Karnmelk's Vley, and Drooge Rug, Gouritz River, Stink River, Kleinberg, to Hartenbosch River; together with the road branching from Kleinberg to the town of Aliwal (Mossel Bay), and thence to the Hartenbosch River.

Fourth section.—To Keurboom's River Height.

5. *Fourth Section.—From Hartenbosch River to Keurboom's River Height.*—From Hartenbosch River to Great Brak River Height, by the Pont over the Little Brak River and Causeway over the Great Brak River; thence crossing the height by the farms Uitkyk and Diep Kloof, over the bridges across Palmiet Vley, Norga, to the village of Blanco; thence by the Malagas River (or Aspeling's) Bridge to the town of George; from Blanco, by the Montagu Pass, to the Langekloof; by Waterval, Grootte Fontein, Ezeljagt's River, the village of Schoonberg, Ganze Kraal, Eenzaamheid, Molen River, Diep River, to Keurboom's River.

Fifth section.—To Van Staden's River.

6. *Fifth Section.—From Keurboom's River Height to the Western Height of the Van Staden's River.*—From Keurboom's River Height, by the farms Wolvekraal, Avontuur, Welgelegen, and others, crossing the Groot River, Diep River, Klein River, Apple River, to Louterwater; thence by Wagenboom's River, and Twee Rivieren to the Kromme River Height; thence along the Kromme River, by Jagersbosch, Diep River, and Leeuwenbosch, to the village of Humansdorp; thence by the Kabeljauw's River and Gamtoos River to the western height of the Van Staden's River, until the completion of the new line of road running in the same direction, but to the northward of the present line, and northwards also of the Kromme River, avoiding the crossing of that stream; and by which the Van Staden's River will be forded about one mile northward of the present road through it, when the latter shall be established as the main line.

Sixth section.—To Port Elizabeth.

7. *Sixth Section —From Van Staden's River, by Witte Klip, to the Town of Port Elizabeth.*

Seventh section.—To Graham's Town.

8. *Seventh Section.—From Port Elizabeth to Graham's Town.*—From the town of Port Elizabeth by the Zwartkop's River and Amsterdam Flats to Junction Post, at the junction of the road to the Zuurberg; thence along the flat to Sunday's River Ferry, through the farms Vetmaak Vlaakte, Zokama, Baksteen's

Vley, and Nanaga, Langeberg, Rietfontein, Leeuwenbosch, Stilgenoeg, Woodbury, Komgee, Klip Fontein, Nazar, Seven Fontein, Assegaabosch River, and Kareiga, Garden and Palmiet Fontein, Howison's Poort, and Waainek, to the city of Graham's Town.

No. 23—1858.

9. *Eighth Section.—From Graham's Town to Fort Beaufort.*—From the city of Graham's Town, past the burying-ground, to the Race-course Flats; thence by Glen Craig, Botha's Hill, the Ecce Heights and Valley, Fort Brown Flats, to Vygenkraal, on the Great Fish River; along the left bank of that river to the Koonap Drift, at Tomlinson's; thence by Koonap Hill, and along the heights to Mildenhall's, and by the farm Windsor, westward of the house by the farm of Gilbert, eastward of the house to Dan's Hoogte Pass, by the Victoria Bridge to the town of Fort Beaufort with this provision and qualification, however,—namely, that when the Fish River is flooded, a slight deviation from the above line is required, and shall be allowed; to wit, a deviation commencing from the finger-post on the Fort Brown Flats, and running to the bridge at Fort Brown, thence along the left bank of the Fish River till this deviating line joins the Vygenkraal Road, near Tomlinson's Krantz.

Eighth section.—To Fort Beaufort.

10. *Ninth Section.—From Fort Beaufort to Post Retief.*—From the town of Fort Beaufort along the western bank of the Kat River, to its junction with the Blinkwater; thence along the Blinkwater to Blinkwater Fort; along the heights rounding the western side of the Didema, until it reaches Post Retief.*

Ninth section.—To Post Retief.

III. FROM PORT ELIZABETH, OVER THE ZUURBERG.

11. From the town of Port Elizabeth, by the Zwartskop's River and Amsterdam Flats, to Junction Post, thence to Tunbridge's, on the Sunday's River, by a road leading to it from a point near or at Diep Kloof; from Sunday's River to the southern slope of the Zuurberg, to Wolvenkop, ascending the Zuurberg range to Stroebel's and Doornnek, to Riet Vallei farm, on the Boontjes River; up the second range of the Zuurberg, to the crest of the main ridge; thence descending the mountain to the farm north of Basson's Kloof.

Port Elizabeth, over Zuurberg.

IV. FROM NORTHERN BASE OF ZUURBERG TOWARDS CRADOCK.

12. From the northern base of the Zuurberg to the farm of Mr. Wm. van der Merwe, on the Little Fish River; thence to the farm of Piet Goosen, on the Great Fish River; thence to Kookhuis Drift.

Towards Cradock.

V. FROM GRAHAM'S TOWN TO CRADOCK.

13. From Graham's Town over the commonage, through Sypher Fontein, of Mr. G. Palmer, to the Government outspan; thence through Table Farm, Draai Farm, and Brak Kloof, of Dr. Atherstone, and Van der Merwe's Kraal, of Mr. P. van der Merwe; thence through the Hell Poort, over the farms Berg Plaats, of Mr. E. H. Dell, and Mackow Kraal, of S. Becker, to Espag's Drift, on the Great Fish River, the property of J. Lombard, and Government outspan; thence through Schelm Kloof

Graham's Town to Cradock.

Repealed by section 2 Act No. 10 of 1861.

No. 23—1858.

and Ettrick Hill, of J. Thomas, Uitkyk, of Gert Nel, Klip Gat, of Gert Goosen, Leeuwfontein, of Harding, and Been Leegte, of Joachim Bloglio, to Kleinfontein, of the Rev. Welsh, and Government outspan; thence by Simpson's Hotel, across the Goba River, over the farms Rekuest Plaats, of Jordan, to Vley Plaats, of C. van Aardt; thence across the Baviaan's River, through the farms of that name, the properties of Messrs. B. Trollip and Roberts, to Daggaboer's Neck, of Mr. D. Mentz; thence by Maskel's Hotel, passing the farm Vaderlandsche Wilgeboom, of W. Trollip, to Blauw Heuvel, of J. J. Coetzee, being an outspan-place; thence to Blauw Krantz to the Tarka River, close to its junction with the Great Fish River, passing to the west of a hillock; thence along the eastern bank of the Fish River, leaving the Kleine Zuurberg to the right, to Cradock.

VI. FROM PORT ELIZABETH TO GRAAFF-REINET, VIA UITENHAGE.

Port Elizabeth to Uitenhage and Graaff-Reinet.

14. From the town of Port Elizabeth, by Klein School, below Bethelsdorp, leaving Mr. Korsten's, Cradock Place, and the salt-pan, to the left, to the town of Uitenhage; thence to the Couga River, crossing near the farm-house Prentice Kraal; from Couga River to Blaauwkrans, crossing the Bezuidenhout's River to the left of that place; thence, by Steenbok's Vlake, to the Kariega River, passing the outspan Roodewal, to Landman's; thence to Brakfontein, leaving the homesteads of Landman and J. Snyman to the right; from Brakfontein, leaving the house to the right, to the Paarde Poort; thence to Rietfontein, by Rietgat, leaving the homestead to the left, to Noorsdoorns Plaats, on the Sunday's River; thence to Milk River, by Ratelpoort and Paardefontein, crossing the river above its junction with the Sunday's River; thence by Kruidfontein to the town of Graaff-Reinet

VII. FROM GRAAFF-REINET TO MIDDELBURG.

Graaff-Reinet to Middelburg.

15. From the town of Graaff-Reinet to Perry's Hoogte, crossing the Sunday's River near the farm-house Roodebloom; thence by Goliath's Kraal Hoogte, Goliath's Kraal, and to the left of Bloemhof, over Naudesberg; thence by the farm Blaauw Water, Lootsberg, Rondehoogte, Lys River, crossing near the house of L. Lessing, to the base of the Rhenosterberg; and thence by Bultfontein to the village of Middelburg.

VIII. FROM MIDDELBURG TO COLESBERG.

Middelburg to Colesberg.

16. From Middelburg to Groot Fontein, thence to Wolvekop, Twee Fontein, and Naauw Poort; thence by Haartebeeste Hoek, and Carolise Poort, to Valsche Fontein; thence by Haartebeeste Fontein to Riet Fontein; and thence over Government ground to Colesberg.

IX. FROM COLESBERG TO BOTHA'S DRIFT.

Colesberg to Botha's Drift.

17. From the town of Colesberg, by the Klipkuil, in the Colesberg commonage, to the poort in the adjoining farm, Rietfontein; thence through a part of Knoffelfontein and Blaauwkrans, and Rietbult, to the Botha's Drift, on the Orange River.

X. FROM GRAHAM'S TOWN TO BREAKFAST VLEY.

No. 23—1858.

18. From the Ecça Heights, on the road from Graham's Town to Fort Beaufort, to Committee's Drift, and thence to Breakfast Vley.

Graham's Town to Breakfast Vley.

XI. FROM MOSSEL BAY TO BEAUFORT.

Mossel Bay to Beaufort.

First Section.—From Mossel Bay to Meiring's Poort.

19. From Doorn River, on the main trunk line to Graham's Town, through Camphor's Poort; thence over a farm occupied by Mr. Raubenheimer, leaving the homestead to the right; thence to the farm Kamanassie, of Mr. Gert Coetzee; thence to Dysseldorp; thence over the farm Riet Fontein, of Messrs. le Roux and Snyman; thence over the farm Oude Muragie, of Messrs. le Roux and de Beer; thence to the farm De Rust, of Mr. P. Meiring, senior, at Meiring's Poort.

First section.—To Meiring's Poort.

Second Section.—Meiring's Poort.

20. From the farm De Rust, of Mr. P. Meiring, senior, through the Zwarteberg range of mountains, to Klaarstroom, of Messrs. Oosthuysen, on the north side.

Second section.—To Meiring's Poort.

Third Section.—From Meiring's Poort to the Town of Beaufort.

21. From the northern entrance of Meiring's Poort, over the farm Klaarstroom, through Drooge Kloof, to the farms Kafir's Fontein (of Mr. B. Visser), Lombard's Kraal (of Mrs. Mocke), and Steenrots Fontein (of Mr. Goosen), to the town of Beaufort.

Third Section.—To Beaufort.

XII. FROM MALMESBURY TO CAPE TOWN.

22. From the village of Malmesbury to a point in the road below the valley of Mr. H. du Toit, Rosenberg, over the place Olifant's Fontein; thence over the farm Amos Kuil, leaving the house on the left; thence over the farm Mollenburg, leaving the house and river on the right; thence over the farm Berg en Dalen leaving the homestead on the right; thence to the Diep River, opposite the farm Draai Hoek (of Mr. A. van Niekerk); thence over the farms of Mr. J. van Schoor and Mr. van der Spuy, leaving the homestead on the right; thence to the Visser's Hok River, crossing at Varken's Vlei; thence to Duiker Valley; thence by Jan Biesjes Kraal to the Maitland Road at Montagu Bridge.

Malmesbury to Cape Town.

XIII. FROM MALMESBURY TO CLANWILLIAM.

23. From the village of Malmesbury to the Grootte Valley outspan-place; thence to the Berg River and the place De Draai, leaving the house to the left; thence following the old road by Zand Valley outspan-place, Draaifontein, and Rondekuil, in a straight line to Baviaans Kloof; thence over Piquineer's Kloof in an easternly direction, crossing the Olifant's River on the property of Mr. Hanekam, called Middelpoort; and thence along the eastern bank of that river to Clanwilliam.

Malmesbury to Clanwilliam.

XIV. FROM CAPE TOWN TO KARROO POORT AND BEAUFORT.

24. From the 12th mile on the Maitland Road (as per No. 2), leaving Elsjes Kraal to the left, by the village of D'Urban and

Cape Town to Karroo Poort and Beaufort.

No. 23—1858.

Lichtenberg to Joostenberg, Eenzaamheid, Slot van de Paarl, and the Wellington Bridge over the Great Berg River, to the village of Wellington; thence through Bain's Pass to Darling Bridge, over the Breede River; thence along the southern side of the Breede River to Michell Pass, by Grey's Bridge; through Michell Pass to the village of Ceres; thence to Karroo Poort, by Breda's Bridge, Leeuwenbosch, and Hottentot's Kloof; thence through the Great Karroo, by Plat Fontein, Stink Fontein, and Brewel's Fontein, the farm Pattattes River; Driekop, over the Hoogeveld, to Zoutkloof; Groot Fontein, crossing the Dwyka River, to Wagonmaker's Kraal; thence to Riet Fontein, Kruid Fontein, and Uitkyk, along the northern bank of the Gamka River, by Stein Kraal, to the town of Beaufort.

XV. FROM CAPE TOWN TO WELLINGTON, VIA PAARL.

Cape Town to Paarl
and Wellington.

25. From the 14th mile on the Maitland Road (as per No. 2), by Stikland, Kruispad, Kraaifontein, and Muller's Vlei, to the town of the Paarl; thence over the Berg River, through Dal Josaphat, to the Village of Wellington.

SCHEDULE B.

Tolls:

TOLL-BARS AND TOLLS.

On certain roads.

1. Rates payable at the Upper and Lower Gates,—Military Lines, Muizenberg, 4th mile Maitland Road, Meiring's Poort, Botha's Hill, and the Buffeljagts River, Wellington, and Paarl or Lady Grey's Bridges:

1. Upon every wheel of a vehicle	£0 0 2
2. Upon each horse, mule, or ass, employed in drawing a vehicle	0 0 1
3. Upon each head of horned cattle employed in drawing a vehicle	0 0 0½
4. Upon each horse, mule, or ass, not employed in drawing a vehicle	0 0 2
5. Upon each head of horned cattle not employed in drawing a vehicle	0 0 0½
6. Upon every sheep, goat, or swine	0 0 0½

At certain mountain passes.

2. Rates payable at Mountain Passes,—Bain's Pass, Michell Pass, Sir Lowry's Pass, Houwhoek, Great Brak River Pass, Montagu Pass, Howison's Poort, Zuurberg Pass, Piquineer's Kloof:

1. Upon each wheel of every four-wheeled vehicle, not provided with a wooden shoe (remschoen), or an iron shoe, not less than eight inches broad	£0 0 3
2. Upon each wheel of any other vehicle ..	0 0 2
3. Upon every animal employed in drawing a vehicle	0 0 1
4. Upon every animal not employed in drawing a vehicle, excepting sheep, goats, or swine	0 0 2
5. Upon every sheep, goat, or swine	0 0 0½

At certain ferries.

3. Rates payable at Ferries on the Zwartkop's, Sunday's, and Breede Rivers, namely,—the rate now payable at such ferries respectively, until the expiration of any existing lease or contract

for the maintenance of such ferries, when the following rates shall be substituted :

For a four-wheeled vehicle, not drawn by more than four animals	£0 1 6
For a two-wheeled vehicle, with any animals drawing the same	0 1 0
Do. do. do. more than four animals	0 1 6*
For a saddle horse	0 0 4
For loose horses	0 0 3
For loose horses, above 10, each	0 0 2
Sheep or goats, first twenty-five, or any lesser number	0 0 6
Do. for every twenty-five, or any lesser number above the first twenty-five.. .. .	0 0 2
A person on foot	0 0 3
Persons on foot, more than one, each	0 0 2

[From sunset to sunrise, a further charge of one half of the above rates.]

No. 24—1858.] AN ACT [June 5, 1858.

To Regulate the respective Rights of certain Divisions in regard to certain Road Rates.

WHEREAS by the Act No. 12, 1857, entitled "An Act for Constituting certain Districts of this Colony Divisions," and by a certain other Act made and passed in this present session of Parliament, entitled "An Act for Constituting the Districts of Fraserburg, Murraysburg, Humansdorp, and Robertson, Divisions," the several districts in the said Acts mentioned have been constituted divisions: And whereas it is expedient to regulate the respective rights in regard to certain road rates of such last-mentioned divisions and of the older or former divisions from or out of which such recently-constituted divisions shall have been formed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

Divisional council of any new division to receive the arrear road rates assessed by the council of the old division out of which it has been formed.

I. In case any road rate shall have been or shall be assessed by the divisional council of any division from or out of which division the whole or any part of any of the newly-constituted divisions aforesaid shall have been formed previously to the day upon which such newly-constituted division became a division, then and in that case all arrears or amounts of such road rate assessed upon or in respect of any immovable property lying and being within such newly-constituted division and due or unpaid on the day of the taking effect of this Act shall be demandable and receivable by the divisional council of

* Misprint corrected by Act No 3 of 1859.

No. 24—1858.

such newly-constituted division and not by any former or other divisional council; and the divisional council of such newly-constituted division in case it shall think fit to collect such arrears shall have and possess all and singular the same rights and remedies for the recovery of such arrear road rates as if the same had been arrears of road rates assessed by such lastmentioned council.

New division to pay to the older division its share of any debt contracted by the latter on credit of road rates.

II. In case the divisional council of any division from or out of which the whole or any part of any of the divisions constituted by the Act aforesaid, No. 12, 1857, shall have been formed shall at any time before the 1st January, 1858, when such divisions came into being, have raised money by way of loan on the credit of any road rates assessed or to be assessed by such council or shall have incurred any other pecuniary obligation upon the faith of any such road rates, then the divisional council of any of the new divisions constituted by the said Act No. 12, 1857, which new division shall comprise any of the immovable property which next before such new division came into being belonged to the division by which the divisional council which borrowed the said money or incurred the said obligation was elected shall be bound to raise by road rates or otherwise and pay over to the divisional council for the time being of the older or former division as such lastmentioned division shall be limited and bounded after such newly-constituted division shall have become a division such a proportion of so much of such loan or debt as was due and owing or of such other pecuniary obligation as was in existence when such new division came into being as the value of the immovable property which, when such loan or debt was contracted or such other pecuniary obligation was incurred belonged to the older or former division but was afterwards included in such newly-constituted division, bears to the value of the whole of the immovable property which next before the day when such new division came into being belonged to the older or former division as then limited and bounded.

Last preceding section to apply to the new divisions of Fraserburg, Murraysburg, &c.

III. If it shall happen that the divisional council of any division from or out of which the whole or any part of any of the four newly-constituted divisions of Fraserburg, Murraysburg, Humansdorp, and Robertson shall be formed shall at any time before the taking effect of the Act aforesaid constituting such divisions have raised money by way of loan or incurred any other pecuniary obligation on the credit of any road rates assessed or to be assessed by such council, then all and singular the provisions of the last preceding section shall apply, *mutatis mutandis*, to such newly-constituted division and such older or former division respectively precisely as if such newly-constituted division had been a division constituted by the Act aforesaid, No. 12, 1857.

No. 25—1858.]

AN ACT

[June 5, 1858.]

For Constituting the Districts of Fraserburg, Murraysburg, Humansdorp, and Robertson, Divisions.

WHEREAS it is intended to create as soon as may be districts of resident magistrate at and for Fraserburg, Murraysburg, Humansdorp, 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.

I. 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.

II. 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, Fraserburg, 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.

III. 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 councils of such new division.

Divisional Councils Act to apply separately to the new divisions, and to those out of which they are constituted.

No. 25—1858.

Council of older divisions to continue 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 divisions not to interfere with constitution of electoral division.

IV. It shall be lawful for the divisional council of every 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.

V. 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.

VI. 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. 26—1858.] AN ACT [June 5, 1858.

For Applying a Sum not exceeding Two Hundred and Ninety-five Thousand and Seventy-eight Pounds Thirteen Shillings and Nine Pence for the Service of the Year 1858.

WHEREAS by the Act No. 19 of 1857, entitled Preamble. "An Act for Applying a Sum not exceeding Seventy-six Thousand Nine Hundred and Forty Pounds for the Service of the Year 1858," the said sum of seventy-six thousand nine hundred and forty pounds was charged upon the revenue of this colony for the service of the Government of the colony until the 30th of April, 1858: And whereas it has become expedient in the present session of Parliament to take into consideration the requirements of the said service for the entire of the year 1858, as well that portion for which provision was made by the said Act as the remaining portion thereof: And whereas it will be expedient in order to prevent confusion to repeal the said Act No. 19, 1857, and to provide by one Act for the service 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:

I. The Act aforesaid, No. 19, 1857, is hereby repealed. Act 19, 1857, repealed

II. The public revenue of the colony is hereby charged with a sum not exceeding two hundred and ninety-five thousand and seventy-eight pounds thirteen shillings and nine pence for the service of the year 1858 in addition to the sums already by law provided for such service, which sum of two hundred and ninety-five thousand and seventy-eight pounds thirteen shillings and nine pence shall be applied in the manner following, that is to say: Expenditure for 1857.

For the expenditure of the Civil Establishments, Civil establishments. a sum not exceeding fifty-four thousand five hundred and seven pounds eleven shillings and three pence.

For the expenditure of the Judicial Establishment, Judicial establishments. a sum not exceeding twenty-three thousand seven hundred and thirty-seven pounds ten shillings.

For the expenditure of the Educational Establishments, Educational establishments. a sum not exceeding ten thousand six hundred and forty-three pounds ten shillings.

For the expenditure of the Medical Establishments, Medical establishments. a sum not exceeding twelve thousand two hundred and fifty-two pounds ten shillings.

For the expenditure of the Police and Gaol Establishments, Police and gaol establishments. a sum not exceeding thirty-eight thousand three hundred and fifty-four pounds two shillings and six pence.

No. 26—1857. Border department (aborigines). Pensions, gratuities, &c. Works and build- ings. Roads and bridges. Miscellaneous ser- vices. Total. Restriction clause.	<p>For the expenditure on account of the Border Department (Aborigines), a sum not exceeding fifty-three thousand six hundred and four pounds.</p> <p>For the expenditure on account of Pensions, Charitable Allowances, and Gratuities, a sum not exceeding two hundred and four pounds ten shillings.</p> <p>For the expenditure on account of Works and Buildings, a sum not exceeding eight thousand four hundred and sixty-five pounds.</p> <p>For the expenditure on account of Roads and Bridges, a sum not exceeding seventy-two thousand six hundred and eighty pounds.</p> <p>For the expenditure on account of Miscellaneous Services, a sum not exceeding twenty thousand six hundred and thirty pounds.</p> <p>Amounting in the whole to two hundred and ninety-five thousand and seventy-eight pounds thirteen shillings and nine pence, as detailed in the schedule hereunto annexed.</p> <p>The said aids and supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act.</p>
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No. 27—1858.]

AN ACT

[June 5, 1858.

For Applying a Sum not exceeding Ninety-one Thousand Six Hundred and Sixty-five Pounds for the Service of the Year 1859.

Preamble.

WHEREAS it is expedient to provide further sums in addition to those by law provided for the service of the Government of this colony until 30th April, 1859:

Expenditure.

I. 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, that a sum not exceeding ninety-one thousand six hundred and sixty-five pounds be charged upon the revenue of the said colony towards the service of the year 1859, and applied in the same manner and for the same purposes as are set forth as permanent services in the schedule annexed to the Act No. 26 of 1858 and any other Act passed during the present session for the appropriation of the public revenue, that is to say:

Civil Establishments.

II. For the expenditure of the Civil Establishments, a sum not exceeding seventeen thousand nine hundred and fifty-seven pounds.

III. For the expenditure of the Judicial Establishment, a sum not exceeding seven thousand seven hundred and eighty-four pounds.

No. 27—1857,
Judicial establish-
ment.

IV. For the expenditure of the Educational Establishment, a sum not exceeding three thousand five hundred and forty-eight pounds.

Educational estab-
lishment.

V. For the expenditure of the Medical Establishment, a sum not exceeding four thousand and eighty-four pounds.

Medical establish-
ment.

VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding twelve thousand seven hundred and eighty-four pounds.

Police and gaol
establishments.

VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding seventeen thousand eight hundred and sixty-eight pounds.

Border department
(aborigines).

VIII. For the expenditure on account of Works and Buildings, a sum not exceeding one thousand six hundred and twenty-eight pounds.

Works and buildings.

IX. For the expenditure on account of the Roads and Bridges, a sum not exceeding twenty thousand six hundred and twenty-seven pounds.

Roads and bridges

X. For the expenditure on account of Miscellaneous Services, a sum not exceeding five thousand three hundred and eighty-five pounds.

Miscellaneous ser-
vices.

XI. Amounting in the whole to ninety-one thousand six hundred and sixty-five pounds.

Total.

XII. The said aids and supplies shall not be issued or applied for any use, intent, or purpose other than the particular services for which the said amounts have been granted respectively by this Act.

Restriction clause.

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