

# STATUTES

OF THE

## CAPE OF GOOD HOPE,

PASSED BY THE

## SECOND PARLIAMENT,

DURING THE

## SESSIONS 1859—1863.

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CAPE TOWN :

SAUL SOLOMON & CO., STEAM PRINTING OFFICE,  
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1871.

CAPE TOWN :

SAUL SOLOMON AND CO., STEAM PRINTING OFFICE.

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# ACTS OF THE CAPE PARLIAMENT.

No. 1—1859.] AN ACT [June 1, 1859.

For the Naturalization of JOHAN GEORGE WILHELM VON MEYER, of Worcester.

**W**HEREAS JOHAN GEORGE WILHELM VON MEYER, Preamble.  
of Worcester, 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:

I. When and as soon as the said JOHAN GEORGE WILHELM VON MEYER 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 JOHAN GEORGE WILHELM VON MEYER, 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 be taken.

II. The resident magistrate or justice of the peace before whom the said JOHAN GEORGE WILHELM VON MEYER 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. 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 when to commence.

No. 2—1859.

No. 2—1859.] AN ACT [July 8, 1859.

For Amending the Act No. 15 of 1858, entitled  
 “An Act for Amending the Act No. 21, 1857,  
 entitled ‘An Act to Amend the Ordinance No. 1,  
 1846, entitled Ordinance for Regulation of the  
 Post Office and Postage.’”

Preamble.

WHEREAS, by the Act No. 15 of 1858, entitled  
 “An Act for amending the Act No. 21, 1857,  
 entitled ‘An Act to amend the Ordinance No. 1,  
 1846, entitled Ordinance for the Regulation of the  
 Post Office and Postage,’” the prepayment of postage  
 upon all letters and newspapers posted in this Colony  
 for transmission to the United Kingdom is made  
 compulsory: And whereas the said Act was passed  
 in anticipation that prepayment of postage upon all  
 letters and newspapers posted in the United King-  
 dom for transmission to this Colony would, in like  
 manner, be in the United Kingdom made compul-  
 sory: And whereas it is expedient that such pre-  
 payment should not, either in this Colony or in the  
 said United Kingdom, be made compulsory in regard  
 to letters, but, at the same time, that all letters not  
 prepaid should be made subject to a certain fine or  
 extra charge: And whereas, whilst such fine or  
 extra charge, together with the ordinary postage,  
 will, in regard to letters posted in this Colony for  
 transmission to the United Kingdom, be collected in  
 the United Kingdom, by virtue of the laws in force  
 therein, it is fitting that provision should be made  
 by the law of this Colony for collecting in this  
 Colony, in regard to letters received therein from  
 the United Kingdom, and which shall not have been  
 prepaid in the United Kingdom, the stated and  
 ordinary postage, as well as the said fine or extra  
 charge: Be it enacted by 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 second and third sections of the Act afore-  
 said, No. 15 of 1858, are hereby repealed.

Second and third sec-  
 tions of Act 15, 1858,  
 repealed.

II. No newspapers liable to the payment of postage, and posted in this Colony for transmission to any part of the United Kingdom of Great Britain and Ireland, shall be so transmitted, unless the postage payable upon such newspapers shall be paid at the time of the posting of the same, by means of postage stamps affixed or impressed upon such newspapers, and of equal value or amount with the postage payable upon such newspapers.

No. 2—1859.  
Newspapers to be prepaid by Stamps.

III. The postage payable upon all letters posted in this Colony for transmission to any part of the said United Kingdom may be prepaid in like manner and form as in the last preceding section provided in regard to the newspapers therein mentioned.

Letters may be prepaid.

IV. In case any letter posted in this Colony for transmission as aforesaid, without being prepaid, shall, after having been transmitted to the said United Kingdom, be returned again to this Colony, upon the ground that the person to whom it was addressed had refused to pay the postage due upon it, or upon any other ground recognized by the law of the place of delivery, for not delivering such letter, then the writer of such letter, if within this Colony, shall be liable to pay the same amount of ordinary postage and of fine or extra charge which the person to whom such letter was addressed would have been liable to pay in the United Kingdom, and every such letter so returned shall be sent to, and shall be opened by, the Postmaster-General of this Colony, in order to ascertain the writer thereof: Provided, always, that no such returned letter shall be opened by the Postmaster-General for the purpose aforesaid, except in the presence of the Registrar of the Supreme Court of the said Colony, or his assistant; and the said letter shall thereupon, in the presence of the said Registrar or his assistant, be immediately resealed and left with the Postmaster-General.

If letters not prepaid be returned.

V. Every letter received in this Colony from any part of the United Kingdom aforesaid, upon which letter the ordinary uniform postage shall not have been prepaid in the United Kingdom, shall be liable in this Colony to the said postage, and also to a fine or extra charge of sixpence.

Unpaid letters from United Kingdom liable to ordinary postage and fine.

No. 2—1859.

Letters underpaid liable to difference of postage and fine.

VI. In case any such letter as in the last preceding section mentioned shall have been posted in the United Kingdom with part, but not the whole, of the ordinary uniform postage thereon prepaid, then such letter shall, in this Colony, be liable to the difference between the amount of postage which was prepaid and the amount which should have been prepaid, and shall also be liable to the fine or extra charge aforesaid of sixpence.

Arrangements may be made with Her Majesty's Government as to disposal of fines or extra charges on unpaid letters.

VII. The provisions of the Act No. 23 of 1856, in regard to arrangements between Her Majesty's Government and the Government of this Colony for establishing an uniform rate of postage, shall extend to the division or other application of the fine or extra charge aforesaid intended to be levied in the United Kingdom and in this Colony respectively upon all letters not prepaid.

Short title of Act.

VIII. This Act may be cited for all purposes as "The Postage Amendment Act, 1859."

Act when to commence.

IX. This Act shall commence and take effect at the same time as the Act aforesaid, No. 15, 1858.

No. 3—1859.] AN ACT [July 8, 1859.

For Correcting an Error or Misprint in the Act No. 23, 1858, entitled "An Act for declaring Main Roads and regulating Tolls."

Preamble.

WHEREAS, in schedule B, section 3, of the Act No. 23, 1858, entitled "An Act for declaring Main Roads and regulating Tolls," a mistake or misprint has occurred in respect of rates payable at ferries on the Zwartkops, Sundays, and Breede Rivers, being therein set forth as follows :

For a four-wheeled vehicle, not drawn by more than four animals	...	£0	1	6
For a two-wheeled vehicle, with any animals drawing the same...	...	0	1	0
For do., do., more than four animals...	...	0	1	6

And whereas the words, as adopted by the House of Assembly, were as follows :

For a four-wheeled vehicle, with any animals drawing the same... ..	£0	1	6
For a two-wheeled vehicle, not drawn by more than four animals ... ..	0	1	0
For a two-wheeled vehicle, drawn by more than four animals ... ..	0	1	6

And whereas it is necessary that the said accidental mistake or misprint be amended: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

I. That portion of the third section of schedule B, of the said Act No. 23, 1858, is hereby repealed, and instead thereof, the following shall stand as the rates payable at the before-mentioned ferries, namely :

Misprint in ferry tariff of Zwartkop's River, &c., corrected.

For a four-wheeled vehicle, with any animals drawing the same... ..	£0	1	6
For a two-wheeled vehicle, not drawn by more than four animals... ..	0	1	0
For a two-wheeled vehicle, drawn by more than four animals ... ..	0	1	6

No. 4—1859.]                      AN ACT                      [June 8, 1859.

For Amending the Act No. 5, 1855, entitled “An Act for Creating Divisional Councils in this Colony.”

**W**HEREAS, by the nineteenth section of the Act Preamble. No. 5, 1855, entitled “An Act for creating Divisional Councils in this Colony,” it is, amongst other things, provided that the member of any such divisional council presiding at any meeting thereof shall, in case the votes upon any question shall be equally divided, have, in addition to his original or deliberative vote, a casting vote: And whereas, in reference to the composition or constitution of divisional councils, it is expedient that any question upon which the votes of the members present at any meeting shall be equally divided should stand over for determination by the votes of an actual majority

No. 4—1859.

of the members present at some meeting thereof, rather than that such question should be decided by means of the additional or casting vote of the presiding member: And whereas it is also expedient that each divisional council should appoint its secretary: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Presiding member of divisional council to have a deliberative vote only.

I. The member of any divisional council presiding at any meeting thereof shall, in regard to all questions that may come before such meeting, have his original or deliberative vote, and none other; and so much of the nineteenth section of the Act aforesaid, No. 5, 1855, as gives him, in addition to such last-mentioned vote, a casting vote, is hereby repealed.

Section 28, Act 5, 1855, repealed.

II. The twenty-eighth section of the Act No. 5, 1855, is hereby repealed.

Council to appoint its own secretary.

III. It shall be lawful for each divisional council within this Colony to appoint its own secretary.

Civil commissioners' clerk may be so appointed.

IV. Nothing in this Act contained shall prevent any divisional council from appointing, with the consent of the Governor, any civil commissioner's clerk to be the secretary to such council.

Secretary's salary.

V. It shall be lawful for every divisional council to assign to its secretary such salary as it shall deem adequate and proper.

To defray such salary and other expenses, council shall receive a percentage on proceeds of land sales.

VI. Towards making good the salary of the secretary of the divisional council, and defraying incidental expenses of such council, there shall be paid to the divisional council of each division, from and out of the public revenue, five pounds per centum upon the net proceeds of the purchase money of all Crown lands lying within such division, and sold under the rules and regulations applicable, for the time being, to the sale of Crown lands: Provided that such percentage shall not exceed, in any one year, in any one division, the sum of one hundred and fifty pounds: And provided that the quitrent which such lands shall be sold subject to shall not, in calculating such net proceeds as aforesaid, be reckoned or regarded as entering into the price.



VII. So far as the percentage aforesaid shall be insufficient to provide for the salary of the secretary aforesaid, such salary shall be paid from and out of the road rates levied by such council, and other funds at its disposal.

No. 4—1859.

If percentage be not sufficient, balance to be paid out of road rates or other funds

No. 5—1859.]                      AN ACT                      [July 8, 1859.

To Regulate, till the Expiration of the Year 1860, the Dealing in Gunpowder, Firearms, and Lead.

WHEREAS the Act No. 8, 1858, entitled “An Act to regulate, till the expiration of the year 1859, the dealing in Gunpowder, Firearms, and Lead,” will expire with the expiration of the last-mentioned year: And whereas it is expedient that the provisions of the Act No. 14, 1857, which was continued in force by the said Act No. 8, 1858, until the expiration of the year 1859, should be further continued, so as to remain in force till the 31st December, 1860: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. The Act aforesaid, No. 14, 1857, entitled “An Act to regulate, till the expiration of the year 1858, the dealing in Gunpowder, Firearms, and Lead,” shall continue and be in force and operation from the expiration of the year 1859 till the expiration of the year 1860.

Act 14, 1857, continued to 1860.

II. This Act shall commence and take effect at and upon the expiration of the Act aforesaid, No. 8, 1858, and not sooner.

When this Act to commence.

III. Every offence against the Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, committed after the commencement and taking effect of this Act, and before the 31st December, 1860, shall, in any indictment relative thereto, be charged as a contravention of the said Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, and continued by this Act; and it shall not be

Contraventions against this Act to be charged as against Ordinance 2, 1853, amended by Act 14, 1857.

No. 5—1859.

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. 6—1859.] AN ACT [July 8, 1859.

To Facilitate and render less expensive the Filling of occasional Vacancies in the Legislative Council for the Cape of Good Hope.

Preamble.

WHEREAS polls are now required to be held, to fill occasional vacancies in the Legislative Council for the Cape of Good Hope, although the number of candidates may be the same as the number of vacancies to be filled, whereby unnecessary expense and inconvenience arise; and it is therefore desirable to amend the seventy-third section of the Ordinance entitled “An Ordinance for constituting a Parliament for the Colony of the Cape of Good Hope,” so far as the said section applies to vacancies occurring in the said Legislative Council:

When number of candidates does not exceed number of vacancies, there shall be no poll.

Be it enacted that when any vacancy or vacancies, as in the said seventy-third section mentioned, shall happen in the said Legislative Council, and the candidate or candidates to fill such vacancy or vacancies, who shall have duly accepted and transmitted a requisition or requisitions, as in the thirty-fourth section of the said Ordinance is mentioned, shall in number not exceed the seat or seats to be filled, then and in every such case there shall be no poll held, but such candidate or candidates, if otherwise duly qualified, shall, after the expiration of the time limited by the proclamation for transmitting requisitions and acceptances thereof, be declared and proclaimed in the Government Gazette as being duly elected a member or members of the said Legislative Council: Provided, always, that if at any such election there are vacancies made by members holding seats for five and ten years, then the Governor shall cause the selection of the member or members who are to hold his or their seat or seats for five

How to determine who shall sit for ten years, and who for five.

years to be decided by lot, in the same manner as is provided by the fifth section of the said Ordinance, in cases where members are elected by an equal number of votes.

No. 6—1859.

No. 7—1859.]            AN ACT            [July 8, 1859.

For Reviving the Ordinance No. 15, 1844, entitled  
 “ Ordinance to Provide for the Enregisterment,  
 in the Land Registers of this Colony, of certain  
 Subdivisions of the Locations and Extensions of  
 the Settlers of 1820.”

**W**HEREAS by the Act No. 24, 1856, provision Preamble.  
 was made for continuing in force until the  
 31st December, 1857, certain of the clauses of the  
 Ordinance No. 15, 1844, entitled “ Ordinance to pro-  
 vide for the enregisterment, in the Land Registers  
 of this Colony, of certain Subdivisions of the Loca-  
 tions and Extensions of the Settlers of 1820 :” And  
 whereas it is expedient to continue for a further  
 space of time the provisions of the said Ordinance :  
 Be it enacted by the Governor of the Cape of Good  
 Hope, with the advice and consent of the Legislative  
 Council and House of Assembly thereof, as follows :

I. It shall and may be lawful for the Governor of  
 this Colony, at any time before the 31st December,  
 1861, 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, 1861, had been inserted  
 in the fourteenth section of the said Ordinance, in  
 place and in stead of the 31st December, 1846.

Proclamations under  
 section 2, Ordinance  
 15, 1844, may be  
 issued until the end  
 of 1861.

No. 8—1859.

No. 8—1859.]

AN ACT

[July 8, 1859.]

To Repeal the Ordinance No. 60, 1829, entitled Ordinance for “Preventing the Mischiefs arising from printing and publishing Newspapers and Papers of a like nature by Persons unknown,” and to make further provision in the Premises.

Preamble.

WHEREAS great benefits have been derived from the art of printing, and from the printing and publishing of newspapers and papers of a like nature in this Colony; and whereas all necessary remedies against abuses of the liberty of the press are provided for by the law of libel, on proof of publication of any libellous matter or thing: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Ordinance 60, 1829, repealed.

I. The Ordinance No. 60, 1829, is hereby repealed, except the twenty-third section thereof, which repeals the proclamation of 21st July, 1800.

Printer's name and abode, and place where printed, to be inserted in every book or paper.

II. In some part of every book, pamphlet, newspaper, or other printed work, printed or published in this Colony, there shall be printed the true and real name or names, addition or additions, and place or places of abode, or of business of the printer or printers thereof, and also a true description of the place where the same is printed.

Penalty for contravening this Act.

III. Any person or persons who shall knowingly and wilfully print and publish, or cause to be printed and published, any such book, pamphlet, newspaper, or other work of that nature as aforesaid, not containing the particulars aforesaid, shall forfeit a sum of not exceeding one hundred pounds.

Act when to commence.

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

No. 9—1859.]

AN ACT

[July 8, 1859.

No. 9—1859.

To Define and Declare the Unit of Land Measure in  
this Colony.

**W**HEREAS the unit of land measure within this Preamble.  
Colony is the foot : And whereas it has been  
ascertained, by due investigation, that the foot used  
for land measurement in this Colony is a length  
which bears to the length of the foot now by law  
established in England a certain proportion : And  
whereas it is expedient to define and declare the said  
unit of land measure in this Colony by reference to  
the said proportion : Be it enacted by the Governor  
of the Cape of Good Hope, with the advice and con-  
sent of the Legislative Council and House of Assem-  
bly thereof, as follows :

I. The unit of land measure in this Colony is, and Unit of land measure defined.  
shall be, a foot of such length that one thousand of  
such feet shall be equal to one thousand and thirty-  
three English feet, as now by law defined and  
established for lineal measurement in England.

No. 10—1859.]

AN ACT

[July 8, 1859.

To Provide for the Adjustment of Disputed Land  
Boundaries, and for the Erection and Preserva-  
tion of Land Beacons.

**W**HEREAS, in various parts of this Colony, the Preamble.  
greatest degree of uncertainty prevails in re-  
gard to the true and proper boundaries of adjacent  
farms, arising, sometimes, from errors in the original  
diagrams, and sometimes from the loss or removal of  
the original beacons : And whereas, owing to such  
uncertainty, constant controversies and disputes take  
place, which have increased, and are increasing,  
with the increased and increasing value of landed  
property in this Colony ; whilst, moreover, the par-  
tition or subdivision of lands, now owned in un-  
divided shares, is rendered in most cases difficult,

No. 10—1859.

and in many cases impossible, whereby the cultivation and improvement of such lands are greatly retarded: And whereas it has become imperatively necessary to provide for the resurvey of all such farms as may require to be resurveyed, for the purpose of fixing the just and proper boundaries thereof, and also to provide for the erection and preservation of permanent and properly-constructed beacons: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Divisional council may subdivide division for purposes of resurvey.

I. It shall be lawful for the divisional council of any division in this Colony, from time to time, to divide such division, or so much and such parts thereof as such council shall deem necessary or expedient, into sections or areas, for the purpose of a resurvey under the provisions of this Act.

Subdivisions or sections to be bounded with reference to natural objects or other distinguishable landmarks.

II. Every such section or area as aforesaid shall be, if possible, a tract of country lying between permanent and conspicuous natural objects, such as mountain ranges or rivers, or objects of a like nature; and, in case of the total or partial absence of such natural objects, then some undisputed and undisputable beacons or land-marks, or other sufficiently distinguishing points shall be resorted to, for the purpose of defining or describing a section or area of such extent, and of such a character as shall be suitable for the purposes of a complete and effectual resurvey, under this Act, of the several farms included therein.

Surveyor-General to be consulted.

III. In defining and describing sections or areas of country, for the purposes of this Act, every divisional council shall consult with, and obtain the concurrence of, the Surveyor-General of the Colony, or of such officer of his department, or Government surveyor, as the said Surveyor-General shall appoint.

Boundaries of section to be publicly notified.

IV. As soon as the whole, or any part, of any division shall have been divided into such sections or areas as aforesaid, or as soon as any one such section or area shall have been defined, the divisional council of the division shall, by means of notices, affixed at public places, and by means of the field-cornet or field-cornets resident within such section or

area, or otherwise, as such council shall devise, make publicly known the boundaries or limits of such sections or areas respectively, or of such single section or area, should only one be, in the first instance, described.

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V. It shall be competent for any number, not less than one half of the owners of the immovable property lying in any section or area, and valued, or liable to be valued, under the provisions of the Act No. 9, 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," to apply, in writing, for the resurvey of such section or area, for the purposes of this Act.

Owners of property assessed for road purposes may apply for resurvey of subdivision or section.

VI. Every divisional council receiving any such application as aforesaid shall forward the same to the Colonial Secretary, together with the report of such council, that such application is signed by not less than one half of such owners as aforesaid, and a description or definition of the section or area to which such application shall relate.

How, when such application received.

VII. As soon as the application, report, and description or definition in the last preceding section mentioned shall have been received by the Colonial Secretary, it shall be lawful for the Governor of the Colony, by proclamation in the Government Gazette, to direct the resurvey of such section or area for the purposes of this Act.

Re-survey to be directed by proclamation in Gazette.

VIII. Upon the issue of any such proclamation as aforesaid, or before such issue, it shall be lawful for the divisional council of the division to which such proclamation shall relate, to recommend to the Surveyor-General such number of competent land surveyors as they shall deem proper to be employed upon the resurvey of the section or area described or defined in such proclamation: Provided that it shall not be incumbent upon the Surveyor-General to appoint the surveyor or surveyors recommended by the council, and that, if, in any case, he shall see cause not to do so, he may transmit to the divisional council the name or names of another surveyor or other surveyors as the person or the persons whom he proposes to employ; and in case the said council shall not object to the surveyor or surveyors so

Divisional council may recommend surveyor.

Surveyor General not bound to appoint such surveyor.

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Surveyor removable  
by Governor.

proposed, and assign sufficient grounds of objection, to be judged of by the Governor aforesaid, then the last-mentioned surveyor or surveyors shall be appointed: Provided that every such surveyor shall be removable by the Governor at pleasure, and that in case of a vacancy arising from death, removal, or other cause, another surveyor may, in manner aforesaid, be appointed to supply such vacancy.

Appointment of and  
instructions to sur-  
veyor.

IX. Every surveyor employed in the resurvey of any section or area aforesaid shall receive from the Surveyor-General a commission or appointment in writing, together with such practical instructions for his guidance or assistance in the performance of his duties as the said Surveyor-General may deem it fitting to supply.

Upon the issue of  
proclamation directed  
in section 7, owners of  
farms to set up their  
beacons.

X. When and as often as any such proclamation as aforesaid shall have been issued, it shall be incumbent upon the owner or owners of each farm included in the section or area described or defined in such proclamation, of which farm the beacons, or some of them, shall not be standing, to put up, within forty-two days from and after the publication of the first Government Gazette containing such proclamation as aforesaid, the beacons of such farm, or some visible marks to serve provisionally as beacons, at or upon the spots where, as he or they maintain, the beacons of such farm ought of right to stand. Any owner failing or neglecting to put up any such beacon or land-mark as aforesaid, within the time aforesaid, shall, upon conviction, forfeit any sum not exceeding ten pounds or less than one pound.

How, if owners differ  
as to position of their  
beacons.

XI. As often as the owners of different farms shall differ in regard to the true position of the beacons dividing or affecting the same, the beacons of each farm shall be provisionally put up by the respective owners, where the said owners respectively maintain that they ought of right to stand: Provided that every beacon or mark so put up shall be merely provisional in its nature, and shall not be evidence, to any extent, of the rights of parties, but only of the fact that such rights are, or may be, in dispute: Provided, also, that it shall not be



lawful for any person acting against the will or without the authority of the person or persons by whom any such beacon or mark was provisionally set up, to remove, destroy, or injure the same, pending the investigation hereinafter provided into the correctness or otherwise of the said beacon. And any person so removing, destroying, or injuring any such beacon or mark shall, upon conviction, forfeit any sum not exceeding ten pounds or less than one pound.

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Penalty for removing or injuring beacons.

XII. As soon after the expiration of the forty-two days aforesaid, as circumstances will permit, the surveyor or surveyors commissioned or appointed as aforesaid to resurvey the section or area in question shall commence the same: Provided that previous notice of the day and place or days and places of commencing such resurvey shall be given by the divisional council, by means of a notice in the Government Gazette, to be published therein for not less than twenty-one days before the first day fixed in and by such notice for the commencement of the resurvey; and provided that such notice may be given either before or after the expiration of the forty-two days aforesaid: Provided, also, that the divisional council shall, besides publishing such notice in the Government Gazette, take such other steps as they may deem expedient for causing the subject-matter of it to be made generally known to the owners of immovable property in the section or area about to be resurveyed. And provided, further, that it shall be lawful for the divisional council, in case it should so think fit, to depute one of its members to accompany such surveyor or surveyors in the making of such resurvey, in manner and form, and under the like conditions, in all respects, as are hereinafter in the sixty-sixth section of this Act set forth.

When re-survey to commence.

Notice to be given.

Deputation from divisional council may accompany surveyor.

XIII. It shall be the duty of the surveyor or surveyors employed upon any such resurvey, when, and as often as he or they shall find any farm or number of farms of which the beacons are all standing, and are admitted as correct by the owners of all the adjoining or other farms interested in or

Duty of surveyor in regard to farms of which the beacons are apparent.

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affected by such beacons or any of them, to frame an accurate diagram of every such farm, taking the same to be the area represented by such admitted beacons, whether the said beacons shall or shall not coincide with the existing diagram of such farm, or with the extent of land which shall, by the title deed of such farm, purport to have been granted: Provided that no beacon or beacons shall be taken to be so admitted before and until the beacons of all the farms within such section or area shall be standing or in existence.

Diagram and report to be transmitted to divisional council.

XIV. Every surveyor who shall frame any such diagram as in the last preceding section mentioned shall transmit the same to the divisional council, together with a report containing any information which he may deem useful or which the divisional council may have desired, and, amongst other things, the degree in which the new diagram coincides with, or differs from, the existing diagram or title deed.

Duty of divisional council on receiving such diagram and report.

XV. The divisional council receiving any such diagram and report shall transmit the same, together with any remarks which the said council shall see fit to offer, to the Governor aforesaid, through the Surveyor-General, in order that a fresh grant, founded upon the resurvey, and new diagram, may be issued: Provided that if the Surveyor-General shall find reason to believe or suspect that any Crown land has been included in any such diagram as aforesaid, it shall be competent for such Surveyor General to withhold the issue of the fresh grant, until he shall be satisfied that no Crown land has been so included.

Fresh grant to nullify all previous titles and transfer deeds.

XVI. Upon the issue of any such fresh grant, all existing title deeds or transfer deeds of the same farm shall become cancelled, void, and of no effect: Provided that as often as any hypothecation, conventional or tacit, of or over any farm so regranted shall be in existence at the date of such regranted, such hypothecation shall attach to and upon the said farm as so regranted, precisely as it existed upon the said farm under its former title deed or transfer deed, and all usual and proper entries and endorsements upon or in regard to such fresh grant as may be necessary

Hypothecation to survive and be registered anew.

to record any hypothecation of the land therein contained shall be made in the Deeds Registry of the Colony, before such fresh grant shall be delivered from and out of the office of the Surveyor-General, to the person and persons entitled thereto.

XVII. As soon as the divisional council shall have learned from the Surveyor-General that any such new diagram as aforesaid, received by him from such council, has been examined and approved of, and will be made the groundwork of a fresh grant, then the said council shall cause notice to be given to the proper parties in that behalf, that they are at liberty to replace such of their existing beacons as shall not be of the description required by the seventy-fourth section of this Act, with other and proper beacons, as by the said seventy-fourth section prescribed. And no fresh grant of any farm shall be delivered to the person or persons entitled thereto without the authority of the divisional council, which shall not give such authority until it shall be certified in writing to such council by the surveyor who made the new diagram, that the beacons of such farm have been inspected by him, and that they are correctly placed, and are constructed according to the provisions of the said seventy-fourth section of this Act.

XVIII. In all cases in which any surveyor employed in any such section or area as aforesaid shall find that any dispute exists regarding boundaries, which dispute cannot be settled amongst themselves by the parties interested, such surveyor shall give notice of such dispute, and of the names of all parties interested in it, so far as he can judge or discover, to the divisional council, in order that, by the means hereinafter provided, such dispute may be inquired into and settled.

XIX. As often as the divisional council shall receive any such notice as aforesaid, the said council shall take the same into consideration, and, regard being had to the nature of the dispute to be settled, shall frame a list of seven men, none of whom shall have any interest in the matter in dispute, or be related to any person who shall be interested therein

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Duty of divisional council when diagram has been examined and approved.

No fresh grant to be issued without authority of divisional council.

How, if dispute as to boundaries cannot be settled by parties concerned.

Duty of divisional council on receiving notice of such dispute.

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in or within the fourth degree of consanguinity or affinity, from or out of which seven men, three men, to form a commission of inquiry, shall be selected or obtained, in the manner hereinafter in that behalf provided.

List of persons to form commission of inquiry.

XX. The list aforesaid of seven men to be framed by the divisional council may include members of such council as well as men not members; and shall contain the names of such men as shall, by the said council, be thought qualified to form an impartial and intelligent judgment upon the dispute in question: Provided that the said council, before inserting in the said list the name of any man proposed to be set down therein, shall ascertain from him that, if necessary, he will be prepared to act as a member of the commission.

Certain names may be struck off the list if dispute be between two farms only.

XXI. As soon as such list of seven men shall have been prepared, and notice thereof given to the parties to the said dispute, it shall be lawful for the said parties in person, or by agents authorized by any writing under their hands, to attend at some time and place to be fixed by such council, in order that, as often as such dispute shall exist between the owner or owners of two farms only, the owner or owners of each farm may, if so minded, strike off from such list the names of two men, so as to leave thereon the names of three men to form the said commission: Provided that the owner or owners of one farm shall first strike off one name, and then the owner or owners of the other farm, another name, and so again alternately; and provided that the farm of which the owner or owners shall strike off the first name shall be decided by lot.

How in case of dispute between more than two.

XXII. In cases in which any such dispute as aforesaid shall embrace or involve a number of farms greater than two, it shall be lawful for the owner or owners of the two farms which shall respectively have the chief or principal interest upon the opposite sides of the dispute to strike off, in manner aforesaid, for themselves and the others having a common or kindred interest with them, four names from the list of seven men already mentioned. And in case any question shall arise regarding the two

farms, or either of them, which really have the chief or principal interest in the dispute, such question shall be summarily decided by the divisional council.

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XXIII. Should any owner or owners entitled to strike off, in manner aforesaid, two names, decline so to do, this shall not prevent the other party from striking off, if so minded, two names: Provided that as often as the non-exercise of the right to strike off names, by either or both of the parties entitled so to do, shall leave a number of names greater than three upon the list aforesaid of seven men, then the three men to form the commission shall be taken by lot from the names so left.

How, if owners decline to strike off any names.

XXIV. As soon as may be after a commission of three members shall, in manner aforesaid, have been selected or obtained, the divisional council shall cause notice, in writing, to be given to the parties interested in the matter or matters in dispute of a time and place at which the said parties, with any witnesses whom they shall desire to have examined, and all title deeds, diagrams, and documents in their possession, and relating to the matter or matters in dispute, shall attend, for the purpose of meeting, and giving information to, the commissioners named in such notice.

Divisional council to give notice of time and place for commissioners to assemble.

XXV. At the time and place mentioned in such notice, the said commissioners shall assemble, and being assisted by the surveyor who reported, as aforesaid, to the divisional council the existence of the dispute, shall, in the presence of the parties to such dispute, examine all deeds, documents, and witnesses produced by the parties, and inspect the localities in question between the parties, so as to ascertain where, according to real and substantial justice between the parties, the disputed beacons ought of right to stand: Provided that it shall be lawful for any party, whether present in person or not, to be assisted by an agent duly appointed.

Commissioners to be assisted by land-surveyor who reported dispute.

Agents for parties to dispute.

XXVI. In determining what real and substantial justice between the parties truly is, the commissioners will take into their consideration the particular circumstances of each particular case, and they will, as general principles, be expected to

Rules for deciding matter in dispute.

recognize and act upon the rules following, that is to say :

- a.* The original beacons of farms, as pointed out at the original measurement thereof, shall be deemed to denote and include the true and proper farms as granted and intended so to be, notwithstanding that such beacons may not correspond with the original diagrams, or with the extents of land which the original title-deeds purport to grant. This rule is, however, to be subject to the qualification or modification mentioned under letter *b.*
- b.* As often as it shall be made to appear that certain well-ascertained beacons have been, for an uninterrupted period of thirty years or upwards, next before the passing of this Act, recognized by the parties who dispute the same before the commissioners, or those under whom such parties claim, as the true and proper beacons, such beacons shall be taken to be, and to have been, the original beacons, nor shall any proof to the contrary be acted upon, unless the parties disputing such beacons shall allege and prove some fraud, deceit, or circumvention, in regard to such beacons, upon the part of the persons maintaining their correctness, or upon the part of those from or under whom such persons claim.
- c.* As often as it shall be made to appear that any land included within the original beacons of an older grant has, afterwards, been included within the diagram and beacons, or diagram or beacons of a later grant, the right of the older grant to the "overlap" shall prevail, unless in the cases next hereinafter stated, under letters *d* and *e.*
- d.* If the parties interested in the later grant shall prove that they, or those from or under whom they claim, are or were purchasers for valuable consideration, and

shall prove that they did, acting *bonâ fide*, and without notice of any error, purchase the farm granted by the later grant according to its original beacons, and shall prove that the error made in planting or pointing out such original beacons was induced by the neglect or default of the parties interested, for the time being, in the older grant, in not having kept up their own beacons, or in not objecting, if present at the time of the inspection of the later grant, to the position of the beacons of such later grant; or, in not attending at such time for the purpose of so objecting, in case, by the custom of the country, they ought to have so attended, then the title of the later grant to the "overlap" shall prevail: Provided that if the original beacons of the older farm were up and visible at the time of the survey of the later farm, then the right of the older farm to the "overlap" shall prevail, although the parties for the time being interested therein did not attend at the inspection of the later grant; and provided that, if such parties attend at the inspection of the later grant, and pointed out or gave notice of the spots where their beacons had been and should be, the older farm shall, in like manner, be entitled to the "overlap," although the beacons thereof may not have been then up or visible.

- e. Although there may have been nothing in the conduct of the parties interested in the older grant, or those from or under whom they claim, in reference to the origin of the error in the later grant, which would prevent the said grant from being entitled to the "overlap," yet if, for thirty years or upwards, beacons other than the original beacons of the older farm have been recognized in manner and form as in letter *b* set forth, then the rule mentioned in letter *b* shall apply.

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*f.* As often as one party to any dispute shall rely upon the existing diagram, and shall maintain that the beacons which contradict it have been shifted, and the other party shall rely upon such beacons as original and authentic, and shall maintain that the diagram which contradicts them is erroneous, then the commissioners, in deciding whether such beacons are or are not the original and authentic beacons, shall have regard to the nature of such beacons as likely or not likely to have been shifted, to the nature of the diagrams as likely or not likely to be erroneous, and to the evidence produced before them as that of witnesses likely or not likely to know and speak the truth, and shall decide the controversy to the best of their skill and judgment. This rule, however, shall not apply in any case to which the rules under letters *b* and *e* shall apply.

Commissioners may  
summon witnesses.

XXVII. If the commissioners should, in any case, desire to obtain the evidence of any person who shall not come before them of his own accord, or be produced by either or any of the parties interested in the case, it shall be lawful for the said commissioners or any of them, by any summons under his hand, to require the attendance of any person who shall be regarded as able to give useful information, and to require such person to bring with him and produce such documents and papers as may be in his possession or power, and be deemed necessary to be examined; and every such summons shall be served by any person appointed for the purpose by the commissioners or any of them. And any person without lawful cause disobeying any such summons, after his reasonable expenses have been tendered to him, or without lawful cause refusing to answer any lawful question put to him by the said commissioners or any of them, shall, upon conviction, incur a fine not exceeding forty pounds sterling, to be recovered in manner and form as provided by the Ordinance No. 6, 1839: Provided that the offence of disobey-

Penalty for disobey-  
ing summons.



ing any such summons shall be deemed to be committed in the district in which the person disobeying usually resides, although the place where such person should have given his attendance may be in another district.

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XXVIII. It shall be lawful for the said commissioners, or any two or one of them, acting in pursuance of this Act, to administer an oath to any witness whom they or he shall examine, to the effect that the evidence he shall give regarding the matters and things that shall be lawfully required of him shall be the truth, the whole truth, and nothing but the truth, so help him God. And any witness who shall, before any such commissioners as aforesaid, or any two or one of them, make on oath, knowingly and wilfully, any false statement, in regard to any matter material to any question which shall be the subject of inquiry by such commissioners, or any two or one of them, shall be guilty of perjury, and shall, upon conviction, be liable to such punishment as shall be by law provided for the said crime.

Commissioners may administer oaths.

Punishment for false oath.

XXIX. It shall be lawful for any such commissioners to adjourn any inquiry, or the further proceeding thereupon, from place to place, or from time to time, as convenience may require, and such commissioners may, by any writing signed by the three of them, depute any two or one of them, to take, in writing, the evidence of any person or persons named or described in such writing, in order that such evidence may be received and considered at the next meeting of the said commissioners.

Inquiry may be adjourned, and members deputed to obtain evidence.

XXX. The commissioners shall, when adjourning any inquiry pending before them, announce the place, day, and hour of their next intended meeting, and should they, during the adjournment, find reason to alter their announced intention, they shall cause notice to be given to all parties interested, through the field-cornet, of the changed place, day, or hour of such next meeting.

Upon adjournment, notice of time and place of intended meeting to be given.

XXXI. The decision of the commissioners may be given by any two of them, notwithstanding the dissent of the third.

Decision of two commissioners to prevail over dissent of the third.

XXXII. The decision of the three commissioners,

Unanimous decision

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of the three to be  
final.

when unanimous, in regard to the matter in dispute before them, and generally in regard to what are and shall be the proper beacons and boundaries of any farm or farms, regarding the beacons and boundaries of which such commissioners shall have inquired, shall be final, binding, and conclusive, and shall not be appealed from, reviewed, or questioned in any place or proceeding whatsoever; and the said commissioners shall announce their decision to the parties interested; and beacons of the description hereinafter in the seventy-fourth section of this Act described shall, if not already standing, be put up by whom it may concern, at or upon the spots which the commissioners shall have fixed for the purpose:

How, if not unani-  
mous.

Provided that, as often as the decision of the commissioners shall not have been unanimous, provisional beacons or visible marks shall be put up at or upon the spots fixed for beacons by or according to such decision. But such beacons or marks need not be of the description in the seventy-fourth section of this Act mentioned.

Duty of surveyor,  
when commissioners  
have fixed correct  
beacons.

XXXIII. As soon as the commissioners shall, in any case, have, by an unanimous decision, fixed or pointed out the beacons which they have decided to be the right and proper beacons, then the surveyor aforesaid, by whom the existence of the dispute, thus adjusted, was originally reported to the divisional council, shall treat and consider such beacons as admittedly correct; and, thereupon, the same proceedings and consequences shall take place, in regard to new diagrams and fresh grants as are hereinbefore provided with respect to the farms which are in the thirteenth section of this Act mentioned.

Decision of commis-  
sioners to be reported  
to divisional council.

XXXIV. The commissioners shall, with all convenient speed, transmit to the divisional council a report, in writing, of their decision, whether unanimous or not, upon the case submitted to them, together with such documentary and other evidence as they may have taken, and any remarks, explanatory of their decision, which they may think it necessary or proper to attach.

Duty of divisional

XXXV. As often as any decision of the com-

missioners shall not have been an unanimous decision, the divisional council shall cause notice, in writing, to be sent through the field-cornet, to the parties interested in the said decision, informing such parties that, unless legal proceedings, as by this Act provided, shall, within three months from and after the receipt of such notice, be instituted for the purpose of reversing or altering such decision, the same will become final, binding, and conclusive, and the field-cornet will report to the divisional council the day or days upon which, and the manner in which, every such notice shall have been served.

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council when decision has not been unanimous.

XXXVI. It shall be lawful for any person whom such last-mentioned decision shall or may concern, at any time within the three months aforesaid, to present a petition to the Supreme Court, stating that he feels aggrieved by such decision, and praying the said court to inquire into and correct the same, and notice of such petition having been lodged, shall be given to the secretary of the divisional council not later than fourteen days from and after the day of the presentation thereof: Provided that any number of persons having the same or a similar interest in opposing such decision may join in petitioning for the correction of the same.

Supreme Court may be appealed to against such decision.

XXXVII. The divisional council, upon receiving notice as aforesaid, that a petition has been lodged, shall, with all convenient speed, transmit to the Supreme Court, addressed to the Registrar thereof, the report of the commissioners upon the subject of the decision petitioned against, and all evidence, documentary or otherwise, and all remarks received by the said council from the commissioners, or any of them.

Divisional council to transmit report and evidence to Supreme Court.

XXXVIII. It shall be lawful for the petitioner, at any time after such report, evidence, and remarks as aforesaid, shall be in the hands of the Supreme Court, to move the said court, without notice, for a rule to show cause why the decision complained of should not be opened up for the purpose of being corrected, and why the petitioner should not be adjudged to be entitled to make good his right to such specific relief as shall be set forth in such rule;

Court may be prayed for rule to re-open the decision.

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and the said court, upon consideration of the report, evidence, and remarks aforesaid, and of any affidavit or affidavits which may be filed by the petitioner, and of such matter as shall be urged in his behalf, shall grant or refuse such rule as shall to justice appertain.

How, if rule be granted.

XXXIX. Should the said court see fit to grant such rule as aforesaid, it shall be served upon all such persons as the said court shall direct, and shall be returnable upon such day as the said court shall appoint, and upon such day it shall be lawful for the parties served with the same, or any of them, to appear, and upon affidavit, or otherwise, to show cause against such rule; and thereupon such rule shall be discharged or made absolute, as to the said court shall seem meet.

Court to direct manner of further investigation.

XL. In case the said court shall make such rule as aforesaid absolute, then the said court shall direct the manner in which the matter in controversy between the applicants and the respondents shall be further investigated, and may take additional evidence, either *viva voce* or by affidavit, or may order an examination before a commissioner appointed by such court, and upon interrogatories framed or approved of by such court, or may depute one or more of the judges of such court to inspect the farms in question, and take evidence upon the spot, and such court shall, in the most speedy and inexpensive manner, which shall consist with a thorough and effectual investigation of the case, decide whether the decision in question shall or shall not be affirmed, wholly or in part.

How, if rule be refused, or, when granted, discharged.

XLI. As often as the Supreme Court shall refuse a rule to show cause as aforesaid, or having granted such rule, shall afterwards discharge the same, or having made such rule absolute, shall ultimately affirm the decision petitioned against, then such decision shall become and be thenceforward final, binding, and conclusive, and the surveyor aforesaid shall treat and consider the provisional beacons or visible marks in the thirty-second section of this Act mentioned as beacons admittedly correct; and, thereupon, the same proceedings and consequences shall

take place in regard to new diagrams and fresh grants as are hereinbefore provided with respect to the farms which are in the thirteenth section of this Act mentioned: Provided that such provisional beacons or visible marks may, at any time after they have so become beacons admittedly correct, be replaced by beacons of the description hereinafter in the seventy-fourth section of this Act mentioned.

XLIII. If in any case the Supreme Court shall see fit to correct any decision petitioned against, then the said court shall fix, by its judgment, the proper position of all beacons connected with the case, and may delegate to such fit and proper person or persons as the said court shall select, the duty of placing the said beacons, and such beacons shall be forthwith constructed as hereinafter in the seventy-fourth section of this Act prescribed; and the provisional beacons or visible marks formerly put up as aforesaid shall be removed, and the surveyor aforesaid shall treat and consider the beacons planted under the judgment of the court as beacons admittedly correct; and, thereupon, the same proceedings and consequences shall take place in regard to new diagrams as are hereinbefore provided with respect to the farms which are in the thirteenth section of this Act mentioned.

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If decision be corrected, court to fix position of beacons.

And whereas it is necessary to regulate the costs and charges of such proceedings as aforesaid, and to provide as to the manner in which the same shall be defrayed: And whereas, whilst the importance to the Colony at large of the objects contemplated by this Act is such as to justify a contribution towards the expense thereof from the public revenue, the importance to all land-owners, especially in cases of disputed beacons, of being supplied with new and accurate diagrams and grants, whereby they may know what lands are really their own, so as to divide and deal with them as they may think fit, without strife or litigation, is such as to render it right and proper that such land-owners should also contribute, but in different proportions, according to circumstances: Be it enacted as follows:

Cost and charges of proceedings.

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Surveyor to be remunerated according to tariff.

XLIII. Every surveyor employed in or upon any resurvey under this Act shall be remunerated according to a scale or tariff to be fixed, from time to time in regard to each division, by the Governor, with the advice of the Surveyor-General of the Colony and of the divisional council of such division.

Remuneration to commissioners.

XLIV. Every commissioner aforesaid shall be entitled to horse-hire at the rate allowed to field-cornets upon duty, and shall, besides, receive a personal allowance of two guineas per day for every day during which he shall be really and *bonâ fide* engaged in any such inquiry as aforesaid, or in repairing to, or returning from, the place or places where the same shall have been carried on.

Ditto to field-cornets.

XLV. Every field-cornet performing any duty under the provisions of this Act shall be entitled to horse-hire and personal allowance, according to the Ordinance No. 9 of 1848.

Expenses of witnesses.

XLVI. Every witness attending and giving evidence in pursuance of any summons of the commissioners, issued under the provisions of the twenty-seventh section of this Act, shall be entitled to receive his reasonable expenses, as if the place of his attendance were a resident magistrate's court, and he had attended thereat to give evidence in a civil case.

In cases of correct diagrams, public revenue to bear three-fourths of the expense.

XLVII. In all cases in which farms shall be found with their beacons up, and admitted to be correct, as in the thirteenth section of this Act mentioned, the public revenue shall, in case the existing diagrams of such farms be found correct, bear three-fourths of the expenses of the resurvey, of the new diagram, and of the fresh grant, and the owners of such farms shall pay the remaining one-fourth.

In cases of erroneous diagrams, public revenue to bear one half of the expense.

XLVIII. In all such cases as last aforesaid, in which the existing diagram shall be found to be erroneous, the public revenue shall bear one half of the expenses aforesaid, and the owners of such farms shall pay the other half.

Expenses of resurvey to be kept separate from costs of inquiry.

XLIX. In all cases of disputes investigated by commissioners in manner hereinbefore provided, the expenses of the resurvey shall be kept distinct from

the costs of the inquiry, and it shall be in the discretion of the commissioners to decide, as they are hereby required to do, whether any portion of the expenses of the resurvey shall be paid by the public revenue, or whether the whole of such expenses shall be paid by the owners respectively concerned; Provided that in no case shall the public revenue be liable for more than three-fourths of the expenses of the resurvey of any farm: And provided that the owner or owners of every farm shall be liable for the whole of such expenses, in case the public revenue shall not contribute thereto, or in case of such contribution for so much as the public revenue shall not pay: Provided, also, that it shall be competent for the commissioners to decide that any owner or owners, paying, as aforesaid, the whole or any portion of the said expenses, shall recover the whole of what he shall have so paid, or any portion thereof, which the said commissioners shall fix, from any other owner or owners, as part and parcel of the costs in the next succeeding section mentioned.

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Owners of farms  
liable for whole of  
expenses.

L. The costs of the inquiry before the commissioners shall include only the expenses of the commissioners and of the field-cornet, at the respective rates aforesaid, and of witnesses so summoned as aforesaid, as well as such expenses of the resurvey as the commissioners may, as hereinbefore provided, adjudge, together with the expense of clerical assistance to the said commissioners, should they require and employ such assistance, and shall be paid by the parties to such inquiry in such shares and proportions, or by one or more of the said parties to the exemption of the rest, according as the commissioners shall adjudge.

What costs of inquiry  
shall include.

LI. The secretary to the divisional council shall give notice, in writing, to be served upon each party by whom any costs are to be paid, calling upon him to attend at the office of such secretary upon some day to be fixed in such notice, not being sooner than fourteen days from the day of the service thereof, in order to have the said costs taxed and ascertained; and the expense of serving such notice shall be included in the costs to be taxed.

Notice of costs.

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Costs to be taxed.

LII. Upon the day fixed in and by such notice, the secretary shall, in the presence of at least one of the commissioners, and of such of the parties interested as shall attend, tax and ascertain the amount of costs to be paid by each or any of the said parties: Provided that any of the said parties may attend by an agent appointed by any writing signed by the principal: And provided that any person dissatisfied, either with the admission or the rejection of any item in the account of costs, may, upon notice to the other party or parties interested, bring the decision upon or in regard to such item under review of the divisional council, at its next meeting, whose decision shall be final.

May be reviewed by divisional council.

LIII. In case the amount of any taxed and ascertained costs, payable by any person who shall not by himself or his agent have signified, in writing, his intention to bring such taxation in review before the divisional council, shall remain unpaid after the expiration of twenty-one days from the day named in the notice aforesaid for the taxation of such costs, it shall be lawful for the secretary aforesaid to certify, in writing, to the resident magistrate of the district, the amount due by any person or persons within his jurisdiction, and the process of such court may issue for the levy of such amount, precisely as if such amount were a sum which had been recovered in a civil suit by the secretary aforesaid, in his said capacity. And as often as any taxation of costs shall be brought in review before the divisional council, the costs, as settled by the said council, upon review, shall be in manner aforesaid recoverable, if need be, by the process in execution of the court of resident magistrate.

No petitions as to costs to lie to Supreme Court.

LIV. No petitions shall lie to the Supreme Court which shall merely complain of the judgment of commissioners, so far as it regards or of some item or items allowed in the taxation of costs as aforesaid, and the costs of all proceedings had in the said Supreme Court in reference to any petition shall be in the discretion of the said court.

Expenses of resurvey, how recoverable.

LV. All expenses of resurvey, due and payable by any land-owner, shall be recoverable by action in any



competent court, at the suit of the secretary of the divisional council.

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LVI. Such funds as may be necessary for carrying into effect any resurvey under this Act shall be from time to time advanced by the Colonial Government from the public revenue, to the divisional council, such advances to be accounted for when and after such resurvey shall have been completed.

Expenses of resurveys may be advanced from colonial treasury.

And whereas the proclamation of the 23rd of December, 1814, by Lord Charles Henry Somerset, the then Governor of this Colony, enjoining the erection and preservation of permanent landmarks or beacons, has, in many parts of the Colony, fallen more or less into disuse; And whereas it is necessary that the duty of every landed proprietor throughout the Colony, to put up and preserve permanent landmarks or beacons, should be enforced: And whereas it will be expedient, in order to the proper enforcement of this duty, to repeal the said proclamation, and to re-enact the substance thereof, with certain modifications and adaptations, and to provide at the same time for the settlement of disputes regarding the boundaries of farms not included in any such section or area as in the first and second sections of this Act mentioned: Be it enacted as follows:

Preservation of landmarks.

LVII. The proclamation aforesaid, of the 23rd December, 1814, is hereby repealed.

Proclamation, 23rd Dec., 1814, repealed.

LVIII. The owner or owners of each farm throughout the Colony, of which farm all and each of the beacons shall not be standing or in existence at the time of the taking effect of this Act, shall be bound, within the time, and under the penalty hereinafter in that behalf provided, to put up at the proper spots or angles of such farm all the beacons thereof not already standing or in existence at the time of the taking effect of this Act.

Owners of farms to erect beacons.

LIX. Every beacon so put up shall, in the first instance, be merely provisional in its nature, and shall not be evidence to any extent of the spot or place where such beacon ought of right to stand, nor need such beacon be made of the materials hereinafter by the seventy-fourth section of this Act prescribed and required.

Beacons to be provisional in the first instance.

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Penalty for failure to erect beacons within one year after passing of this Act.

LX. If after the expiration of one year from and after the taking effect of this Act, any farm throughout the Colony shall be found, of which farm all the beacons (whether such provisional beacons as aforesaid or beacons already in existence at the time of the taking effect of this Act) shall not be standing or in existence, the owner or owners of every such farm shall incur a fine not exceeding ten pounds, nor less than one pound, for every beacon not then standing or in existence; and such fine shall be incurred afresh for every three months, from and after a first conviction, during which such owner or owners shall fail or neglect to have such beacons put up: Provided that such fine may be prosecuted for by the secretary of the divisional council, in his capacity as such secretary,—and that the person convicted shall also be liable to the reasonable costs of the prosecution, and that the fine, when recovered, shall be paid to the divisional council for public purposes.

Fine, how to be recovered and disposed of.

All beacons remaining undisputed for two years to be admitted as true and correct.

LXI. All beacons of any farm, whether provisional or not, shall, unless disputed within two years next after the time at which all the beacons of such farm shall have been standing and in existence, be deemed and taken (subject to the proviso hereinafter in this section contained) to be admittedly true and correct, and to denote the true and correct extent and limits of the said farm, anything in the diagram or title deed of that farm, or of any other farm, to the contrary notwithstanding: Provided that no beacon of any kind, whether provisional or not, shall be deemed to be admittedly true and correct, so as not to be afterwards disputed, until after the expiration of three years from the taking effect of this Act: And provided that nothing in this section contained shall apply to any Crown land upon which the beacons of any adjoining farm shall have been put up, which beacons shall, unless the notice in the next succeeding section mentioned be given, be capable of being disputed by the Government of this Colony as erroneous, upon any ground, and for any length of time, upon or for which such beacons could lawfully have been disputed in case this Act had not been passed.

But no beacon to be so admitted until after three years from the expiration of this Act.

Nor beacons on Crown lands.

LXII. As often as any farm shall adjoin any Crown land, it shall be lawful for the owner of such farm, in case he shall desire to have any beacons thereof separating or dividing such farm from such Crown land fixed and established, so as not to be afterwards disputed by the Colonial Government, to give notice in writing to the civil commissioner of the division in which such Crown land shall be situated, that his beacons on the side of such Crown land are erected or in existence; and unless the said civil commissioner, acting for the Colonial Government, shall, within two years next after the receipt of such notice, or three years from the taking effect of this Act (whichever of these dates shall last expire), object to such beacons, the same shall become and be admittedly true and correct, so as not to be afterwards disputed: Provided that, should the civil commissioner aforesaid, within the time aforesaid, dispute any such beacon as aforesaid, he may lodge with the secretary to the divisional council, as in the next succeeding section mentioned, his objection in writing, and thereupon all and singular the like effects and consequences shall take place, and the matter in dispute shall be determined, precisely as if the Colonial Government were a private person.

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How, in regard to beacons of farms adjoining Crown lands.

LXIII. No person shall be deemed or taken to dispute, or to have disputed, any beacon of or belonging to any other person, unless the person so disputing such beacon shall, within the time in the last preceding section mentioned, lodge, with the secretary to the divisional council of the division in which such beacon is situated, his objection in writing: Provided, however, that any person whose beacons, or any of them, are objected to or questioned by any other person may, at once, apply in writing to the secretary aforesaid, stating the circumstances, and requesting the divisional council to have the correctness of such beacons or beacon investigated and determined under this Act.

Who shall be deemed as disputing a beacon or beacons.

LXIV. As often as any beacon or beacons shall be disputed in manner and form as in the last preceding section mentioned, and as often as any

Duty of divisional council when beacons are disputed.

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person whose beacons, or any of them, shall be objected to or questioned, shall make the application in the said section mentioned, then a surveyor or surveyors, appointed in manner and form as in the eighth section of this Act mentioned, shall be sent by the divisional council to make a resurvey of all the farms which it shall be necessary or proper to resurvey for the purpose of determining, or assisting to determine, the true and correct position of the beacons or beacon disputed or objected to: Provided that if such objection or application as is in the sixty-third section mentioned shall be lodged before the expiration of one year next after the taking effect of this Act, it shall be lawful for the divisional council, in case it shall contemplate the formation of a section or area of country, such as is in the first and second sections of this Act mentioned, which section or area shall include the beacon or beacons in dispute, to defer until the expiration of the year aforesaid, or the expiration of three months next after the day of the lodging of such objection or application (whichever of these dates shall last expire), the sending of a surveyor or surveyors to make the resurvey hereinbefore in this section mentioned.

How, if disputed beacons are included in a section for resurvey.

Notice of day and place for commencing resurvey.

LXV. Notice of the day and place of commencing any such resurvey as last aforesaid shall be given in manner and form as the notice in the twelfth section of this Act mentioned.

Member of divisional council may be deputed to accompany surveyor.

LXVI. It shall be lawful for the divisional council by which any such surveyor shall be sent, as in the sixty-fourth section mentioned, to make any resurvey, to depute a member of the said council, not interested in the matter in dispute, nor related to any person having an interest therein in or within the fourth degree of consanguinity or affinity, to accompany such surveyor: Provided that such deputed member shall be paid for his attendance, at the rate hereinbefore in the forty-fourth section of this Act mentioned in regard to a commissioner, and that his expenses shall be taken to be included in the cost of the resurvey: Provided, also, that it shall be in the discretion of the divisional

council, in each particular case, to decide, according to circumstances, whether a member shall or shall not be deputed as aforesaid.

LXVII. In case all the parties interested or concerned in any such beacon or beacons shall, with the aid and assistance of the deputed member aforesaid (if any), and of the surveyor or surveyors aforesaid who shall have made the resurvey aforesaid, agree amongst themselves upon the spot where the beacon or beacons which had previously been disputed or questioned ought of right to stand, then the beacons of all the farms so resurveyed shall be deemed to be admitted as correct; and thereupon all and singular the same proceedings shall take place in regard to the farms so resurveyed as are in the thirteenth section of this Act mentioned.

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If parties concerned agree as to position of beacons, they shall be admitted as correct, and new diagrams framed upon them.

LXVIII. Should the deputed member aforesaid (if any) and such surveyor or surveyors as aforesaid, after the making of such resurvey as aforesaid, find that the disputing parties cannot agree amongst themselves in regard to the position of the beacon or beacons in dispute, then the said surveyor or surveyors shall give to the divisional council notice of such dispute, in manner and form as in the eighteenth section of this Act mentioned, and thereupon all and singular the same proceedings, in all respects, shall be had and taken as are hereinbefore in the several sections of this Act, from the nineteenth to the forty-second, both inclusive, provided in regard to the determination by commissioners of similar disputes arising within such sections or areas as are in this Act mentioned.

How, if parties do not agree.

LXIX. The divisional council of every division will, as much as circumstances will permit, adopt the system of defining or describing, for resurvey, sections or areas of country such as are in the first and second sections of this Act mentioned, in preference to the system of deciding detached disputes between the owners of particular farms.

Resurvey by sections to be preferred to decisions of detached disputes in regard to particular farms.

LXX. As often as any such resurvey as aforesaid shall be made of any farm or farms not included in any such section or area of country as aforesaid, and as often as any such commission as aforesaid shall be

Resurvey of farms not included in such sections not to be paid for from public revenue

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selected and appointed to adjust any dispute regarding such a farm or farms, no part of the costs of such resurvey or of such inquiry shall (except as hereinafter excepted) be paid from or out of the public revenue. In case, upon the resurvey, the parties previously in dispute shall agree upon the beacon or beacons which were in controversy, then the owner of each farm shall (unless it be otherwise agreed upon) be liable for the expense of resurveying such farm. And in case the dispute shall be referred to and determined by a commission, then the costs of the resurvey of every farm so resurveyed, and also the costs of the inquiry, shall be paid by the parties to such inquiry in such shares and proportions, or by one or more of the said parties to the exemption of the rest, according as the commissioners shall adjudge; and the provisions of the fifty-first, fifty-second, fifty-third, fifty-fourth, and fifty-fifth sections shall apply to such costs: Provided that it shall and may be lawful for the Governor, upon the recommendation of the divisional council, to pay from and out of the public revenue such part of the costs of the resurvey of any such farm, not exceeding three-fourths of such costs, as the said Governor shall approve of, under the particular circumstances of the case.

Except in certain cases, upon recommendation of divisional council.

Sections 57 to 68 not to apply to farms included in sections for resurvey.

Divisional council may, before beacons have been admitted as correct, describe section for resurvey.

Farms of which the beacons have been determined need not be resurveyed.

LXXI. Nothing in the Act from the fifty-seventh to the sixty-eighth sections (both inclusive) shall apply to any farm which shall be included in any such section or area of country as is hereinbefore in the first and second sections of this Act mentioned: Provided that nothing in this Act contained shall prevent any divisional council, at any time before, under the sixty-first section of this Act, the beacons of farms have become admittedly true and correct, from describing or defining sections or areas of country, as in the first and second sections of this Act mentioned, for the purpose of a resurvey, under the provisions of this Act: Provided, also, that if any such sections or areas should be described or defined at any time after any farm or farms lying within it shall have been resurveyed, and have had its beacons fixed, under the clauses of this Act

applicable to the determination of detached disputes, not arising within sections or areas previously described or defined, such farm or farms shall not be again surveyed or be chargeable with any of the expenses of the resurvey of the section or area in which such farm or farms shall be afterwards included.

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LXXII. Should the owner or owners of any farm of which the beacons shall, under and by virtue of the sixty-first section of this Act, have become admittedly true and correct, desire to obtain a fresh grant, founded upon a diagram truly and correctly representing the said farm as defined by such admitted beacons, such owner or owners may cause the said farm to be surveyed by a duly qualified land-surveyor, according to such admitted beacons, and thereupon the thirteenth, fourteenth, fifteenth, and sixteenth sections of this Act shall apply to such case, and a fresh grant shall be issued, showing a correct diagram, and the true contents of the said farm: Provided that such surveyor shall be approved of by the divisional council before proceeding to make the survey, and that he shall conform himself to such instructions in reference to the notice to be given of his survey, and to other matters, as the divisional council shall see fit to issue for his guidance: And provided that the expense of such survey shall be borne by the person causing the same to be made.

Owner of farm of which beacons are admitted may obtain resurvey and new diagram.

Surveyor be approved by divisional council.

Expense to be borne by owner.

LXXIII. From and after the expiration of three years next after the taking effect of this Act, the owner or owners of every farm throughout the Colony shall (except as hereinafter is excepted) be at all times bound to keep up, and in repair, the beacons of such farm: Provided that when, by reason of disputes or any other sufficient cause, any owner or owners shall not be in a position to put up the permanent beacons by this section contemplated, within the three years aforesaid, it shall be lawful for the divisional council to grant to such owner or owners such an extension of time as to the said council shall seem reasonable.

Beacons to be erected within three years from the commencement of this Act.

LXXIV. All such beacons as are in the last pre-

Materials for constructing beacons.

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ceding section mentioned shall be made of stone and lime, or of brick and lime, unless where, in places in which such materials shall not be obtainable, the divisional council shall see fit to sanction the use of some other materials: Provided that no such other materials shall, except in cases of necessity, be sanctioned, except such as are of a sort or description clearly and easily distinguishable from the soil and other substances at and about the spot where the beacon is to stand.

Penalty for failing to erect beacons within prescribed time.

LXXV. If, after the expiration of the three years aforesaid, or any further extension of time which the divisional council may, under the seventy-third section of this Act, have seen fit to grant, any farm within the Colony shall be found which shall not have the beacons thereof, being such beacons as are in the last preceding section mentioned, up and in good repair, the owner or owners of such farm shall incur, for and in regard to each beacon not up, or not in repair, a fine not exceeding ten pounds, nor less than one pound, in addition to the costs of the prosecution, which fine shall be incurred afresh for every three months, after a first conviction, during which any such beacon shall not be put up, or be left out of repair: Provided that it shall be lawful for the divisional council to cause every absent beacon, of which the site is known, to be erected, and every defective beacon to be replaced or repaired, and the costs thereby incurred shall be recovered as part and parcel of the costs of prosecution: Provided, also, that the fine aforesaid may be prosecuted for, and when recovered shall be applied in like manner as the fine in the sixtieth section of this Act mentioned.

Divisional council may direct absent beacons to be erected at expense of owner.

Fine, how to be recovered and applied.

Penalty for destroying or injuring beacons.

LXXVI. If any person shall unlawfully and wilfully destroy, remove, or injure, or cause to be destroyed, removed, or injured, any beacon, whether belonging to such person himself or to any other person, with intent to defraud or injure any other person, such person so offending shall be guilty of the crime of contravening this section of this Act, and shall, upon conviction, forfeit any sum not exceeding one hundred pounds; and in case of non-



payment, shall be liable to be imprisoned and kept at hard labour for any term not exceeding one year.

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LXXVII. It shall be the duty of every field-cornet, and he is hereby required, to report to the divisional council of his division every case of absent or defective beacons within his ward which shall come to his knowledge; and it shall be lawful for the divisional council, from and out of any funds at their disposal, to pay such field-cornet for his trouble.

Field-cornet to report when beacons are absent or defective.

LXXVIII. As often as any beacon shall be common between two or more farms, and shall, upon that or any other account, be a beacon which should of right be kept up by the said farms jointly, every owner of either or any of the said farms shall, in case such beacon shall not be up, or not be in proper or substantial repair, be liable to the fine in the seventy-fifth section mentioned, and to the other provisions of the said section, precisely as if such beacon had been exclusively a beacon of his own farm: Provided that every such owner may himself erect or repair (as the case may be) any such beacon, and may recover from the other owner or owners their proportion of the cost of so doing.

How common beacons to be erected and maintained.

LXXIX. In all cases in which any farm shall be resurveyed under any provisions of this Act, then, besides the angle beacons thereof, there shall be erected, under the inspection of the surveyor or surveyors, line beacons, at distances and spots visible one from another; and such surveyor or surveyors shall, upon the diagram or some writing annexed thereto, give, as he or they best can, a topographical description of the places where the angle beacons stand, and of the boundary line or lines connecting them: Provided that such line beacons need not be made of the materials hereinbefore directed in regard to the proper or angle beacons of the farm, and that they shall be, in shape, distinguishable from such angle beacons: Provided, also, that if any such line beacon shall not be kept up and in good repair, the owner or owners of the farm to whom it belonged or belongs shall incur and be liable to the penalties in the seventy-fifth section of this Act provided.

"Line" beacons to be erected as well as "angle" beacons.

Materials for "line" beacons.

By whom to be kept in repair.

No. 10—1859.

This Act not to apply to properties within municipalities.

LXXX. Nothing in this Act contained shall extend to any lands or fixed properties situated within any municipality: Provided always, that it shall be competent for any municipality to avail itself of the provisions of this Act, to settle its boundaries or limits, in regard to lands lying beyond such limits, precisely as if such municipality were a private person.

Meaning of terms "owner" and "farm."

LXXXI. In the interpretation of this Act, the term "owner" shall include an occupier who is not the owner, and the term "farm" shall mean, as well what is commonly called a farm, as any other piece of immovable property: Provided that no beacons need be erected or kept up upon, or in reference to, any properties except such as had beacons pointed out for them when surveyed either for the original grant or for some subdivision thereof, or upon, or in reference to any piece of land, not being the whole of an original grant, which shall be less in extent than fifty morgen: Provided, also, that any occupier of any farm, who is not the owner, who shall incur any expense in erecting or repairing any beacon, shall be entitled to retain or recover such expense from the owner of such farm, in case the loss of or damage to such beacon shall not have been occasioned by any act or default of such occupier, and in case it shall not have been agreed between such owner and such occupier that such expense should be borne by such occupier.

Properties in regard to which beacons need not be erected.

Occupier may recover from owner expense of erecting beacons.

Short title of Act.

LXXXII. This Act may be cited for any purpose as "The Land Beacons Act, 1859."

No. 11—1859.] AN ACT [July 8, 1859.

To Amend the Act No. 9, 1858, entitled "An Act to provide for the Management of the Public Roads of this Colony."

Preamble.

WHEREAS, by the twenty-ninth, thirtieth, thirty-first, thirty-second, and thirty-third sections of the Act No. 9, 1858, entitled "An Act to provide

for the Management of the Public Roads of the Colony," provision was made for enabling the resident householders of the municipalities of Cape Town and Green Point, voting together as one constituency, to elect four persons who, in regard to all functions, powers, and matters by the said Act to be exercised or done by the divisional council of the Cape division, should be entitled to sit, deliberate, and vote with the members of the said divisional council, precisely as if they were ordinary members thereof: And whereas, owing to the date fixed by the said Act No. 9, 1858, for the commencement thereof, to wit, the 1st January, 1859, and to the date at which a general election for members of the divisional council of the Cape took place in the year 1858, it became difficult, if not impracticable, to carry into effect the true intent and meaning of Parliament in regard to the mode in which the two municipalities should be represented in the said council upon or in relation to road purposes, whereby it happens that the said municipalities are not now represented in the said council: And whereas, before and on the 1st January, 1859, aforesaid, the Municipal Ordinance establishing the Municipality of Green Point had expired by effluxion of time: And whereas an Act has been or will be passed during the present session for re-establishing the said municipality; and it is therefore expedient to provide for the election, as speedily as possible, of the four persons aforesaid, to represent in the divisional council of the Cape the municipalities 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. So much of the twenty-ninth, thirtieth, thirty-first, thirty-second, and thirty-third sections of the Act aforesaid, No. 9, 1858, as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant portions of Act 9, 1858, repealed.

II. As soon as may be after the commencement and taking effect of the said Act for re-establishing the municipality of Green Point, the civil commissioner of the Cape division shall, by such a notice

Poll to be taken for the election of four members to represent Cape Town and Green Point in divisional council.

No. 11—1859.

as is in the thirty-second section of the Act aforesaid, No. 9, 1858, mentioned, appoint a day and hour, and fix a place for the taking of the poll in the said thirty-second section mentioned; and the several provisions of the said section shall apply to the said poll.

Members, how long to remain in office.

III. The four persons elected at or by the poll aforesaid, shall remain in office until the then next ensuing general election for members of the divisional council of the Cape division, but no longer.

To be re-eligible.

IV. The four persons first elected as aforesaid, and every person elected at any time afterwards to be one of the four persons aforesaid, and who shall go out of office triennially, as in the thirtieth section of the Act aforesaid, No. 9, 1858, directed, shall be eligible to be again elected.

And whereas, by the twenty-seventh section of the Act aforesaid, No. 9, 1858, it is enacted that, within three months after the passing of the said Act, valuator should be appointed by each divisional council, for the purpose in the said section mentioned: And whereas, in certain divisions of this Colony, such valuator were appointed, and acted under such appointment, prior to the 1st of January, 1859: And whereas doubts exist whether such appointment of valuator, so made prior to the said 1st of January, 1859, was not, under and by virtue of the fifty-ninth section of the said Act, premature and invalid: And whereas it is expedient to remove such doubts: Be it enacted as follows:

Doubts as to validity of the appointment of certain valuator under Act 9, 1858, removed.

Such appointments declared valid.

V. No valuation for the purposes of the said Act No. 9, 1858, nor court held, or purporting to have been held, under the thirty-fourth section of the said Act, nor assessment made for the purposes of the said Act, shall be invalidated, impeached, or questioned, by reason that the valuator who made such valuation were appointed, or that the court aforesaid was held, or that the assessment aforesaid was made, prior to the 1st of January, 1859: Provided, also, that all appointments of valuator made at any time within three months after the said 1st of January, 1859, shall be as legal, valid, and effectual

as if, in the twenty-seventh section of the Act aforesaid, No. 9, 1858, the words "after the taking effect of this Act" had been inserted, in place and stead of the words "after the passing of this Act."

No. 11—1859.

And whereas it is expedient to correct two mistakes which have occurred in regard to references made in certain sections of the said Act, No. 9, 1858, to certain other sections thereof; and also, to remove an inconsistency between the thirty-fourth and thirty-sixth sections of the said Act: Be it enacted as follows:

Mistakes in certain sections of Act 9, 1858.

VI. The term "twenty-ninth section," used in the thirty-third section of the Act aforesaid, No. 9, 1858, shall be deemed and taken to refer to the "thirty-first section," for which last-mentioned section the former was, by mistake inserted; and the term "thirty-third section," used in the thirty-ninth section of the aforesaid Act, shall be deemed and taken to refer to the thirty-fourth section.

Those mistakes corrected.

VII. The thirty-sixth section of the Act aforesaid, No. 9, of 1858, is hereby repealed.

Section 36, Act 9, 1858, repealed.

No. 12—1859.] AN ACT [July 8, 1859.

To Define the Meaning and Effect of certain Terms of common use in Acts of Parliament, and to provide Rules for the Interpretation of such Acts in other respects.

WHEREAS, to define by a single Act of Parliament the meaning and effect of certain terms commonly used in Acts of Parliament, instead of defining such terms in every Act in which they occur, and to provide rules for the interpretation of such Acts in certain other respects, will tend to simplify and shorten the language of such Acts: Be it enacted by 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. In the interpretation of all Acts passed and to be passed by the Parliament of the Cape of Good

Application of the provisions of this Act.

No. 12—1859.

Hope, the definitions and other provisions in this Act contained shall, unless there be something in the language, subject, or context of any such Act repugnant to the said definitions or provisions, be adopted and applied.

Term "governor."

II. The term "Governor of this Colony" shall mean the officer for the time being administering the Government thereof.

Name of an office be used to designate the officer or acting officer.

III. When and as often as any public officer is described by his name of office, the person designated shall be taken to be the officer for the time being or the person for the time being acting as such officer.

Term "month."

IV. The term "month" shall mean a calendar month.

Oath or affidavit to mean also declaration or affirmation.

V. When and as often as any person is, by any Act, required or directed to take or make, in regard to any subject, matter, or thing, any oath or affidavit, it shall be understood that such person, being a Quaker, Moravian, or Separatist, may, instead of taking or making an oath or affidavit, make a declaration or affirmation, according to the custom of the sect or denomination to which he belongs.

Punishment for false oath to apply also to false declaration.

VI. As often as any oath is by any Act required or directed to be made, it shall be understood that any person who shall knowingly and wilfully make on oath, or by affidavit, or being a Quaker, Moravian, or Separatist, make, by any such declaration or affirmation as aforesaid, any statement which shall be false in any material particular, shall incur and be liable to such punishment as shall, for the time being, be by law provided for the crime of perjury.

"Solemn declaration" defined.

VII. When and as often as any person shall, by any Act, be directed to make, in regard to any subject, matter, or thing, a solemn declaration, the term "solemn declaration" shall mean a solemn declaration made under and by virtue of the provisions of the Ordinance No. 6, 1845, entitled "Ordinance for substituting declarations in the place of certain oaths, and for the suppression of voluntary and extrajudicial oaths and affidavits."

Words of singular number to include plural, and *vice versa*.

VIII. Words of the singular number shall include the plural number, and words of the plural number shall include the singular number, and words of the

masculine gender shall include females as well as males.

No. 12—1859.

IX. The repeal of any Act or Ordinance whereby any former Ordination or Act was repealed shall not have the effect of reviving such last-mentioned Act or Ordinance.

Repeal of any law not to revive laws thereby repealed.

X. Acts of Parliament shall commence and take effect from and after their promulgation in the Government Gazette.

When Acts of Parliament to commence.

XI. This Act may be cited for all purposes, as "The Acts of Parliament Interpretation Act, 1859."

Short title of Act.

No. 13—1859.]

AN ACT

[July 8, 1859.

To Incorporate the Simon's Bay Dock or Patent Slip Company.

**W**HEREAS a company has been formed, under the name or style of the Simon's Bay Dock or Patent Slip Company, for the purpose of establishing, constructing, maintaining, and working a dock or patent slip in Simon's Bay, and for the prosecution of all undertakings which may be necessary or convenient for the said purposes, or may be advantageously prosecuted and carried on in connection therewith: And whereas the making, constructing, and maintaining such dock or patent slip would be attended with much advantage to the general trade and commerce of this Colony, inasmuch as facilities which do not at present exist for the refitting and repairing of ships arriving in Simon's Bay and other ports of this Colony would be offered: And whereas it has been made to appear, by the plans and estimates of competent persons, that the cost of constructing a dock or patent slip in Simon's Bay, capable of containing one or more ships, will not exceed the sum of sixty thousand pounds: And whereas there is reason to believe that, provided the liability of the shareholders in the said company is limited by law to the amount of their respective shares, a sufficient number of persons will be found

Preamble.

No. 13—1859.

ready to subscribe the said sum of sixty thousand pounds; and it is deemed expedient to provide by law for the carrying into effect of the proposed plan, and to incorporate the said company by the authority of Parliament: 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, to wit:

Incorporation  
and  
style of company.

I. The several persons who are or shall become proprietors and shareholders in the said company, and their respective executors, administrators, successors, and assigns, shall be and are hereby united into one body corporate, under the name of the "Simon's Bay Dock or Patent Slip Company," for the purpose of making, constructing, working, and maintaining such dock or patent slip in Simon's Bay aforesaid, including all necessary convenient or accessory extensions, piers, breakwaters, and works as may be agreed upon, upon any ground to be purchased by or granted to the said company. And the company hereby incorporated by the name aforesaid shall have a perpetual succession and a common seal, and by such name shall and may, from time to time, sue and be sued, implead and be impleaded, answer and be answered unto, in all courts of this Colony, and shall have power to take, purchase, and hold lands, buildings, hereditaments, and possessions, and also all other property, chattels, or effects whatsoever; and such lands and other property, subject to any engagements affecting the same, shall be vested in the company incorporated by this Act by its corporate name, and without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.

General powers.

Capital of company.

II. The capital of the said company shall be sixty thousand pounds, in twelve thousand shares of five pounds each, and such shares shall be numbered in arithmetical progression, beginning with number one, and every share shall be distinguished by its appropriate number.

Subscription list for  
shares to be opened.

III. That subscription lists for shares in the said



company shall be opened, headed as follows: "We, whose names are hereunder written, hereby agree with each other to become shareholders in the Simon's Bay Dock or Patent Slip Company, incorporated under Act of Parliament, and to take, each of us, the number of shares set opposite his name." And every such list shall be signed by the shareholder himself, or his attorney, lawfully authorized, and all such lists shall be preserved by the directors of the said company; and the shareholders so signing the said lists shall thenceforth be bound to each other for the due fulfilment of the several obligations by this Act imposed upon the shareholders of the said company, as fully and amply as if every such shareholder had executed a trust-deed containing all and singular the provisions and stipulations of this Act.

IV. No more than five pounds in all shall be due or payable, in any case or by any person, in respect of any share in the said company, and the liability of every shareholder shall be limited to the making good of that amount by instalments, as hereinafter mentioned.

V. The amount of the shares in the said company shall be paid in manner following: Two shillings per share, in cash upon subscribing, and the remaining four pounds eighteen shillings per share by instalments, not exceeding ten shillings per share each, which instalments it shall be lawful for the directors to call up upon giving a notice to that effect of not less than one month in the Government Gazette, and one or more of the local newspapers.

VI. If at the time appointed for the payment of any call any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof in any of the courts of this Colony having competent jurisdiction, and to recover the same with lawful interest from the day on which such call was payable.

VII. If any shareholder fail to pay any call payable by him within one month from the day appointed for payment of such call, the directors may, at a meeting of directors duly convened, by resolu-

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tion in writing, signed by not less than four of their number, declare the share or shares in respect of which such call was payable forfeited, and that, whether the company have sued for the amount of such call or not, and the said directors may thereupon dispose of the same to any other person or persons, and, if needful, issue fresh certificates of shares to the person or persons purchasing such forfeited shares.

Management vested in directors.

VIII. The management of the company shall be vested in nine directors, and no person shall be capable of being elected a director who shall not possess in his own right twenty-five shares at least in the stock of the company.

First directors.

IX. Joseph Barry, Henry Bailey Christian, Charles John Manuel, William James Anderson, Edwin George Bower, Richard William Murray, William Grout, James Duncan Thomson, and James Murison shall be appointed the first directors of the company, and shall continue until other directors are appointed in their place, or they, or any of them, die, resign, be removed, or become incapacitated as after-mentioned.

Directors, when to be deemed to vacate office.

X. Any director becoming insolvent, or being absent from the Colony for six months, or who shall cease to be the holder of twenty-five shares at the least, shall become disqualified, and his seat shall become vacant.

Director may be removed.

XI. In case the conduct of any director shall at any time be such that his continuance in office shall appear to at least twenty shareholders, holding not less than one hundred shares, to be prejudicial to the interests of the company, and notice thereof shall be given to the directors in writing, the directors shall thereupon call a general meeting of proprietors for the purpose of determining whether such director shall continue in office: Provided that twenty-eight days' notice shall be given of such meeting and its purpose in the Government Gazette, and one or more public newspapers; and it shall and may be lawful for a majority of the proprietors at such meeting to remove such director from his office.

Notice of meeting for his removal.

Board of managers,

XII. Four or more directors shall constitute a

board for the management of the company's business, and such board shall meet, after notice given to all the directors, alternately at Simon's Town and Cape Town, unless another place of meeting shall be otherwise arranged, from time to time, by the directors themselves.

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how and where to meet.

XIII. On the first Wednesday in the month of July, 1860, the said nine directors shall go out of office, but shall be eligible for re-election, and on the first Wednesday in the month of July, in every subsequent year, the whole of the nine directors shall in like manner go out, but be re-eligible: Provided, however, that if, from any cause whatever, no election shall take place, the said directors shall remain in office until such time as other directors shall be appointed.

Directors to go out of office annually, but re-eligible.

XIV. The directors shall choose from among themselves a chairman, who shall preside at all meetings of directors, and in case of his absence, the directors then present shall, by a majority of votes, appoint a chairman of such meeting, such chairman to have a casting vote, and also an original or deliberative vote. And at all meetings of shareholders they shall make choice of a chairman from among their number, who shall preside and have a casting vote, as well as a deliberative vote.

Directors to choose a chairman, who shall preside and have casting vote.

Shareholders ditto.

XV. The annual general meetings of shareholders shall be held in Simon's Town on the first Wednesday in the month of July in each year, and the first annual general meeting shall be held on the first Wednesday in the month of July, 1860; twenty-eight days' notice thereof being previously given in the Government Gazette, and such other newspapers as the directors may deem expedient.

Annual meeting of shareholders.

XVI. A report shall be submitted at each annual general meeting of the prospects of the company, together with an account of receipts and expenditure for the year ending the thirtieth June preceding.

Annual report.

XVII. In addition to the annual general meetings, general meetings of the company may be held for any special purpose upon a requisition, in writing, setting forth such purpose, signed by not less than twenty shareholders, holding collectively

General meetings for special purposes.

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one hundred shares, provided that notice of such meeting and its purpose shall be given by the directors twenty-eight days, at least, before such meeting shall take place, in the Government Gazette and such other papers as may be deemed expedient: Provided that no business shall be brought before any such meeting except that described and set forth in such requisition and notice.

Auditors.

XVIII. The accounts of the company shall be audited annually by two auditors, not being directors, who shall be appointed by the shareholders at each annual general meeting, and no person shall be eligible to be an auditor unless he shall be the proprietor of at least five shares.

Shareholders, how to vote at general or special meetings.

XIX. Shareholders shall have a right to vote at general or special meetings in manner following: Each shareholder of five shares, to one vote; each shareholder of ten shares, to two votes; each shareholder of twenty-five shares, to three votes; each shareholder of fifty shares, to four votes; each shareholder of one hundred shares, to five votes; each shareholder of two hundred shares, to six votes; each shareholder of three hundred shares, to seven votes; each shareholder of four hundred shares, to eight votes; each shareholder of five hundred shares, to nine votes; each shareholder of six hundred shares, to ten votes; each shareholder of seven hundred shares, to eleven votes; each shareholder of eight hundred shares, to twelve votes; each shareholder of nine hundred shares, to thirteen votes; and each shareholder of one thousand shares, to fourteen votes, and no more: Provided that shareholders holding shares in a representative capacity, and representing more persons than one, shall be regarded in voting as if, in respect of all the shares held by him, he represented one person only; and no person shall, by reason of any number of shares held by him in any number of representative capacities, be entitled to more than fourteen votes; and no shareholder, by transfer, shall be entitled to vote in respect of any share or shares until he shall have been registered as the proprietor thereof for a period of three months.

How, if holding shares in representative capacity.

No shareholder, by transfer, to vote until registered three months.

XX. No shareholder residing within twenty miles of the town where any of the meetings of the company shall be held (except females holding shares in their own right, and persons unable from illness to attend) shall be allowed to vote by proxy; and the proxy for such females or shareholders suffering from illness or being resident beyond twenty miles from the town in which the meetings may be held, or being temporarily and unavoidably absent from such town, though resident there, shall be in the form or to the effect following :

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What shareholders  
may vote by proxy.

I, A. B., of \_\_\_\_\_, one of the shareholders of the Simon's Bay Dock or Patent Slip Company, do hereby authorize and appoint C. D., of \_\_\_\_\_, to be my proxy at all meetings of the shareholders of the said company, and to vote for me thereat upon all matters and things proposed relative to the concerns of the company, unless I myself shall be personally present.

Form of proxy.

Witness my hand at \_\_\_\_\_, this  
day of \_\_\_\_\_, 18 .

A. B.

XXI. All resolutions of shareholders at meetings shall be determined by a show of hands, but any shareholder may thereafter demand a ballot, and thereupon the question shall be determined by a majority of votes of those present, given in writing, and reckoned according to the rule in that behalf provided; and in any case of the votes being equally divided, the chairman of the meeting shall have the casting vote.

Resolutions at shareholders' meetings,  
how determined.

XXII. All proceedings, votes, and resolutions of meetings, whether annual or special, shall be entered in a minute book, and be subscribed by the chairman presiding at such meetings.

Minute book to be kept.

XXIII. The directors shall keep a book, open for the inspection of the public at all reasonable times, on the payment of one shilling for each search, in which the names and residences of all the shareholders and the number of shares which they respectively hold, shall be entered; of which entry,

List of shareholders open to inspection.

No. 13—1859.

an extract, by way of certificate, shall be delivered to every shareholder, which certificate shall, at all times, be deemed sufficient evidence of the interest in such share of the respective parties to whom the same shall be granted. And the certificate to be so granted shall be in the form following, to wit :

Form of certificate of share.

Certificate of Share in the Simon's Bay Dock or Patent Slip Company.

No.

This is to certify that A. B., of \_\_\_\_\_, is the proprietor of the share No. \_\_\_\_\_ of the Simon's Bay Dock or Patent Slip Company, established by Act of Parliament, subject to the regulations of the said company.

Given under the common seal of the said company, the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

Penalty for failing to produce such list.

Provided, always, that if the secretary does not, on application, produce such book for inspection, correctly kept, in pursuance of the directions herein contained, then he shall be liable to pay a penalty not exceeding ten pounds sterling, to any person aggrieved, which penalty may be recovered before any magistrate having jurisdiction to act within the district in which the office of the said company is situate.

Shares, how transferable.

XXIV. It shall be lawful for any shareholder to transfer his share or shares, by endorsement upon each certificate, specifying the person to whom such share is transferred ; but no such endorsement shall, as between either the assignor or assignee and the said company, have any force, effect, or operation whatsoever, until such endorsement shall have been registered at the office of the said company, and three of the directors shall have certified in writing on the back of such certificate their approval of such transfer ; and until the assignee or transferee shall, either in person or by attorney, in a book to be by the directors provided for that purpose, have signed an acknowledgment, in substance as follows, that is to say :

Acknowledgment of transfer.

I, C. D., do hereby acknowledge to have received, by transfer, from E. F., the share No. \_\_\_\_\_ in

the Simon's Bay Dock or Patent Slip Company, subject to the conditions, provisions, and regulations of the Act of incorporation of the said company.

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XXV. As often as any share shall be transferred in manner aforesaid, the person transferring the same shall be wholly released and discharged from any liability in respect thereof, and the person to whom the same shall be so transferred shall become subject to all and singular the same liabilities in respect of such share as if such person had been the original shareholder.

Effect of transfer as to liability of party transferring and transferee.

XXVI. It shall and may be lawful for the said directors to enter into any contract or contracts with any person or company whatsoever for any work to be done and performed, or for any materials, articles, or things to be furnished for the purposes of the works to be constructed by the said company; and also to appoint and employ such engineer or engineers, wharf-clerks, masons, workmen, and other persons, as they shall find it necessary to employ, in carrying this Act into effect; and, from time to time, to remove or dismiss all or any such persons, and employ others in their room and stead, and to fix the duties and salaries of all such persons.

Directors may enter into contracts, appoint engineers, &c.

XXVII. When, and as soon as, from time to time, the whole of the capital for the time being of the company shall have been subscribed for, and one half of such capital shall have been paid up, it shall be lawful for the company, from time to time, by the authority of a special general meeting, convened for that purpose in manner provided by the seventeenth section of this Act, to borrow money on mortgage of their undertaking, and of the wharfage dues to be received by the company.

When the whole capital has been subscribed for, and half paid up, company may borrow money on guarantee of wharfage dues.

XXVIII. The amount of dividends to be paid to the shareholders of the said company respectively shall be determined by the directors for the time being, subject to the approval of the shareholders present at the annual general meeting, provided that the amount of such dividends shall not, for the five years next ensuing from and after the passing of this

Directors to determine amount of dividends.

Limitations.

No. 13—1859. †

Act, exceed the rate of six per cent. per annum upon the amount paid up by the shareholders; and provided, also, that no dividend shall be made whereby the capital stock shall be in any degree reduced.

Remuneration to chairman and directors.

XXIX. The chairman and directors, for the time being, shall receive, out of the clear profits of the company, such sum or sums of money, by way of remuneration for their trouble, as the majority of the shareholders shall determine at the annual general meeting.

When docks fit for receiving vessels, wharfage dues may be levied.

XXX. When and so soon as it shall be made to appear to the Governor of this Colony, by the directors of the company for the time being, that the docks have been sufficiently advanced to permit the entrance of ships or vessels therein, or that there are sufficient conveniences for the landing and shipment of goods thereat, it shall and may be lawful for the said Governor, by his proclamation to be issued for that purpose, and published in the Government Gazette, to announce that from and after some certain day, to be specified in such proclamation, so much of the Ordinance No. 6, 1851, as relates to the levying and payment of the several dues of wharfage and cranage, on all goods landed or shipped in Simon's Bay, shall be repealed, and that there shall thenceforth be levied by and paid to the said directors, or such other person or persons as shall be appointed to receive the same, for their use, upon all goods, articles, matters, and things included in the schedules to the Ordinance No. 6, 1851, landed or shipped in Simon's Bay, such dues of wharfage and cranage, not exceeding the several rates of dues respectively set forth in the said schedule as the said Governor shall approve of and appoint, and such dues from time to time, by proclamation, to alter, but so, however, as never to exceed the rates set forth in the said schedule; and the directors shall be entitled to recover by legal process all such dues from the owners of the goods, articles, matters, and things aforesaid, and shall, moreover, have the right of retaining the same until such wharfage dues shall have been paid, as well as the right of preventing any goods, articles, matters, or things from being

Dues, at what rate, and how to be imposed.



shipped at or from the said docks, or any wharfs or piers connected therewith, until the wharfage dues payable in respect thereof shall have been paid: Provided that the said directors shall erect or provide such cranes or other conveniences as may be necessary for landing or shipping at the said docks.

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Directors to erect cranes, &amp;c.

XXXI. The right to and property in all and singular the walls, embankments, piers, jetties, wharfs, or other works constructed under this Act shall vest in the directors for the time being.

Wharfs, &amp;c., vested in directors.

XXXII. In case it should, at any time, be found that the losses of the company hereby incorporated have exhausted all the capital, the directors shall call a special general meeting, in manner provided by the seventeenth section of this Act, and shall submit to such meeting a full and general statement of the affairs and concerns of the company; and thereupon the said company shall be dissolved, unless a majority of the shareholders present shall resolve, by their votes, to continue and carry on the company, and shall then and there undertake, in writing, to indemnify the remaining shareholders against all debts of the company, and to purchase their shares at such value as may be determined by three indifferent persons; one to be named by the shareholders so indemnifying, another by the remaining or dissentient shareholders, and the third by two such nominees; and the award of the said arbitrators, or any two of them, shall be conclusive upon all and each of the shareholders.

How, if capital is exhausted.

XXXIII. In any action or suit which may be brought by or against the said directors, in their capacity as such, it shall and may be lawful for such directors to sue or be sued by the style or description of "The Directors of the Simon's Bay Dock or Patent Slip Company," and in all criminal proceedings the same style may be used: Provided, always, that no director shall be deemed to be an incompetent witness in any such suit or proceeding as aforesaid, civil or criminal, by reason of his holding the office of director: And provided, also, that the said directors shall be repaid, out of the moneys in their hands, under the provisions of this Act, all such costs and

Directors, how to sue and be sued.

Competent as witnesses.

Costs

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expenses as they shall incur by reason of bringing or defending any suit or action, shall be deemed and taken to be charges duly incurred in the execution of this Act, unless such suit or action shall have arisen from their own gross negligence or wilful default.

Short title.

XXXIV. This Act shall be known and cited as the "Simon's Bay Dock or Patent Slip Company Act, 1859."

No. 14—1859.] AN ACT [July 8, 1859.

For the Creation of a Municipal Board for the Districts of Green Point and Sea Point, and for other purposes connected with the said Municipality.

Preamble.

WHEREAS the Ordinance No. 4, 1839, entitled "Ordinance for the creation of a Municipal Board for the districts of Green Point and Sea Point," has expired on the 1st day of January, 1859, and it is expedient that a municipal board should be again constituted and established therein: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, that from and after the promulgation of this Bill, a municipality shall be created, which shall be styled and called the Municipality of Green Point and Sea Point, and which shall include the space of ground situated within the following limits:

Municipality of Green Point and Sea Point created.

Boundaries of municipality.

The southern boundary line of the land now the property of Mr. Wessels and others, formerly belonging to Mr. Smuts (being lot No. 1 of the Green Point lots), prolonged upward and westward to the point where the line of the west side of Strand-street, prolonged northward, shall intersect it, and prolonged downward and eastward across the Somerset or Green Point road to a point twenty yards to the eastward of the said road. A line commencing at the said last-mentioned point, and running parallel

within twenty yards to the eastward of the said road, and of the cross road branching off therefrom to Three-anchor Bay to low-water mark; thence along low-water mark to where the western boundary line of the property now belonging to Mr. Henry Hewitt, formerly belonging to Mr. Frederick Liesching (called Botany Bay), prolonged northward, runs into the sea; thence along the last-mentioned boundary line to its southern extremity; thence running in straight direction to the summit of the hill called the Lion's Head; and thence eastward along the ridge and on the line which divides the water flowing therefrom to the north and south to the first point of intersection herein mentioned.

II. The said municipality shall, for the purposes of this Act, be under the administration of a municipal board consisting of five commissioners, to be elected in manner hereinafter provided.

To be under administration of five commissioners.

III. Every person who is the proprietor of, or who, as renter, occupies any dwelling-house situated within the said municipality, and of the yearly value or rent of not less than ten pounds, shall be, and be deemed and taken to be, a householder within the meaning of this Act, and that, at the several meetings of such householders hereinafter appointed or authorized to be holden, every such householder who shall be personally present shall have and be entitled in his own right to one vote, and no more.

Qualification of householders and right of voting.

IV. Any person residing within the said municipality, being the proprietor of landed property, situated within the same, of the value of not less than three hundred pounds, and none other, shall be qualified and eligible to be elected a commissioner, for the purposes of this Act.

Qualification of commissioners.

V. Within eight days after the promulgation of this Act, the resident magistrate for Cape Town, or the officer at the time acting as such, shall call a meeting of the householders of the said municipality, to be holden at the Town-house, in Cape Town, in order to elect five commissioners to form such municipal board as aforesaid, for the purposes of this Act; and at such meeting the said commissioners shall be elected in manner hereinafter provided.

Meeting of householders for election of commissioners.

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Commissioners to go out of office every two years, but re-eligible.

VI. Every person who shall be elected a commissioner at such meeting as aforesaid shall go out of office on the first day of January, 1861; and in place of such commissioners so going out of office, a like number of other commissioners, to be elected in manner hereinafter provided, shall come into office, and remain in office for two years, and at the expiration of such biennial term shall, in like manner, go out of office, and be succeeded by other commissioners, who shall remain in office for a like biennial term, and so on for ever, so long as this Act shall remain in force: Provided, always, that any of such outgoing commissioners shall be re-eligible and may be re-elected, and shall in such case again come into office; anything herein contained to the contrary notwithstanding.

Meeting of householders for election of succeeding commissioners.

VII. On the first Monday in the month of December, 1860, and thereafter on the first Monday in every month of December, immediately preceding the day on which any such biennial term shall expire, a meeting of the householders of the municipality shall be holden, at such hour and place as shall be duly notified by the said commissioners, for the election of commissioners for the next succeeding biennial term.

Commissioners vacating office from any cause, meeting to be called to elect others.

VIII. Any commissioner who shall cease to possess the qualification required by the fourth section of this Act, or shall absent himself from the municipality for any period exceeding three months, or shall become incapacitated to fulfil the duties of his office by mental or bodily infirmity or disease, shall, *ipso facto*, vacate his office, and that in case any person so elected a commissioner shall die, or become disqualified in manner aforesaid, or shall resign or refuse to accept the office of commissioner, or in case of any casual vacancy happening in any manner whatever in such office, the commissioner or commissioners then being in office shall forthwith call a meeting of the householders, for the purpose of electing a commissioner to fill up every such vacancy.

If at biennial election three new commissioners be not chosen, those in office to remain until succeeded by others to be elected.

IX. If it shall happen that at any such biennial meeting as aforesaid for the election of commissioners, there shall not have been at the least three

commissioners duly elected to come into office, and succeed the commissioners who, in manner hereinbefore provided, are to go out of office at the expiration of any such biennial term, then, and in every such case, such last-mentioned commissioners shall remain in office until at the least three commissioners shall be duly elected, when they shall forthwith go out of office and be succeeded by such newly elected commissioners.

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X. Whenever any commissioner or commissioners, by reason of the time at which his or their election shall have taken place, shall come into office on any other day than the first day of any such biennial term as aforesaid, he or they shall remain in office only until the expiration of such biennial term, and no longer, except in the case provided in the ninth section of this Act.

Commissioners elected after first day of biennial term, how long to hold office.

XI. If it shall happen that, by reason of any failure or neglect, or other cause, the biennial meeting for the general election of commissioners shall not have been duly holden on the first Monday of any month of December, in manner hereinbefore provided, or that at such biennial meeting there shall not have been three commissioners duly elected, or that when the office of any commissioner shall be or have become vacant in any manner aforesaid, the commissioner or commissioners in office shall not, within eight days after such vacancy shall have occurred, have called a meeting of the householders of the municipality to elect a commissioner to fill up such vacancy, then, and in every such case, the resident magistrate of Cape Town, or the officer at the time acting as such, shall, so soon as any such event shall have been notified to him, in writing, by any commissioner or householder, forthwith call a meeting of the householders of the municipality for the purpose of electing a commissioner or commissioners, as the case may be.

In case of failure or neglect to hold biennial meeting.

Resident magistrate to call meeting for election of commissioners.

XII. At every meeting for the election of any commissioner or commissioners, every candidate shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other qualified person; and every

Manner of proceeding at election of commissioners.

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vote which at any such election shall be given for any person who has not been so proposed and seconded shall not be taken into account in such election, but shall be wholly void and ineffectual: And that the votes shall be taken by ballot, and the person or persons having the greatest number of votes shall be elected commissioner or commissioners, as the case may be: Provided, always, that when there shall be only one vacancy to be filled up, and only one candidate shall have been proposed and seconded in manner aforesaid, no vote shall be taken, and such candidate shall thereupon be elected and become commissioner: And provided, also, that when, by reason of any two or more candidates having obtained an equal number of votes, any ballot shall be indecisive as to them, such candidates shall forthwith be balloted for a second time, and he or they who shall obtain the greatest number of votes shall be elected commissioner or commissioners, as the case may be; but if such second ballot shall also be rendered indecisive, by reason of any equality of votes, the chairman of the meeting shall decide the election by his casting vote; and the commissioners elected at any meeting shall be ranked on the list according to the number of votes by which each shall have been elected, and all other commissioners, elected to fill up any vacancy occurring during any such biennial period as aforesaid, shall be ranked on the list after the commissioners holding office at the time of such last-mentioned election: And where two or more commissioners shall have been each elected at the same meeting by the same number of votes, their respective priority on the list of commissioners shall be decided by lot.

Quorum of commis-  
sioners.

Chairman  
chosen.

XIII. At all meetings of such commissioners, not less than three commissioners shall be a quorum. And be it further enacted, that at the first meeting of the said commissioners, the commissioner to be called and styled the chairman of the board of commissioners shall be chosen by a majority of the votes of the commissioners then present; and the said commissioner so elected chairman shall hold such office until the next succeeding general election of

commissioners ; and in case of the death, resignation, or other incapacity of such chairman, then a successor shall be forthwith chosen to serve in manner aforesaid till the then next general election as aforesaid : Provided, however, that if at any meeting of commissioners as aforesaid the chairman shall be absent therefrom, and which absence shall not have arisen from the death, resignation, or incapacity aforesaid, the commissioners then present may choose, by majority of votes, any one of their number to act as chairman for that meeting : Provided, also, that at the first meeting of every successive board of commissioners, to be elected biennially as aforesaid, the commissioners shall, in manner hereinbefore mentioned, with respect to the first board of commissioners, choose a chairman to act as such for the term of two years then ensuing ; and whenever the votes of such commissioners, including such chairman, are equally divided, the chairman shall have a casting vote.

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How, in the absence of chairman.

Chairman elected at first meeting of board to hold office for two years, and have casting vote.

XIV. The said commissioners shall meet at such times as are specified in the municipal regulations for the time being, at some convenient place or office previously publicly notified, with open doors ; and, at such meetings, it shall be lawful for any person to appear there and prefer any matter of complaint which he may think proper to make, concerning any matter or thing by force of, or in pursuance of, or under pretence of, the provisions of this Act, or of the municipal regulations.

Meetings of commissioners, when and how to be held.

XV. The said commissioners shall meet at all other times, and so often, and at such places, as at any previous meeting shall have been determined ; and it shall be at all times competent for any two commissioners, by writing under their hands, upon at least forty-eight hours' notice, to summon the commissioners to meet for any special purpose therein named ; and it shall at all times be lawful for any quorum of the said commissioners, who shall have assembled together, although without any such previous notice, to hold a meeting of the municipal board, and then and there to transact any of the business of the municipality, provided that all the

Special meetings of commissioners.

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commissioners then present shall agree to do so, and that every other commissioner not then present, and who shall not be then absent from the municipality at a greater distance than twenty miles, shall have, by writing, under his hand, signified his consent that such meeting of the municipal board shall be holden for the transaction of such business.

Commissioners to receive no fee or reward.

XVI. No person elected in manner aforesaid a commissioner of the said municipality shall 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, in virtue of this Act, or relative to putting the provisions of this Act into execution.

Commissioners may sue and be sued.

XVII. In any action, or suit, or prosecution, which shall or may be brought for the recovery of any penalty or sum of money, due or payable by virtue of this Act, or for or in respect of any property, movable or immovable, vested in the said commissioners, or for or of any other matter or thing relating to this Act, by or against the said commissioners, it shall and may be lawful for the said commissioners to sue or be sued, or to prosecute, by the style or description of "The Commissioners for the Municipality of Green Point," and the secretary of the commissioners may sign all documents necessary for prosecuting any action, suit, or proceeding: Provided, always, that every such commissioner may and shall (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action, or suit, or prosecution, either for or against the said commissioners; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any such action, suit, or proceeding, shall and may be lawfully made by any such commissioner; and provided, also, that the said commissioners shall always be reimbursed and paid, out of the moneys to arise by virtue of this Act, all such costs, charges, and expenses, as they shall be put to or become chargeable with, by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the

To be competent as witnesses.

To be reimbursed all costs, unless in case of wilful neglect or default.



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.

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XVIII. The commissioners who shall be elected, in manner aforesaid, to compose the said municipal board, for the term commencing on the passing of this Act, and terminating on the first day of January, 1861, shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same, when prepared, to a meeting of the householders of the municipality, to be called by the said commissioners upon seven days' notice: Provided, always, that such commissioners shall submit such regulations to such meeting as aforesaid within two months from the date of their election, otherwise such commissioners shall thereupon, *ipso facto*, vacate their offices, and a new board of commissioners shall thereupon be elected in manner aforesaid, and proceed to frame such regulations in manner aforesaid.

Commissioners to frame regulations.

And submit them to meeting of householders within two months after election.

XIX. In such regulations it shall be the duty of the said commissioners to divide the municipality into wards, if it shall be deemed necessary so to do, and to fix the limits of such wards, and to distinguish the same by numbers, and to fix the number and make rules as to the mode of election of the wardmasters, and as to the duties to be performed by them, and for the classification and valuation of the immovable property therein, and to frame all other regulations which may be necessary to enable the said commissioners to carry into effect the provisions of this Act, or such of them as the said commissioners shall think expedient and necessary for the municipality.

Division of municipality into wards, and other matters regarding which regulations should be framed.

XX. At the meeting to which such regulations as aforesaid shall be submitted, the question shall be put by the chairman on each and every clause contained in such regulations, *seriatim*, and afterwards, on the whole of such clauses as have not been disapproved of and rejected by such meeting, jointly; and the majority of votes shall decide whether such clause, or the whole of such regulations, as the case may be, shall or shall not be adopted.

Regulations, how to be adopted by meeting of householders.

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Regulations, how to be made valid.

XXI. The regulations adopted at such meetings shall first be published in the Government Gazette for fourteen days, for general information, and then be transmitted by the said commissioners to the Governor of the Colony for the time being, for the approval, amendment, or disallowance thereof, of the said Governor, by and with the advice of the Executive Council; and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf; and the said regulations shall be published in the Government Gazette, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein; and in the event of the said regulations being amended by the said Governor, by and with the advice of the Executive Council, the regulations, so amended, shall forthwith be transmitted to the said commissioners, who shall forthwith, upon a notice of not less than seven days, call a meeting of the householders of the municipality, who shall by a majority of votes, decide whether the said regulations so amended shall be adopted or not; and if the regulations be adopted, the said commissioners shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation, and cause the same to be published in the Government Gazette, and upon such publication, the same shall become as legal, valid, and effectual as if the same had been inserted herein: Provided, always, that nothing contained in such regulations, or in any of the regulations mentioned in the twenty-second and twenty-third sections of this Act, shall be repugnant to, or inconsistent with, the true intent and meaning of the provisions of this Act.

In case regulations be disallowed, commissioners to frame new regulations.

XXII. If the said regulations, when submitted to the said Governor, shall be disallowed by him, by and with the advice of the Executive Council, or if such regulations, after being amended by the Governor, by and with the advice of the Executive Council, shall not be adopted by the majority of votes at the meeting of the householders of the municipality aforesaid, then, and in every such case, the commissioners shall again, *de novo*, frame other municipal

regulations ; and the like proceedings shall be taken for having the same submitted to and adopted by, and when amended by the Governor, decided upon by the householders of the municipality, and submitted to, and approved or amended by the said Governor, by and with the advice of the Executive Council, as by the provisions of the twenty-first section of this Act are prescribed to be taken as to the municipal regulations therein mentioned ; and so on, until such regulations as have been adopted by the householders in manner aforesaid shall have been approved of by the said Governor in manner aforesaid, or when amended by him in such manner, shall have been adopted by such householders in manner aforesaid.

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XXIII. At any time within one month after the expiration of each and every term of ten months from the publication of any such regulations as aforesaid, and at any other time, when such commissioners shall have obtained the consent of the said Governor so to do, it shall be lawful for the said commissioners, and they are hereby required, upon a requisition made to them in writing to that effect, by any number of such householders as aforesaid, not less than ten, to call a meeting of such householders as aforesaid, upon seven days' notice, to be given in manner aforesaid, for the purpose of adding to, amending, or repealing, the existing regulations, or any of them, by a majority of persons present and entitled to vote at such meeting ; and the said regulations, after being so reformed, shall be first published in the Government Gazette, for fourteen days, and then transmitted by the said commissioners to the Governor, for the approval or disallowance thereof, or of any part thereof, by the said Governor, by and with the advice of the Executive Council ; and such of the said reformed regulations as shall be approved of shall be published in the Government Gazette forthwith, and proclamation of such approval shall be made, and the said reformed regulations, so approved of as aforesaid, shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall

Regulations, how to be amended, reformed, or repealed.

Reformed regulations to be published in Gazette, and former regulations repealed.

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become null and void, in so far as the same have been altered or repealed by any such reformed regulations, so approved of as aforesaid.

Commissioners to appoint treasurer and other officers, and may remove them.

XXIV. It shall be lawful for the said commissioners for the time being, and they are hereby authorized and required, to appoint, during pleasure, such treasurer and other officers as shall be specified in any such regulations, and to remove and displace the same.

Treasurer to give security.

XXV. It shall be lawful for the said commissioners, and they are hereby required, to take security from the treasurer to be appointed by virtue of this Act, for the due execution of his office of treasurer, according to the true intent and meaning of this Act, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time. And in case any such treasurer shall neglect or refuse, for the space of three weeks next after his appointment, to give or offer such security to the satisfaction of the said commissioners, then the appointment of 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.

How, if he fail to do so.

Treasurer and other officers to render accounts to commissioners.

XXVI. Every such treasurer and other officer appointed by virtue of this Act shall, under his hand, and at such time or times, and in such manner as the said commissioners shall direct, deliver to the said commissioners, or such person as they shall appoint, true and perfect accounts, in writing, of all matters and things committed to his charge by virtue of this Act, and also of all moneys which shall have been by such officer received by virtue, or for the purposes of this Act, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the treasurer for the

time being, or to such person or persons as the said commissioners shall appoint to receive the same: and if any such treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers relating to the same, or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said commissioners, by notice in writing under their hands, given to or left at the last or usual place of abode of such officer, all books, papers, and writings, in his custody or power relating to the execution of this Act, or to give satisfaction to the said commissioners, or such other person or persons as aforesaid, respecting the same, then, and in every such case, upon complaint made by the said commissioners, or by such person or persons as they shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to the Supreme Court, or any judge thereof,—the said court or judge shall, if they or he shall see fit, summon the officer so refusing or neglecting to appear before him; and if it shall appear to the said court or judge, upon the hearing of the case, that any moneys remain due from such officer, such court or judge may, by decree of the said court, or warrant under the hand of the said judge, cause such money to be levied by distress and sale of the goods and chattels of such officer; and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such court or judge that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings, relating to the execution of this Act, remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then, and in every such case, such court or judge shall, and they or he are or is hereby required to commit such offender to the com-

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How, in case of refusal or neglect.

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mon gaol or house of correction of Cape Town, there to remain without bail until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said commissioners, or to such other person or persons as aforesaid, or until such other or further time as the said court or judge shall direct: Provided that nothing herein contained shall prevent such treasurer, officer, or other person from being tried, and, if found guilty, convicted and sentenced according to law, for any crime or offence which he may have committed relative to any matter or thing entrusted to him under the provisions of this Act: And provided, further, that nothing herein contained shall prevent the said commissioners from bringing their action for the recovery of any sum or sums due by such treasurer, officer, or other person to the said municipality.

Defaulter may be prosecuted criminally.

Sums deficient may be recovered from him at law.

Prosecution of treasurer or other officers not to acquit their sureties.

XXVII. No prosecution or commitment, under the provisions of this Act, of any treasurer or other officer or person, to be appointed under the powers of this Act, shall acquit and discharge any surety or security that shall or may have been taken by, or given to, the commissioners for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

Commissioners to keep records of proceedings.

XXVIII. All acts, orders, and proceedings of the said commissioners, at any of their meetings, shall be entered in a book to be kept by them for that purpose, and shall be signed by the chairman, or person acting as such, and one of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *primâ facie* evidence of all such acts, orders, and proceedings, upon any appeal, or trial, or information, or any proceeding, civil or criminal, and in any court within this Colony.

To keep accounts of money received and

XXIX. The said commissioners shall, and they

are hereby required, from time to time, to order and direct a book or books to be provided and kept by such person and at such place as they shall from time to time appoint, in which shall be entered true and regular accounts of all sums of money received, paid, and expended for, or on account of, the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall, at all reasonable times, be open to the inspection of the said commissioners, and of every such householder as aforesaid, without fee or reward; and the said commissioners and other persons aforesaid, or any of them, may take copies of or extracts from the said book or books without paying for the same; and in case the said commissioners, or any of them, shall refuse to permit, or shall not permit, the persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such commissioners or commissioner shall each forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

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expended, which shall be open to inspection.

XXX. In the month of January, in every year, a true account shall be made, in writing, of all moneys received and paid by virtue of this Act during the preceding year, ending on the 31st day of December in every year; and a copy or duplicate of such account, verified by the said treasurer, and certified by the chairman and one of the said commissioners, shall be deposited with the said commissioners, and shall be open to the inspection of any householder of the municipality, or any party interested, and an abstract thereof published in the Government Gazette, for general information, before the fifteenth day of the said month of January.

Annual accounts to be rendered and published.

XXXI. It shall and may be lawful for the said commissioners, when they shall see fit, and they are hereby required, upon a requisition made to them in writing to that effect, by any number of householders of the said municipality, not less than ten, to call a meeting of such householders, for the purpose of assessing any such rate or rates on the

Rates, how to be assessed.

Meeting of householders.

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immovable property situated within the municipality, and to endure for such period, not exceeding twelve months, as the majority of persons present and entitled to vote at such meeting shall deem necessary for all and any of the purposes of this Act: Provided, always, that when it shall at any time be deemed to be necessary or expedient to assess any rate for the purpose of defraying the expense of lighting or watching any particular ward or wards, or any portion of such ward or wards, or any particular district of the said municipality, or of procuring for the use of the inhabitants thereof any additional supply of water other than that to be furnished from the Cape Town water-works, in manner hereinafter mentioned, every such rate shall be assessed solely and exclusively on the immovable property situated within the ward or wards, or portions thereof, or the particular district so to be lighted or watched, or for the use of the inhabitants of which such supply of water is to be furnished, unless such meeting shall decide and appoint, by a majority of not less than three-fourths of the votes of the persons present and entitled to vote thereat, that the rate for defraying the expense of any such lighting or watching shall be assessed on the immovable property situated elsewhere within the municipality: Provided, also, that nothing herein contained shall prevent any person who feels himself aggrieved by any such assessment from appealing therefrom to any court having jurisdiction.

XXXII. The rates to be levied by virtue of this Act shall become due and be payable within fourteen days after the same shall have been assessed in manner aforesaid, and that it shall and may be lawful for the said commissioners to appoint a collector for the purpose of collecting the amounts due and payable upon the property so assessed; and the said collector is hereby authorized to demand and receive the amounts so to be collected: Provided, always, that the said collector shall be furnished with an order under the hands of the said commissioners, or any two of them, directing the said collector to levy the amount mentioned in the

Rates for particular wards.

Rates when due, may be collected by a collector.



said order; and provided, also, that the said order shall specify the rate in the pound at which the sum mentioned therein shall be computed.

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XXXIII. The said collector to whom any such order as aforesaid shall be issued shall pay over the amount collected under such order to the treasurer, to be appointed in the said municipality under this Act, within forty-eight hours after the receipt of any sum so collected by such collector, from the person by whom such sum was paid; and at the time of making any payment to the said treasurer the said collector shall deliver to him a note in writing, signed by him, specifying the amount so paid, which note shall be kept by the treasurer as a voucher for his receipt of that particular amount; and the receipt of the said treasurer specifying the amount paid him by the said collector shall be a sufficient discharge to the collector for such amount, and shall be allowed as such in passing his account with the municipality.

Collector to pay over sums collected to treasurer.

XXXIV. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time to appoint and employ such number of watchmen as shall be sufficient for the proper protection of the inhabitants, houses, and property within the limits of the municipality, by day and night, and provide all such watchmen with such clothing, arms, ammunition, and weapons, and to assign to them such duties, and appoint such hours for them to be on duty, and also to fix their monthly pay, salary, or allowance; and from time to time to make such regulations, relative to them and their duties, as shall be deemed fit; and also to cause such a number of watch-houses to be provided as shall be necessary for the purposes aforesaid, within the limits of the municipality.

Watchman may be appointed by commissioners.

XXXV. All watchmen, while in execution of the powers and authorities of this Act, shall act as constables, and they are hereby invested with, and shall have and enjoy, the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures

Watchmen to act as constables.

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as any constable or constables is or are invested with, or shall or may have and enjoy, or is or are, or shall be, subject or liable to by law.

Commissioners to keep up fire-engines.

XXXVI. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, to keep up fire-engines for the use of the municipality, and to make such further regulations thereon as they shall think necessary.

To put up lamp-posts and lamps in the roads and streets.

XXXVII. It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, to cause such lamp-irons or lamp-posts, or other posts, to be put or be fixed upon or against the walls or palisades of any houses, tenements, buildings, or enclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner, within any of the roads, streets, and places within the limits of the said municipality as shall be deemed proper; and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting any such roads, streets, and places, and cause the same to be lighted during such hours as shall be necessary; and also, from time to time, to make such regulations thereon as they shall find necessary.

To build, repair, and remove bridges.

XXXVIII. The said commissioners shall, and they are hereby empowered to cause to be made, erected, and built, and covered in, such bridges, water-courses, drains, and ditches as now are or shall be deemed necessary within the municipality, and cause the same to be kept at all times in good and sufficient repair; and to remove such of the same as shall be deemed unnecessary, and from time to time to make such regulations thereon as they shall find necessary.

Proprietors of immovable property to give notice when selling such property.

XXXIX. Every proprietor of immovable property within the said municipality shall be bound, and such proprietor is hereby required, in case of sale and disposal by him of immovable property within the said municipality, to give notice in writing of

such sale and disposal to the secretary of the said municipality, and such notice in writing shall be given within thirty days after transfer of such immovable property shall have been executed in the office of the Registrar of Deeds in the name of the purchaser or purchasers thereof; and if such proprietor shall neglect to give such notice, he shall continue liable for the amount of any rate which shall have been assessed on such immovable property, and it shall be lawful for said commissioners, and they are hereby empowered, to sue such proprietor before any competent court, and to obtain the judgment and process of such court for the recovery of the same.

XL. It shall be lawful for the said commissioners, and they are hereby empowered, to cause the roads within the limits of the municipality to be at all times kept in good and sufficient repair, and, as occasion shall require, to cause such new roads to be made within the limits aforesaid as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair, and from time to time to make such regulations thereon as to them shall seem fit. And that, for this purpose, it shall be lawful for the said commissioners to cut drains for conveying water from off the said roads into any common land, or other land, lying between the said roads and the sea, whether within or without the said municipality, wherever the same may be necessary or requisite; and also to take, gratis, from any of the said common land within or without the said municipality, materials for the repair and improvement of the said roads: Provided, always, that no such drain shall be carried across the race-course at Green Point, or shall be carried under any house, now erected or hereafter to be erected, or through any garden now enclosed, or hereafter to be enclosed, without the consent of the proprietor thereof, and that such materials shall always be taken in such manner as that no injury be thereby done to the said race-course, and that the gravel pits or holes be properly fenced in or enclosed whilst the material is being

Commissioners to  
make and repair  
roads.

Race-course not to be  
injured.

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extracted, and that the said pits or holes be filled and levelled within the period of fourteen days from the cessation of such works; on failure of which the party so extracting and neglecting to fill up the holes, or the commissioners of the municipality, under whose orders he may be acting, shall become liable to a penalty not exceeding five pounds, and which may be recovered before any competent court by any party or parties suing for the same.

To build bridges over drains appertaining to public roads, when crossed by private roads.

**XLI.** Wherever any road now exists or shall hereafter be made, leading from any public road within the municipality, across any drain appertaining to such public road, it shall be lawful for the said commissioners, and they are hereby empowered, either to cause a bridge to be made over the drain, where it is so crossed by, or to pave it to the extent of the breadth of such road so crossing it, as they shall consider to be most expedient, at the expense of the proprietor or proprietors, for affording access to whose property such last-mentioned road shall be used; and to make such regulations for having all such bridges kept in such repair as to occasion no stoppages in or injury to any such drain, and to cause all accumulations of sand or other obstructions of such drain under any such bridge, or at any such crossings, to be removed at the expense of such proprietor or proprietors; and also to remove, or cause to be removed, any pond, reservoir, or accumulation of water, situated on any ground adjacent or near to any such public road, whereby injury is occasioned to any such road, at the expense of the proprietor or proprietors of such ground. And if the amount of any such expense shall not be by him or them paid within fourteen days after demand, the commissioners are hereby empowered to institute proceedings at law for the recovery thereof.

To establish markets, keep them in repair, and regulate their cleanliness.

**XLII.** It shall be lawful for the said commissioners (acting in pursuance of any municipal regulations to that effect), and they are hereby empowered, from time to time, as occasion may require, to keep up or establish within the limits of the said municipality, a market or markets for the sale of cattle, meat, fish, poultry, vegetables, fruit, and the like;

and to cause suitable houses or buildings to be built and erected for the convenience of persons attending, holding, and superintending such market or markets, and to cause the same to be kept in good and sufficient repair; and also, to frame and make such regulations, and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets.

XLIII. It shall and may be lawful to and for the commissioners, and they are hereby empowered, from time to time, to make necessary rules for the due and proper care of weights, measures, and the quality and assize of bread, and the quality of meat; and they are hereby empowered, at all times, to visit and enter into the shops or places, where bread, meat, and other articles are sold, for the purpose of assizing the bread and examining the weights and measures; and also of taking proper care that the bread and meat sold are good and wholesome.

To examine weights and measures, and assize bread.

XLIV. The property of and in all the lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, bridges, sluices, dams, market-houses, pipes, posts, chains, pales, and rails, in, about, or belonging to the said roads and places within the limits of the said municipality, and of and in all iron, timber, stone, bricks, and other materials, and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said commissioners), shall be, and the same is hereby vested in the said commissioners, and may be used, sold, and disposed of by them, from time to time, as they shall deem necessary; and the money arising from such sale shall be applied towards the purposes of this Act; and the said commissioners are hereby authorized and empowered to bring, or cause to be brought, any civil or criminal action, in manner as hereinbefore or hereinafter is provided, against any person or persons who shall steal, break, or otherwise damage any of the buildings or other things, the property in which is hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any law or Ordinance which may hereafter be

Property in lamps, &c., vested in commissioners, who may sue and prosecute in respect of damage done thereto.

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created, or then be in force in that behalf. And in all such actions it shall be, and be deemed and taken to be, sufficient to state generally that the article or thing, for or on account of which such action shall be brought, is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Persons injuring property vested in commissioners to be punished.

XLV. If any person shall wilfully break, throw down, spoil, or damage, any watch-house or watch-box, or lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any lamp, or shall break, spoil, or damage any building, the property in which is, by the provisions of this Act, vested in the said commissioners, or shall wilfully break or damage any public water-course, drain, or ditch within the limits of the said municipality, it shall be lawful for any person who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act, and without any warrant, to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before the resident magistrate of Cape Town; and if the party accused shall be convicted of any such offence by such resident magistrate, he, she, or they shall forfeit, severally, any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act; and in case any such offender shall not, on conviction, pay the said forfeiture and satisfaction, such magistrate is hereby required to commit him, her, or them to the common gaol or house of correction, there to be kept to hard labour, if such magistrate shall so order, for any term not exceeding three calendar months, unless such forfeiture and satisfaction shall be sooner paid: Provided that nothing herein contained shall prevent

the commissioners from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said magistrate.

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XLVI. If any person shall carelessly or accidentally do any such damage or injury as hereinbefore is mentioned, and shall not, upon demand, make satisfaction to the said commissioners for the damage or injury so done, it shall and may be lawful for the said resident magistrate, and he is hereby required, upon the application or complaint of the commissioners, or any two of them, to summon the party complained of, and upon the hearing the parties upon both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money, by way of satisfaction to the said commissioners, for such damage, as such resident magistrate shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same, and all expenses attending the recovery thereof, may be levied and recovered as any penalty or forfeiture is by this Act directed to be levied and recovered in other cases: Provided, however, that nothing herein contained shall prevent the commissioners from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said magistrate.

Proceedings, where injury is done carelessly or accidentally.

XLVII. It shall be lawful for the said commissioners, and they are hereby authorized, to remove, put down, and abate all nuisances of a public nature within the said municipality, or which may tend either to injure the health or in any way affect the safety or the rights of the inhabitants at large, and, if need be, to proceed at law before the resident magistrate, or Supreme Court, against any person or persons so committing any such nuisance, as for the abatement thereof, and for any damages thereby occasioned; and, further, that the said commissioners shall, and they are hereby required to cause all water-courses, drains, roads, and places within the

Commissioners may abate nuisances.

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said municipality to be kept clean and free from dirt, filth, or rubbish; and any person convicted upon the complaint made by the commissioners to the resident magistrate, of throwing dirt, filth, or rubbish into any such road, water-course, drain, or place as aforesaid, shall forfeit and pay any sum of money not exceeding five pounds; and in case of neglect or refusal forthwith to pay such money, then the same, and all expenses attending the recovery thereof, may be levied and recovered as any other penalty or forfeiture is by this Act directed to be levied and recovered in other cases.

Commissioners may  
enter into contracts.

XLVIII. It shall be lawful to and for the said commissioners, acting in pursuance of any such regulations as aforesaid, from time to time to enter into any contract with any person or company whatsoever, for any work to be done and performed, or for any materials to be furnished to and for the said commissioners for the purposes of this Act, which contract shall specify the work to be done, and the price to be paid for the same, and the time when the work shall be completed, and the penalty to be suffered in case of non-performance thereof, and shall be signed by two or more of the said commissioners, and also by the person or persons contracting; which contract, or a copy thereof, shall be entered in a book to be kept for that purpose; but no contract beyond the value of one hundred pounds shall be entered into, unless eight days' notice be previously given in the Government Gazette, and affixed to some conspicuous place within the municipality, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if such commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price, it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper: Provided, however, that no commissioner shall be allowed, either directly or indirectly, to become a contractor,



or to tender for any contract, either in his name, or in the name of, or jointly with, any other person, on pain of forfeiture of all his share and interest in such contracts for the benefit of the municipality, and be considered to have vacated his office of commissioner, *ipso facto*, and to be ineligible to be elected at any future period to serve as a commissioner.

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XLIX. The said commissioners, acting in pursuance of any such regulations as aforesaid, may, and they are hereby authorized and empowered to treat with the owner or owners and occupier or occupiers of any houses or buildings, lands, and grounds, for the purpose of this Act, for such sum of money or yearly rent, or for such time as to them shall appear reasonable.

May hire houses or lands for the purposes of this Act.

L. The property of and in all lands, roads, and buildings, to which inhabitants of the municipality of Green Point shall at any time have or acquire a common right, shall be vested in the commissioners of the said municipality for the time being.

Property in lands, &c., vested in commissioners.

LI. It shall be lawful for the said commissioners, and they are hereby empowered, from time to time, if necessary and expedient, to make rules for the due and proper care of the common pasture lands within the municipality, and therein to specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kind; and also to impose fines on any person contravening such regulations, and to establish and erect one or more pounds within the said municipality, and to appoint one or more poundmasters, and to make all such pound regulations as shall be necessary or expedient.

Commissioners to make regulations as to care of pasture lands, and to establish pounds.

LII. It shall be lawful for the commissioners for the time being of said municipality to sell or lease, as they may consider most expedient, any lands to which the inhabitants of Green Point and Sea Point shall at any time have or acquire a common right, or any lands which may be the property of the said commissioners in their said capacity, and apply the proceeds to the purposes of the said municipality: Provided that the said commissioners shall not be authorized or permitted to sell any such lands, or to

Commissioners may, with consent of rate-payers and approval of Governor, sell or lease lands.

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lease any such lands for any term longer than five years, without having first obtained the consent of a majority of ratepayers at a public meeting called for that purpose, after a notice of fourteen days duly given in the Government Gazette of such sale or lease, and without having also obtained the consent of the Governor, acting with the advice of the Executive Council: And provided that all such lands shall, when sold, be sold by public sale, and that all leases of such lands for any term exceeding five years shall be granted or disposed of in such manner and under such conditions as the said commissioners shall propose, and the said majority of ratepayers shall approve of.

May raise loans on credit of rates.

LIII. It shall be lawful for the commissioners for the time being of said municipality, if it should be found necessary so to do, to raise, by way of loan, on the credit of any rates to be assessed by the said commissioners, any such sum or sums of money as may, at any time, be required by said commissioners for the time being for carrying into effect the objects of this Bill: Provided, always, that no such loan shall be effected unless the object and amount thereof shall have been published fourteen days previous in the Government Gazette; and provided permission to conclude such loans shall have been received from a majority of ratepayers at a public meeting called for that purpose, after a notice of fourteen days duly given in the Government Gazette, and having previously obtained the sanction of the Governor and Executive Council to borrow any sum exceeding one thousand pounds: Provided, always, that the said commissioners for the time being shall, in every case in which such loan shall have been approved of in manner aforesaid, call for tenders for the loan of the sum or sums of money required, and shall accept the tender which specifies the lowest rate of interest; and provided, also, that every sum so borrowed shall be paid out of the proceeds of the rates hypothecated with all convenient speed: Provided, further, that the loan or loans in existence shall not at any time exceed five thousand pounds sterling.

Proprietors within municipality to have

LIV. The proprietors and inhabitants of or on

any lands situated within the municipality of Green Point, and being within one quarter of a mile of the common pasturage land lying between the Somerset and Green Point road and the sea, and without the municipality of Green Point, shall at all times, and in whomsoever the property or administration of such common pasture land shall for the time being be vested, have right and be entitled to pasture their cattle thereon, on the same or on as favourable terms and conditions, and under such and the same regulations as the inhabitants of Cape Town, or any part thereof, shall, for the time being, be entitled to pasture their cattle thereon.

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a right to pasture  
cattle on common  
pasture lands.

LV. The inhabitants of the said municipality of Green Point shall have the right, and shall be entitled to be furnished and provided from the water-works now existing, or which may hereafter be made, erected, or provided, for supplying water to the inhabitants of Cape Town, in whomsoever the property, management, or administration of any such water-works shall, for the time being, be vested, with a supply of water, in the same proportions, on the same terms, at the same rates, and under the same regulations, in, on, at, and under which the inhabitants of Cape Town shall for the time being have, or be entitled to have, water supplied to them. And that, in consideration of such water rates so to be paid by the inhabitants of the municipality of Green Point as aforesaid, the community or communities, person or persons, in whom the property, management, or administration of such water-works as aforesaid shall for the time being be vested, shall, and they are hereby required to provide, keep in good order, and repair, a main pipe, extending from the said water-works as far as the main pipe by which water is now supplied to the inhabitants of Green Point and Sea Point at present extends; and also the four fountains or pumps connected with the said main pipe now existing, or as many of them as from time to time shall be necessary for the due supply of water to the inhabitants of the said municipality of Green Point.

Inhabitants of Green  
Point to be supplied  
with water from  
waterworks for sup-  
ply of Cape Town.

LVI. Provided, always, that neither the said

Neither commis-  
sioners nor inhabitants to

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have property in, or management of, such water-works.

commissioners nor any of the inhabitants of the municipality of Green Point shall have any property in, or any management of, any pipes, pumps, or other machinery now used, or which may hereafter be erected, provided, or used by the community or communities, person or persons, in whom the property, management, or administration of such water-works as aforesaid, for the purpose of furnishing and providing from the said water-works a supply of water to the inhabitants of the said municipality in manner aforesaid. And that the property, management, and administration of such last-mentioned pipes, pumps, and other machinery shall be vested in such community or communities, person or persons, as aforesaid.

Commissioners to make regulations as to water procured from other sources.

LVII. It shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered, from time to time, to provide and to carry and lay any pipe or pipes for the conveyance of water, to which the inhabitants of the municipality shall at any time have or acquire a common right (not being water supplied in manner aforesaid from any such water-works as aforesaid), from any reservoir, river, or spring, to any house, building, or other place within the limits of the municipality; and the said commissioners shall, acting in pursuance of any such regulations as aforesaid, and they are hereby authorized from time to time to make such regulations touching the quantity of water (not being water so supplied in manner aforesaid from the aforesaid water-works) to be supplied to the inhabitants, and the time or times at which such supply is to be received, as shall be proper and necessary.

Seven days' notice to be given of all meetings of householders.

LVIII. Every meeting of the householders of the municipality hereinbefore appointed or authorized to be called by the resident magistrate for Cape Town, or by the commissioners of the said municipality, shall be called, and that the hour and place at which shall be holden the meetings appointed to be holden in the seventh section of this Act, shall by the said commissioners be notified by advertisements, to be published in the Government Gazette of this Colony,

not later than on the seventh day previous to the day on which such meeting shall be appointed to be holden: Provided, always, that in the event of any sudden and unforeseen emergency, it shall be lawful for the said commissioners to call a meeting of the householders of the municipality, on notice of not less than one clear day to be given by them, by written or printed notices, posted on conspicuous places within the municipality, or by advertisements published in the said Gazette, or in any newspaper published in Cape Town, or by writing shown to or left at the dwelling-house of every householder residing within the municipality. And every such notice, notification, and advertisement shall specify the purpose or purposes for which any such meeting shall be holden.

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Except in cases of sudden emergency.

LIX. At any of the meetings hereinbefore mentioned and appointed, or authorized to be holden, such householder as may be elected by the majority of persons present and entitled to vote shall preside as chairman, and shall, notwithstanding, be entitled to vote as he might have done had he not been elected chairman, and shall, when the votes of the meeting are equally divided, also have a casting vote.

At such meetings chairman to be elected and to have casting vote.

LX. No proprietor, renter, householder, agent, or other person, being a female, shall be entitled to vote at any meeting of householders of the municipality of Green Point, or to be proposed as a candidate for, or to be elected to hold, any office created or established under the provisions of this Act.

No female to vote or hold office.

LXI. No inhabitant of or proprietor of property within the said municipality shall on that account be deemed an incompetent witness in any action, suit, or information, complaint, appeal, prosecution, or proceedings, to be had, made, prosecuted, or carried on under the provisions of this Act.

Inhabitants or proprietors to be deemed competent witnesses.

LXII. If the amount of any rate which under the provisions of this Act shall have been assessed on any immovable property within the said municipality shall not, on demand made by the person duly authorized to collect the same, be paid by the occupier of such property, or by the proprietor thereof, it

Occupier or proprietor may be sued, or either of them, for amount of any rate.

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shall be lawful for the said commissioners, and they are hereby empowered, to sue either the said occupier or the said proprietor separately, or both of them in one and the same action, each for the whole, before any competent court, and to obtain the judgment and process of such court for the recovery of the same, reserving to such occupier and proprietor respectively such relief against each other as they may be lawfully entitled to: Provided, always, that no person shall, as occupier of any such immovable property, be liable to pay or to be sued for any rate which had been assessed on the same, in respect of any period, or which had become due and payable at any time, before such person entered on the occupation of such property. And that every person who, as occupier of any such property, shall, at any time, have become liable to pay any rate which may have been assessed thereon shall continue to be liable, and may be sued in manner aforesaid for the same, notwithstanding that such person shall have ceased to occupy such property: And provided, also, that the payment of any rate assessed on and due in respect of any such immovable property as aforesaid, by either the proprietor or the occupier of the same, shall free and discharge the other from all claim and demand for the payment of such rate.

Punishment of offences in contravention of this Act.

LXIII. All offences committed in contravention of this Act, or of any municipal regulation made under the authority thereof, may lawfully be prosecuted by the said commissioners, in manner hereinbefore provided, in the court of the resident magistrate for Cape Town; and if any person shall be duly convicted of any such offence, and shall not pay or satisfy the amount of the fine imposed upon him or her, it shall be lawful for the said resident magistrate to sentence such offender to any period of imprisonment not exceeding three months. And that where it has hereinbefore been enacted and provided that any such offence as aforesaid shall be punishable by fine, and the amount of such fine has not been specified, it shall be lawful for the said resident magistrate to sentence any person who shall be duly convicted of any such offence to pay a fine of not less than five

shillings nor exceeding five pounds ; and the amount of all such fines when recovered shall be paid to the treasurer of the municipality for the time being, for the purposes of this Act : Provided, always, that the said commissioners may award so much of every such fine as they may deem fit, to be paid as a reward to any person who may have given information concerning the offence in respect of which such fine was imposed, or who may have apprehended the offender.

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LXIV. Nothing herein contained shall extend, or be construed to extend, to injure or impair the rights or property which any person or persons may have in, to, or in respect of any of the matters aforesaid ; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this Act, or of any municipal regulation by which the right or property of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same : Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally, or any of their goods and chattels (other than such as may be vested in them in pursuance of this Act), liable to the payment of any sum of money, as or by way of compensation or satisfaction, in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Act not to affect private rights.

LXV. All the necessary costs, charges, and expenses incurred during the year 1859, by the proprietors and inhabitants of the said municipality, for or in respect of any proceedings by them had for the purpose of having better and more effectual provision made for the repairs of the public road within the districts of Green Point and Sea Point, or in anywise incurred, touching and concerning this Act, as also all the necessary costs, charges, and expenses attending the carrying the provisions of this Act into effect, shall be paid out of the money authorized to be received by the commissioners under the provisions of this Act.

Expenses incurred in 1859, for repairs to public road, and expenses of carrying this Act into effect, to be paid out of moneys levied under this Act.

LXVI. The Ordinance No. 34, entitled "An Ordinance for dissolving the Burgher Senate ;" the

Laws repugnant to this Act repealed, as far as repugnant thereto.

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Ordinance No. 48, entitled "An Ordinance for establishing an executive police in Cape Town and the district thereof, and for consolidating and amending the laws and regulations relating thereto;" the proclamation bearing date the 1st of April, 1814; the Ordinance No. 55, entitled "An Ordinance for regulating and defining the mode of collecting taxes and rates in Cape Town and the district thereof, and for constituting a general survey of the same;" and the Ordinance No. 57, entitled "An Ordinance for repealing certain taxes and duties, and imposing certain others in lieu thereof;" shall, in so far as the same, or any of the provisions thereof, are repugnant to or inconsistent with any of the provisions of this Act, be repealed, and the same are, to such extent as aforesaid, hereby repealed accordingly.

No. 15—1859.]                      AN ACT                      [July 8, 1859.

To Amend the Law relating to the Rehabilitation of Insolvents.

Preamble.

**W**HEREAS it is expedient to amend the law relating to the rehabilitation of insolvents: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Section 117, Ordinance 6, 1843, repealed.

I. The 117th section of the Ordinance No. 6, 1843, entitled "Ordinance for regulating the due collection, administration, and distribution of Insolvent Estates within this Colony," is hereby repealed.

When and how insolvent may apply for his discharge.

II. Any insolvent may, after the third meeting of the creditors, called by the Master of the Supreme Court, according to the provisions of the said Ordinance in that behalf, and after the examination of such insolvent (should such examination have been applied for and ordered), apply to the Supreme Court, by motion, for his discharge: Provided, however, that no such motion shall be made before the expiration of six months from the date of the making of the order of sequestration.



III. Not less than six weeks' notice of the day on which such motion is to be made shall be given by advertisement in the Government Gazette, provided that notice in writing of such motion shall be given to the trustee of the insolvent, and in any other manner which the Supreme Court, by any such rule or order thereof as is hereinafter mentioned, shall provide.

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How notice of motion to be made.

IV. Where, in consequence of the goods and effects of the insolvent being under the value of seventy-five pounds sterling, the proceedings in such case, directed by the thirty-second section of the Ordinance aforesaid, shall have taken place, it shall be lawful for such insolvent at any time, not being less than six months after the first and final meeting in the said section mentioned, to apply, by motion as aforesaid, for his discharge.

Insolvent may apply for discharge when proceedings in section 32, Ordinance 6, 1843, have taken place.

V. No certificate of or from the creditors of any insolvent, or any majority of them, testifying their consent to his discharge, shall be necessary in order to entitle such insolvent to obtain his discharge: Provided that every insolvent may support the motion for his discharge by producing to the court a certificate, in writing, signed by his creditors, or any of them, testifying their consent to his discharge: Provided, also, that no such motion shall be capable of being made until such insolvent shall have given sufficient security, in the sum of twenty-five pounds, for the payment of the costs of any person who may appear to oppose such discharge, and to whom the court shall see fit to award his costs against the said insolvent: And provided that it shall be lawful for the said court, by any such rule or order thereof as is hereinafter mentioned, to regulate the manner of giving such security, and to nominate the officer to whose satisfaction it shall be given: Provided, also, that the court may, upon cause shown to its satisfaction by any insolvent, dispense with such security.

Certificate of creditors, consenting to discharge, not necessary.

How in regard to creditors opposing the discharge.

VI. Every insolvent applying to the court as aforesaid, for his discharge, shall make oath in writing that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or made or promised any payment,

Insolvent applying for discharge, to make oath that surrender of estate has been full and fair.

No. 15—1859.

or entered into any secret or collusive agreement or transaction, with intent to persuade his trustee or trustees, or any creditor, to forbear opposing such insolvent's discharge by the said court.

Trustee or creditors may appear and oppose granting of discharge.

VII. Upon the day fixed for the hearing of such motion, the trustee or any of the creditors of the insolvent may appear, in person or by counsel, and oppose the granting of the discharge aforesaid, and the court, having regard to the conformity of the insolvent to the insolvent law, and to his conduct, whether a trader or not, before as well as after the sequestration of his estate as insolvent, shall, whether the discharge of such insolvent be opposed by the trustee or any creditor or not, judge of any objection against granting such discharge, and either find the insolvent entitled thereto, or refuse or suspend the granting of the same, or annex such conditions thereto as the justice of the case may require: Provided, always, that in case any insolvent shall apply for his discharge within four years after having obtained a former discharge in insolvency, then the court shall not entertain such application unless three-fourths of his creditors, in number and value, certify their assent to the making of such application.

Consent of three-fourths of creditors required, when application for discharge is made within four years after a previous one.

Supreme Court to make rules as to procedure in regard to motions for discharge.

VIII. It shall be lawful for the Supreme Court, by any rule, order, or regulation thereof made in manner and form as are in the Act No. 26, 1856, set forth, to fix and determine the course of procedure upon such motions as aforesaid, for the discharge of insolvents, and to provide by such rules, orders, or regulations for taking evidence in the country districts in cases in which such evidence shall be required, and to make known the evidence or information, documentary or otherwise, which the court will, in addition to the oath in the sixth section mentioned, require.

Order for discharge to have same force and operation as certificate under Ordinance 6, 1843.

IX. The order of the court, granting the discharge of any insolvent, shall be in such form as shall, by such rule, order, or regulation as aforesaid, be established, and shall have the same force and operation, to all intents and purposes, as is by the Ordinance aforesaid, No. 6, 1843, attached to the certificate and allowance thereof in the said Ordinance men-

tioned, and shall be null and void for any reason on account of which, according to the Ordinance aforesaid, such certificate and allowance would have been null and void.

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X. All and singular the provisions of the one hundred and nineteenth section of the Ordinance aforesaid, regarding preferences, gratuities, securities, or payments, and secret and collusive agreements and transactions intended to persuade any creditor to consent to sign the certificate in the said section mentioned, shall apply to the same matters and things when intended to persuade any trustee or any creditor to forbear opposing the discharge of such insolvent; and any trustee or creditor receiving any money, matter or thing, or promise of the same, as a consideration for, or inducement to, such creditor to forbear such opposition, shall incur the forfeiture in the said one hundred and nineteenth section mentioned.

Provisions of section 119, of Ordinance 6, 1843, to apply to all contracts or agreements intended to persuade trustees to forbear opposing discharge.

XI. The provisions of the one hundred and twenty-third section of the Ordinance aforesaid, in regard to the manner of pleading the certificate therein mentioned, shall apply, *mutatis mutandis*, to the manner of pleading the discharge granted by the court.

Provisions of section 123, of Ordinance 6, 1843, to apply to manner of pleading for discharge.

XII. The order of court granting the discharge of any insolvent, or refusing or suspending the allowance thereof, shall be final and conclusive, and shall not be reviewed by the court, unless the court shall thereafter see good and sufficient cause to believe that the granting of such discharge, or the refusal or suspension thereof, has been obtained on false evidence, or by reason of any improper suppression of evidence, or has otherwise been fraudulently obtained; in any of which cases it shall and may be lawful for the court, upon the application of the insolvent, or of the trustee or any creditor of the insolvent, and subject to such order as to deposit of a sum for costs, and to such notices to the insolvent, or to any trustee or creditor, by advertisement or otherwise, as the court shall think fit, to grant a re-hearing of the matter, and to re-hear the same accordingly, And upon such re-hearing, the court shall make such order as to the granting of such discharge, or the

Order of court granting discharge to be final, unless court shall order a re-hearing of the case.

How if case be re-heard.

No. 15--1859.

refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, as far as the case will admit, as upon an original hearing; and in case the discharge shall have been previously granted, and upon such re-hearing, the granting thereof shall not be confirmed, such discharge shall be of no force or effect whatever; but, on the contrary, null and void.

Short title of Act.

XIII. This Act may be cited for any purpose as "The Insolvents' Rehabilitation Act, 1859."

No. 16—1859.]

AN ACT

[July 8, 1859.]

For Preventing Obstructions, and for preserving Good Order on the Beach of Algoa Bay, and on the Breakwater Wharfs and Jetties belonging thereto.

Preamble.

WHEREAS it is expedient that the commissioners for improving the Port and Harbour of Algoa Bay should be empowered to prevent obstructions and preserve good order on the beach of Algoa Bay, and on the breakwater wharfs and jetties belonging thereto: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Beach, wharfs, &c., to be under direction of a beachmaster appointed by harbour commissioners, with sanction of Governor, and paid out of wharfage dues.

I. The management of the beach and of the breakwater wharfs and jetties thereon shall be under the direction of an officer, who shall be denominated the beachmaster, and who shall be appointed by the commissioners for the time being for improving the port and harbour of Algoa Bay, with the sanction of the said Governor, and be paid by the said commissioners, out of the collection of wharfage dues, and the said commissioners shall have power to remove any such officer and appoint another, with the like sanction, in his stead.

Duties of beachmaster.

II. The duty of the beachmaster shall be to cause all persons making use of the beach and the break-

water wharfs and public jetties thereon, for the landing and shipping of goods or otherwise, to remove all goods therefrom, and from the approaches thereto, as speedily as possible, so as to prevent the said beach and the breakwater wharfs and public jetties thereon, together with the said approaches, being encumbered with goods, or be otherwise obstructed, and to keep the said beach and the breakwater wharfs and public jetties thereon open, for the convenience of all persons requiring the use of the same.

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III. If any person or persons depositing goods on the beach or the breakwater wharfs and public jetties thereon, or on any of the approaches thereto, shall not forthwith remove such goods, when directed and required so to do by the beachmaster, or within such reasonable time as shall be notified to the person or persons depositing the goods, according to the discretion of the beachmaster, then the person or persons so offending shall be liable, on conviction, to a penalty not exceeding ten pounds for every such offence.

Persons failing to remove goods, after due notice from beachmaster, liable to fine of ten pounds.

IV. If any person or persons shall refuse or neglect to remove any goods from the said beach, or from the breakwater wharfs and public jetties thereon, or from the approaches thereto, according to the requirement of the beachmaster, made by him as aforesaid, then the beachmaster shall be empowered to cause such goods to be removed, and the person or persons so refusing or neglecting shall, besides being liable to the penalty in the last preceding section mentioned, pay and make good the expense of such removal, which expense shall be adjudged by the court in which the penalty aforesaid shall be prosecuted for, by way of additional fine or penalty: Provided, always, that the beachmaster shall be authorized to remove such goods, either to the store or residence of the owner or owners, consignee or consignees thereof, or, in case there be none such found, or be open to receive the said goods, then to some other safe store or place in which last-mentioned place the said beachmaster shall have a right of retaining such goods, until the expense of removing and storing, or keeping the same at the store or place

Beachmaster may remove goods at the expense of parties neglecting to do so.

Such expense to form an additional penalty.

Such goods to be removed to store or residence of owner or consignee, or other safe place, and be retained until expenses are paid.

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to which they shall have been removed, shall have been paid.

Beachmaster to give directions regarding position of wagons and other vehicles on wharfs, or approaches thereto.

V. The beachmaster shall have the right to prevent all wagons and other vehicles employed in bringing goods or ballast to the beach or the breakwater wharfs or jetties thereon, or removing them therefrom, from unnecessarily obstructing the approaches thereto, and all drivers of wagons or other vehicles shall place them, after loading, or when waiting to be loaded, in such position or place as shall be pointed out by the beachmaster as proper and convenient. Any person in charge of any wagon or other vehicle neglecting or refusing to comply with any direction of the beachmaster, in respect of the matter aforesaid, shall be liable to a penalty not exceeding five pounds.

Fine for disobeying such directions, five pounds.

To regulate the position of ballast, anchors, cables, &c., and of boats alongside.

VI. The beachmaster shall have the right to regulate the position of the ballast, anchors, and cables required to be placed on the beach for the use of the shipping, and of all passage or other boats lying thereon, and to cause to be removed all boats lying an unreasonable time at the breakwater or at any public wharf, jetty, or other place, to the hindrance of others waiting to be loaded or discharged. Any person refusing or neglecting to obey the lawful order of the beachmaster in regard to the subject-matter of this section shall be liable to a penalty not exceeding five pounds.

Penalty, for disobeying orders, five pounds.

Beachmaster may prevent landing of goods until the removal of those already landed—penalty for disobeying, ten pounds.

VII. The beachmaster shall be empowered, as often as the state of the beach shall appear to him to require, to prevent any boat from landing cargo on the breakwater wharfs or public jetties thereon, or on the approaches thereto, unless the owner or owners of that boat shall have removed therefrom all goods previously deposited by him or them thereon, and which goods shall then remain on the breakwater wharfs or jetties thereon, or on the approaches thereto, in contravention of the third section of this Act. Any person or persons landing any such cargo which the beachmaster shall have directed not to be landed shall be liable to a penalty not exceeding ten pounds.

No boat to be made fast to wharf steps,

VIII. No person shall make fast any boat to the

steps attached to the breakwater or to the steps attached to any wharf or jetty belonging to the harbour board of Algoa Bay, nor shall any boat be hauled up for repair at or upon the space, from time to time, appointed by the beachmaster to the passage and fishing boats.

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nor to be hauled up on space allotted to fishing-boats.

IX. All penalties incurred under this Act shall be recoverable in the court of the resident magistrate of the district of Port Elizabeth. And in case of non-payment, upon conviction of any penalty imposed by such court under this Act, any person offending may be imprisoned, with or without hard labour, for any period during which the penalty may remain unpaid not exceeding one month; and all penalties recovered under this Act shall be and become the property of and be paid over to, the said commissioners for improving the port and harbour of Algoa Bay.

Penalties recoverable in court of resident magistrate, Port Elizabeth.

In case of non-payment, offender to be imprisoned.

Penalties to be paid over to harbour commissioners.

X. If any servant, *bonâ fide* obeying the orders of his employer, shall, when acting under the directions or command of such employer, by omission, or any acts of commission, infringe any of the provisions of this Act, then such employer and the servant may both or either of them be prosecuted for the penalty incurred by such omission or commission.

Servant and employer may both, or either of them, be prosecuted for the same act.

No. 17—1859.]                      AN ACT                      [July 8, 1859.

For the Regulation of the Affairs of the Board of  
Executors.

WHEREAS certain persons did by a deed bearing date at Cape Town, in this Colony of the Cape of Good Hope, the twenty-second day of August, one thousand eight hundred and thirty-eight, enter into a contract of co-partnership for the purpose of administering such property and estates as they might be lawfully appointed to, as executors, administrators, tutors, or curators; and whereas a certain Ordinance was duly made and passed in this said Colony, No. 8, 1839, and entitled "Ordinance for

Preamble.

No. 17—1859.

enabling the Board of Executors to sue and be sued in the name of their Secretary;" and whereas the joint-stock or capital sum of ten thousand pounds sterling, mentioned in the preamble to the said Ordinance, divided into fifty shares at the time of the passing of the said Ordinance, was vested in the directors of the said Board of Executors, to serve as an available fund to satisfy any claim or demand which any person might have upon the said co-partnership, has since been annually increased according to the provisions in the said deed contained, and now amounts to the sum of sixteen thousand five hundred pounds, and the number of shares has in accordance with the said provisions been increased to sixty. And whereas the said Ordinance will expire on the first day of May, 1860: And whereas the following are the persons who now constitute the shareholders of the said board, that is to say: William George Anderson; Henry Aston; Johannes Christoffel Berrangé; Kenne Nicholaas van Breda; Andries Brink, Daniel's son; Cornelis Petrus Brink, Andries' son; Petrus Michael Brink, the younger; Dirk Gysbert van Breda; Philippus Albertus Brand; William Luck Blore; Johannes Hendrik Beyers; Joseph Barry; Louis Petrus Cauvin; Ewan Christian; John Deane; Johannes Jacobus George Fischer; Diederich Heinrich Fraenkel, Doctor of Medicine; Johannes Coenraad Gie, Johannes' son; Johannes Coenraad Gie, Michael's son; Michael Coenraad Gie; George Clement Gie; William Hiddingh, LL.D.; Johannes Hendrick Hofmeyr, Hendrick's son; Hendrik Johannes Hofmeyr, the elder; Jan Hendrik Hofmeyr, senior; Arend Hermanus Hofmeyr; Laurens Johannes de Jongh; Rice Daniel Jones; Gilles Johannes de Korte; Anthony David Krynauw; Jan Hendrik Lezar; Helperus Ritsema van Lier; Charl Marais; Gysbert van Reenen Muller; Joshua Metcalfe; Wilhelmus Cornelis Arendse Möller; Samuel Oliver; Isaac Petrus van der Poel; Albertus Johannes van der Poel; Charles Pritchard; John Reid; Paul Johannes Roux, Paul's son; Johan Coenraad Schickerling; Vespasius Schönberg; George Wolfgang Spengler; Johannes



Petrus Serrurier; Johannes Wilhelmus Bernardus Adolph Stuckeris; Johannes Jacobus Tesselar; Johannes Tromp; Oloff John Truter; Michiel Christiaan Vos, the elder; Johan Andries Heyse Wicht; Carl Fredrick Joubert Watermeyer; Fredrik Stephanus Watermeyer; Harrison Watson; Johannes Carolus de Wet; Jacobus Marthinus Wentzel; Jacobus Petrus de Wet; Jacobus Alexander de Wet; Mauritz Hertman Otto Woeke :

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And whereas the said shareholders did, at a meeting duly held upon the twenty-eighth day of March last past, resolve that the said deed should become void on the first day of October, one thousand eight hundred and fifty-nine, and a new deed should be framed which should embrace the provisions of the said first-mentioned deed and certain alterations and additions which have, from time to time, been made in and to the said deed, which resolutions were confirmed by the shareholders at a meeting duly held upon the first day of April, and which deed has been duly adopted, and will come into force on, and be the deed of the said company, from and after the first day of October, 1859 :

Resolutions of shareholders to amend deed of agreement.

And whereas the said persons have applied for an Act to incorporate the said Board of Executors, as constituted under the said last-mentioned deed; and in order the better to enable them to carry the said objects into effect—to take effect from and after the said first day of October, 1859: Be it therefore enacted by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly,—that it shall and may be lawful for the said persons, and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said sum of sixteen thousand five hundred pounds, and of all such sums as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of “The Board of Executors.”

Incorporation and style of company.

II. A copy of the said deed, duly authenticated by the secretary of the said Board of Executors, appointed

Authenticated copy of deed, and list of shareholders to be

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 filed with Registrar  
 of Supreme Court.

under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope, within one month after the passing of this Act; and in like manner, a return of the names of the several persons at the time, being members of the said Board of Executors, with their respective places of abode, and the name and place of abode of the chairman, and of each director thereof, and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office.

Subsequent altera-  
 tions in or additions  
 to deed to be filed in  
 like manner.

III. A copy of all alterations in, or additions to, the said deed which may at any time be made in conformity with the provisions therein contained shall, within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed in the office of the said Registrar.

Also transfers of  
 shares.

IV. Whenever the transfer of any share in the said co-partnership or company shall be made, a return in like manner authenticated shall, within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer, the name and place of abode of the person to whom or in whose behalf such transfer is made.

And names and re-  
 sidences of chairman,  
 director, and secre-  
 tary.

V. A return in like manner authenticated shall, from time to time as occasion shall render it necessary, be filed in the office of the said Registrar, of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, in place of any former chairman, director, or secretary, within one month after such appointment shall have been made.

Copy of alteration,  
 addition, or return,  
 certified by registrar,  
 to be admissible in  
 evidence.

VI. A copy made from the copy of the said deed, or, if any alteration on, or addition thereto, which may have been made and filed as aforesaid; and a copy of any such return of any such chairman, director, secretary, or member, certified under the hands of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence or proof of such deed, or of any such altera-

tion or addition as aforesaid, or of the authority of the officer named in any such return, and also of the fact that all persons therein named as members were such at the date of such return.

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VII. All appointments under and by virtue of any last will and testament, codicil, or of any deed or act which shall have been at any time previous to the passing of this Act, or which shall hereafter be duly made and executed, of the directors of the Board of Executors, or of the secretary of the Board of Executors, as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, curator, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the Board of Executors hereby constituted.

Appointments of directors or secretary, as executors, administrators, &c., to be valid.

VIII. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a member of the said Board of Executors shall be admissible in like manner as if such person were not a member thereof.

Evidence of any officer or member to be admissible.

IX. All actions and suits, and all other proceedings at law, to be commenced or instituted for and on behalf of the said Board of Executors, against any person or persons, bodies politic or corporate, or others (whether members of the said Board of Executors or otherwise), for recovering any debts, or enforcing any claims or demands due to the said Board of Executors, or for any other matter relating to the concerns of the said Board of Executors, shall, and lawfully may, after the passing of this Act, be commenced or instituted, and prosecuted to a final judgment or sentence in the name of the secretary of the Board of Executors, as the nominal plaintiff, applicant, or petitioner, for and on behalf of the said Board of Executors; and shall, and lawfully may, subject to the provisions of any Act, Law, or Ordinance which may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against, or with intent to defraud, the said Board of Executors, or the members thereof, jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the

Actions may be brought by secretary.

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death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceedings, as the case may be; and that all actions, and suits, and proceedings at law, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said Board of Executors or otherwise, against the said Board of Executors, or against the said members thereof, jointly shall, and lawfully may be commenced, instituted, and prosecuted, to a final judgment or sentence against the said secretary of the said Board of Executors, as the nominal defendant or respondent for and on behalf of the said Board of Executors, or for the members of the said Board of Executors aforesaid, and not against the Board of Executors, or against the members or any of them.

Secretary may bring action against any member.

X. It shall and may be lawful for the secretary of the said Board of Executors to bring and maintain any action, suit, or other proceeding at law, against any person being an officer or member of the said Board of Executors, for or on account of any claim or demand which the said Board of Executors may have against such person, in like manner as if he were not an officer or member thereof.

Any officer or member may bring his action against the secretary.

XI. It shall and may be lawful for any person, being an officer or a member of the said Board of Executors, to bring and maintain any action, suit, or other proceeding at law, against the secretary of the said Board of Executors, for or on account of any claim or demand which he may have against the said Board of Executors, in like manner as if such person were not a member of the said Board of Executors.

Claim of members not to be set off against capital stock or dividend, &c.

XII. No claim or demand which any member of the said Board of Executors may have in respect of his share of the capital stock of the said co-partnership, or of any dividends, interests, or profits, payable in respect of such shares, shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share, or dividends, or profits, against any demand which the said Board of Executors may have against such member on

account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interests, or profits payable in respect thereof.

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XIII. It shall and may be lawful for any two directors of the said Board of Executors, to execute any bond or other act, for and on behalf of the said Board of Executors, to draw up and execute any inventory or liquidation, distribution or other account; and all such bonds, acts, inventories, and accounts so executed shall be equally valid as if the same had been done and executed by every one of the members thereof.

Any two directors may execute bonds, inventories, accounts, &c.

XIV. The said Ordinance shall cease to be of any force and effect from and after the said first day of October, 1859.

Termination of Ordinance 8, 1839.

XV. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all judges, magistrates, and others, without being specially pleaded.

This Act to be a public Act.

No. 18—1859.] AN ACT [July 8, 1859.

For more effectually preventing the unlawful cutting down or otherwise destroying the Forests and Herbage in this Colony.

WHEREAS, in various parts of this Colony, persons are in the habit of unlawfully cutting down, carrying away, and disposing of trees growing on Crown forests, or on Crown or other lands, and of kindling fires, whereby the forests and herbage are destroyed: And whereas it is expedient to put an effectual stop to such practices: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. Every person who shall, without having a lawful licence or permission or other lawful authority

Penalty for cutting down trees on Crown land.

No. 18—1859.

so to do, cut down, or cause to be cut down, any tree growing in any Crown forest, or on any Crown or other land, in this Colony, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction, be liable to a fine not exceeding one hundred pounds, and in case such fine shall not be paid, to imprisonment with or without hard labour, for any period not exceeding six months, or to such fine and such imprisonment, or to such imprisonment, without such fine.

II. If any person accused of contravening the last preceding section shall prove, to the satisfaction of the court or jury by which he shall be tried, that he had reasonable and probable cause for believing that the tree cut down, or caused to be cut down, by him, was standing on the land of such person himself, or of some other private person whose leave and licence for cutting down trees in such land such person so accused had obtained, then such person shall be acquitted of the criminal charge aforesaid.

III. Every person who shall wilfully or by gross carelessness set fire to, or kindle any fire which by spreading shall set fire to, any tree, bush, brushwood, underwood, or grass, not his property, shall be deemed to be guilty of the crime of contravening this section of this Act; and shall upon conviction, be liable to the like penalties as are contained in the first section.

IV. Every such person as aforesaid, whether prosecuted, or not prosecuted, shall be liable in a civil action, to be instituted by the party aggrieved, to pay and make good the amount of all damage done by such cutting down or burning.

V. Every person who shall receive any tree, or part or parts of any such tree, knowing at the time of such receipt that the same had been cut down in a Crown forest, or on Crown or other land, without any lawful licence or permission for so doing, shall be deemed to be guilty of the crime of contravening this section of this Act, and shall, upon conviction, be liable to the penalties hereinbefore in the first section of this Act provided.

VI. Nothing in this Act contained shall extend to

Under what circumstances offender may be acquitted.

Setting fire to trees, brushwood, grass.

Action for damages may be instituted.

Receiving tree or part of tree, knowing it to have been removed from Crown land.

Penalty.

Contraventions of this Act may be treated as

alter, in reference to the wrongful and unlawful destroying, carrying away, or receiving of trees or timber cut down in any Crown forest, or on any Crown or other land, the law of this Colony relating to the crime of theft, or to the crime of receiving stolen goods, knowing them to have been stolen, or the crime of maliciously setting fire to or burning any description of property: Provided that no person shall be twice prosecuted for or in regard of the same act of cutting down or of burning.

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theft, or as receiving stolen goods knowing them to be stolen.

VII. If any servant shall, when acting under the direction or command of his employer, by omission or any act of commission, infringe any of the provisions of this Act, then such employer and servant may both or either of them be prosecuted, and, if convicted, be punished under this Act.

Employers and servants may both or either of them be prosecuted.

VIII. In the construction of this Act the term "tree" shall mean any tree, whether young or old, of a sort or description ordinarily used in making wagons or other vehicles, or articles of furniture, or for building purposes, or for some other purpose of a like nature, with some one or more of the purposes aforesaid; but not any other sort or description of tree, nor brushwood, underwood, or wood only used as firewood.

Meaning of term "tree."

IX. This Act may be cited for all purposes as the "Forest and Herbage Preservation Act, 1859."

Short title.

No. 19—1859.] AN ACT [June 8, 1859.

For Applying a Sum not exceeding Three Hundred and Eighty-one Thousand Eight Hundred and Ninety-eight Pounds Eleven Shillings and Nine Pence for the Service of the Year 1859.

WHEREAS, by the Act No. 27 of 1858, entitled "An Act for applying a sum not exceeding Ninety-one Thousand Six Hundred and Sixty-five Pounds for the Service of the Year 1859, the said sum of Ninety-one Thousand Six Hundred and Sixty-five Pounds was charged upon the revenue

Preamble.

No. 19—1859.

of this Colony, for the service of the Government of the Colony, until the 30th of April, 1859: 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 1859, 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. 27, 1858, and to provide by one Act for the service 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:

Act 27, 1858, repealed.

I. The Act aforesaid, No. 27, 1858, is hereby repealed.

Total expenditure, 1859, charged upon the revenue.

II. The public revenue of the Colony is hereby charged with a sum not exceeding Three Hundred and Eighty-one Thousand Eight Hundred and Ninety-eight Pounds Eleven Shillings and Nine Pence, for the service of the year 1859, in addition to the sums already by law provided for such service, which sum of Three Hundred and Eighty-one Thousand Eight Hundred and Ninety-eight Pounds Eleven Shillings and Nine Pence shall be applied in the manner following, that is to say:

Civil establishments.

For the expenditure of the Civil Establishments, a sum not exceeding Sixty-one Thousand Eight Hundred and One Pound Ten Shillings.

Judicial establishments.

For the expenditure of the Judicial Establishments, a sum not exceeding Twenty-nine Thousand Nine Hundred and Seventy-seven Pounds.

Educational establishment.

For the expenditure of the Educational Establishment, a sum not exceeding Eleven Thousand Seven Hundred and Five Pounds.

Medical establishments.

For the expenditure of the Medical Establishments, a sum not exceeding Fourteen Thousand and Ten Pounds and Ten Shillings.

Police and gaols establishments.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding Fifty Thousand Nine Hundred and Four Pounds Two Shillings and Six Pence.

Border department (aborigines).

For the expenditure on account of the Border



Department (Aborigines), a sum not exceeding No. 19—1859.  
 Fifty-five Thousand Nine Hundred and Fifty-two  
 Pounds Nineteen Shillings and Three Pence.

For the expenditure on account of Pensions, Pensions, charitable allowances, and gratuities.  
 Charitable Allowances, and Gratuities, a sum not  
 exceeding Two Hundred Pounds.

For the expenditure on account of Works and Works and buildings.  
 Buildings, a sum not exceeding Nineteen Thousand  
 Four Hundred and Thirty-three Pounds and Ten  
 Shillings.

For the expenditure on account of Roads and Roads, bridges, and convict department.  
 Bridges, including the Convict Department, a sum  
 not exceeding One Hundred and Two Thousand and  
 Sixty-one Pounds.

For the expenditure on account of Miscellaneous Miscellaneous ser- vices.  
 Services, a sum not exceeding Thirty-five Thousand  
 Eight Hundred and Fifty-three Pounds.

Amounting, in the whole, to Three Hundred and Total.  
 Eighty-one Thousand Eight Hundred and Ninety-  
 eight Pounds Eleven Shillings and Nine Pence, as  
 detailed in the schedule hereunto annexed.

The said aids and supplies shall not be issued or Restriction as to ap- plication.  
 applied for any use, intent, or purpose other than  
 the particular services for which the said amounts  
 have been granted respectively by this Act.

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No. 20—1859]                      AN ACT                      [July 8, 1859.

For Applying a Sum not exceeding One Hundred  
 and Seventeen Thousand Six Hundred and  
 Eighty-nine Pounds for the Service of the  
 Year 1860.

**W**HEREAS it is expedient to provide further Preamble.  
 sums, in addition to those by law provided  
 for the service of the Government of this Colony,  
 until 30th April, 1860 :

I. Be it therefore enacted by the Governor of the Expenditure to end of April, 1860.  
 Cape of Good Hope, with the advice and consent  
 of the Legislative Council and House of Assembly

No. 20—1859.

thereof, that a sum not exceeding One Hundred and Seventeen Thousand Six Hundred and Eighty-nine Pounds be charged upon the revenue of the said Colony, towards the service of the year 1860, 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. 19 of 1859, 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 Twenty Thousand Six Hundred Pounds.

Judicial ditto.

III. For the expenditure of the Judicial Establishment, a sum not exceeding Nine Thousand Nine Hundred and Ninety-Three Pounds.

Educational ditto.

IV. For the expenditure of the Educational Establishment, a sum not exceeding Three Thousand Eight Hundred and Two Pounds.

Medical ditto.

V. For the expenditure of the Medical Establishment, a sum not exceeding Four Thousand Six Hundred and Seventy Pounds.

Police and gaols ditto.

VI. For the expenditure of the Police and Gaols Establishments, a sum not exceeding Sixteen Thousand Nine Hundred and Sixty-eight Pounds.

Border department  
(aborigines).

VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding Seventeen Thousand Three Hundred and Forty-three Pounds.

Pensions, charitable  
allowances, &c.

VIII. For the expenditure on account of Pensions, Charitable Allowances, and Gratuities, a sum not exceeding Sixty-six Pounds.

Works and buildings.

IX. For the expenditure on account of Works and Buildings, a sum not exceeding Four Thousand and Eighty-three Pounds.

Roads and bridges.

X. For the expenditure on account of Roads and Bridges, a sum not exceeding Thirty-two Thousand Three Hundred and Seventy-six Pounds.

Miscellaneous ser-  
vices.

XI. For the expenditure on account of Miscellaneous Services, a sum not exceeding Seven Thousand Seven Hundred and Eighty-Eight Pounds.

Total.

XII. Amounting, in the whole, to One Hundred and Seventeen Thousand Six Hundred and Eighty-nine Pounds.

XIII. 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—1859.  
Restrictive clause.

No. 21—1859.]            AN ACT            [July 8, 1859.

For Preventing Bribery, Treating, and Undue Influence at Elections of Members of Parliament.

**W**HEREAS it is expedient to make provision for preventing corrupt practices in the elections of members to serve in Parliament, and for securing the freedom of such elections: Be it enacted by His Excellency the Governor of the Cape of Good Hope, with advice and consent of the Legislative Council and the House of Assembly thereof, as follows: Preamble.

I. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly: Bribery defined.

1. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person,

No. 21—1859.

in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election.

3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.
4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.
5. Every person who shall advance or pay, or cause to be paid, any money to, or to the use of, any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay, or cause to be paid, any money to any person, in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

Penalty.

And any person so offending shall be guilty of an offence punishable by fine not exceeding one hundred pounds, or by imprisonment, for a term not to exceed one year, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit: Provided, always, that the aforesaid enactment shall not extend, or be construed to extend, to any money paid, or agreed to be paid, for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined.

II. The following persons shall also be deemed

guilty of bribery, and shall be punishable accordingly:

No. 21—1859.

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election.
2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting at any election.

And any person so offending shall be guilty of an offence punishable by fine not exceeding fifty pounds, or imprisonment not exceeding a term of three months, and shall also be liable to forfeit the sum of five pounds to any person who shall sue for the same, together with full costs of suit. Penalty.

III. Every candidate at an election, or other person, who shall corruptly, by himself or by or with any other person, or by any other ways or means, on his behalf, at any time, either before, during, or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, lodging, provision, or conveyance, to or for any person, for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit any sum not exceeding twenty-five pounds to any person who shall sue for the same, with full costs of suit. Treating defined  
Penalty.

No. 21—1859.  
Undue influence de-  
fined.

IV. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of an offence punishable by fine not exceeding twenty-five pounds, or imprisonment not exceeding a term of three months, and shall also be liable to forfeit the sum of twenty-five pounds to any person who shall sue for the same, together with full costs of suit.

Penalty.

Names of offenders to  
be struck out of list  
of registered voters.

V. Whenever it shall be proved before the civil commissioner of any division that any person who is, or claims to be placed on the list or register of voters for such division has been convicted of bribery, treating, or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such civil commissioner shall, in case the name of such person is on the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled, "The list of persons disqualified for bribery, treating, or undue influence," which last-mentioned list shall be preserved in the office of the civil commissioner, for general information.

And be inserted in a  
separate list.

VI. No candidate or other person shall, before, during, or after any election, in regard to such election, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the division for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall, for every such offence, forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music, or flags or banners, shall be deemed illegal payments within this Act.

No. 21—1859.  
No cockades or other mark of distinction to be given at elections.

VII. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence, respectively, shall be recoverable by action or suit by any person who shall sue for the same in the Supreme or Circuit Courts of this Colony, but not in any other court.

Penalties recoverable in Supreme and Circuit Courts only.

VIII. It shall be lawful for any criminal court, before which any prosecution by any private prosecutor shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided, always, that no indictment for bribery, treating, or undue influence shall be triable before any other than the Supreme or Circuit Court.

Costs and expenses of prosecutions.

IX. For the more effectual observance of this Act, every proclamation which shall at any time hereafter be issued by the Governor of this Colony, for any election for either the Legislative Council or House of Assembly of the said Colony, shall proclaim and make known that all persons who are guilty of bribery, treating, or undue influence at or in reference to the said election will, upon conviction, be liable to the penalties provided by this Act.

Proclamation for election to give warning against bribery, &c.

X. In case of any indictment or information by a private prosecutor, for any offence against the provisions of this Act, if judgment shall be given for

In private prosecutions, if judgment be given for defendant, he may recover costs from prosecutor.

No. 21—1859.

the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.

Prosecutor not entitled to costs unless he shall have entered into a recognizance that he shall conduct the prosecution and pay costs.

XI. It shall not be lawful for any court to order payment of the costs of a private prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding or filing of the indictment or information, enter into a recognizance before a judge of the Supreme Court, with two sufficient sureties, in the sum of two hundred pounds, with the conditions following, that is to say: that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Limitation of actions.

XII. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of six months next after such offence against this Act shall be committed, and unless such person shall be summoned, or otherwise served with process, within the same space of time, provided such summons or service of process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such summons or other process shall have issued, in which case the summons or process may be served within six months after the return of such person within the jurisdiction of the court; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

Giving refreshments to voters illegal.

XIII. The giving, or causing to be given, to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of five pounds for each offence to any person who shall sue for the same, by civil action in any competent court, together with full costs of suit.

Penalty.



XIV. In citing this Act for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices at Elections Prevention Act, 1859."

No. 21—1859.  
Short title of Act.

No. 22—1859.] AN ACT [July 8, 1859.

For Introducing into this Colony Immigrants from Europe.

WHEREAS, by the Act No. 8, 1857, entitled, "An Act for introducing into this Colony immigrants from Europe," provision was made for the introduction into this Colony of such immigrants as aforesaid, during the year 1858: And whereas, by the Act No. 16, 1858, provision was made for the introduction into this Colony of such immigrants as aforesaid, during the year 1859: And whereas it is expedient to make provision for the introduction, during the year 1860, of such immigrants as aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. It shall be lawful for the Governor of this Colony to expend, from time to time, during the year 1860, any sum not exceeding fifty thousand pounds, in introducing immigrants from Europe.

Sum to be expended in 1860.

II. In case the state and condition of the ordinary revenue during the said year 1860 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.

Debentures may be issued.

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

Sections 3, 4, and 5 of Act 8, 1857, to apply to such debentures.

No. 22—1859.

manner precisely as if the said sections were herein again set forth, and word for word repeated.

Immigration to be conducted upon the principle of Act 8, 1857.

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, 1857.

Expenditure to be apportioned between eastern and western divisions.

V. Of the fifty thousand pounds so to be raised and expended as aforesaid, it shall and may be lawful for the Governor to apportion, between the eastern and western districts, the expenditure in the following proportions, namely, not exceeding thirty thousand pounds upon the introduction of immigrants into the eastern districts, and not exceeding twenty thousand pounds upon the introduction of immigrants into the western districts: anything contained in the schedule to the Act No. 8 of 1857, to the contrary notwithstanding.

No. 23—1859.] AN ACT [July 8, 1859.

For Reviving and Continuing the Act No. 26, 1857, entitled “An Act for Punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace.

Preamble.

WHEREAS the Act No. 26 of 1857, entitled “An Act for punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, messages dangerous to the Public Peace,” was limited so as to continue in force until the 31st December, 1858, and no longer: And whereas it is expedient to revive the said Act, and to continue it in force until the 31st December, 1860: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Act 26, 1857, continued to 1860.

I. The Act aforesaid, No. 26 of 1857, is hereby revived, and shall be and continue in force until the 31st December, 1860, and no longer.

No. 24—1859.] AN ACT [July 8, 1859. No. 24—1859.

To Amend the Laws for regulating the Admission of  
Kafirs and other Native Foreigners into the  
Colony.

WHEREAS a certain Act was passed by the Preamble.  
Legislature of this Colony, in the year 1857,  
entitled "An Act for regulating the terms upon which  
natives of Kafirland and other native foreigners may  
obtain employment in this Colony:" And whereas a  
certain other Act was passed in the same year, en-  
titled "An Act for more effectually preventing  
Kafirs from entering the Colony without passes:"  
And whereas it is desirable to remove doubts as to  
the true meaning and intent of certain provisions in  
the Acts 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. No inhabitant of this Colony shall incur any  
penalty by admitting into his service any Kafir or  
other native foreigner who was already in this  
Colony when the Act aforesaid, No. 27, 1857, en-  
titled "An Act for regulating the terms upon which  
natives of Kafirland and other native foreigners may  
obtain employment in this Colony," took effect under  
any contract of service which could legally have  
been made with such Kafir or other native foreigner  
before the taking effect of the said Act, anything in  
the fifteenth section of the said Act to the contrary  
notwithstanding.

Act 27 of 1857 not to  
affect Kafirs in the  
Colony before the  
passing of that Act.

II. The penalties provided by the Act aforesaid,  
No. 23 of 1857, entitled "An Act for more effect-  
ually preventing Kafirs from entering the Colony  
without passes," shall be incurred only by Kafirs and  
other native foreigners of the Kafir family, as de-  
scribed in the sixth section of the said Act, and shall  
not apply to Griquas, Corrannas, Namaquas, Gona-  
quas, Boschjesmans, and other native foreigners of  
the Hottentot or Boschjeman race, or of any race not  
belonging to the Kafir family, anything in the  
twelfth section of the Act No. 27 of 1857 to the

Penalties under Act  
23, 1857, applicable to  
"Kafirs" only, not  
to natives of other  
races.

No. 24—1859.

“Native foreigners”  
to be dealt with under  
Ordinance No. 49.

contrary notwithstanding : Provided that every such native foreigner as aforesaid, not belonging to the Kafir family, may, at all times, be dealt with under the provisions of the Ordinance No. 49, entitled “An Ordinance for the admission into the Colony, under certain restrictions, of persons belonging to the tribes beyond the frontier thereof, and for regulating the manner of their employment as free labourers in the service of the colonists.”

Contracts with “na-  
tive foreigners,” not  
being “Kafirs,” not  
affected either by Act  
27, 1857, or by Act 1,  
1858.

III. Nothing contained in the Act aforesaid, No. 27 of 1857, or in the Act No. 1 of 1858, entitled “An Act for correcting an error or misprint in the Act No. 27 of 1857, entitled ‘An Act for regulating the terms on which natives of Kafirland and other native foreigners may obtain employment in this Colony,’” shall extend to or affect the contracts of service entered into within this Colony by any native foreigner not belonging to the Kafir family, and described in the sixth section of Act No. 23 of 1857, aforesaid, which contracts may be entered into, and shall be judged of as if the said Act, No. 27 of 1857, had never been passed.

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No. 25—1859.]                      AN ACT                      [July 8, 1859.

To Amend the Act No. 23, 1858, entitled “An Act for declaring Main Roads and Regulating Tolls.”

Preamble.

WHEREAS, by the first section of the Act No. 23, 1858, entitled “An Act for declaring Main Roads and regulating Tolls,” all and singular the roads mentioned and set forth in the schedule to the said Act marked A are declared to be the main roads of the Colony : And whereas it is expedient to make certain alterations in and additions to the main road mentioned in the said schedule, marked A : 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 :

I. That part or portion of the road branching from Kleinberg to the town of Aliwal (Mossel Bay), and thence to Hartenbosch River, which lies between Aliwal (Mossel Bay) and Hartenbosch River, shall be the road laid down as the new road, upon a certain survey and plan of such new road made and signed by the surveyor, Adam de Smidt, and now deposited in the office of the Civil Engineer, in Cape Town; and such new road between Aliwal (Mossel Bay) and Hartenbosch River, and none other, shall form part or portion of the road aforesaid branching from Kleinberg to the town of Aliwal (Mossel Bay), and thence to Hartenbosch River, and shall be deemed and taken to be the main road in the third section aforesaid, in the schedule aforesaid, mentioned and declared.

No. 25—1859.

Main road from Kleinberg to Mossel Bay and Hartenbosch defined.

II. The road from Worcester to Darling Bridge.— From the town of Worcester, over part of the place now or lately belonging to Mr. Pieter Jacobs; thence in a straight line to Slangeheuvel, passing through the lands of Messrs. Jacob de Vos and Gabriel Hugo; from Slangeheuvel, in a straight line to the eastern entrance of Bain's Kloof, where it crosses the Breede River at Darling Bridge.

Road from Worcester to Darling Bridge to be a main road.

III. The road from the Knysna harbour to Langekloof, as far as Yzernek.—From Belvidere village, crossing the Knysna River at the "point" by pontoon; thence through the property of Mr. E. Sutherland, called Eastford; thence through the commonage of the Admiralty lands to the village of Melville; thence through the property of Mr. John Sutherland, called Melkhout Kraal; thence through Government ground, following Moutskirts of Messrs. Kep and Veldman's lands, occupied by Stroubel; then over Government ground; thence over glebe lands (forest), granted to the Lord Bishop of the diocese; thence through forest land of Mrs. the Widow John Rex; thence through Government forest to Yzernek.

From Knysna to Langekloof ditto.

No. 1—1860.

No. 1—1860.]

AN ACT

[May 21, 1860.

To Prevent the Introduction into the Colony of the Cape of Good Hope of Convicted Felons and other Persons sentenced to Transportation for Offences against the Laws.

Preamble.

WHEREAS the colony of Western Australia has been constituted a penal settlement for the safe keeping of convicted felons and other persons undergoing transportation for offences against the laws: And whereas certain of the Australian colonies adjacent to the colony of Western Australia, to which colonies persons undergoing, or sentenced or sent to undergo, transportation in the colony of Western Australia, had betaken and were likely to betake themselves, have passed legislative Acts prohibiting the landing or living in such colonies of any of the said persons: And whereas certain persons of the class or description prohibited by the legislative Acts aforesaid from landing or being in the colonies of which the legislatures have passed the said Acts have recently arrived in this colony: And whereas, owing to the geographical position of this colony and to other causes, there is reason to apprehend that many more persons of the class or description aforesaid, finding themselves shut out by the legislative Act aforesaid from the colonies adjacent to Western Australia, to which colonies they would otherwise resort, will, unless prevented, betake themselves to this colony: And whereas it is essential to the preservation of peace and good order in the colony of the Cape of Good Hope that an immediate stop should be put to the landing or being in the said colony of convicted felons or other persons undergoing sentence of transportation for offences against the laws: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. No convicted felon or other person undergoing sentence of transportation for any offence against the laws, nor any person who is or shall be under

Imprisonment of felons who enter the colony.

sentence in any British colony or possession other than this colony for any capital or other offence, nor any person not at liberty by reason of any conviction or sentence to reside in any part of the United Kingdom of Great Britain and Ireland, shall land in any of the ports of this colony, or come to be in any place within the limits of this colony, under the penalty, on conviction thereof before any competent court, if a male, of being sentenced to imprisonment with or without hard labour for a period not exceeding three years, and, if a female, of being imprisoned with or without hard labour for a period not exceeding two years.

II. The master of any ship or vessel arriving at any port or place in this colony from any port or place in Western Australia shall detain every passenger on board his ship or vessel until he have obtained from the collector or other chief officer of Customs at or nearest to the port or place of arrival, in respect of each passenger respectively, a certificate that the said master has proved, to the satisfaction of the said collector or other chief officer of Customs, that the passenger in respect of whom such certificate is granted is not a prisoner of the Crown, or runaway convict, or any convict coming by virtue or under cover of any conditional pardon, ticket of leave, or indulgence of any kind, other than a free pardon or remission of his or her sentence by Her Majesty: And any master who shall permit or suffer any passenger to land previous to obtaining such certificate shall be liable to a penalty of twenty-five pounds for each passenger so landing: Provided, also, that it shall be lawful for the Governor, by proclamation, to extend the provisions of this section to the masters of ships and vessels arriving from any port or place mentioned in any such proclamation; and thereupon the like effects shall, in all respects, take place as if the port or place mentioned in any such proclamation had been mentioned in this section together with the ports and places in Western Australia.

No person coming from Western Australia to land, without proof of being a free person.

III. Any master or mariner, or other person commanding, navigating, or sailing any ship, vessel,

Masters or owners of vessels bringing felons to the colony

No. 1—1860.

liable to fine or imprisonment.

or boat, which may hereafter, with the knowledge of such master or other person, bring to any port or place in this colony any runaway convict, or any convict coming by virtue or under cover of any conditional pardon, ticket of leave, or any kind of indulgence other than a free pardon or remission of his or her sentence by Her Majesty, shall, upon conviction thereof before any court of resident magistrate, for every such offence, incur and be liable to a fine not exceeding one hundred pounds or to imprisonment for any time not exceeding three calendar months, or to both such fine and such imprisonment, at the discretion of the said court.

Penalty for concealing persons in first section mentioned.

IV. Every person who shall knowingly harbour or conceal any other person such as is in the first section mentioned, shall, on conviction thereof before any such court of resident magistrate as aforesaid, forfeit and pay for every such offence a sum not exceeding one hundred pounds, and in default of payment, shall be imprisoned with or without hard labour for any period not exceeding twelve months.

Property of offenders to be forfeited, and whole or part applied in conveying them away.

V. All property found upon or in the possession of any person convicted of contravening the first section of this Act shall be forfeited; and it shall be lawful for the convicting court to order the whole, or a sufficient part thereof, to be applied towards the expense of conveying such offender to the colony or possession to which he or she was transported, or in which he or she was convicted.

What deemed evidence of a person being a convict.

VI. Proof on oath that any person was in any British colony or possession other than this colony known to be, or was commonly reputed and deemed to be, a transported felon, or a convict under sentence for any capital or other offence, shall, for the purposes of this Act, be taken as good *primâ facie* evidence that such person was transported to such colony or possession or convicted therein of a capital or other offence, as the case may be; and evidence that such person was so known, deemed, or reputed at any period within seven years shall be taken as good *primâ facie* evidence that such person has not served the full period of his or her sentence, or the full term for which he or she was transported, and



has not received such pardon or remission as aforesaid, unless the contrary be proved.

No. 1—1860.

VII. It shall be lawful for any justice of the peace or resident magistrate having credible information, on oath, that any person such as is in the first section of this Act described is harboured in any dwelling-house or tenement or other place within his jurisdiction, to grant a search warrant to any one or more constables or officers of the law proper for the execution of criminal warrants, to search for and apprehend such offender, and any person found and apprehended by virtue of such warrant shall, by such constable or constables, be forthwith taken before a resident magistrate or justice of the peace for examination, and to be further dealt with according to law.

Justice of the peace or resident magistrate may grant warrant to apprehend offenders.

VIII. All fines and penalties recovered under this Act, and all moneys forfeited and not specially appropriated, shall be applied to and go to Her Majesty, her heirs and successors, for the public uses of the colony.

Appropriation of penalties.

IX. All proceedings under this Act shall be had and taken in a summary manner, and no such proceeding shall be quashed for want of form.

Proceedings not to be quashed for want of form.

X. If any suit or action be brought against any resident magistrate, justice of the peace, constable, or other person, for any act or thing done in furtherance of this Act, the defendant in every such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon.

General issue may be pleaded in all actions.

No. 2—1860.] AN ACT [July 17, 1860.

For Regulating the Manner in which Crown Lands at the Cape of Good Hope shall be disposed of.

**W**HEREAS it is expedient that the manner in which the Crown lands at the Cape of Good Hope shall be disposed of should be regulated by law: Be it enacted by the Governor of the Cape of

Preamble.

No. 2—1860.

Lands to be disposed  
of under regulations  
in schedule, and not  
otherwise.

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

I. The conditions and regulations in the schedule to this Act contained shall be, and the same are hereby, established, and the lands to which they relate shall be disposed of according to such conditions and regulations, and not otherwise.

Schedule.

## SCHEDULE.

CONDITIONS and REGULATIONS upon which the CROWN LANDS at the Cape of Good Hope will be disposed of.

Previous regulations  
repealed.

I. The conditions and regulations relative to the disposal of Crown lands in this Colony, published by Government notice of the 17th May, 1844, or by subsequent notices, are hereby cancelled; and, in future, all waste and unappropriated Crown lands will be sold subject to an annual quitrent on each lot, and at a reserved price, sufficient at least to defray the costs of inspection, survey, erection of beacons, and title-deed.

Crown lands to be sold  
under annual quitrent  
and at reserved price,  
to cover survey ex-  
penses and title-deed.

How and where sale  
to be held in each  
division.

II. The sale will be by public auction, at the office of the Civil Commissioner of the division in which the land to be sold is situated, after four months' notice by proclamation, in the Government Gazette, descriptive of the position and extent of the land intended to be sold; but lands in the Cape division shall be sold at Cape Town, at such place as shall be notified in such proclamation.

When quitrent re-  
deemable.

III. The quitrent may be redeemed at any time, upon payment of fifteen years' purchase, but when, by future subdivision of a lot and the quitrent thereon, any portion of the quitrent shall be less than ten shillings, it shall be obligatory upon the proprietor of such portion, within twelve months after such subdivision, to redeem the quitrent at fifteen years' purchase.

Conditions as to pay-  
ment of purchase  
money.

IV. The sales will be held on the following conditions as to the payment of the purchase money, viz.: the expenses of inspection, survey, erection of beacons, and title-deed shall be paid on the day of sale, and one-fourth of the balance of the purchase money shall be paid within three months after the sale, failing either of which conditions no sale shall be considered as having been effected. When a sale is effected, the purchaser shall have the option of discharging the whole or any portion of the remaining three-fourths of the purchase amount at once, and on depositing the expense of the necessary bond, of retaining the balance of the purchase money aforesaid, on first mortgage of the land sold, payable in three equal instalments, at the expiration of the fifth, sixth, and seventh years respec-

tively, from the date of sale, or at any previous time at the pleasure of the purchaser. The interest thereon shall be reckoned at the rate of six per cent. per annum, from the day of sale, and be payable annually, either to the respective civil commissioners in whose division the land is situated, or the Treasurer-General in Cape Town.

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Interest on balance of purchase money remaining on mortgage.

V. When any lands are mortgaged under the provisions hereinbefore contained, the Government may at any time discharge any part or parts of such lands from being subject to the mortgage, if a certificate be obtained, under the hand of the Surveyor-General, that the lands which remain subject to the mortgage are of sufficient and ample value to afford a security for the mortgage debts.

Lands mortgaged under preceding section may be discharged from mortgage.

VI. In all cases in which there may be timber, or houses, or other valuable and destructible, or perishable, or exhaustible property, on or within the limits of any lot, the Governor may, at his discretion, direct that a clause be inserted in the conditions of sale, requiring that the purchaser provide, at the time of sale, two good and sufficient sureties for due payment of the purchase money, to the satisfaction of the civil commissioner of the division, or of the Surveyor-General, in case such land be sold in Cape Town.

In case of timber or other perishable property being within the limits of the land, surety for payment of purchase money may be required.

VII. The lots will be sold subject to such special servitudes and conditions as may be set forth in the conditions of sale, and the following general conditions, which must be stated in the title-deed, viz.:

General conditions to be inserted in title-deed.

- (a) The quitrent payable.
- (b) All existing roads and thoroughfares described in the diagrams shall remain free and uninterrupted.
- (c) Government shall always have the right to make new roads, railways, and railway stations, aqueducts, dams, and drains, or to conduct telegraphs over the land, for the benefit of the public, and to establish convenient outspans for the use of travellers, on payment to the proprietor of such sum of money in compensation, as three appraisers, one to be appointed by each side, and a third to be chosen by the two others before proceeding to act, or any two of them, shall award.
- (d) With regard to lands on or adjoining the sea coast or on the banks of public rivers (not being in a town or village), Government shall have power to resume any portion thereof, when required for public purposes, on payment to the proprietor of a just and fair price for the same, according to valuation, as under section c.
- (e) Lands adjoining public rivers or running streams shall be sold subject to having such water-furrows

No. 2—1860.

made through or over them as the Government, acting with the advice of the divisional council, shall approve of and direct, for the supply of water to lands lying at a greater distance; compensation being made to the proprietors of such adjoining lands according to valuation as under section *c*.

(*f*) No condition which is not clearly expressed shall be presumed to exist.

When title-deed to be issued.

VIII. On settlement of the whole purchase money, by bond or otherwise, the title-deed will be issued to the purchaser.

Certain lands not to be deemed waste Crown lands.

IX. No land claimed by any registered owner of adjacent land as part of his property, by reason of any alleged defective title-deed, or supposed land-marks of the said adjacent land, or land occupied *bonâ fide* and beneficially without title-deed at the date of the extension of the colonial limits beyond it, or land conditionally occupied or claimed under any general notice or regulation of the Government, or under any promise or order of a Government officer, duly authorized at the time to make such promise or give such order, shall be considered or treated as waste Crown land, for the purpose of these regulations, until the claim thereto, in each case, shall have been decided on by the Governor, who shall have the power of rejecting the claim altogether or of satisfying such claim by grant of the land or compensation out of the purchase money or otherwise, as shall appear equitable: Provided, always, that due notice of the nature of the claim, and reasonable proof that it may be substantiated, be received at the office of the Colonial Secretary in sufficient time to admit of the withdrawal of the lot from sale, and that the claimant use reasonable diligence to lay the proofs in support thereof before the officer or board to whom the question may be referred by the Governor.

How claims to such lands to be dealt with.

Grants of land may be made for public purposes, with consent of Parliament.

X. Grants or reserves of land may be made by the Governor for special public purposes, provided that no such grant or reserve shall be made until the Legislative Council and House of Assembly shall have communicated to the Governor their concurrence therein.

Municipal lands not to be deemed waste Crown lands.

XI. No municipal land, or land within the limits of any municipality or land lying outside the municipal limits, but which has been, by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for any municipality, shall be considered or treated as waste Crown land for the purposes of these regulations. But the Governor shall have the power, upon the application of the commissioners of any municipality, to grant or authorize the sale of any portion or portions of such lands for public improvements, for the benefit of the inhabitants resident within the limits of such municipality.

Municipal lands may, upon application of commissioners, be granted for public purposes.

XII. No land lying within or outside any town or village, which has been, by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for such town or village, shall be considered or treated as waste Crown land, for the purpose of this Act.

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Town pasturage not waste Crown lands.

XIII. The Crown lands in the divisions of Albany along the Fish River, Peddie, Stockenstrom, Victoria East, Queen's Town, and Aliwal North, may be disposed of by the Governor, by public sale, on condition of personal occupation, or of personal occupation and such conditions of providing arms and armed men as have been imposed in the divisions of Victoria, Peddie, and Queen's Town, and it shall be deemed expedient to continue to enforce for the defence of the frontier. Such conditions, however, shall not be cancelled or changed except by Act of Parliament.

Crown lands in certain frontier divisions, how to be disposed of.

XIV. No lands known to contain valuable minerals, or situated in the neighbourhood thereof, no lands required for military stations, defence of the frontier, public outspans, fishing stations on the sea-coast or the banks of tidal rivers, of such extent as the Government, with the advice of the divisional council, shall define, or required for any other public purpose, or so much of the land on the sea-coast lying above and within two hundred feet of high-water mark shall be considered waste lands of the Crown for the purpose of these regulations, and all such land shall not be disposed of, except in the manner set forth in section ten in regard to the lands therein mentioned.

Lands containing valuable minerals, or required for military or certain other purposes.

XV. In all cases in which Crown lands shall be disposed of, where sufficient public roads, outspans, and cattle thoroughfares do not exist, but may be required, such extent of land as may be necessary for establishing public roads, outspans, and cattle thoroughfares shall be reserved for such purposes.

Public roads, outspans, and cattle thoroughfares to be provided for.

XVI. Whenever any divisional council may deem it expedient that waste Crown lands be sold, or when any person may be desirous of purchasing particular parts of such land, an application may be made to the Colonial Secretary, in writing, setting forth as far as practicable the position, boundaries, and extent of the land referred to. But in the case of any person desirous of purchasing such land, his application may be addressed direct to the divisional council of the division in which the land is situate, who shall, upon the receipt thereof, forward the same to the Colonial Secretary.

Applications for purchase of land to be addressed to Colonial Secretary or divisional council.

XVII. The applications, after being duly recorded, shall be transmitted to the Surveyor-General, who shall communicate thereon with the chairman of the divisional council of the division in which the land is situate.

Such applications to be transmitted to Surveyor-General.

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Applications to be submitted to divisional council.

Reports to be signed by members and certified by chairman.

Reports in which Surveyor-General does not concur with council, or special reports, to be submitted to Governor.

Council to transmit estimate of costs of inspection, failing which, applicant may be required to deposit amount of costs.

Members of divisional council may be deputed to make inspection after due notice given.

In whose presence inspection to be made.

All claims to land to be heard and noted.

Capabilities to be observed.

XVIII. The chairman shall submit every application to the divisional council at the first meeting of the said council after the receipt thereof, at which there shall be two-thirds of the members present, and actually taking part in the proceedings; and all reports, if any be agreed to, on questions relating to land shall be signed by the members individually, at the time and place of their meeting, and in presence of each other, and the chairman shall certify the same on all copies required for communication with Government.

XIX. The Surveyor-General shall submit, for the decision of the Governor, all reports on cases in which he is unable to concur with the divisional council, and all reports which the council desire to be specially submitted for information of the Governor.

XX. When the Governor directs that the sale shall proceed, the council shall in the first place transmit an estimate of the probable cost of inspection and survey, and erection of beacons, in order to enable the Surveyor-General to comply with the financial regulations, by obtaining previous specific authority for the necessary expenditure, or in the event of such information not being sent, then the Surveyor-General may call on the applicant for a deposit sufficient to cover the aforesaid cost, which deposit shall be refunded when the land is sold; but should no sale take place, or the reserved price be more than the aforesaid deposit, no refund will be made.

XXI. Whenever the special appointment of an inspecting officer shall not appear to be rendered necessary by circumstances of a peculiar and technical character, the members of the divisional council may depute one or more of their number, where necessary, to inspect the land; but the inspection shall not take place until after fourteen days' notice to the field-cornet of the ward, and a public notice, posted conspicuously for fourteen days immediately preceding such inspection at the office of the civil commissioner or other place in the chief town or village of the division where notices are usually placarded.

XXII. The said inspection shall be made in presence of the field-cornet or acting field-cornet of the ward and a sworn surveyor, duly qualified, to be employed by Government; and all claims affecting the land inspected shall be heard and carefully noted, whether relating to private rights or public convenience, as in the instance of outspans, thoroughfares, and other questions of a local nature, or when an unreserved disposal of the lot might convey to a purchaser a power of annoying neighbouring residents, or of damaging adjacent property; further, the capabilities of the soil for cultivation and maintenance of stock during the year or certain months, the supply of water and facilities

for augmenting such supply, the means of communication with and distance from markets or ports; the quantity of timber, if any, should all be observed and estimated; and an accurate record of the proceedings drawn up and handed to the chairman, by whom the case will be laid before the first subsequent meeting of the divisional council, consisting of the number of members specified in the seventeenth section.

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Record of proceedings to be kept.

XXIII. The council shall then issue the necessary instructions for survey, or otherwise act as the case may appear to require, and, on the completion of diagrams, will transmit them with their reports and a copy of the record mentioned in the last section to the Surveyor-General, who will take the further steps necessary for the sale of the land, or otherwise.

Council to give directions for survey, diagrams, &c., to be transmitted to Surveyor-General.

XXIV. The divisional councils will, from time to time, transmit to the office of the Surveyor-General a list of such surveyors as may be willing to undertake the survey and subdivision of particular lots or tracts of land in their division, and the duties of surveyors, on inspection of the same; and the Surveyor-General will, if he see fit, select the surveyor to be employed. Such surveyor will conform to the instructions of the council in all matters relating to allotment, erection of beacons, and survey, according to previously-authorized agreement and estimate, under the provisions of this Act, and attend to the directions of the Surveyor-General in all that relates to professional points.

Divisional council to transmit to Surveyor-General list of surveyors willing to undertake survey.

XXV. Whenever any improvements, such as the erection of buildings, the construction of dams, or of water-conduits for irrigation, or the like, shall at any time prior to the taking effect of this Act have been made upon Crown land, by any occupier thereof, whose occupation shall not have been authorized by Government, it shall be lawful for the Governor, if he shall think fit, to compensate such occupier for the improvements so made. This compensation shall be made in the following manner: The buildings or other improvements in question shall be valued either by the inspecting officer or officers appointed by the divisional council to inspect Crown lands, or by some competent appraiser, to be appointed by the Government, as the Government shall elect; and the lands on which such improvements have been made shall, when put up to public sale, be sold subject to the payment, out of the purchase money, of the amount of such valuation, and such amount shall be paid by the purchaser at the time of sale. If the occupier who made the improvements should not be the purchaser, then one-third of the value of such improvements shall be retained by the Government, and carried to the account of the public treasury; and the remaining two-

Compensation to be given to previous occupier for building and improvements.

Buildings, &c., to be valued.

How, if occupier does or does not become purchaser.

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thirds shall be paid to the said occupier. In case the said occupier should himself become the purchaser, the two-thirds to which he will have become entitled shall be retained by the Government, and received in payment or part payment of the purchase money for which he shall have become liable. Provided that whenever any such improvements have been made by any occupier whose occupation has been authorized by Government, such occupier shall receive or be allowed the entire value of such improvements. And provided that compensation cannot be claimed, and shall not be given, on account of expenditure upon improvements unconnected with the ordinary use of the land by the usual class of purchasers, or of extravagant improvements not adapted to increase the value of the land.

Compensation not to be given for extravagant improvements.

Regulations as to remission of purchase money to military, naval, or Indian officers.

XXVI. The privileges allowed to officers of the army and navy, and of the late East India Company's service, in respect to remission of purchase money of waste Crown lands, may be claimed under the foregoing regulations; the claimants adhering thereto, in all respects, as in the case of ordinary application and purchase, excepting that, in the settlement of the balance of the purchase money over and above the expenses of inspection, survey, erection of beacons, and title-deed, which must be paid in cash, the letter of approval of remission by the Governor may be tendered and will be received, to the extent of such amount or balance of amount as may be therein stated, in satisfaction of the whole or part of such balance of purchase money, under such regulations as the Governor may consider necessary to ensure the accuracy of the public accounts in that particular class of cases.

Waste Crown lands may be sold to contiguous proprietors at valuation by divisional council.

XXVII. As often as the Surveyor-General shall, on the recommendation of the divisional council, certify that a portion of Crown land lies so contiguous to or between farms belonging to private persons, and that from the situation of such Crown land and all the circumstances connected with it, such Crown land ought to be attached to one or more of the contiguous farms, then the divisional council may allot such Crown land to one farm, or divide it amongst two or more farms, as may seem just and expedient, at a reasonable and equitable price, to be fixed by the council, and approved of by the Governor, not being less than the expense of inspection, survey, erection of beacons, and title-deed. And such land shall be subject to a quitrent, to be assessed by the council.

Quitrent to be assessed by council.

Applications for such land, how to be dealt with.

XXVIII. After the Surveyor-General shall have certified as in the last clause mentioned, then the council shall cause to be published in the Government Gazette a notice stating the name of the applicant, the situation and boundaries of the land applied for, and the extent of such land, if it shall



then have been surveyed, or if it have not been surveyed, its supposed extent, and stating that such application will be decided upon by the council, at a meeting thereof, to be held upon some day to be mentioned in such notice, not being less than three months from and after the day upon which such notice shall have been first published in the Government Gazette. A copy of such notice shall also be posted at the office of the resident magistrate of the district for not less than three months before the day appointed for the meeting of council to decide upon such application.

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XXIX. At the meeting of council to decide upon any such application as aforesaid, it shall be competent for any person, having or alleging an interest in the matter of such application, to appear in person, or by agent authorized by any writing under the hand of such person, and to submit to the council such matters for or against such application as he shall think fit; and the council may, from time to time, adjourn the decision upon any such application to a future meeting as often as it shall be found expedient to do so.

Persons interested in such applications may appear in person or by deputy to support or object to application.

XXX. The council may grant any such application, either wholly or in part, as may appear desirable, and when an application by one person shall have been made and published for a certain lot of land, may, in deciding upon such application, and without the publication of any fresh notice, divide such land between the applicant and any other person or persons who may, at the meeting in the twenty-seventh clause mentioned, claim, and be found entitled to, a share of such land.

Applications may be granted wholly or in part.

XXXI. When the council shall have decided to recommend that any such land as is in the last clause mentioned, should be granted to any person or persons, the chairman of the council shall forward such recommendation to the Surveyor-General, together with the diagram or diagrams of such land, and a statement of the price fixed, and of the quitrent assessed by the council, and the necessary title-deed or title-deeds shall be prepared and issued: Provided that the Governor, upon sufficient cause shown to him, shall be empowered to withhold the issue of such title-deed or title-deeds.

How, if council shall decide to grant application.

Governor may withhold title-deed.

XXXII. The Surveyor-General shall cause to be published in the Government Gazette, during the months of January and July, in every year, half-yearly lists, made up to the 31st December and 30th June preceding, respectively, of all title-deeds issued from the Surveyor-General's office of any such lands as are in the preceding clause mentioned, which lists shall set forth, in regard to each title-deed, the division and field-cornetcy in which the land is situated, the name of the grantee or grantees, the extent of the land granted, the price fixed, and the quitrent assessed.

Surveyor-General to publish half-yearly returns of title-deeds issued under preceding section.

No. 3—1860.

No. 3—1860.] AN ACT [July 17, 1860.

To Amend the Act No. 10, 1859, entitled “An Act to provide for the Adjustment of Disputed Land Boundaries, and for the Erection and Preservation of Land Beacons.

Preamble.

WHEREAS it has been found in some parts of this Colony that there are farms which are partly in one division and partly in another, and that there are divisions of which the boundary lines dividing them from other divisions are, in certain places, the boundary lines dividing certain farms one from another: And whereas when beacons or boundaries happen to be disputed by and between any such farms and contiguous farms, doubts arise under the Act No. 10, 1859, as to the divisional council proper for the adjustment of such disputes: And whereas it is expedient to remove such doubts, as well as to provide for the equitable apportionment or distribution of costs in certain cases, and to prevent, more effectually, the destruction of beacons provisionally put up in pursuance of the fifty-eighth and fifty-ninth sections of the Act aforesaid, No. 10, 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:

Repugnant part of Act 10, 1859, repealed.

I. So much, if any, of the Act No. 10, 1859, as shall be repugnant to, or inconsistent with, any of the provisions of this Act, shall be and the same is hereby repealed.

How, if disputed boundary lie in more than one division.

II. As often as any boundary line in dispute between two or more farms shall lie partly in one division and partly in another division, and as often as any boundary line in dispute between two or more farms shall form part of the boundary line between any two divisions, and as often as a dispute regarding any boundary line within any division shall involve or affect any farm or farms lying wholly or in part in any other division, it shall be competent for the parties involved in such dispute to agree together upon or in regard to the divisional council

to which the adjustment of such dispute shall be referred; and in case the said parties shall not agree thereupon, then it shall be competent for the divisional councils of the respective divisions in which any of the lands involved in or affected by such dispute shall lie, to agree upon or in regard to the divisional council to which the adjustment of such dispute shall be referred, and in case neither the said parties nor the said councils shall so agree, then the divisional council to which such adjustment shall be referred shall be appointed by the Governor, with the advice of the Executive Council.

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In case no agreement be come to, Governor to decide which divisional council shall adjust dispute.

III. In all such cases as are in the last preceding section described, it shall be competent for either of the persons interested in the dispute to give to the other person, having an adverse interest, a notice in writing, naming the divisional council to which, in the opinion of the person giving such notice, the adjustment of the dispute should be referred, and requiring the person to whom such notice shall be given to state in writing, within fourteen days next after the receipt of such notice, whether or not he agrees to refer such dispute to the divisional council named in such notice, and, if not, what other divisional council he proposes.

In the first instance, one disputant to notify to other the divisional council he selects.

IV. If, within the said period of fourteen days, or afterwards, both parties shall agree as to the divisional council to which the adjustment of the dispute shall be referred, then such divisional council so agreed on shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such divisional council belongs.

If parties agree, council shall have full power to adjust dispute.

V. In case the said parties shall not within the fourteen days aforesaid, or within some extension of that time mutually agreed upon between them for the purpose of negotiation, agree upon or in regard to the divisional council to which the adjustment of the dispute shall be referred, then either of the said parties may address either or any of the divisional councils in which any of the lands involved in or affected by such dispute shall lie, stating the existence of such dispute, the giving or receipt of the

If parties do not agree, application may be made to council of either division to decide which shall adjust dispute.

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notice aforesaid, the persons by and to whom such notice was given, and the failure of the parties to agree upon or in regard to the divisional council to which the adjustment of the dispute should be referred, and requesting the council so addressed to make arrangements for or in regard to the appointment of a divisional council by which the dispute shall be adjusted.

Proceedings of council upon receiving such application.

VI. The divisional council so addressed as aforesaid shall, as soon as conveniently may be, and not later than one month next after being so addressed, communicate with the council or councils of the other division or divisions in which any of the lands involved in or affected by such dispute shall lie; and such councils shall, between or amongst themselves agree, if they can, upon or in regard to the divisional council to which the adjustment of the dispute shall be referred, and thereupon such last-mentioned divisional council shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such divisional council belongs: Provided that it shall be lawful for the said last-mentioned council to agree with the other council or councils in question upon or in regard to all or any of the names proper to be placed upon the list of seven men mentioned in the nineteenth and succeeding sections of the Act No. 10, 1859, from or out of which list a commission of three men shall be chosen in manner and form as are in that behalf in the said Act set forth, should it eventually become necessary to appoint a commission.

When councils cannot agree as to whom dispute should be referred to, Governor to be applied to.

VII. In case the divisional councils aforesaid shall be unable between or amongst themselves to agree upon or in regard to the divisional council to which the adjustment of the dispute in question shall be referred, it shall be competent for either or any of the councils so unable to agree to apply to the Governor to name, with the advice of the Executive Council, the divisional council to which the adjustment of the dispute in question shall be referred.

Proceedings of Governor upon receiving such application.

VIII. As often as the Governor shall receive any such application as aforesaid, he shall, with the

advice of the Executive Council, name the divisional council to which the adjustment of the dispute in question shall be referred: Provided that before naming such divisional council, the Governor shall call for a report upon the subject from the other council or councils concerned, and consider such reasons as may be therein given for naming some particular divisional council: And provided that as often as the Governor, with the advice of the Executive Council, shall name any divisional council for the adjustment of any dispute, such last-mentioned divisional council shall have the same power and authority to adjust such dispute as if all the lands involved in or affected by it lay within the division to which such last-mentioned divisional council belongs.

IX. Should it happen that any case not expressly provided for in the Act aforesaid, No. 10, 1859, or in this Act, should occur whereby a doubt or question may be raised regarding which one of any greater number of divisional councils is proper for the adjustment of any dispute, or for the performance of any further function under the Act aforesaid, No. 10, 1859, it shall be competent for the Governor, with the advice of the Executive Council, to determine such question, and thereupon the divisional council named by the Governor with such advice as aforesaid, shall have the same power and authority to adjust such dispute, or perform such other function, as if all the lands involved in or affected by it lay within the division to which such last-mentioned council belongs: Provided that it shall not be competent for the parties to any dispute, nor for the divisional councils connected with any dispute, nor for the Governor, to appoint any divisional council to adjust such dispute, except a divisional council belonging to some division in which some of the lands involved in or affected by such dispute shall lie.

If question be raised as to which of any number of councils shall adjudicate in cases not expressly provided for in this or previous Act, Governor to decide.

But council so selected must belong to some division in which disputed lands lie.

X. As often as it shall be found, upon any resurvey or other proceeding connected with any disputed boundary, that other farms besides those originally engaged in the dispute are really involved

If other farms besides those originally in dispute become involved, proprietors to contribute to costs of resurvey.

No. 3—1860.

in or affected by it, then the owners of every farm involved in or affected by the dispute shall, as well as the farms originally engaged, be deemed to be, for the purpose of the fiftieth and seventieth sections of the Act No. 10, 1859, parties to the inquiry, so as to be liable, at the discretion of the commissioners, to pay or contribute towards paying the costs in the said sections mentioned, in such shares and proportions as the commissioners in the said sections mentioned shall under the circumstances consider just and shall adjudge.

Penalty for removing provisional beacons.

XI. If any person shall, against the will or without the authority of the person who shall have erected the same, remove, destroy, or injure any such beacon as is mentioned in the fifty-eighth section of the Act No. 10, 1859, and which beacon is, by the fifty-ninth section of the said Act declared to be merely provisional in its nature, such person so offending shall upon conviction forfeit any sum not exceeding ten pounds sterling for or in respect of every beacon so removed, destroyed, or injured.

Short title of Act.

XII. This Act may be cited for any purpose as "The Land Beacons Amendment Act, 1860."

No. 4—1860.]                      AN ACT                      [July 17, 1860.

For Continuing the Provisions of an Ordinance bearing date the 14th day of February, 1833, entitled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property in the Land Register."

Preamble.

WHEREAS it is enacted by an Ordinance numbered 97, and bearing date the 14th February, 1833, entitled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed Right to certain Lands and Houses to procure the same to be enregistered as their Property

in the Land Register," that as such memorial as therein mentioned should be received or acted upon by the committee nominated and appointed by His Excellency the Governor, under and by virtue of the provisions of the said Ordinance, which should not be lodged with the secretary of the said committee on or before the 31st December, 1833: And whereas, by certain other Ordinances since successively made and passed in this Colony, whereof the last was numbered 9, 1853, entitled in manner and form as this present Act, the period within which it should be lawful for the said committee to receive and act upon such memorials as aforesaid which should be lodged with the secretary thereof was prolonged from time to time till the 31st December, 1860: And whereas it is expedient to provide a further period, within which such memorials as aforesaid may be lodged with the secretary aforesaid, in order to their being received and acted upon by the said committee: Be it 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 it shall and may be lawful for the said committee to receive and act upon all such memorials as aforesaid which shall be lodged with the secretary thereof on or before the 31st December, 1865, anything in any former law to the contrary notwithstanding.

No. 4—1860.

Provisions of Ordinance No. 97 continued.

II. This Act may be cited for any purpose as the Short title of Act.  
 "Ordinance No. 97 Continuing Act, 1860."

No. 5—1860.] AN ACT [July 17, 1860.

To Amend the Act No. 9, 1858, entitled "An Act to Provide for the Management of the Public Roads of this Colony."

WHEREAS, by the twenty-seventh section of the Preamble.  
 Act No. 9, 1858, entitled "An Act to Provide for the Management of the Public Roads of this Colony," it is provided that each divisional council

No. 5—1860.

shall appoint one or more competent valuers for the purpose of valuing the immovable property situate in such division: And whereas it has been found in some divisions of this Colony that the expense of employing such valuers would, when compared with the amount of such road rates as it would in those divisions be reasonable to impose, be so disproportionate, that in such divisions it was found necessary to have the valuations made by the divisional councils themselves instead of by paid valuers, which valuations have given very general contentment: And whereas it is expedient that such by-gone valuations should be established: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant portions of Act 9, 1858, repealed.

I. So much of the Act aforesaid, No. 9, 1858, as is repugnant to or inconsistent with any of the provisions of this Act shall be, and the same is hereby, repealed.

Valuations conducted by divisional councils without employment of special valuers confirmed.

II. Every valuation for the purposes of the Act No. 9, 1858, already made, or yet to be completed, for the purpose of the first valuation under the said Act by any divisional council without the employment or intervention of any valuator or valuers, paid or unpaid, shall be deemed to have been of the same force and effect in all respects as if it had been made by such a valuator or such valuers as in the twenty-seventh section of the said Act mentioned: Provided that the provisions of the thirty-fourth and thirty-fifth sections of the said Act shall apply to all valuers for the purposes of the said Act, whether made by the divisional council without special valuers or by valuers appointed by such councils: And provided that no valuation for the purpose of the Act aforesaid shall hereafter be made except by valuers who shall not be members of the divisional council.

No member of divisional council to receive fee or reward for any valuation made under preceding section.

III. It shall not be lawful for any member of any divisional council to receive, or retain if already received, either by way of allowance for horse-hire or otherwise, any sort of payment, remuneration, or reward for or in respect of any valuation made



by him as a valuator employed by the council to which he belongs, or any valuation made by such council collectively and without the employment of any special valuator.

No. 5—1860.

And whereas, whilst, by the thirty-fifth section of the Act aforesaid, No. 9, 1858, provision is made for reducing, at the instance of the owner of any immovable property too highly valued, the value put upon such property, no provision is made for increasing the valuation of any such property which may happen to have been undervalued: Be it enacted as follows:

Provision for increasing valuations of properties undervalued.

IV. It shall be competent for the court in the thirty-fourth and thirty-fifth sections of the said Act mentioned, acting in manner and in form as by this Act directed, to increase the value put in and by any valuation which shall be under the review of such court upon any farm or other immovable property.

When properties have been undervalued, valuations may be increased.

V. Any person, being the owner of any farm or other immovable property included in any valuation, who shall consider that any other farm or immovable property included in such valuation is valued lower than it ought to be, may send in to the secretary of the divisional council an objection in writing, signed by such owner, setting forth the farm or other property alleged to have been valued lower than it ought to have been, and the value which the person objecting considers true and just: Provided that such objection shall be sent so as to be received by the said secretary not later than fourteen days before the day appointed for the holding of the court in the thirty-fourth and thirty-fifth sections of the Act aforesaid mentioned.

Objection to valuation to be lodged with secretary of divisional council.

VI. The secretary of any divisional council receiving such objection shall cause the owner or occupier of the farm or other immovable property of which the value is objected to, to be informed that such an objection has been lodged, and that it will come on for consideration at the court aforesaid.

Duty of secretary when receiving objection.

VII. Should the person receiving such notice as aforesaid, that an objection has been lodged by the

How, if proprietor consents to increase of valuation.

No. 5—1860.

person named in such notice against the value put upon the property owned or occupied by him, consent that the valuation upon such property may be increased to the amount claimed in and by the objection, such person may, in writing, inform the secretary aforesaid that he consents to such increase, and such secretary shall report such consent to the court aforesaid at its sitting, and thereupon the value of such property shall be increased accordingly.

Duty of secretary when receiving consent.

VIII. The secretary receiving any such consent as aforesaid shall, in case there shall be time so to do, inform the person who lodged the objection that such objection has been admitted, and that it will not be necessary for him to attend the court aforesaid to support his objection.

How, if proprietor does not consent.

IX. In case no such consent as aforesaid shall be given as aforesaid, then the person objecting and the person resisting the objection may, in person or by any agents appointed in writing, appear before the court aforesaid upon the day appointed for the sitting thereof, and such court shall, in deciding upon such objection, proceed in manner and form as in the thirty-fifth section of the Act aforesaid provided in regard to objections founded upon an alleged overvaluation; and the decision of such court upon such objection shall be final and conclusive.

How, if objection fail or be disallowed.

X. If at the sitting of the court aforesaid the person who lodged the objection shall fail to appear to support his objection, or, appearing, shall fail to show sufficient cause for increasing to any extent the valuation to which he objected, such objection shall be dismissed, and should the court think fit, dismissed with costs: Provided that no costs shall be given against an objecting party unless the opposite party shall have appeared in person or by agent.

If proprietor fail to appear or cannot disprove insufficiency of valuation, valuation to be increased, and costs given to objecting party.

XI. If the person entitled as aforesaid to receive, and who shall have received, notice of an objection lodged to any valuation shall fail to appear at the sitting of the court, or, appearing, shall fail to rebut the proof made that the valuation objected to was too low, so that the valuation objected to shall be

increased, then the court may, should it think fit, give costs to the objecting party: Provided that no costs shall be given against any person who shall have received notice of objection, and who shall appear at the sitting of the court, and then and there declare his consent that the valuation objected to shall be increased to some amount less than the amount claimed in and by such objection which shall be admitted by the objecting party or found by the court to be the true and just value. And provided that even where such person appears to consent that the value objected to shall be increased to the full amount claimed in and by the objection, no costs shall be given against him in case he shall prove to the satisfaction of the court that he received notice of such objection so short a time before the sitting of the court that he could not send in as aforesaid to the secretary before the sitting of the court his consent to such increase in the valuation.

No. 5—1860.

Excepting against party appearing and consenting to increase.

XII. As often as the court aforesaid shall see reason to give costs to any person against any other person, such costs shall be the same as would be payable by a suitor condemned in costs in a civil case in the court of the resident magistrate of the district; and such costs shall be recoverable by action in the court of such resident magistrate: Provided that upon proof made of the order of the court aforesaid giving costs, the liability for such costs shall not be brought into question in the court of the resident magistrate, but only the amount thereof.

Costs to be the same as in civil cases in magistrate's court.

XIII. As soon as any valuation for the purposes of the Act aforesaid, No. 9, 1858, shall be completed, it shall lie in the office of the civil commissioner of the division, for the inspection of every owner or occupier of any property included therein, who may, upon all lawful days and at all reasonable hours, inspect the same and take extracts therefrom.

When valuation is completed, it shall lie open for inspection.

XIV. Although no objection shall have been lodged in manner and form and within the time in the fifth section of this Act mentioned, it shall be lawful for the court aforesaid at the sitting thereof, should it so think fit, to allow any such person as might under the said fifth section have lodged an objection

Objection summarily made may be inquired into without previous notice.

No. 5—1860.

to make, in writing, such an objection as is in the said section mentioned, and thereupon should the person entitled by the sixth section to receive notice of such objection be present and consenting, may proceed summarily and at once to inquire into and decide upon such objection: Provided that if such last-mentioned person be not present, or, being present, shall demand time to answer the objection, then the court shall adjourn till some future day to be then and there appointed for deciding upon such objection, at which day, or upon some other day to be fixed by a further adjournment, the said court shall decide finally upon such objection, and make such order as to costs as shall to justice appertain.

Short title of Act.

XV. This Act may be cited for any purpose as the "Road Act Amendment Act, 1860."

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No. 6—1860.]            AN ACT            [July 17, 1860.

To Amend the Act No. 20, 1858, entitled "An Act for Constructing a Breakwater to form a Harbour of Refuge in Table Bay, and otherwise Improving the said Harbour."

Preamble.

WHEREAS doubts exist whether the sum of two hundred thousand pounds, mentioned in the Act No. 20, 1858, entitled "An Act for Constructing a Breakwater to form a Harbour of Refuge in Table Bay, and otherwise Improving the said Harbour," can be raised and taken up upon the security or guarantee of the general revenue of the Colony, or whether the said sum is charged only upon the certain dues and moneys mentioned in the said Act: And whereas it is expedient to remove such doubts by declaring that the said sum shall be a charge upon the general revenue of the Colony as well as upon the said certain dues and moneys, and to amend the said Act in other respects: Be it enacted by the Governor of the Cape of Good Hope, with

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

No. 6—1860.

I. The sum of two hundred thousand pounds in the said Act mentioned shall be raised and taken up upon debentures bearing interest at a rate not exceeding six per cent., and such debentures, together with the interest from time to time to accrue thereon, shall be and the same are hereby charged upon and made payable out of the general revenue of the Cape of Good Hope.

General revenue pledged for repayment of loan authorized by Act 20, 1858.

II. All such debentures shall be issued in London, and not in this Colony, unless it should, at any time, be found that the same could not be issued in London upon terms as favourable as if issued in this Colony.

Debentures to be issued in London unless terms in the Colony be more favourable.

III. Notwithstanding that the debentures so to be issued as aforesaid are for the purpose of facilitating the issue of the same upon the most advantageous terms charged as aforesaid upon the public revenue of this Colony, the said debentures shall be and the same are hereby made a charge upon the dues of wharfage and cranage, and upon all and singular the other properties, revenues, and moneys in the said Act mentioned.

Debentures made a charge on wharfage dues.

IV. The breakwater to which the funds and moneys mentioned in the said Act No. 20, 1858, and in this Act are to be devoted, shall be constructed upon or with reference to the plan of harbour improvements lately prepared by John Coode, Esq., civil engineer, so that such plan or any further part or parts thereof may be hereafter undertaken, should Parliament think it fitting to authorize the undertaking the same.

Breakwater to be constructed on plan of Mr. Coode.

V. It shall be lawful for the Governor by proclamation to appoint a board of commissioners, to consist of seven persons, of whom three shall be a quorum, to supervise the construction of the breakwater aforesaid, and to administer all and singular the properties, funds, dues, revenues, and moneys in the said Act No. 20, 1858, and in this Act mentioned ; and in case of the death or resignation of any member of such board, or his absence from the meetings of the said board for the space of three

Board of commissioners to supervise construction of breakwater and administer funds.

No. 6—1860

months or upwards, it shall be lawful for the Governor to appoint, in manner aforesaid, another person in room and stead of the person so dying, resigning, or being absent.

No. 7—1860.] AN ACT [July 17, 1860.

For Enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues.

Preamble.

WHEREAS the Board of Commissioners for the Harbour of Mossel Bay, appointed under and by virtue of the Ordinance No. 21, 1847, entitled "Ordinance for Improving the Ports, Harbours, and Roadsteads of this Colony," have caused an estimate to be made of the cost of constructing certain works calculated to promote the safe and convenient anchorage of ships and landing and shipping of goods in the said harbour: And whereas it is estimated by the said board, and by the engineers and others who have by desire of the said board considered the subject of the said works, that a sum not exceeding seven thousand pounds will be sufficient to defray the cost of constructing or completing the said works, and also any expense which the said board may incur in taking over (should it see fit so to do) a certain jetty already existing in the said harbour, which sum, together with all interest to become due thereon when borrowed, will, as it is estimated, be paid off within fifteen years out of the wharfage dues to be levied under this Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Harbour board may raise money on debentures.

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 seven thousand pounds in the whole, as may be necessary for constructing such works in or at Mossel Bay as the said board shall judge fit to be constructed; and the provisions of the sixth and seventh sections of the

Ordinance No. 21, 1847, shall, except as hereinafter excepted, apply to all such sums of money as aforesaid, precisely as if this Act were the vote or resolution of the former Legislative Council of this Colony in the said sections mentioned: Provided that the Governor aforesaid shall, in regard to the matters in the said seventh section of the said Ordinance mentioned, act with the advice of the Executive Council of the Colony, instead of with the advice and consent of the Legislative Council in the said section mentioned: And provided, also, that the word “deed” in the said section mentioned shall include the sort of security or engagement commonly called a debenture.

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 Mossel Bay the several dues or rates set forth in the tariff contained in the schedule to this Act; the fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections of the Ordinance aforesaid, No. 21, 1847, shall apply to such dues or rates precisely as if the said dues or rates had been tolls or rates approved of and proclaimed by the Governor of the Colony, with the advice and consent of the former Legislative Council, whilst it existed, and had been by the said Governor, with the said last-mentioned advice and consent, declared to be payable in regard to every article, matter, or thing landed or shipped in any part of Mossel Bay.

Harbour board may levy wharfage dues on goods landed or shipped.

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 Mossel Bay, or his known agent, shall be bound to state to the principal officer of Customs at Mossel Bay, who shall be entitled to demand and receive the dues or rates payable thereon, the value thereof; and if it shall appear to the said officer that the same are not valued according to the actual value thereof, then the said officer may require the person who shall have landed or shipped or be about to land or to ship any goods, articles, matters, or things to make and subscribe a declaration, which declaration

Value of articles landed or shipped to be stated to principal officer of customs, who shall receive dues.

No. 7—1860.

How, if value cannot be declared.

shall be in substance in the form in the second schedule to this Act set forth; and the value stated in such declaration shall be the value upon which dues shall be paid: Provided that it shall be lawful for such officer, as often as it shall be made to appear to him that the value of any goods, articles, matters, or things landed in Mossel Bay cannot be declared at or immediately after the time of such landing, to permit the same to be taken away without the payment of wharfage; but in every such case such officer shall take a bond or obligation for the payment of such wharfage at or before such time as shall in that behalf be specified in such bond or obligation.

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.

Principal officer of customs to pay over to harbour board all dues collected.

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.

Board may appoint clerk, to be paid out of wharfage dues.

Act when to commence.

VI. This Act shall commence and take effect from and after the first of August, 1860.

Schedule No. 1.

## SCHEDULE NO. I.

Dues chargeable on wool.

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

On other articles.

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



## EXEMPTIONS.

No. 7—1860.

- All public stores, naval or military baggage, and personal baggage of passengers. Exemptions.
- All ship's stores outwards.
- All goods exported upon which wharfage has been paid upon importation.
- All surplus stores or provisions for the use of whaling vessels.

## SCHEDULE NO. II.

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 Mossel Bay, viz. :—(here describe the articles, with marks and numbers, if any.)

Form of declaration of the value of articles.

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. 8—1860.] AN ACT [July 17, 1860.

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

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

Preamble.

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

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

II. All such debentures as aforesaid shall be and Debentures charged

No. 8—1860.  
on the general revenue.  
To be issued in London, unless more favourable terms can be obtained in this Colony.

Debentures when to be made payable, and how and when to be paid off.

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

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

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

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

#### SCHEDULE A.

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

#### SCHEDULE B.

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

#### SCHEDULE C.

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

#### SCHEDULE D.

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

No. 9—1860.] AN ACT [July 17, 1860.

For Introducing into this Colony Immigrants from  
Europe.

**W**HEREAS, by the Act No. 8, 1857, entitled Preamble.  
“An Act for introducing into this Colony Immigrants from Europe,” provision was made for the introduction into this Colony of such immigrants as aforesaid during the year 1858: And whereas, by the Act No. 16, 1858, provision was made for the introduction into this Colony of such immigrants as aforesaid during the year 1859: And whereas, by the Act No 22 of 1859, provision was made for introducing into this Colony such immigrants as aforesaid, during the year 1860: And whereas it is expedient to make provision for the introduction during the year 1861, of such immigrants as aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. It shall be lawful for the Governor of this Colony to expend from time to time, during the year 1861, any sum not exceeding twenty-five thousand pounds in introducing immigrants from Europe. Sum to be expended in 1861.

II. In case the state and condition of the ordinary revenue during the said year 1861 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, in England, of debentures bearing interest at some rate to be agreed upon, not exceeding six per cent. May be raised on debentures issued in England.

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. Previous Act to apply to debentures under this Act.

IV. The immigration contemplated by this Act Immigration to be

No. 9, 1860.  
 conducted upon the  
 principles of Act 8,  
 1857.

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, 1857.

No. 10—1860.] AN ACT [July 17, 1860.

To Make better Provision for the Granting and Withholding of Licences to sell Wines and Spirituous and other Liquors.

Preamble.

WHEREAS the law regarding the mode of obtaining licences for selling wines and spirituous and fermented liquors, as the same is set forth in the Ordinance No. 9, 1851, entitled "Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors," requires amendment: Be it enacted by 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 Ordinance 9, 1851,  
 repealed.

I. So much of the Ordinance aforesaid, No. 9, 1851, as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Licensing court to be  
 held quarterly.

II. The court mentioned in the twelfth and certain succeeding sections of the Ordinance aforesaid shall, instead of being held only once a year, be held quarterly, that is to say, upon the third Wednesday of the months of March, June, September, and December in each year.

In the absence of  
 magistrate, members  
 present to elect chair-  
 man.

III. In case of the absence of the resident magistrate, or of any person acting as such, from any meeting of the court aforesaid, the members present shall elect their chairman, who shall have a casting vote besides his original vote.

Members of divisional  
 council to sit in court.

IV. In addition to the persons entitled under the provisions of the Ordinance aforesaid to sit, deliberate, and vote at every such court as aforesaid, the members of the divisional council for each division shall be entitled to sit, deliberate, and vote at any

such court held within the limits of such division :  
 Provided that the four persons mentioned in the  
 twenty-ninth and certain succeeding sections of the  
 Act No. 9, 1858, entitled "An Act to provide for  
 the Management of the Public Roads of the Colony,"  
 shall, for the purpose of this Act, be deemed and  
 taken to be members of the divisional council of the  
 Cape division.

No. 10, 1860.

In Cape division,  
 members of council  
 for road purposes to  
 be members of court.

V. Applications such as are described in the tenth  
 section of the Ordinance aforesaid, No. 9, 1851, shall  
 be capable of being made in reference to each re-  
 spective quarterly court aforesaid, that is to say,  
 on or before the second Monday in the months  
 of February, May, August, and November in each  
 year.

Applications for li-  
 cences under section  
 10, Ordinance 9, 1851,  
 when to be made in  
 regard to each quar-  
 terly court.

VI. Every such licence as is in the fifth section of  
 the said Ordinance mentioned granted by the quar-  
 terly board which sits as aforesaid upon the third  
 Wednesday in March shall endure for one year, and  
 commence on the first day of April next ensuing.  
 Licences granted by each of the other of the quarterly  
 boards shall commence upon the first day of the  
 month next after the sitting of such boards, and shall  
 expire upon the thirty-first day of March then next  
 ensuing: Provided that nothing herein contained  
 shall extend to any such licences as are in the eighth  
 section of the said Ordinance mentioned.

Licences granted by  
 first quarterly court  
 to continue for one  
 year from 1st April.

Licences granted by  
 subsequent courts to  
 continue to end of  
 following March.

VII. The cost of licences other than licences  
 enduring for a year and commencing upon the first  
 of April in each year shall be as follows :

Cost of licence.

1. For a licence commencing upon the 1st of July and ending upon the 31st March ...	£17 10 0
2. For a licence commencing upon the 1st of October and ending as aforesaid ... ..	13 0 0
3. For a licence commencing upon the 1st of January and ending as aforesaid ... ..	7 10 0

VIII. Every person who shall be the holder of a  
 licence in force at the time when any such March

Licence in force at  
 meeting of March  
 quarterly court to be

No. 10—1860.

continued, unless opposed by three-fourths of members.

quarterly board as aforesaid shall hold a session, and which holder shall not since the commencement of such licence have been convicted of any offence against or under the Ordinance aforesaid, shall be entitled to obtain a licence for the year then next ensuing, unless a majority of not less than three-fourths of the members of such board then present shall concur in refusing such licence: Provided, also, that in case such a majority as aforesaid shall agree in refusing a licence for a year, the said holder shall be entitled to obtain a licence to endure for three months, that is to say, until the 1st of July then next ensuing; and unless a majority of not less than three-fourths of the members present at the June quarterly board shall concur in confirming the vote of the March quarterly board, refusing such licence, then such holder shall be entitled (except as hereinafter excepted) to obtain a further licence, to last till the 31st of March then next ensuing: Provided that in case such holder shall have been convicted of any such offence as aforesaid, committed during the continuance of the three months' licence aforesaid, it shall be competent for such June quarterly board, by a majority of members then present, to refuse such further licence as aforesaid. And provided that a judgment against any licensed dealer in an action upon his recognizance shall be deemed to be such a conviction as aforesaid for the purposes of this Act.

If refused for a whole year, then to be granted for a lesser term.

Unless holder be convicted of offence against Ordinance 9, 1851.

Cost of continuing licences.

IX. Every such holder of a licence as in the last preceding section mentioned, who shall be entitled to obtain such a three months' licence as aforesaid, shall pay for the same the sum of five pounds, and in case such further licence as aforesaid shall become demandable by him as aforesaid, he shall pay for the same the sum of fifteen pounds.

Persons holding licences not competent to sit at court.

X. No person holding, whether singly or with others or with another, either a wholesale or a retail licence for the sale of wines and spirituous and fermented liquors shall be competent to sit, deliberate, or vote at any such board as aforesaid for the granting of licences. Any person contravening this section shall, upon conviction, incur and be liable to any penalty not exceeding fifty pounds.

XI. For the purpose of the fourteenth section of the Ordinance aforesaid, No. 9, 1851, no justice of the peace who shall be such a person as in the last preceding section mentioned shall be reckoned as one of the ten justices therein described: Provided that if, through error or inadvertence, any justice of the peace who should have been reckoned shall fail to be reckoned, and another person be thereupon appointed to be a member of the court in the twelfth section of said Ordinance mentioned, who but for such error or inadvertence would not have been appointed, nothing in the said Ordinance or this Act shall be construed so as to deprive either such justice or such other person of his right to sit, deliberate, and vote at every such court, which right both such justice and such other person shall possess and enjoy.

No. 10—1860.

Justices of the peace similarly interested not to sit.

How, if through error another person be appointed instead of justice entitled to sit.

XII. It shall be lawful for any quarterly board, at any session thereof, to authorize any person licensed for the sale of liquor at some certain place or premises specified in his licence to sell the same at some other place or premises in the same district, not distant more than one mile from the place or premises mentioned in the licence; provided that no such authority shall be given unless a notice that such authority had been applied for, stating the name of such licensed dealer and the particular place or premises to which he desires leave to remove his business, shall have been posted for general information at or near the office of the resident magistrate for not less than fourteen days next before the sitting of such board.

Quarterly court may allow removal of licence from one place or premises to other.

Notice of intended removal to be given.

XIII. In case any licensed dealer desirous of removing his place of business as aforesaid shall satisfy the resident magistrate and any three other members entitled to take part in the proceedings of the licensing board of the district that the change which he seeks is one proper to be authorized, and that to wait for authority from the next quarterly board would be attended with serious loss or inconvenience, it shall be lawful for such magistrate and three other members to authorize such removal: Provided that such a notice as is in the last preceding section mentioned shall be posted before any such

Resident magistrate and three members of court may authorize removal.

Such authority to be reported at next sitting of court.

*No. 10—1860.*

authority shall be granted: And provided that every authority so granted shall be reported by the resident magistrate to the licensing board of the district at the next sitting thereof, which shall be competent to revoke such authority.

How authority to be issued.

XIV. Every such authority as aforesaid shall be in writing and shall be signed by the resident magistrate, and shall be endorsed upon the licence of the dealer receiving such authority or contained in a separate writing, as may be more convenient.

Certain liquors may be sold without licence.

XV. From and after the taking effect of this Act, ginger-beer and spruce-beer may be sold without taking out any licence: Provided that if any vendor of ginger-beer, spruce-beer, soda-water, or the like drink shall supply wine or spirits to mix or to be taken with such drink, he shall be deemed to have sold such wine or spirits.

No. 11—1860.] AN ACT [July 17, 1860.

For Abolishing the Offices of Judge and Superintendent of Police of Cape Town, and Deputy Superintendent of Police of Cape Town.

Preamble.

WHEREAS it is expedient that the offices of judge and superintendent of police of Cape Town and deputy superintendent of police of Cape Town should be abolished, and that other provision should be made for the performance of the duties now belonging to the former of the said offices: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Office of judge and superintendent of police abolished.

I. The office of judge and superintendent of police of Cape Town and the office of deputy superintendent of police of Cape Town are hereby abolished.

Police court of Cape Town abolished. Ordinance No. 4, 1834, repealed.

II. The police court of Cape Town, as erected, constituted, and established by the Ordinance No. 4, passed in 1834, entitled "Ordinance for erecting,



constituting, and establishing police courts, to be holden in Cape Town and Simon's Town respectively, and for defining the duties and jurisdiction of the judge of police of Cape Town, and of the justice of the peace of Simon's Town respectively," is hereby abolished, and the Ordinance aforesaid hereby repealed.

No. 11—1860.

III. All and singular the powers and authorities vested in the judge and superintendent of police of Cape Town by the Ordinance No. 2, 1840, entitled "Ordinance for improving the executive police of Cape Town and the district thereof, for defining the powers and duties of the said police in certain cases, and for promoting the peace and good order of the said town," are hereby vested in the resident magistrate of Cape Town and the district thereof and the Cape district, in like manner and to the same extent as if the name of such resident magistrate were substituted in the said Ordinance for the name of such judge and superintendent of police as often as the latter name occurs.

Powers of judge and superintendent of police vested in resident magistrate.

IV. The matrimonial court for Cape Town and the district thereof and the Cape district shall be composed of the resident magistrate aforesaid, assisted by the clerk of the court of such resident magistrate, in place and stead of the judge and superintendent of police of Cape Town, assisted by his clerk.

Matrimonial court of Cape Town how constituted.

V. This Act shall commence and take effect at and from such a date as shall be fixed for that purpose by any proclamation of the Governor of this Colony.

Act when to take effect.

No 12—1860.] AN ACT [July 17, 1860.

For Increasing the Jurisdiction of the Courts of Resident Magistrate in Criminal Cases, in which the Persons accused admit their Guilt.

WHEREAS, by the law of this Colony, every prisoner against whom a preparatory examination has been instituted is asked by the resident

Preamble.

magistrate or justice of the peace before whom such examination takes place, after the examination of the witnesses in support of the charge has been concluded, what he will say in answer to the charge against him, and is at the same time cautioned that he is not obliged to make any statement that may criminate himself, and that what he shall say may be used in evidence against him: And whereas the statement, if any, afterwards made by such prisoner is taken down in writing, and is, after being read over to him, subscribed by him, if he will subscribe the same, and also by the magistrate, and by one person at least present at the making of such declaration: And whereas prisoners making their declarations do not infrequently in and by such declarations admit their guilt: And whereas, notwithstanding such admissions of guilt, every such prisoner must be detained in prison for trial by the Supreme or Circuit Court unless he can give bail, or unless the Attorney-General, upon consideration of the preparatory examination, should remit the case to the court of the resident magistrate as a case proper for the summary jurisdiction of such court: And whereas it is expedient that courts of resident magistrate should be empowered in such cases of admitted guilt to pass sentences exceeding those which, in the exercise of their summary jurisdiction, they are competent to pass as often as the Attorney-General upon consideration of the preparatory examination shall be of opinion that what the law constitutes a crime has really been committed, and that the prisoner has by his declaration voluntarily admitted that he is guilty of that crime, and that the case, from its nature and circumstances, is one proper to be dealt with by the court of resident magistrate under such increased jurisdiction, instead of being reserved for the Supreme or Circuit Court: And whereas, whilst conferring upon the courts of resident magistrate such increased jurisdiction, it will at the same time be proper to subject the proceedings of such courts exercising such increased jurisdiction to the scrutiny of the Supreme Court or some of the judges thereof: Be it enacted by the Governor of

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

I. As often as any preparatory examination taken against any prisoner for any crime or offence, in reference to which the prisoner shall in his declaration, duly made and certified, have voluntarily confessed himself guilty of the crime charged against him, shall have been transmitted to the Attorney-General for his consideration, and the said Attorney-General shall be satisfied that the preparatory examinations contain legal evidence of the prisoner's guilt, and shall see fit, with reference to the nature and circumstances of the case, to remit such case to the court of the resident magistrate, ~~such court may sentence such prisoner to imprisonment, with or without hard labour, for any period not exceeding two years, or, if a male, to a whipping, privately in prison, not exceeding thirty-six lashes, — or such offender may be punished both by such imprisonment and such whipping :~~ Provided that all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20, 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," shall extend and apply to all sentences pronounced by virtue of the powers conferred by this Act in like manner, precisely as to the sentences in the said forty-seventh section of the said Act No. 20, 1856, mentioned and set forth : Provided, always, that the punishment of whipping shall in no case be inflicted until the proceedings are returned to the magistrate with a judge's certificate, as directed by the said section of the Act No. 20, 1856.

When prisoner admits his guilt and preparatory examination contains proof of such guilt, Attorney-General may remit case to resident magistrate.

Sentence magistrate is empowered to pronounce.

Sentence liable to revision by judge in chambers.

Whipping not to be inflicted before sentence is confirmed by judge.

No. 13—1860.

No. 13—1860.] AN ACT [July 17, 1860.

For Creating a body of Water Police at the Port of Cape Town, and for altering in certain respects the Scale of Fees now payable at the Shipping Office in Cape Town.

Preamble.

WHEREAS it is expedient to employ in Table Bay a body of water police for the repression of thieving in and from cargo-boats and upon the public wharfs, for the suppression of mutiny and insubordination on board ship, and for other purposes connected with the protection of property and the preservation of good order in the harbour of Table Bay: And whereas, in order to defray in part the expense of such water police, it is expedient to increase the fees now payable at the Shipping Office in Cape Town, for or in respect of the engagement and discharge of seamen, and to provide for the payment in certain cases of certain charges for specific services which the water police may be desired to render, and shall render, to particular ships: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Act confined to Cape Town.

I. Nothing in this Act contained shall extend to any shipping office or shipping master at any port in this Colony other than the port of Cape Town.

Fees for engagement and discharge of seamen.

II. The table marked A in the schedule to the "Local Merchant Seaman's Act, 1855," is, in regard to the port of Cape Town, hereby repealed, and the following fees are hereby substituted in lieu and stead of the fees specified in the said table, that is to say:

1. Upon and for the engagement of a seaman, or any number of seamen, for each seaman ... £0 5 0
2. Upon and for the discharge of a seaman, or any number of seamen, for each seaman ... 0 3 0

Deductions from wages by way of partial repayment of fees.

III. The table marked B in the schedule aforesaid is also hereby repealed, and the following sums are

hereby substituted in lieu and stead of the sums specified in the said schedule, as the sums which may be deducted from wages by way of partial repayment of the fees in the last preceding section mentioned, that is to say :

1. From the wages of any mate, purser, engineer, surgeon, carpenter, or steward upon each engagement and each discharge ... £0 3 0
2. From the wages of all others, except apprentices, upon each engagement and each discharge ... 0 2 0

IV. It shall be lawful for the Governor to cause such a number of fit and able men as Parliament shall from year to year provide for to be enrolled to serve as water policemen at and for the port of Cape Town.

Governor may appoint water police.

V. The men of the said water police force shall be sworn in before any resident magistrate or justice of the peace, and shall act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders when crimes have been committed ; and the men so sworn shall, within Cape Town, the Cape district, and the port of Table Bay, have all such powers, authorities, privileges, and advantages, and perform all such duties and incur all such responsibilities as any constable duly appointed now has, or hereafter may have, within his constable-wick or assigned district, by virtue of any law or Ordinance existing or to exist in this Colony, and shall obey all such lawful commands touching the manner in which they shall conduct themselves in the execution of their office as they may from time to time receive from their lawful superiors, as the latter shall from time to time be constituted, named, and specified by the Governor.

Powers and duties of water police.

VI. A boat shall be provided for the water police, to be manned by the members of the force, and to be used by them in the execution of their duty, and they shall convey seamen paying fees under the provisions of this Act to their respective vessels, upon each engagement, without making any charge.

Police boat to be provided.

No. 13—1860.

Warrants to be executed by water police. Fees chargeable.

VII. Criminal warrants against any person being on board of any ship in the harbour of Table Bay shall, as much as may be, be executed by the water police; and as often as any such warrant shall have been sued out at the instance of any master against his crew, or any of them, such master shall pay to the officer or person in command of the water police executing the same, the sum of ten shillings for each trip of the police boat necessarily taken in and about the execution of such warrant.

Duty of water police in regard to vessels putting to sea. Fees.

VIII. It shall be the duty of the water police force to go on board any vessel about to sail from Table Bay, when so required by the master of such ship, for the purpose of preventing the crew of such vessel, or any number of them, from unlawfully obstructing the sailing of such ship, and of rendering all such reasonable services towards enabling such ship to set to sea as they may be desired and be able to perform. For and in regard to such services as are in this section mentioned every master desiring the same shall pay such sum, not exceeding five pounds sterling, as the Governor shall from time to time fix and determine.

Application of fees.

IX. All fees and charges authorized by this Act, when received by the officer commanding the water police, shall be paid over by him into the Colonial Treasury, at such times and in such manner as the Governor shall direct.

Policemen not to receive any gratuity unless authorized by Governor.

X. No member of the water police force shall (except as hereinafter is excepted) receive from any shipmaster or other person any gratuity or reward for or in respect of anything done or to be done by him by virtue of, or in connection with, his office as such policeman: Provided that nothing in this section contained shall extend to any gratuity or reward which may be voluntarily tendered by any shipmaster or other person, and which gratuity or reward the member or members to whom it shall be tendered shall by the Governor be authorized to accept. Any officer or member of the said force who shall, without having had the authority of the Governor so to do, receive any gratuity or reward shall, upon conviction, incur and be liable to a penalty not

exceeding treble the amount or value of the gratuity or reward so received, and in case he shall not pay the same forthwith shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month.

No. 13—1860.

XI. This Act may be cited for any purpose as the “Cape Town Water Police Act, 1860,” and shall commence and take effect from such day as the Governor shall, by proclamation, determine and appoint.

Short title of Act and when to commence.

No. 14—1860.] AN ACT. [July 17, 1865.

For Amending the Act No. 5, 1855, entitled “An Act for Creating Divisional Councils in this Colony.”

**W**HEREAS it is expedient that members of divisional councils, travelling to attend the meetings of such councils, should be allowed moderate travelling expenses; and that members absenting themselves without leave from a certain number of the meetings of such councils should be deemed to have thereby vacated their seats: Be it enacted by 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 each divisional council to pay to each member attending any meeting of such council travelling expenses, at a rate to be fixed by such council, according to the distances travelled, not exceeding in the whole twenty shillings per day for every day necessary for journeying to, remaining at, and returning from the place of meeting.

Travelling expenses may be paid to members of council.

II. The travelling expenses aforesaid shall be payable from and out of any funds or revenue raised or received by or belonging to the divisional council.

Such expenses to be defrayed from funds belonging to council.

III. If any member of any divisional council shall, without leave of the council first had and obtained, absent himself from any three consecutive meetings, whether ordinary or special, of such council, without being prevented by sickness or

Absence from certain number of meetings to forfeit seat in council.

No. 14—1860.

some other lawful and sufficient cause, to be judged of by the council, he shall be deemed and taken to have, *ipso facto*, vacated his seat: Provided that every member prevented from attending at such meetings as aforesaid by sickness or other cause shall be bound to report or cause to be reported to such council, not later than fourteen days next after the day on which the last of the said meetings shall have been held, the cause of his non-attendance; and if no such report shall be received, or being received shall be resolved by the council not to be lawful and sufficient, then the seat of such member shall as aforesaid become vacant: And provided that, in regard to special meetings of the council, absence from the same shall not be reckoned or regarded for the purposes of this Act unless notice of the same shall have been given to the member who shall have absented himself in reasonable and customary time.

Except in regard to special meetings.

No member to receive any fee or reward, or to enter into, or be interested in, any contract with council.

IV. No member of any divisional council shall have or receive any salary or allowance, or exact, accept, or receive any fee or reward whatsoever, not granted or allowed by this or some other Act, for, on account, or by reason of his office as such divisional councillor; nor shall any divisional councillor become a contractor with the council of which he shall be a member, for the doing of any work, or the supplying of any materials, articles, or things required by such council, nor shall such member be directly or indirectly interested in any such contract as last aforesaid; any person contravening this section of this Act shall incur and be liable to a penalty not exceeding one hundred pounds: Provided that nothing in this section contained shall prevent any divisional councillor from receiving any fee or allowance which the Governor shall authorize for or on account of any service performed by such councillor under and in pursuance of the Crown Lands Act, or any other Act.

Members may receive allowances under Crown lands or other special Acts.



No. 15—1860.] AN ACT [July 17, 1860.

No. 15—1860.

For Continuing the Ordinance No. 9, 1836, entitled “Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded,” as also the Ordinance No. 2, 1844, entitled “Ordinance for Amending the Ordinance No. 9, 1836, entitled ‘Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded.’”

**W**HEREAS by the Ordinance No. 3, 1853, entitled “Ordinance for Declaring the Ordinance No. 9, 1836, to be in force and operation,” it is enacted that the said Ordinance No. 9, 1836, and the said Ordinance No. 2, 1844, as the said Ordinances are more fully described in the title of this Act, should cease to be in force upon the first day of January, 1861: And whereas it is expedient that the said Ordinances should be made perpetual: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The Ordinances aforesaid, No. 9, 1836, and No. 2, 1844, shall be and remain in force until Parliament shall otherwise provide.

II. The Ordinance No. 9, 1836, may be cited for any purpose as “The General Municipal Ordinance, 1836,” and the Ordinance No. 2, 1844, as “The General Municipal Ordinance Amendment Ordinance, 1844,” and this Act as “The General Municipal Ordinance Continuing Act, 1860.”

No. 16—1860.

No. 16—1860.] AN ACT [July 17, 1860.

## To Amend the Law concerning Marriages.

Preamble.

**W**HEREAS it is expedient to afford additional facilities for contracting valid marriages: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Resident magistrates to be marriage officers.

I. The several resident magistrates of this Colony are hereby made and constituted marriage officers before whom marriages may be contracted.

Provisions of schedule A to apply to marriages before magistrates.

II. All and singular the clauses and provisions in the schedule marked A to this Act annexed, shall apply to marriages to be contracted before any resident magistrate, as fully and to all intents and purposes as if the said clauses and provisions were here set forth as so many sections of this Act.

Appointments of marriage officers already made, confirmed.

III. All appointments of marriage officers heretofore made by the Governor of this Colony for the time being are hereby ratified and confirmed, and declared to be and to have been as legal, valid, and effectual as if the order of Her Majesty the Queen in Council of the 7th September, 1838, had by express words authorized the making of every such appointment.

Governor may appoint marriage officers for Jews and Mohammedans.

IV. The Governor may appoint in manner and form as in the twelfth section of the said Order in Council mentioned, marriage officers, for the purpose of solemnizing the marriages of persons professing the Jewish faith, and marriage officers for solemnizing the marriages of persons professing the Mohammedan faith: Provided that no marriage solemnized by any such marriage officer shall be invalidated or impeached by reason that neither of the married parties belonged, or was reputed to belong, to the class or denomination for which such marriage officer was appointed.

Marriage by special licence before magistrate how solemnized.

V. Any marriage for the solemnization of which a special licence shall have been obtained may, upon the production of such licence to any resident magistrate named therein, be solemnized and contracted before such magistrate and witnesses, in manner and form as is in the schedule marked A annexed to this

Act directed and enjoined: Provided that as often as a special licence shall be produced for authorizing the solemnization of any marriage it shall not be necessary that notice of the intention to contract such marriage shall have been given or posted as in the said schedule provided, and such marriage may upon the production of such licence be solemnized forthwith.

No. 16—1860.

VI. The provisions of the Act No. 12, 1856, entitled "An Act for better securing, in certain cases, the Inheritances of Minors," shall apply, *mutatis mutandis*, to all marriages solemnized after the taking effect of this Act by any resident magistrate, precisely as if the affixing of any notice of an intended marriage, as in the fourth clause of the said schedule marked A were a publication of bans: Provided, however, that no such certificate as in the said Act mentioned shall be issued.

Act 12, 1856, for securing inheritances of minors, to apply to all marriages under this Act.

VII. It shall not be lawful for any resident magistrate to demand or receive any fee, gratuity, or reward, for or by reason of anything done or to be done by him under or in pursuance of this Act.

No fees to be charged under this Act.

VIII. This Act may be cited for any purpose as the "Marriage Act, 1860."

Short title of Act.

## SCHEDULE A.

Schedule A.

1. In every case in which any persons shall desire to contract a marriage before any resident magistrate, one of the parties shall give notice under his or her hand, or his or her mark, witnessed by two witnesses, in the form marked No. 1 to this schedule annexed, or to the like effect, to the resident magistrate of the district within which the parties shall have dwelt for not less than fourteen days, and shall state therein the name and surname (if any) and the condition and occupation or calling of each one of the parties intending marriage, the dwelling-place of each of them and the time, not being less than fourteen days, during which each has dwelt therein: Provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

Notice of intention to marry before magistrate.

2. If the parties intending marriage as in the last preceding section mentioned dwell in different districts of resident magistrate, then one of the said parties shall give

How, if parties live in different districts.

No. 16—1860.

the like notice to the resident magistrate of each of the two districts.

Notice to be filed.

3. Every resident magistrate receiving any such notice as aforesaid shall file and preserve the same in his office, and shall also forthwith enter a true and fair copy of every such notice in a book to be kept by him in his office for that purpose, and to be called "The Marriage Notice Book," which book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

"Marriage Notice Book" to be kept.

Notice to be affixed, and also to be read in open court.

4. Every resident magistrate receiving any such notice as aforesaid shall cause the same or a fair copy thereof to be affixed in some conspicuous place in or near his court-house or his office, and shall at the next ensuing court of resident magistrate held at the stated and ordinary place for holding such court read the same in open court, and the said notice shall be so read at not less than two other courts so held as aforesaid: Provided that not less than three clear days shall elapse between each of the respective courts in which such notice shall be read, and provided that such notice shall be read as aforesaid three times within twenty-one clear days next after the receipt of such notice.

Objections to intended marriages, how to be made.

5. Any person knowing any lawful impediment to the marriage of the persons named in any such notice as aforesaid may at any time during the twenty-one days aforesaid, by any writing under his hand addressed to the resident magistrate and bearing the true name and place of abode of the person who shall have subscribed the same, lodge an objection to such marriage, stating the ground of such objection.

Such objection may be made on the ground of a previous marriage according to Mohammedan custom.

6. It shall be competent for any woman to whom the man named in any such notice shall have been married according to the Mohammedan customs and usages, at any time before the taking effect of this Act, to lodge upon that ground an objection to the intended marriage.

Intended marriage on the part of minors may be forbidden by their guardians.

7. Any person whose consent is required by law to the marriage of any person under the age of twenty-one years named in any such notice as aforesaid as one of the parties intending marriage may, by any such writing as is in the fifth clause of this schedule mentioned, forbid such marriage.

After due notice, marriage may be solemnized.

8. After the expiration of the twenty-one clear days aforesaid, then, in case no objection shall have been lodged, it shall be lawful for the parties to contract marriage in the court-room or in the office of such resident magistrate, between the hours of nine and twelve in the forenoon, with open doors and in the presence of such magistrate and of two or more credible witnesses: or in case such resident magistrate shall think fit, at any dwelling-house within his district, and at any convenient hour of the day, in the presence of such witnesses as aforesaid: Provided that as

How, if notice of in-

often as any notice of an intended marriage shall have been published in more districts than one, neither of the resident magistrates shall permit the marriage in such notice mentioned to be so contracted until it shall have been certified to him by the other magistrate that no objection has been lodged; and provided that it shall be lawful for the resident magistrate to put to both or either of the parties intending marriage all such questions as to him shall appear necessary for determining whether there be or be not any lawful impediment to such marriage, and to refuse to permit such marriage to take place unless satisfactory answers shall be given.

No. 16—1860.

tended marriage has been published in more districts than one.

Unless satisfactory answers to certain questions are given, marriage need not be permitted.

9. As often as any marriage shall be contracted in manner and form as in the last preceding section mentioned, each of the parties shall, in the presence of the magistrate and bystanders, declare as follows: "I do solemnly declare that I do not know of any lawful impediment why I, A.B., may not be joined in matrimony to C.D.," and each of the parties shall say to the other, "I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband);" or the said parties may, with leave of the magistrate, in lieu and stead of the said forms, declare as follows: "I, A.B., do take thee, C.D., to be my lawful wife (or husband):" Provided that the words to be so spoken as aforesaid may, when the parties or either of them shall be wholly or partially ignorant of the English language, be spoken in the Dutch language, or in any other language capable of being understood by the witnesses aforesaid.

Declaration to be made by parties.

10. A register of every such marriage so solemnized and contracted in the presence of any resident magistrate and witnesses shall be filled up by such magistrate, and shall be signed by him and by the parties married, and shall be attested by two witnesses, and shall be in the form marked No. 2 to this schedule annexed.

Register of marriage to be signed and attested.

11. After any marriage shall have been contracted in manner and form as in the eighth clause of this schedule mentioned, it shall not be necessary in support of such marriage, or in any action, suit, or proceeding in which the same may come into question, to give any proof of the actual residence of the parties married or of either of them before the marriage; nor that the notice of such marriage was duly or at all affixed or read; nor that such marriage was solemnized in the place or within the hours by this Act prescribed; nor shall any evidence be received to prove the contrary.

Evidence of certain matters not required in suits regarding validity of marriages.

12. As soon as may be after any such marriage as last aforesaid shall have been solemnized, the resident magistrate shall cause such register to be copied into a book, to

'Marriage Record book' to be kept.

No. 16—1860.

Register of every marriage to be sent to Colonial Secretary.

be kept for the purpose, and to be called "The Marriage Record Book," and shall, not later than one month after the solemnization of such marriage, transmit the said register to the Colonial Secretary aforesaid, and all such registers shall be preserved like and be as evidence of the same force as the duplicate original registers of marriage mentioned in the twenty-first section of the Order in Council of the 7th September, 1838.

Marriage cannot be solemnized after the lapse of three months from expiration of notice.

13. Whenever any such marriage as aforesaid shall not be solemnized within three calendar months after the expiration of the twenty-one days aforesaid, then the notice aforesaid and all proceedings under it shall be totally void; and in case of the desire of the parties to contract such marriage after such three months, fresh notice shall be necessary, precisely as if no former notice had been given.

Objections to intended marriage to be referred to matrimonial court.

14. As often as any objection to any marriage shall be lodged as aforesaid with any resident magistrate, such magistrate shall refer the same to the matrimonial court of his district for consideration.

Matrimonial court may summon and swear witnesses.

15. It shall be lawful for any matrimonial court to which any such objection shall be referred, to summon before it any person capable, or supposed to be capable, of giving information relative to any fact involved in such objection and in dispute between the parties, and to examine such person upon oath, which oath the presiding member of such court is hereby authorized to administer.

Form of process, and how to be served.

16. The process of the matrimonial court for summoning any witness to appear to give evidence before it shall be, *mutatis mutandis*, the same as the process of the court of resident magistrate for summoning witnesses in civil cases, and shall be served in the same manner, and have the same effect, and the fifty-second section of the Act No. 20, 1856, entitled "An Act to amend and consolidate the law relative to Courts of Resident Magistrates," shall apply to witnesses resident beyond the district of such matrimonial court, precisely as if such court were the court of resident magistrate for such district.

Opinion of counsel on questions of law.

17. As often as any question of law which the matrimonial court shall not feel itself competent to decide shall arise in regard to any such objection it shall be lawful for such matrimonial court to state a case for the opinion of counsel, and to require such of the parties to the matter in controversy, as such court shall think fit, to obtain the opinion of counsel upon such case, and to lay such opinion before such court at some future meeting thereof: Provided that as often as the parties are in poor and indigent circumstances, Her Majesty's Attorney-General for the Colony shall give his opinion upon all such cases free of charge.

Attorney-General to give free advice in certain cases.

Proceedings of court

18. In case any objection to any marriage shall be lodged

as aforesaid by any woman to whom the man who is desirous of having such marriage registered or solemnized had previously and before the taking effect of this Act been married according to Mohammedan customs and usages, the matrimonial court, in considering and deciding upon such objection, shall have regard to the conduct and character of such woman since such Mohammedan marriage took place, and unless such court shall be of opinion, upon proof made by the man, that the character and conduct of such woman since such marriage have been such that, had such marriage been in law a valid marriage, the man would have been entitled to claim from any competent court either a dissolution of such marriage or a separation from bed and board, the matrimonial court shall allow such objection, and thereupon such marriage shall not take place. And as often as any such last-mentioned objection shall be allowed, no future application by the same man for the registration or solemnization of any marriage (not being his marriage with the objecting party herself) shall, during the life of such objecting party, be capable of being entertained, except upon proof by the man that the objecting party had, since the decision come to upon her said objection, being guilty of what, had they been in law married people, would have been adultery.

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when an objection is lodged on the ground of a previous Mohammedan marriage.

How, if objection be allowed.

19. It shall be competent for the matrimonial court to award against such of the parties to any objection as such court shall deem just and fitting the reasonable costs (if any) of the other parties to such objection, or any of them; and such costs, when certified by the matrimonial court to the court of resident magistrate of the same district, shall be recovered by process of such last-mentioned court, precisely as if such costs had been costs awarded by such last-mentioned court in a civil case therein pending.

Court may award costs.

20. Any person feeling himself aggrieved by the decision of any matrimonial court upon any such objection may apply by petition to the Supreme Court in Chamber, or to any judge of such court or Circuit Court, stating the alleged grievance, and praying relief: Provided that notice in writing of the intention to present such petition shall be given to the resident magistrate of the district in and for which such matrimonial court exercises its functions, not later than seven days next after the day upon which the decision of the matrimonial court objected to shall have been given.

Appeal from matrimonial court.

21. It shall be lawful for the court or judge which shall receive any such petition to cause notice of such petition to be given by the party petitioning to such other persons as such court or judge shall think fit, and to inquire into the matter thereof, and to call upon the matrimonial court

Judge or court to whom appeal is made may direct summary inquiry into the case.

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whose decision is objected to for such explanations or information as such court or judge shall think necessary; and if need be, such court or judge shall take further evidence, and in the most summary, effectual, and inexpensive manner determine the matter in controversy; and may make such order as to the costs of, or consequent upon, such petition, as such court or judge shall think fit.

Pleadings may be filed and questions at law argued by counsel.

22. The court or judge aforesaid may, if need be, direct the parties concerned in the matter of any such petition to file pleadings, or may direct any question of law arising in any such case to be argued by counsel: Provided that if the parties to any such objection or any of them be in poor and indigent circumstances, the said court or judge shall assign them or him an attorney and advocate, who shall act free of charge.

How, if decision of matrimonial court is set aside.

23. If the said court or judge shall disallow any objection which the matrimonial court shall have allowed, then the marriage which was objected to shall be proceeded with as if such objection had not been made; and if such court or judge shall allow any objection which the matrimonial court shall have disallowed, then the registration or solemnization objected to shall not take place.

If objection be disallowed by matrimonial court, marriage not to take place within seven days from date of disallowance.

24. When any matrimonial court shall have disallowed any objection to any marriage, such marriage shall not take place before the time at which it might have taken place in case no objection had been lodged, nor then, unless or until seven days shall have elapsed since the day upon which the decision of the matrimonial court disallowing the objection was given, in order to afford time for lodging notice of petition: Provided that the lodging of such notice shall be a stay of all proceedings touching such marriage pending the decision upon such petition.

Lodging of notice to stay all proceedings.

Persons lodging frivolous objections, liable to action for damages.

25. Any person who shall lodge an objection to any marriage, which objection shall be by the matrimonial court declared to be frivolous, shall be liable to an action for damages at the suit of the person whose marriage was objected to: Provided, however, that such person shall not recover any damages unless the court in which the suit shall have been instituted shall find the objection to have been frivolous.

Penalty for lodging unauthorized or fictitious notice or objections.

26. If any person shall transmit, or cause to be transmitted to any resident magistrate any writing purporting to be the notice of an intended marriage, or shall lodge or cause to be lodged with any resident magistrate an objection to any intended marriage purporting to be lodged by or on behalf of some person objecting to such marriage, such person not having any authority from the person or persons named in such notice or objection to transmit or lodge the same, but wantonly and mischievously intending



to subject the persons named in such notice or objection, or some of them, to ridicule or annoyance, shall, upon conviction, be liable to a fine not exceeding fifty pounds, or to imprisonment, with or without hard labour, for any period not exceeding three months, or to both such fine and such imprisonment.

27. Any person who shall transmit to any resident magistrate any notice of an intended marriage, or any objection to an intended marriage, containing any statement knowingly and wilfully false, shall, upon conviction, be liable to a fine not exceeding one hundred pounds, or to be imprisoned, with or without hard labour, for any period not exceeding twelve months, or to both such fine and such imprisonment.

Penalty for notices or objections wilfully false.

28. After any marriage shall have been contracted in manner and form as in the eighth clause of this schedule mentioned it shall not be necessary in support of such marriage, or in any action, suit, or proceeding in which the same may come in question, to give proof of the consent of any person whose consent to such marriage was required by law, nor shall any evidence be received to prove the contrary.

After solemnization of marriage no question to be raised as to consent of persons thereto.

FORM NO. I.—NOTICE OF MARRIAGE.

To the Resident Magistrate of ———

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described, that is to say :

Form of notice of marriage.

Name.	Condition.	Occupation or Calling.	Age.	Residence.	Length of Residence.
James Smith ...	Widower...	Shopkeeper	Full age	Bree-street, Cape Town	23 days.
Mary Jones ...	Spinster ...	... ..	Minor ...	Wynberg ...	More than a month.

Witness my hand this ——— day of ——— 18—.

(Signed) JAMES SMITH.

## FORM NO. 2,—MARRIAGE REGISTER.

No. 16—1860.

Form of register.

No.	When Married.	Name.	Condition.	Occupation or Calling.	Age.	Residence.	Consent—By whom given, or by Judge's Order.
1	1859 Aug. 1	Jas. Smith	Widower	Shopkeeper	Full age	Bree-street, Cape Town	
"	"	Mary Jones	Spinster	... ..	Minor ...	Wynberg ..	Thos. Jones

(Signed) JAMES SMITH, { Witnesses to the } A.B.  
 MARY JONES, { Marriage } C.B.  
 THOMAS JONES.

I, the undersigned, do hereby certify that the above marriage was contracted by the parties thereto, on the \_\_\_\_\_ day of \_\_\_\_\_ 18—, in my presence, and in the presence of the persons who have signed their names as witnesses, under and by virtue of the Marriage Act, 1860.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

(Signed) J. M. H.,

Resident Magistrate.

No. 17—1860.] AN ACT [July 17, 1860.

To Provide for the Granting, in this Colony, of  
 Patents for Inventions.

Preamble.

WHEREAS it is expedient that the making of new and useful inventions should be encouraged by securing to their inventors for a limited time the exclusive enjoyment thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Interpretation terms.

I. In the interpretation of this Act the term "invention" shall bear and have the same meaning as the term "invention" bears and has in the Act of the Imperial Parliament, the fifteenth and sixteenth of Her Majesty, chapter 83, and term "letters patent" shall mean authorizations granted by the Governor under the public seal of the Colony, and

the term “proceeding in the nature of a *scire facias*” shall mean as much as may be what the same term would mean if used in an Act of the Imperial Parliament.

II. It shall be lawful to make and issue, in the manner hereinafter mentioned, letters patent granting to the true and first inventor of any invention the privilege of the sole and exclusive working, making, and enjoyment of such invention within this Colony, for any term not exceeding fourteen years from the date of such letters patent.

Power to grant patents.

III. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to make such rules and regulations, not inconsistent with the provisions hereof, as may appear to be necessary and expedient for the purposes of this Act, and all such rules and regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament.

Governor to make rules for executing this Act.

IV. All applications under this Act for the grant of letters patent for an invention shall be made as follows, that is to say, the applicant shall deposit at the office of the Colonial Secretary an instrument in writing under his hand, particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, and also a copy of such instrument, and of the drawings accompanying the same, if any; and the day of the deposit of every such specification shall be recorded at the said office and endorsed upon such specification, and a certificate thereof given to such applicant or his agent; and thereupon, subject and without prejudice to the provisions hereinafter contained, the said invention shall be protected under this Act for the term of six months next after the said deposit, and the applicant shall have during such term the like powers, rights, and privileges as might have been conferred on him by letters patent for such invention issued under this Act, and duly sealed as of the day of such deposit, and during the continuance of such powers, rights, and privileges

Applicants for patents to deposit specifications.

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under this provision such invention may be used and published without prejudice to any letters patent to be granted for the same; and where letters patent are granted in respect of such invention, such letters patent shall be conditioned to become void if such specification does not particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed: Provided, always, that in case the title of the invention or the said specification be too large or insufficient, it shall be lawful for the Attorney-General hereinafter mentioned, during the said term of six months and before the grant of the letters patent, to allow or require such specification to be amended, or another and sufficient specification to be deposited in lieu thereof; and every such amended or new specification shall have the same force, effect, and operation as if it had been originally deposited in its amended state.

Specification may be amended before issue of patent.

Patent of true inventor not to be effected by specification of pretended inventor.

V. In case of the deposit of any such specification as aforesaid in fraud of the true and first inventor, any letters patent granted to the true and first inventor of any such invention shall not be invalidated by reason of such deposit, or of any use or publication of the invention subsequent to such deposit and before the expiration of the said term of protection.

Mode of proceeding after deposit of specification.

VI. The applicant, so soon as he shall think fit after the deposit of such specification as aforesaid, and of the drawings and models accompanying the same, if any, may give notice in writing at the office of the Attorney-General of his intention to proceed with his application for letters patent for the said invention, stating in such notice the title of the said invention, and the day on which the specification thereof was deposited at the office of the Colonial Secretary, and at the time of giving such notice shall produce the said certificate of deposit; and thereupon the said Attorney-General shall deliver to the applicant or his agent an appointment in the form contained in the second schedule to this Act, or to the like effect; and such applicant or agent shall cause the said appointment to be published once in the Government Gazette, once in some news-

paper published in the city of Cape Town, and twice in some newspaper published in the town or place at or near to which the applicant uses or exercises the said invention, or (in case he does not use or exercise the same) in or near to which he resides, or if there shall be no newspaper published in such town or place, then twice in some newspaper circulating in the neighbourhood where he uses or exercises the said invention, or (in case he does not use or exercise the same) where he resides; and any persons having an interest in opposing the grant of letters patent for said invention shall be at liberty to leave particulars in writing of their objections to the said application at the office of the Attorney-General within such time, not being less than one month, as the said Attorney-General by such appointment may direct.

VII. At the time and place named in the said appointment the applicant shall produce the newspapers containing the same, and the Attorney-General shall thereupon hear and consider the said application, and all objections to the same mentioned in the said particulars, if any, and for that purpose shall obtain from the office of the Colonial Secretary the copy of the said specification, and of the drawings and models accompanying the same, if any, and may call to his aid such scientific or other person or persons as he may think fit, and may, by writing under his hand, order to be paid to such person or persons some remuneration for his or their attendance, and may also in like manner order that the costs of any hearing upon any objection or otherwise, in relation to the grant of such letters patent or the protection acquired by the applicant under this Act, shall be paid, and in and by such writing shall fix the amount of such remuneration or costs, and by or to whom the same respectively shall be paid; and every such order shall be in the form contained in the third schedule to this Act, or to the like effect, and may be made a rule of the Supreme Court: Provided, always, that the applicant, the objectors, and their respective witnesses and evidence shall be respectively heard, examined, and considered

Attorney-General to hear applications and objections, and award costs.

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Attorney - General  
may issue warrant for  
letters patent.

separately, and apart from and in the absence of the other and his witnesses and evidence.

VIII. The Attorney-General, after such hearing and consideration, may issue a warrant under his hand for the granting of letters patent for the said invention, and by such warrant shall direct the insertion in such letters patent of all such restrictions, conditions, and provisoes as he may deem usual and expedient in such grants, or necessary in pursuance of this Act, and the said warrant shall be the warrant for the making and sealing of letters patent under this Act, according to the tenor of the said warrant; and every such warrant shall be in the form contained in the fourth schedule to this Act, or to the like effect.

Letters patent may  
be repealed or with-  
held, and specifica-  
tions cancelled.

IX. A writ of the Supreme Court, in the nature of a writ of *scire facias* in England, shall lie for the repeal of any letters patent granted under this Act, and it shall be lawful for the Governor, with the advice aforesaid, to order such Attorney-General to withhold such warrant as aforesaid, or that any letters patent for the granting whereof he has issued a warrant shall not issue, or to order the insertion in any such letters patent of any restrictions, conditions, and provisoes in addition to or in substitution for any restrictions, conditions, or provisoes which would otherwise be inserted therein under this Act; and it shall also be lawful for the Governor, with the advice and consent aforesaid, to order any specification in respect of the invention described in which no letters patent may have been granted to be cancelled, and thereupon the protection obtained by the deposit of such specification shall cease.

Letters patent to be  
void on non-perform-  
ance of conditions.

X. All letters patent for inventions granted under this Act shall be in the form contained in the fifth schedule to this Act, or to the like effect, and be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine at the expiration of three years and seven years respectively from the date thereof, unless there be paid within the said three and seven years respectively the sum or sums of money in that behalf hereby required to be paid,

and the Colonial Secretary shall issue under his hand a certificate of such payment, and shall endorse a receipt for the same on the letters patent.

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XI. The Colonial Secretary, so soon after the receipt by him of the warrant aforesaid as required by the applicant, shall cause to be prepared letters patent for the invention according to the tenor of the said warrant; and it shall be lawful for the Governor, with the advice of the Executive Council, to cause letters patent to be sealed with the public seal of the Colony, and such letters patent shall be made applicable to the said Colony, and shall be valid and effectual as to the whole of the same; but, except as hereinafter mentioned, no letters patent shall issue on any warrant granted as aforesaid unless application be made to seal such letters patent within three months after the date of the said warrant, nor unless such letters patent be granted during the continuance of the protection conferred under this Act by reason of such deposit as aforesaid.

Letters patent to be issued within three months after warrant, and during the protection.

XII. Where the application to seal such letters patent has been made during the continuance of such protection as aforesaid, and the sealing of such letters patent has been delayed from accident and not from the neglect or wilful default of the applicant, then such letters patent may be sealed at such time, not being more than one month after the expiration of such protection as the Governor with the advice aforesaid, shall direct; and where the applicant for such letters patent dies during the continuance of such protection as aforesaid, such letters patent may be granted to the executors, testamentary or dative, of such applicant during the continuance of such protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the term of such protection; and the letters patent so granted shall be of the like force and effect as if they had been granted to such applicant during the continuance of such protection; and in case any letters patent shall be destroyed or lost, other letters patent, of the like tenor and effect, and sealed and dated as of the same day, may, subject to

Letters patent may issue after that time, in certain cases.

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such regulations as the Governor, with the advice aforesaid, may direct, be issued under the authority of the warrant in pursuance of which the original letters patent were issued.

Letters patent to bear date of deposit of specification.

XIII. All letters patent to be issued in pursuance of this Act shall be sealed and bear date as of the day of the deposit of such specification as aforesaid, and shall be of the same force and validity as if they had been sealed on the day as of which the same are expressed to be sealed and bear date; and after any letters patent shall have been granted or issued under this Act it shall not be necessary or admissible to inquire or ascertain whether such appointment as aforesaid has or has not been delivered and published in the manner hereinbefore mentioned and directed.

Letters patent for foreign inventions not to continue after expiration of foreign patent.

XIV. Where, upon any application made under this Act, letters patent are granted for or in respect of any invention first invented in parts out of the Colony of the Cape of Good Hope, and a patent or like privilege for the monopoly or exclusive use or exercise of such invention in any parts out of the Cape of Good Hope is obtained before the grant of such letters patent in the Cape of Good Hope, all rights and privileges under such letters patent shall, notwithstanding any term in such letters patent limited, cease and be void immediately upon the expiration or other determination of the term during which the patent or like privilege obtained in such part out of the Cape of Good Hope shall continue in force, or where more than one such patent or like privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges: Provided, always, that no letters patent for or in respect of any invention for which any such patent or like privilege as aforesaid shall have been obtained abroad, granted in the Cape of Good Hope after the expiration or determination of the term for which such patent or privilege was granted or was in force, shall be of any validity.

Letters patent not to prevent the use of inventions in foreign ships resorting to ports in the Colony.

XV. No letters patent for any invention, granted after the passing of this Act, shall extend to prevent the use of such invention in any foreign ship or



vessel, or for the navigation of any foreign ship or vessel which may be in any port of the Cape of Good Hope, in case such invention is not so used for the manufacture of any goods or commodities to be vended within or exported from the same.

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XVI. Every specification deposited at the office of the Colonial Secretary as aforesaid, and the drawings and models accompanying the same, if any, shall forthwith, after the grant of the letters patent, or if no letters patent be granted, then immediately on the expiration of six months from the time of such deposit, be transferred to and kept in such office as the Governor, with the advice aforesaid, shall from time to time appoint for that purpose.

Specification to be filed in office appointed by Governor, after issue of patent or expiring of protection.

XVII. Any person who shall obtain letters patent under this Act, or in case such person shall depart with the whole or any part of his interest by assignment, such person, together with the assignee (if part only hath been assigned), or the assignee alone (if the whole hath been assigned), may apply to the Attorney-General for leave to enter a disclaimer of any part of either the title of the invention or of the specification, or a memorandum of any alteration in the said title or specification, not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent; and thereupon the Attorney-General shall deliver to such patentee and assignee, or either of them, or to their or either of their agents, an appointment in the form contained in the sixth schedule to this Act, or to the like effect, and such patentee or assignee shall thereupon cause such disclaimer (stating the reason for the same), or such memorandum of alteration to be written at the foot of such appointment, and shall cause the same respectively to be published in the manner hereinbefore required, with respect to the said first mentioned appointment, and any person having an interest in opposing the said application shall be at liberty to leave particulars, in writing, of their objections to the same, at the office of the Attorney-General, within such time, not being less than one month, as the said Attorney-General by such appointment may direct: Provided, always, that where

Notice of application to disclaim or make alterations

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such application as aforesaid shall be for leave to enter a disclaimer of any part of the title of the said invention, or a memorandum of any alteration in such title, the Attorney-General may dispense with such appointment and publication, and in that case shall certify in the fiat hereinafter mentioned that he has dispensed with the same.

Application for disclaimer to be heard.

XVIII. At the time and place named in such appointment, the said patentee and assignee, or one of them, shall produce the newspapers containing the same, and the said disclaimer or memorandum of alteration at the foot thereof; and the Attorney-General shall thereupon hear and consider the said application and all objections to the same mentioned in the said particulars, if any, and all such power and authority shall and may be exercised on such occasion by the Attorney-General, as by virtue of the provisions hereinbefore contained can and may be exercised in relation to the hearing and considering an application for letters patent and objections to the same, and shall and may be enforced in the same manner.

How disclaimer may be entered, and alterations made.

XIX. After such hearing and consideration, or without such hearing and consideration where the said appointment and publication shall have been dispensed with as aforesaid, such patentee and assignee, or either of them, may by leave of the Attorney-General, to be certified by a fiat under his hand (to be written at the foot of the same parchment with the said disclaimer or memorandum), enter such disclaimer stating the reason for the same, or such memorandum of alteration; and at the time of entering such disclaimer or memorandum of alteration shall deposit a copy thereof in the office next hereinafter mentioned, and such disclaimer or memorandum of alteration being filed in such office as the Governor, with the advice aforesaid, shall from time to time appoint for that purpose, shall be deemed and taken to be part of such letters patent or such specification, and subject to the several incidents thereof in all colonial courts, and shall be valid and effectual in favour of any person in whom the rights under the said letters patent may then

be, or hereafter become legally invested; and no objection shall be allowed to be made in any proceeding upon or touching such letters patent, specification, disclaimer, or memorandum of alteration, on the ground that the person entering such disclaimer or memorandum of alteration had not sufficient authority in that behalf: Provided, always, that no action shall be brought upon any letters patent in which or on the specification of which any disclaimer or memorandum of alteration shall have been filed in respect of any infringement committed prior to the filing of such disclaimer or memorandum of alteration (unless the Attorney-General shall certify in his said fiat that any such action may be brought, notwithstanding the entry or filing of such disclaimer or memorandum of alteration); and no such disclaimer or alteration shall be receivable as evidence in any action or suit (save and except in any proceeding as aforesaid in the nature of a *scire facias*) pending at the time when such disclaimer or alteration was filed as aforesaid; but in every such last-mentioned action or suit, the original title and specification alone shall be given in evidence, and be deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: Provided, also, that when any such fiat shall have been granted or issued under this Act, it shall not be necessary or material to inquire or ascertain whether such appointment as last aforesaid has or has not been delivered and published or dispensed with in accordance with this Act; and such filing of any disclaimer or memorandum of alteration in pursuance of the leave of the Attorney-General, certified as aforesaid, shall, except in cases of fraud, be conclusive as to the right of the party to enter such disclaimer or memorandum of alteration under this Act.

XX. The copies of all specifications, and the drawings and models accompanying the same, if any, and of all disclaimers and memoranda of alterations, respectively deposited under or in pursuance of this Act, shall be open to the inspection of the

Copies of specification, disclaimers, &c., to be open for inspection.

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public at all reasonable times after the grant of letters patent, or if no letters patent be granted, then immediately on the expiration of six months from the time of such deposit, but subject to such regulations as the Governor, with the advice aforesaid, may make in that behalf.

Mode of obtaining extension of the term.

XXI. If any person having obtained letters patent under this Act, or in case such person shall have departed with his whole or any part of his interest by assignment, if such person together with the assignee (where part only hath been assigned), or if the assignee alone (where the whole hath been assigned), shall, six months before the expiration or other termination of such letters patent, present to the Governor a petition for the extension of the term in such letters patent mentioned, and shall set forth in such petition that he or they has or have been unable to obtain a due remuneration for his or their expense or labour in perfecting such invention, and that an exclusive right of using and vending the same for some further period, to be named in such petition, in addition to the said term, is necessary for his or their reimbursement and remuneration, it shall be lawful for the Governor, with the advice aforesaid, to refer the consideration of the said petition to commissioners to be appointed for that purpose in the manner hereinafter mentioned.

Mode of obtaining confirmation of invalid patent.

XXII. If in any suit or action it shall be proved or specially found by the verdict of a jury that any person who shall have obtained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person having invented or used the same or some part thereof, before the date of such letters patent, or if such patentee or his assigns shall discover that some other person had, unknown to such patentee, invented or used the same or some part thereof before the date of such letters patent, such patentee or his assigns may petition the Governor to confirm the said letters patent or to grant new letters patent, and it shall be lawful for the Governor, with the advice aforesaid, to refer the consideration of the said petition

to commissioners to be appointed for that purpose in the manner hereinafter mentioned.

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XXIII. For the purpose of considering any such petition as aforesaid, it shall be lawful for the Governor, if, with the advice aforesaid, he shall think fit, to issue and direct, in the name of Her Majesty, her heirs or successors, to five or more persons, of whom some of the judges of the Supreme Court shall be two, a commission reciting such petition, and requiring and authorizing such persons or any three of them, of whom one of the said judges shall be one, to meet at some time, not being less than two months from the publication of the said commission in the Government Gazette, and at some place to be respectively fixed in the said commission, and then and there to consider the said petition, and to report to the Governor, in case such petitioner shall have prayed for an extension of the term in the letters patent mentioned, whether any, and if any, what further extension of the said term should be granted, according to the prayer of the said petition, and upon what, if any, conditions, or, in case such petitioner shall have prayed for a confirmation of the letters patent or for a grant of new letters patent, whether such confirmation or grant should be made.

Governor to appoint commissioners.

XXIV. Two months at least before the time named in the said commission for the consideration of any such petition as aforesaid, the petitioner shall cause to be published in the same manner as is hereinbefore required with respect to the said first-mentioned appointment an advertisement of the contents of the said commission in the form contained in the seventh schedule to this Act, or to the like effect; and any person having an interest in opposing the said petition shall be at liberty to enter a caveat against the same at the office of the Colonial Secretary at any time, not being less than one week before the time named in the said commission for the execution thereof.

Notice of commission to be published, and caveats entered.

XXV. At the time and place fixed in the said commission for that purpose, the commissioners shall meet and proceed to consider such petition, and the petitioner shall be heard by his counsel and witnesses,

Commissioners to hear all parties, and report.

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to prove his case as stated in such petition, and the publication of the said last-mentioned advertisement as required by this Act; and the persons entering caveats shall likewise be heard by their counsel and witnesses; and all such witnesses shall be examined upon oath or affirmation, which oath or affirmation such commissioners as aforesaid are hereby authorized and required to administer, and thereupon, and upon hearing and inquiry of the whole matter, in case such petitioner shall have prayed for an extension as aforesaid, the said commissioners may report whether any, and, if any, what further extension of the said term should be granted; and the Governor is hereby authorized and empowered, if he, with the advice aforesaid, shall think fit to grant to the petitioner new letters patent for the said invention, for a term not exceeding fourteen years after the expiration of the first term, anything hereinbefore contained to the contrary thereof in any wise notwithstanding; and such new letters patent shall be sealed and bear date as of the day after the expiration of the term of the first letters patent; or in case such petitioner shall have prayed for a confirmation or grant as aforesaid, such commissioners, upon examining the said matter, and being satisfied that such patentee as aforesaid believed himself to be the first and original inventor, and being satisfied that such invention or part thereof had not been publicly and generally used before the date of such first letters patent, may report to the Governor their opinion that the prayer of such petition ought to be complied with, whereupon the Governor may, if he, with the advice aforesaid, shall think fit, grant such prayer; and the said letters patent shall be available at law and in equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, anything hereinbefore contained to the contrary thereof notwithstanding: Provided that any person, party to any former action or suit touching such first letters patent as last aforesaid, shall be entitled to have notice in writing of the time and place fixed as aforesaid for the first meeting of the said commissioners to consider the said petition, and after

any such report shall have been made, it shall not be material to inquire or ascertain whether any such advertisement as last aforesaid has or has not been published, or whether any such notice as last aforesaid has or has not been given in the manner hereinbefore directed in that behalf.

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XXVI. The Governor, with the advice aforesaid, may cause indexes to all specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter enrolled or deposited as aforesaid to be prepared in such form as may be thought fit; and such indexes shall be open to the inspection of the public at such places as the Governor, with the advice aforesaid, shall appoint, and subject to the regulations to be made as hereinbefore provided.

Indexes to specifications, disclaimers, &c.

XXVII. There shall be kept at the office to be appointed as aforesaid, a book or books to be called "The Register of Patents," wherein shall be entered and recorded in chronological order all letters patent granted under this Act, the deposit and filing of specifications, disclaimers, and memoranda of alterations, filed in respect of such letters patent, all amendments in such letters patent and specifications, all confirmations and extensions of such letters patent, the expiry, determination, vacating, or cancelling such letters patent, with the dates thereof respectively, and all other matters and things affecting the validity of such letters patent as the Governor, with the advice aforesaid, may direct; and such register or a copy thereof shall be open at all convenient times to the inspection of the public, subject to such regulations as the Governor, with the advice aforesaid, may make in that behalf.

Register of patents to be kept.

XXVIII. There shall be kept at the same office a book or books entitled "The Register of Proprietors," wherein shall be entered in such manner as the Governor, with the advice aforesaid, shall direct, the assignment of any letters patent or of any share or interest therein, any licence under letters patent and the district to which such licence relates, with the name or names of any person having any share or interest in such letters patent or licence, the date of his or their acquiring such letters patent, share,

Register of proprietors to be kept.

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and interest, and any other matter or thing relating to or affecting the proprietorship in such letters patent or licence; and a copy of any entry in such book, certified as hereinafter mentioned, shall be given to any person requiring the same, and shall be *prima facie* proof of the assignment of such letters patent, or share or interest therein, or of the licence or proprietorship as therein expressed: Provided, always, that until such entry shall have been made, the grantee or grantees of the letters patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such letters patent, and of all the licences and privileges thereby given and granted, and such register, or a copy, shall be open to public inspection subject to such regulations as the Governor, with the advice aforesaid, may make.

Falsification or forgery of entries.

XXIX. If any person shall wilfully make or cause to be made any false entry in the said register, or shall wilfully make or forge or cause to be made or forged any writing falsely purporting to be a copy of any entry in the said book or shall produce or tender or cause or suffer to be produced or tendered in evidence any such writing knowing the same to be false or forged, he shall be guilty of the crime of contravening this section of this Act, and shall upon conviction be liable to imprisonment, with or without hard labour, for any period not exceeding five years.

Entry may be expunged, or varied, by order of Supreme Court.

XXX. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said register, it shall be lawful for such person to apply by motion to the Supreme Court for an order that such entry may be expunged, vacated, or varied; and upon any such application such court may make such order for expunging, vacating, or varying such entry, and as to the costs of such application as to such court may seem fit; and the officer having the care and custody of such register, on the production to him of any such order, shall expunge, vacate, or vary the said entry according to such order.

Penalty for unauthorized use of word "patent."

XXXI. If any person shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark



upon anything made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making or vending of such thing, without leave in writing of such patentee or his assigns; or if any person shall, upon such thing not having been purchased from the patentee, or some person who purchased it from or under such patentee, or not having had the licence or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word "patent," the words "letters patent," or the words "by the Queen's patent," or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee, he shall for every such offence forfeit and pay the sum of one hundred pounds, one half to Her Majesty, her heirs and successors, and the other half, with full costs of suit, to any person who shall sue for the said penalty by action of debt: Provided, always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "patent" upon anything for the sole making or vending of which letters patent before obtained shall have expired or otherwise determined.

XXXII. In any action for the infringement of letters patent, the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant on pleading thereto shall deliver with his pleas, and the prosecutor in any proceedings in the nature of *scire facias* to repeal letters patent shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas in the said action, or of the suggestions of the said declaration respectively; and at the trial of such action or proceedings no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such letters patent which shall not be contained in the particulars de-

In actions for infringement, particulars of breaches and objections to be delivered.

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livered as aforesaid : Provided, always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent shall be stated in such particulars : Provided, also, that it shall and may be lawful for any judge at Chambers to allow such plaintiff, or defendant, or prosecutor respectively to amend the particulars delivered as aforesaid upon such terms as to such judge may seem fit : Provided, also, that at the trial of any proceeding to repeal letters patent the defendant shall be entitled to begin and give evidence in support of such letters patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters patent, the defendant shall be entitled to the reply.

Particulars to be regarded in taxing costs.

XXXIII. In taxing the costs in any action for infringing letters patent, regard shall be had to the particulars delivered in such action ; and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular, unless certified by the court before which the trial was had to have been proved by such plaintiff or defendant respectively ; and it shall be lawful for the court before which any such action shall be tried to certify on the record that the validity of the letters patent in the declaration mentioned came in question, and the record with such certificate being given in evidence in any suit or action for infringing the said letters patent, or in any proceeding in the nature of a *scire facias*, to repeal the letters patent, shall entitle the plaintiff in any such suit or action or the defendant in any such proceeding, on obtaining a decree or judgment, to his full costs, charges, and expenses, to be taxed as between attorney and client, unless the court making such judgment, decree, or order, shall certify that the plaintiff or defendant respectively ought not to have such full costs.

Fees on obtaining patents.

XXXIV. There shall be paid in respect of letters patent applied for or issued as herein mentioned, the depositing of specifications, disclaimers, and memoranda of alterations, warrants, certificates, entries, and searches, and other matters and things respectively mentioned in the last schedule to this

Act, such fees as are enumerated in that schedule; and such of the said fees as are thereby made payable to the Attorney-General, as well as the residue thereof, shall form part of the colonial revenue.

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XXXV. All letters patent which shall be granted in the United Kingdom of Great Britain and Ireland after the first day of July, in the year of Our Lord one thousand eight hundred and sixty, for any invention, shall, so far as the same relate to this said Colony, be utterly void and of none effect, and in no wise be put in execution; but all such letters patent granted in the said United Kingdom on or before that day, and which if this Act had not been passed would have been valid in this Colony, shall be deemed and taken to have been granted under this Act, and may be dealt with accordingly.

English patents subject to this Act.

## SCHEDULES.

### FIRST SCHEDULE.

Schedule 1.

To all to whom these presents shall come: I, John Doe, of Cape Town, engineer, send greeting: Whereas I am desirous of obtaining letters patent for securing unto me Her Majesty's special licence that I, my executors and assigns, and such others as I or they should at any time agree with, and no others, should and lawfully might, from time to time and at all times during the term of fourteen years (to be computed from the day on which this instrument shall be left at the office of the Colonial Secretary), make, use, exercise, and vend, within the Colony of the Cape of Good Hope, an invention for [insert the title of the invention]; and in order to obtain the said letters patent, I must, by an instrument in writing under my hand, particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed, and must also enter into the covenant hereinafter contained: Now know ye that the nature of the said invention and the manner in which the same is to be performed are particularly described and ascertained in and by the following statement, that is to say [describe the invention]. And I do hereby, for myself, and heirs and executors, covenant with Her Majesty, her heirs and successors, that I believe the said invention to be a new invention as to the public use and exercise thereof, and that I do not know or believe that any person other than myself is the true and first inventor of the said invention, and that I will not deposit

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these presents at the office of the Colonial Secretary with any such knowledge or belief as last aforesaid. In witness whereof I have hereunto set my hand at Cape Town, this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

Schedule 2.

## SECOND SCHEDULE.

Patent for [insert the title as in the specification].

This is to notify that John Doe, of &c., did on the \_\_\_\_\_ day of \_\_\_\_\_ instant [or last] deposit at the office of the Colonial Secretary, in Cape Town, a specification or instrument in writing under his hand, particularly describing and ascertaining the nature of the said invention and in what manner the same is to be performed, and that by reason of such deposit the said invention is protected and secured to him exclusively for the term of six calendar months thence next ensuing. And I do further notify that the said John Doe has given notice in writing, at my office, of his intention to proceed with his application for letters patent for the said invention, and that I have appointed [Thursday] the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at my office, to hear and consider the said application and all objections thereto; and I do hereby require all persons having an interest in opposing the grant of such letters patent to leave, before that day, at my office in Cape Town, particulars in writing of their objections to the said application; otherwise they will be precluded from urging the same.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 18—.

W. P., Attorney-General.

Schedule 3.

## THIRD SCHEDULE.

Upon hearing the objection of A. B. to the grant to John Doe of letters patent for [insert the title as in the specification], I do by this writing under my hand order that the said A. B. shall pay to the said John Doe the sum of \_\_\_\_\_ for the costs of such hearing [or to E. F. the sum of \_\_\_\_\_ as a remuneration for his attendance at such hearing].

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

W. P., Attorney-General.

Schedule 4.

## FOURTH SCHEDULE.

I have heard and considered the application of John Doe for letters patent for [insert the title as in the specification], and also all objections to the same; and, having perused the specification and the usual and necessary advertise-

ments, am of opinion that, as it is entirely at the hazard of the said applicant whether the said invention is new and will have the desired success, Her Majesty's royal letters patent may be issued in the form contained in the fifth schedule to the Act [with the following additional clauses, that is to say: here set them out, if any].

Given under my hand, this — day of —, 18—.

W. P., Attorney-General.

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FIFTH SCHEDULE.

Schedule 5.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all to whom these presents shall come, greeting: Whereas John Doe, of ———, in the division of ———, engineer, hath represented that he is desirous of obtaining our royal letters patent for securing unto him our special licence that he, his executors and assigns, and such others as he or they should agree with, and no others, should and lawfully might make, use, vend, and exercise within our Colony of the Cape of Good Hope, an invention for [insert the title of the invention], and by an instrument in writing under his hand, deposited in the office of the Colonial Secretary, the said John Doe hath particularly described and ascertained the nature of the said invention and in what manner the same is to be performed: And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to confer upon the said John Doe the privileges hereinafter mentioned: Know ye, therefore, that we of our especial grace, certain knowledge, and mere motion have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said John Doe, his executors and assigns, our especial licence, full power, sole privilege and authority, that he, the said John Doe, his executors, administrators, and assigns, and every of them, by himself and themselves, or his and their deputy or deputies, servants or agents, or such others as he or they shall at any time agree with, and no others, during the term herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within our said Colony, in such manner as to him, his executors and assigns, or any of them, shall seem meet; and that he, his executors and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage from time to time coming, growing, accruing, and arising by reason of the said invention, during the said term: To have, hold, exercise, and enjoy the said licences, powers, privileges, and advantages, unto and by the said John Doe,

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his executors and assigns, for and during and unto the full end and term of ——— years now next ensuing. And to the end that he, his executors and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious intention, we do by these presents, for us, our heirs and successors, require and strictly command all and every person and persons, whatsoever, of what estate, quality, degree, name, or condition soever they be within our said Colony, that neither they or any of them, at any time during the said term, either directly or indirectly, do make, use, or put in practice the said invention, or any part of the same, so attained unto by the said John Doe as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, deviser or devisors thereof, without the consent, licence, or agreement of the said John Doe, his executors or assigns, in writing under his or their hands first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command; and, further, to be answerable to the said John Doe, his executors and assigns, according to law, for his and their damage thereby occasioned: Provided, always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall appear that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof, or that the said John Doe is not the first and true inventor thereof within this Colony, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided, also, that these our letters patent, or anything herein contained, shall not extend, or be construed to extend, to give privilege unto the said John Doe, his executors and assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised, unto whom our like letters patent or privileges have been already granted for the sole use and exercise and benefit thereof, within our said Colony; it being our will and pleasure that the said John Doe, his executors and assigns, and all and every person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions by them

invented and found out, according to the true intent and meaning of the same respecting letters patent, and of these presents: Provided, likewise, nevertheless, and these our letters patent are upon this express condition, that if the said instrument in writing does not particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed, and also, if the said John Doe, his executors or assigns, shall not pay at the office of the Colonial Secretary of our said Colony the sum of ——— pounds within three years next after the date of these presents, and the sum of ——— pounds within seven years next after such date, that then, and in any of the said cases, these our letters patent, and all liberties and advantages whatsoever hereby granted shall utterly cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted: And, lastly, we do by these presents, for us, our heirs and successors, grant unto the said John Doe, his executors and assigns, that these our letters patent shall be in and by all things good, firm, valid, sufficient, and effectual in the law, according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the said John Doe, his executors and assigns.

In witness whereof we have caused these our letters to be made patent, and to be sealed and bear date as of the ——— day of ———.

## SIXTH SCHEDULE.

Schedule 6.

Patent for [insert the title].

This is to notify to all whom it may concern that John Doe, of, &c., has applied to me for leave to enter a disclaimer of part [or memorandum of alteration, as the case may be] of the said invention, the particulars whereof are stated below; I do therefore appoint [Thursday] the ——— day of ——— next, at ——— o'clock in the ——— noon, to hear and consider the said application and all objections to the same. And I do hereby require all persons having an interest in opposing the said application to leave, before that day, at my office in Cape Town, particulars in writing of their objection to the same; otherwise they will be precluded from urging such objections.

Given under my hand this ——— day of ———

W. P., Attorney-General.

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The following is the disclaimer [or as the case may be] which I desire to make in, &c. [the applicant must here set forth what he wishes to enter; and sign it.]

Schedule 7.

## SEVENTH SCHEDULE.

Patent for [insert the title].

Notice is hereby given that I have presented a petition to His Excellency the Governor, praying for the confirmation of [or extension of the term in] the said patent, and that a commission has issued authorizing and requiring certain commissioners therein named to consider and report upon the subject to the said Governor, which said commissioners will meet for that purpose on the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_. All persons objecting to the said confirmation [or extension] must enter a caveat against the same at the office of the Colonial Secretary in Cape Town; otherwise they will be precluded from objecting to it.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

JOHN DOE.

Schedule 8.

## LAST SCHEDULE.

	£	s.	d.
On depositing specification ... ..	2	10	0
To the Attorney-General for any "appointment"	2	4	6
On obtaining letters patent ... ..	2	10	0
At or before the expiration of the third year ...	10	0	0
At or before the expiration of the seventh year	20	0	0
To the Attorney-General with particulars of objections ... ..	2	4	6
On presenting petition for extension or confirmation ... ..	2	10	0
Every search and inspection ... ..	0	1	0
Entry of assignment or licence ... ..	0	10	0
Certificate of assignment or licence ... ..	0	10	0
Filing memorandum of alteration or disclaimer	2	10	0
Entering any caveat ... ..	2	10	0
Copy or extract of any writing, per common law folio ... ..	0	1	0



No. 18—1860.] AN ACT [July 17, 1860. No. 18—1860.

For Amending the Act No. 4, 1858, Creating a Board of Public Examiners.

**WHEREAS** it is expedient, for the purpose of Preamble. extending the usefulness of the Board of Public Examiners, constituted by Act No. 4 of 1858, to give power to the Board to hold examinations elsewhere than in Cape Town: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The board shall have the power of appointing one of their number to be a commissioner, to preside at and conduct a public examination to be held once in each year at Port Elizabeth, in the Eastern Province of this Colony, as nearly as possible simultaneously with the annual session of the board held in Cape Town. Examinations may be held at Port Elizabeth by deputations from board.

II. The days and hours appointed for the various subjects of examination at Port Elizabeth shall be the same as those fixed for the like subjects of examination at the annual session in Cape Town. Such examination simultaneous with those held in Cape Town.

III. The examination papers, which shall be the papers prepared by the board for the like examinations proceeding at the same time in Cape Town, shall remain in the custody of the commissioner until submitted by him to the candidates: the answers of the candidates shall be carefully sealed up in the presence of the commissioner at the close of each sitting, and shall remain in his custody until presented by him to the board; and shall be considered by the board at the same time as the answers of the candidates examined before the board. Papers to be in custody of member deputed until returned to board.

IV. Candidates for the certificate of qualification for entry into the public service and for the certificate of proficiency in the theory of land-surveying, and no others, shall be allowed to appear before the commissioner at Port Elizabeth at the ensuing annual session; and the board shall have the power, should they deem fit, to allow candidates for the other certificates of the board likewise to appear Next annual examination to refer only to certificates for entering public service and land-surveying. Further examinations may be held for other certificates, under regulations to be approved by Governor.

No. 18—1860.

before the commissioner at future annual sessions, under such regulations as may be made by them in that behalf, and confirmed by his Excellency the Governor.

Deputed commissioner to hold preliminary examinations.

V. The commissioner shall, prior to the admission of candidates to examinations for certificates, conduct the preliminary examination ordinarily conducted by two commissioned members of the board, in all cases where the preliminary examination shall be required by the rules and regulations of the board.

No. 19—1860.] AN ACT [July 17, 1860.

For Regulating the Public Pound at Glen Grey, in the Tambookie Location in the Division of Queen's Town.

Preamble.

WHEREAS it is expedient, in reference to the peculiar circumstances of the Tambookie location in the division of Queen's Town, that all impoundable animals found trespassing within the said location should be sent to the public pound at Glen Grey, and not to any pound beyond the limits of the said location: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant part of Ordinance 16, 1847, repealed.

I. So much of the twenty-fifth section of the Ordinance No. 16, 1847, entitled "Ordinance for the better regulation of Pounds and the prevention of Trespasses," as shall be repugnant to or inconsistent with this Act is hereby repealed.

Cattle trespassing within the limits of location to be sent to Glen Grey pound. Penalty for contravening this section.

II. No horse, head of horned cattle, sheep, goat, or pig found trespassing upon any land or ground within the limits of the Tambookie location aforesaid, shall be sent to any pound other than the pound at Glen Grey, or at such other place within the said limits as the pound of or for the said location shall from time to time be placed at. Any person contravening this section shall, upon conviction, be liable to a penalty not exceeding ten

pounds, and in case of non-payment of the same forthwith, to imprisonment, with or without hard labour, for any term not exceeding one month.

No. 20—1860.

No. 20—1860.] AN ACT [July 17, 1860.

To Regulate, till the expiration of the Year 1861, the Dealing in Gunpowder, Firearms, and Lead.

**W**HEREAS the Act No. 5, 1859, entitled “An Preamble.  
Act to regulate, till the expiration of the year 1860, the dealing in Gunpowder, Firearms, and Lead,” will expire with the expiration of the last-mentioned year: And whereas it is expedient that the provisions of the Act No. 14, 1857, which was continued in force by the said Act No. 5, 1859, until the expiration of the year 1860, should be further continued, so as to remain in force till the 31st December, 1861: Be it enacted by 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. 14, 1857, entitled “An Act 14, 1857, continued to end of 1861.  
Act to regulate, until the expiration of the year 1858, the dealing in Gunpowder, Firearms, and Lead,” shall continue and be in force and operation from the expiration of the year 1860 till the expiration of the year 1861.

II. This Act shall commence and take effect at When this Act to commence.  
and upon the expiration of the Act aforesaid, No. 5, 1859, and not sooner.

III. Every offence against the Ordinance No. 2, Offence against this Act to be charged as contravention of original Ordinance.  
1853, as amended by the Act aforesaid, No. 14, 1857, committed after the commencement and taking effect of this Act, and before the 31st December, 1861, shall in any indictment relative thereto be charged as a contravention of the said Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, and 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. 21—1860.] AN ACT [July 17, 1860.

For Granting Compensation to certain Persons for the Loss of Lands in the former Military Villages of Auckland, Ely, Juannasberg, and Woburn; and for other purposes.

Preamble.

WHEREAS, in 1848, Lieutenant-General Sir H. G. W. Smith, G.C.B., &c., &c., &c., the then Governor of this Colony, established upon the eastern frontier the military villages of Auckland, Ely, Juannasberg, and Woburn, upon certain terms and conditions, in regard to erven and commonage, set forth in the General Order No. 129 of the 1st of January, 1848: And whereas, on Christmas-day, 1850, the said military villages were treacherously surprised by hordes of Kafirs, about fifty of the villagers slain, and the rest, with their wives and children, forced to fly for their lives: And whereas, upon the restoration of peace, it was deemed expedient by the then Governor of the Colony, the Honourable Sir George Cathcart, K.C.B., &c., &c., &c., upon grounds of public policy, to appropriate the lands which had formed the erven and commonage of the said military villages to other purposes, so that the surviving military settlers and the families of others of them who were killed as aforesaid were prevented from resuming occupation, and became claimants for compensation: And whereas, in the year 1854, there was granted by Parliament, for the relief of the military settlers in question, who were then in a destitute condition, a sum of two thousand eight hundred and seven pounds five shillings and four pence, which sum was granted without prejudice to their claims to compensation for the lands which they were as aforesaid prevented from resuming: And whereas, in order to ascertain what would be a fair and just compensation for the lands aforesaid, and who were fairly and justly entitled to claim such compensation, Frederick Carlisle, Esq., of Graham's Town, was, in the year 1858, appointed by the Governor of this Colony, His Excellency Sir George Grey, K.C.B., &c., &c., &c.,

a commissioner to inquire into and report such claims, which said commissioner did, on the 28th September, 1858, report upon the said claims: And whereas it is expedient to make provision for granting to surviving military settlers compensation for the lands aforesaid, as also for granting relief to the widows and children of certain of the settlers so slain as aforesaid, and to the mothers of two superintendents, Lieutenant Stacey and Mr. Phelps, also slain, and who died unmarried, and whose heirs did not receive any part of sum aforesaid of two thousand eight hundred and seven pounds five shillings and four pence: Be it enacted by the Governor of this Colony, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. It shall be lawful for the Governor aforesaid to pay or cause to be paid, to every person named in the schedule marked A, annexed to this Act, as the occupier of a twelve-acre lot in one of the military villages aforesaid, in compensation for such lot and for having been deprived of the use of the same since the time at which occupation might have been resumed, the sum of thirty-eight pounds sterling; and to every person named in the schedule marked B, as the occupier of a twenty-four acre lot, the sum of fifty pounds sterling.

Amount of compensation to be given to occupiers of twelve-acre and twenty-four-acre lots respectively.

II. It shall also be lawful for the Governor aforesaid to pay to every person in the said schedules named, over and above that one of the respective sums aforesaid to which such person may be entitled, such further sum as shall be the value of his share of or in the commonage attached to the village to which he belonged. And the value of such share shall be ascertained by dividing the number of acres constituting the commonage of each village by the number of lots comprised in such village, whether twelve-acre lots or twenty-four-acre lots, and by giving for each acre to which the settler shall thus appear to have been entitled the sum of twelve shillings.

Compensation for value of share in commonage. How such value to be ascertained.

III. In all the cases set forth in schedules A and B, annexed to this Act, in which the compensation

Conditions on which compensation shall be paid to executors of deceased settlers.

No. 21—1860.

shall be paid to the executor of any deceased military settler, such executor shall hold the money so received by him upon trust, as follows, that is to say :

1. If the deceased shall have left a widow and children who still survive, then one half of such money shall go and belong to the surviving widow and the other half to the surviving children, share and share alike.
2. If there be surviving children, but no surviving widow, then the whole of such money shall go and belong to such children, share and share alike.
3. If there be a surviving widow, but no surviving children, then the whole of such money shall go and belong to such widow.

Compensation to persons named in schedule C.

IV. It shall be lawful for the Governor to pay to any and each of the persons mentioned in the schedule marked C, annexed to this Act, or to the executor of such of the said persons as may have departed this life, the same amount payable by this Act to the persons named in the schedule marked A.

Creditors of deceased settlers to have no claim upon moneys granted as compensation.

V. No creditor of any deceased military settler killed on Christmas-day, 1850, or who afterwards, but before the first day of January, 1854, departed this life, shall be entitled to claim any part of the money received by such executor under this Act, which money shall, subject to the legal fees and charges of such executor, go as aforesaid to the widow and children or widow or children of such settler.

Compensation to the relatives of Lieut. Stacey and Mr. Phelps.

VI. In consideration of the circumstances connected with the death on the day aforesaid, by the hands of Kafirs, of Lieutenant Courtney Stacey, superintendent of the military village of Woburn, and of Mr. David Phelps, superintendent of the military village of Ely, and in consideration also that the representatives of those officers, who died childless and unmarried, received no part of the sum of two thousand eight hundred and seven pounds five shillings and four pence in the preamble to this Act mentioned; it shall be lawful for the Governor to pay to their mothers (their fathers being now dead) the sum of two hundred and fifty pounds respectively.

VII. Nothing in this Act contained shall be construed so as to deprive the Governor of the power of withholding under special circumstances, to be judged of by such Governor, from any person mentioned or referred to in any of the schedules to this Act, the whole or any part of the sum which the said Governor is, by this Act, authorized to pay; it being the true intent and meaning of this Act that the said Governor should have a discretionary power to withhold such payment in any case in which he shall discover that such person, though now believed to be entitled to such sum, is not in reality entitled to the same.

No. 21—1860.

Discretionary power of Governor to withhold payment in certain cases.

VIII. Nothing in this Act contained shall be deemed or taken to deprive any person whomsoever of the right to assert by legal process his claim to any higher or greater compensation than that provided by this Act: Provided that no action or suit claiming such compensation shall be commenced later than twelve months next after the commencement of this Act: And provided that no person who shall have received compensation under this Act shall be entitled to claim, at law, or otherwise, any further or other compensation or relief; and such compensation shall be in full of all demands.

This Act not to affect legal rights.

Compensation granted under this Act to be in full of all demands.

IX. There shall be laid before both Houses of Parliament, at the next session thereof, a detailed account of all moneys paid in pursuance of this Act.

Return of payments under this Act to be laid before Parliament.

SCHEDULE A.

Schedule A.

NO.	NAME.	VILLAGE.
1	Daniel McBrien	Ely
2	John Graham	Juannasberg
3	Joseph Taylor	Juannasberg
4	Executor of late James Johnstone	Juannasberg
5	James Marrin	Ely
6	Thomas Faircloth	Ely
7	Executor of late Michael Bourke	Ely
8	Joseph Duggan	Auckland
9	John Breen	Auckland
10	Thomas Woods	Auckland
11	William Fair	Ely
12	William Joiner	Auckland

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NO.	NAME.	VILLAGE.
13	William Balfour (otherwise Belford)	Ely
14	Executor of late Michael Finnigan	Ely
15	John Lakey	Ely
16	Charles Donoghue	Ely
17	James Nestor	Ely
18	William Bushell	Ely
19	Samuel Wilkinson	Auckland
20	Edward Cavanagh	Woburn
21	John Brown	Woburn
22	Executor of late Michael Gurrin	Ely
23	Executor of late George Paddock	Woburn
24	John Gleeson	Ely
25	William Nelson	Woburn
26	Owen Kelly	Ely
27	John Buyers	Juannasberg
28	Francis Jacobs	Ely
29	Edmond Baker	Woburn
30	John Baker	Woburn
31	John Hanning	Ely
32	Executor of late Charles Macrill	Auckland
33	Executor of late Alexander Thompson	Auckland
34	Executor of late Patrick Donnelly	Auckland
35	Executor of late William Walsh	Auckland
36	Executor of late Henry Drenman	Auckland
37	Executor of late William Clarke	Auckland
38	Executor of late George Rushmere	Ely
39	Executor of late Mathew Quinn	Auckland

Schedule B.

SCHEDULE B.

NO.	NAME.	VILLAGE.
1	James Snodgrass	Auckland
2	William McGregor	Ely
3	Hugh McAllister	Auckland
4	Executor of late Peter Gibson	Auckland
5	Executor of late Edward Maher, or Marr	Juannasberg

Schedule C.

SCHEDULE C.

NO.	NAME.	VILLAGE.
1	Cornelius Cox	Ely
2	William Mellowney	Juannasberg
3	Benjamin Mullins	Juannasberg
4	William Wright	Auckland
5	Patrick Rielly	Ely
6	Executor of late James McGarr	Ely
7	John Lawton	Woburn
8	John Jennings	Ely
9	Thomas Bannon	Ely
10	John Campbell	Woburn
11	Thomas Doherty	Ely
12	Executor of the late Robert McGorry	Auckland.



No. 22—1860.] AN ACT [July 17, 1860.

No. 22—1860.

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

WHEREAS, by the Act No. 6, 1855, which was Preamble. entitled as this Act, provision was made for enabling the Governor to appoint commissioners to inquire into and report upon all such claims for compensation for the loss of erven in the Kat River settlement as should be made to such commissioners, and for enabling the said Governor to pay such compensation as should be found to be due: And whereas the said Act, which was limited to continue in force for the space of twelve calendar months next after the promulgation thereof and no longer, expired on the eighth of June, 1856: And whereas, by reason of divers obstacles and impediments, no such commissioners as aforesaid were appointed during the continuance of the said Act: And whereas upon the eleventh of February, 1858, the said Governor, by an instrument under the public seal of the settlement, reciting that although the term or period for which the said Act No. 6, 1855, was limited to continue in force had expired, it was nevertheless expedient that the objects contemplated by the said Act should be carried out, did appoint Anthony Berrangé, Esquire, civil commissioner of Graaff-Reinet, Charles Haw, Esquire, then civil commissioner of Cradock, and Edward Philpott, Esquire, civil commissioner of Alexandria, to be commissioners for the purposes in the Act aforesaid mentioned: And whereas the said commissioners did, on the fifth of June, 1858, make their report to the said Governor, which report, together with its annexures, was presented to both Houses of Parliament during the session of 1859: And whereas it appears from the said report, with its annexures, and more especially from the annexure numbered 7, being an "Analysis of Claims and Reports," that certain of the claimants had received and possessed, by grants from the Crown, legal title to the land or

No. 22—1860.

erven in regard to which they claim compensation, whilst, in most cases, no actual grants had been issued to nor legal title vested in the respective claimants: And whereas the conditions which, under and by virtue of the regulations originally framed for the Kat River settlement were to be fulfilled by the occupiers of erven, as conditions precedent to the grant to them of legal title, have, in some cases, been fulfilled by claimants, who, however, have not yet received legal title, but, in other cases, have not been fulfilled: And whereas it is expedient, under all the circumstances of the case and of the said settlement, that the fulfilment of the said conditions should not be insisted on, but on the contrary, be waived in favour of all claimants still without legal title who were not engaged in the rebellion which in the latter end of the year 1850 broke out in certain portions of the Eastern frontier, but that no claimant who has not fulfilled the said conditions, and who was engaged in the said rebellion, should receive any compensation under this Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Governor may direct payment of certain claims for compensation.

I. It shall be lawful for the Governor (except as hereinafter is excepted) to authorize and direct payment to be made from and out of the Colonial Treasury to the respective persons named as claimants in the annexure aforesaid, numbered 7, entitled "Analysis of Claims and Reports:" Provided that no payment shall be made to any person named in such annexure opposite to whose name the words "forfeited for rebellion" are placed in the said annexure, unless the Governor shall be satisfied by evidence to be hereafter produced by such person that, in truth and in fact, he was not engaged in the rebellion: And provided that if it shall thereafter be proved to the satisfaction of the said Governor against any person named as a claimant in such annexure that he was engaged in such rebellion, though not stated in the said annexure to have been so engaged, no payment shall be made to such

person or to any person claiming from or under him.

No. 22—1860.

II. As often as compensation shall be payable under this Act, it shall be paid in conformity with the valuation set forth in the said annexure No. 7 to the commissioners' report.

Value of claim to be regulated by commissioners' report.

III. 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.

Returns of claimants and of compensation given to be laid before Parliament.

IV. Nothing in this Act 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 action or suit for such purpose shall be commenced later than twelve months next after the commencement of this Act: And 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 bar action for legal rights.

But claims satisfied under this Act not to be re-opened in courts of law.

No. 23—1860.] AN ACT [July 17, 1860.

For Preventing unauthorized Persons from granting to Kafirs or other Native Foreigners Passes or Papers pretending or supposed to be such, and for preventing Kafirs or other Native Foreigners from being harboured on the premises of Persons who do not employ such Kafirs or other Native Foreigners.

WHEREAS, in certain parts of the Eastern Frontier of this Colony, divers persons who have by law no power whatever to grant passes to Kafirs

Preamble.

No. 23—1860.

or other native foreigners are in the habit of granting, or pretending to grant, such passes, and in some cases of obtaining money by so doing: And whereas it is expedient to suppress this practice, as well as the practice of giving to Kafirs or other native foreigners, sometimes for payment and sometimes without payment, certificates signed by private persons professing to certify to the number and description of live-stock which such Kafirs or other native foreigners possess, whereby the making away with stolen property is not unfrequently facilitated: And whereas it is expedient to prevent Kafirs and other native foreigners from being harboured on premises by the residents of such premises when such Kafirs and other native foreigners are not in the service of such residents: Be it enacted by 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 unauthorized person to grant passes or papers purporting to be passes.

I. No person, not being a person named in the Government Gazette as an officer or functionary empowered to grant passes to Kafirs or other native foreigners, and not being a resident magistrate, shall, within this Colony, grant or give to any Kafir or other native foreigner any pass or any paper-writing purporting to be a pass, or calculated or intended to be used as a pass, or which shall, to the knowledge of the person granting the same, be regarded or considered as a pass by the Kafir or other native foreigner receiving the same. Any person contravening this section of this Act shall, upon conviction, forfeit any sum not exceeding twenty pounds: Provided that if any person contravening this section shall be proved to have demanded or received any money, live-stock, or other valuable consideration whatever, or any promise of the same, for or in return for such pass or paper-writing he shall, upon conviction, forfeit for such contravention any sum not exceeding fifty pounds.

Penalty.

Penalty for receiving valuable consideration in return for such papers.

Certificates of character or service may be granted.

II. Nothing in the foregoing section shall be construed so as to prevent any person in whose service any Kafir or other native foreigner actually is, from giving to such Kafir or other native foreigner,

whilst in such service, a paper-writing certifying that he is in the service of the person giving the same, and that he is to be free from let or hindrance whilst employed upon or about the certain business of his master, specified in such paper-writing, or from giving such Kafir or other native foreigner, on his quitting service, a paper-writing certifying the period of such service and the character of said Kafir or other native foreigner during the same. But every paper-writing given to any Kafir or other native foreigner by any person in whose service such Kafir or other native foreigner never was, or whose service he shall have quitted or shall be about to quit, containing any statement to the effect that such Kafir or other native foreigner is authorized or at liberty to seek a master or employment, shall be deemed to be a paper-writing falling under the description and prohibited under the penalty in the last preceding section mentioned.

No. 23—1860.

But no paper intended to serve as a pass.

III. Every resident magistrate, justice of the peace, field-cornet, or person authorized to grant passes to or to attest the contracts of service of Kafirs or other native foreigners shall be and is hereby authorized to grant, if he shall so think fit, to any Kafir or other native foreigner who shall apply to him for the same, a certificate in writing certifying to the number and description of live-stock which such Kafir or other native foreigner possesses, and any functionary or officer aforesaid who is by law authorized to grant passes may grant a pass and a certificate by one and the same paper-writing. If any person, not being such an officer or person as is in this section specified, and not being a person whose service any Kafir or other native foreigner shall be about leaving, shall give to any Kafir or other native foreigner any such certificate or any paper-writing of the like nature, he shall, upon conviction, forfeit any sum not exceeding twenty pounds; and if he shall have demanded or received for such certificate or other paper-writing any money, live-stock, or other valuable consideration, he shall, upon conviction, forfeit any sum not exceeding fifty pounds.

Persons authorized to grant passes may grant also certificates showing live-stock possessed by holder.

Penalty for contravention.

No. 23—1860.

Kafir servant to be furnished with discharge when leaving service.

IV. Every person whose service any Kafir or other native foreigner shall be about leaving shall be bound to give to such Kafir or other native foreigner a discharge, which shall state with precision the number and description of live-stock which such Kafir or other native foreigner shall to the best of his knowledge and belief lawfully possess and be about to take away with him; printed forms of such discharge, in the Dutch and English languages, shall be supplied by Government to the inhabitants through the various resident magistrates, officers entitled to attest contracts of service, and field-cornets; if any person whose service any Kafir or other native foreigner shall be about to leave shall refuse or neglect to give or tender such a discharge, or if he shall knowingly or negligently give a discharge containing any false or erroneous statement, he shall, upon conviction, be liable to a fine not exceeding two pounds, together with the costs of prosecution: Provided, further, that no person such as in this section described shall demand or receive, for or in reference to the giving of such discharge, any money, live-stock, or valuable consideration, on pain of incurring, upon conviction, the like penalty as that hereinbefore in that section mentioned; And provided, lastly, that such discharge as aforesaid shall be given as well to the Kafirs or other native foreigners mentioned in the eleventh section of the Act No. 26, 1857, as to the other Kafirs or native foreigners mentioned in the said Act.

No valuable consideration to be given for such discharge.

Certain conditions under which certificates of possession of live-stock shall be issued to Kafirs, &c.

V. No resident magistrate or other officer or person aforesaid shall grant any such certificate as aforesaid unless he shall have demanded and received from the Kafir or other native foreigner such a discharge as in the last preceding section mentioned, or unless he shall have personal knowledge or certain information that the live-stock mentioned in such certificate is the lawful property or in the lawful possession of the Kafir or other native foreigner named in such certificate; and no resident magistrate or other officer or person aforesaid shall demand or receive, for or on account of the granting

of any such certificate, any money, live-stock, or other valuable consideration, or any promises of the same, on pain of forfeiting, upon conviction, any sum not exceeding fifty pounds.

No. 23—1860.

VI. The penalties provided by this Act shall be recoverable in the court of the resident magistrate, and any person convicted of contravening any of the sections of this Act who shall not forthwith pay the penalty to which he shall have been sentenced shall be liable to be imprisoned, with or without hard labour, for any term not exceeding three months: Provided that if after such imprisonment, and before the expiration thereof, he shall pay the penalty awarded, he shall be forthwith discharged from custody.

Penalties under this Act, how recoverable.

VII. Nothing in this Act contained shall be construed so as to exempt any person whomsoever from being prosecuted and punished for the crime of fraud, or for any other crime for which he might lawfully have been prosecuted and punished in case this Act had not been passed; but no person who shall have been prosecuted for any contravention of this Act shall be afterwards prosecuted, by reason of or in reference to the same state of facts, for fraud or any other crime, and, conversely, no person who shall have been prosecuted for fraud or any other crime shall be afterwards prosecuted, by reason of or in reference to the same state of facts, for any contravention of this Act.

Fraud to constitute a distinct offence, but not to be proceeded against after a prosecution for the same contravention of this Act.

VIII. If any person shall wilfully deprive any Kafir or other native foreigner of his pass, such person so offending shall be liable to a fine not exceeding ten pounds or to imprisonment, with or without hard labour, for any period not exceeding three months. But nothing in this section contained shall be construed so as to prevent any master to whom any such Kafir or other native foreigner shall have been contracted as a servant, and with whom such Kafir or other native foreigner shall have deposited his pass, from retaining the same during the stipulated term of service: Provided, however, that every person in whose service any such Kafir or other native foreigner may have been, and who shall be in

Kafir not to be deprived of his pass but it may be retained by his master during service.

To be returned at expiration of service.

No. 23—1860.

Penalty for failing to return such pass.

possession of such servant's pass, shall forthwith, upon the expiration of the service of such servant, deliver to him his pass. Any person who shall fail to deliver any such pass in manner hereinbefore directed, shall, upon conviction, incur and be liable to the penalty hereinbefore in the first part of this section provided.

Kafirs or native foreigners not in service not to be allowed to remain on premises more than three days.

IX. No resident within this Colony shall (except as hereinafter in the thirteenth section excepted) knowingly and willingly permit or suffer any Kafir or other native foreigner, who is not in the actual and *bonâ fide* service of such resident, to be or remain in the house or upon the farm or other premises occupied by such resident for any period longer than three days: any resident contravening this section shall, upon conviction, be liable to a fine not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not exceeding one month.

Separate prosecution to lie in regard to every Kafir and every term of three days.

X. Each Kafir or other native foreigner so permitted or suffered as aforesaid to be or remain in or upon any house, farm, or other premises shall constitute or form the subject of a distinct offence. And if the same Kafir or other native foreigner who shall have formed the subject of a conviction under this section shall be so permitted and suffered as aforesaid to continue upon the same premises for upwards of three days from and after such conviction, such Kafir or other native foreigner shall thereby become and be the subject of a fresh offence; and so on, from conviction to conviction, so long as such Kafir or other native foreigner shall be so permitted and suffered to continue upon such premises: Provided, however, that the wife or wives and the child or children of any Kafir or other native foreigner, living with and accompanying such Kafir or other native foreigner, shall not, any of them, form the subject of a prosecution under this section of this Act.

Wives and children not subjects of prosecution.

Every such Kafir refusing to remove from premises liable to arrest without warrant.

XI. Every resident as aforesaid upon whose premises any Kafir or other native foreigner shall have remained for the period of three days shall forthwith, upon the expiration of such period, call upon and require such Kafir or other native foreigner to depart



from such premises, and if he shall refuse or neglect so to do, the said resident is hereby authorized to apprehend, without warrant, such Kafir or other native foreigner, and deliver him over to any resident magistrate, field-cornet, police constable, or other public officer; and in case such resident shall be unable or unwilling to apprehend such Kafir or other native foreigner, then such resident shall, upon the expiration of the said period of three days, without any avoidable delay, report or cause to be reported to some such public officer as aforesaid the fact that such Kafir or other native foreigner remains upon such premises. Any resident failing to apprehend as aforesaid any Kafir or other native foreigner, and failing also to report or cause to be reported as aforesaid his being upon the premises, shall be deemed and taken to have knowingly and willingly permitted and suffered such Kafir or other native foreigner to be and remain upon his premises for a period longer than three days.

No. 23—1860.

Penalty for failing to cause removal of such Kafir.

XII. Every Kafir or other native foreigner (except as in the next succeeding section excepted) who shall have been required as in the last preceding section mentioned to depart from any premises, and who shall, being under no disability arising from sickness or other sufficient cause, refuse or neglect so to do, shall, upon conviction, be liable to the same or the like penalty as that hereinbefore in the ninth section mentioned, over and above any other penalty to which he may be liable in case he shall have contravened the second section of the Act No. 23, 1857, entitled "An Act for more effectually preventing Kafirs from entering the Colony without Passes."

Kafir refusing to remove liable to punishment under Act 23 1857, in addition to penalty under this Act.

XIII. Nothing in the ninth or succeeding sections of this Act shall extend to any Kafir or other native foreigner who shall have received and shall possess "a certificate of citizenship" under Act No. 24, 1857, or to any case in which any officer empowered to grant passes to Kafirs and other native foreigners shall, in writing, have authorized any resident, whose name and place of abode shall be mentioned in such writing, to permit and allow any Kafir or other native foreigner named and described in such

Ninth and following sections of this Act not to affect Kafirs possessing certificates of citizenship or regular passes.

No. 23—1860.

writing to be and remain upon the premises occupied by such resident, for any certain number of days to be fixed in and by such writing; and in case any such authorization shall be given, then the period of three days aforesaid shall not begin to be reckoned until the expiration of the number of days mentioned in such writing.

Act when to take effect.

XIV. This Act shall take effect at the expiration of one month after its promulgation in the Government Gazette.

No. 24—1860.] AN ACT [July 17, 1860.

For Continuing the Act No. 26, 1857, entitled “An Act for Punishing Emissaries from Kafirland and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace.”

Preamble.

WHEREAS the Act No. 26, 1857, entitled “An Act for Punishing Emissaries from Kafirland, and others, delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace,” was limited so as to continue in force until the 31st December, 1858, and no longer: And whereas the said Act was, by Act No. 23, 1859, continued until the 31st December, 1860: And whereas it is expedient that the said Act should be continued in force until the 31st December, 1861: Be it enacted by 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 26, 1857, continued.

I. The Act aforesaid, No 26 of 1857, shall be and continue in force until the 31st December, 1861, and no longer.

When this Act to commence.

II. This Act shall commence and take effect from and after the expiration of the Act aforesaid, No. 23, 1859, and not sooner.

Short title of Act.

III. This Act may be cited for any purpose as “The Kafir Emissaries Act, 1860.”

No. 25—1860.] AN ACT [July 17, 1860.

No. 25—1860.

For Applying a Sum not exceeding Three Hundred and Eighty-eight Thousand Nine Hundred and Four Pounds and Five Shillings for the Service of the Year 1860.

WHEREAS, by the Act No. 20 of 1859, entitled Preamble.  
 “An Act for applying a sum not exceeding one hundred and seventeen thousand six hundred and eighty-nine pounds for the service of the year 1860,” the said sum of one hundred and seventeen thousand six hundred and eighty-nine pounds was charged upon the revenue of this Colony for the service of the Government of the Colony until the 30th of April, 1860: 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 1860, 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. 20, 1859, and to provide by one Act for the service of the year 1860: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The Act aforesaid, No. 20, 1859, is hereby Act 20, 1859, repealed. repealed.

II. The public revenue of the Colony is hereby Expenditure for 1860. charged with a sum not exceeding three hundred and eighty-eight thousand nine hundred and four pounds and five shillings for the service of the year 1860, in addition to the sums already by law provided for such service, which sum of three hundred and eighty-eight thousand nine hundred and four pounds and five shillings shall be applied in the manner following, that is to say:

For the expenditure of the Civil Establishments, a Civil establishments. sum not exceeding seventy thousand four hundred and forty-seven pounds and fifteen shillings.

For the expenditure of the Judicial Establish- Judicial establish-  
ments. ments, a sum not exceeding thirty thousand seven

No. 25—1860.	hundred and thirty-eight pounds seven shillings and six pence.
Educational establishments.	For the expenditure of the Educational Establishment, a sum not exceeding fourteen thousand two hundred and thirty-eight pounds and ten shillings.
Medical establishments.	For the expenditure of the Medical Establishments, a sum not exceeding seventeen thousand nine hundred and eleven pounds and ten shillings.
Police and gaol establishments.	For the expenditure of the Police and Gaol Establishments, a sum not exceeding sixty-five thousand one hundred and seventy-one pounds two shillings and sixpence.
Border department (aborigines).	For the expenditure on account of the Border Department (Aborigines), a sum not exceeding forty-eight thousand seven hundred and eleven pounds.
Pensions, gratuities, &c.	For the expenditure on account of Pensions, Charitable Allowances, and Gratuities, a sum not exceeding two hundred pounds.
Works and buildings.	For the expenditure on account of Works and Buildings, a sum not exceeding six thousand one hundred and fifty pounds.
Roads and bridges.	For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding eighty-six thousand two hundred and sixty-three pounds.
Miscellaneous services.	For the expenditure on account of Miscellaneous Services, a sum not exceeding thirty thousand five hundred and twenty-three pounds.
Interest.	For the expenditure on account of Interest, a sum not exceeding eight thousand five hundred and fifty pounds.
Allowances to military officers.	For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding ten thousand pounds.
Total.	Amounting, in the whole, to three hundred and eighty-eight thousand nine hundred and four pounds and five shillings, as detailed in the schedules hereunto annexed
Restriction clause.	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. 26—1860.] AN ACT [July 17, 1860. No. 26—1860.

For Applying a Sum not exceeding Ten Thousand Five Hundred and Sixty-two Pounds, in addition to the Sums provided by Act No. 25, for the Service of the Year 1860.

**W**HEREAS it is expedient to provide further Preamble.  
 sums, in addition to those by law provided, for the service of the Government of the Colony during 1860 :

I. Be it therefore enacted by the Governor of the Additional expenditure for 1860.  
 Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, that a sum not exceeding ten thousand five hundred and sixty-two pounds, in addition to the sums already provided as aforesaid, be charged upon the revenue of the said Colony towards the service of the year 1860, and applied in the manner and for the purpose herein set forth, that is to say :

II. For the expenditure of the Civil Establish- Civil establishments.  
 ments, a sum not exceeding ten thousand and sixty-two pounds.

III. For the expenditure on account of Miscel- Miscellaneous ser- vices.  
 laneous Services, a sum not exceeding five hundred pounds.

IV. Amounting in the whole to ten thousand five Total.  
 hundred and sixty-two pounds.

V. The said aids and supplies shall not be issued Restriction clause.  
 or applied for any use, intent, or purpose other than the particular purposes for which the said amounts have been granted respectively by this Act.

No. 27—1860.] AN ACT [July 17, 1860.

For Applying a Sum not exceeding One Hundred and Twenty-eight Thousand Seven Hundred and Seventy-four Pounds for the Service of the Year 1861.

**W**HEREAS it is expedient to provide further Preamble.  
 sums, in addition to those by law provided, for the service of the Government of this Colony until 30th April, 1861 :

- No. 27—1860.
- Partial expenditure for 1861.
- 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 one hundred and twenty-eight thousand seven hundred and seventy-four pounds be charged upon the revenue of the said Colony towards the service of the year 1861, 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. 25 of 1860, 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 twenty-three thousand five hundred and three pounds.
- Judicial establishments. III. For the expenditure of the Judicial Establishments, a sum not exceeding ten thousand two hundred and forty-six pounds.
- Educational establishment. IV. For the expenditure of the Educational Establishment, a sum not exceeding four thousand seven hundred and forty-six pounds.
- Medical establishment. V. For the expenditure of the Medical Establishments, a sum not exceeding five thousand eight hundred and four pounds.
- Police and gaol establishments. VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding twenty-one thousand six hundred and seventy-four pounds.
- Border department (aborigines). VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding sixteen thousand two hundred and thirty-seven pounds.
- Pensions, gratuities, &c. VIII. For the expenditure on account of Pensions, Charitable Allowances, and Gratuities, a sum not exceeding sixty-six pounds.
- Works and buildings. IX. For the expenditure on account of Works and Buildings a sum not exceeding two thousand and fifty pounds.
- Roads and bridges. X. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding twenty-eight thousand seven hundred and fifty-four pounds.
- Miscellaneous services. XI. For the expenditure on account of Miscellaneous Services, a sum not exceeding eight thousand five hundred and fifty-eight pounds.

XII. For the expenditure on account of Interest, a sum not exceeding three thousand eight hundred and two pounds. No. 27—1860.  
Interest.

XIII. For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding three thousand three hundred and thirty-four pounds. Allowances to military officers.

XIV. Amounting in the whole to one hundred and twenty-eight thousand seven hundred and seventy-four pounds. Total.

XV. The said aids or supplies shall not be issued or applied for any use, intent, or purpose other than the particular service for which the said amounts have been granted respectively by this Act. Restriction clause.

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No. 28—1860.] AN ACT [July 17, 1860.

For Legalizing Art-Unions.

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

No. 29—1860.

the college fund who have respectively contributed not less than twenty-five pounds to that fund.

Names of nominated members to be communicated to resident magistrate. Proceedings thereupon.

V. The Governor, the divisional council of Graaff-Reinet, and the commissioners of the municipality of Graaff-Reinet shall respectively communicate to the resident magistrate of Graaff-Reinet, on or before the second day of August, 1860, the names of the persons nominated by them to be members of the college council; and the said magistrate shall thereupon immediately cause the names of those persons to be posted up in some conspicuous place in front of his office, with a notice that they have been so nominated.

Election of members of council.

VI. A general meeting of all persons who have contributed twenty-five pounds or upwards to the said college fund shall be held before the resident magistrate of Graaff-Reinet, in his court-room, on the eleventh day of August, 1860, at ten o'clock in the forenoon, for the election of the four elective members of the college council, and every such contributor present at the said meeting shall be entitled to one vote for every member of the said council to be elected, and the election shall be by ballot, and the four persons who shall have the greatest number of votes shall be declared duly elected.

How long to hold office.

VII. The seven persons nominated and elected as in the preceding sections prescribed shall hold office as members of the Graaff-Reinet college council until the 31st day of December, 1863.

Appointment of nominated members every third year.

VIII. Within the first week of December of the year 1863, and of every subsequent third year, the Governor, the divisional council of Graaff-Reinet, and the commissioners of the municipality of Graaff-Reinet shall respectively communicate to the college council the names of the persons nominated by them as members of the said council for the next ensuing three years, which names the said council shall thereupon cause to be posted up in some conspicuous place within the municipality, with a notice that those persons have been so nominated.

Elected members how to be chosen.

IX. A general meeting of the registered holders of the certificates in the eleventh section of this Act mentioned shall be held in the college building on



some day between the 15th and 25th December of the year 1863, and of every subsequent third year, for the purpose of electing four members of the college council to serve for the next ensuing period of three years, and the said meetings shall be called by the college council by notice published in the Government Gazette and in one of the local newspapers not more than thirty nor less than twenty days before the day appointed for such meeting.

X. At the first meeting of the college council after every general election, the members shall elect one of their number to be their chairman.

Council to elect chairman.

XI. As soon as may be after the first election, of the college council the said council shall issue to every person who shall have contributed the sum of twenty-five pounds or upwards to the college fund a certificate signed by the chairman and the secretary of the council to that effect, and such certificate shall be numbered and registered in a book to be kept by the council for that purpose; and a similar certificate shall in like manner thereafter be issued to every other person who shall subscribe and contribute twenty-five pounds or upwards to the college fund.

Council to issue certificates to certain contributors to college fund.

XII. Every such certificate shall be transferable upon payment of a fee of ten pounds to the college fund; and every transfer made shall be registered in the register of certificates kept by the council, and shall be endorsed, under the signature of the chairman and the secretary of the council, on the certificate transferred; and every person in whose name any such certificate shall stand registered at the time of any election of members of the council, and who shall be personally present, shall be entitled to one vote for every member to be elected.

Certificates transferable. Holders entitled to vote for members of college council.

XIII. Any member of the college council who shall be absent from the meetings of the council during six consecutive months, except with leave of the council, or who shall become incapacitated by mental or bodily infirmity, shall, *ipso facto*, vacate his office.

What to constitute vacation of seat in council.

XIV. Whenever any member of the college council shall die or resign, or shall otherwise vacate office before the period for which he was nominated or

How to proceed in case of vacancies occurring.

No. 29—1860.

elected shall have expired, a nomination or election, as the case may be, of a new member, shall immediately take place, as nearly as may be in the same manner as prescribed with regard to general triennial nominations and elections, and the person then nominated or elected shall hold office only during the unexpired period of the term for which the person in whose room he is nominated or elected had been nominated or elected.

Votes by proxy.

XV. At all elections of members of the college council after the first, every registered holder of a certificate such as in the eleventh section of this Act mentioned, who shall reside at a greater distance than fifteen miles from Graaff-Reinet, and every female holder of such a certificate shall be entitled to vote by proxy, which proxy shall be in following form :

I, \_\_\_\_\_ do hereby authorize and appoint \_\_\_\_\_ to vote for me at all elections of members of the Graaff-Reinet college council.

\_\_\_\_\_ (Signature.)

Dated at \_\_\_\_\_ this day of \_\_\_\_\_

Members vacating office re-eligible.

XVI. Any member of the college council who shall vacate office, otherwise than from mental or bodily infirmity, shall be eligible for re-nomination and re-election.

Council to administer existing and future funds of college.

XVII. The Graaff-Reinet college fund already existing and all moneys, assets, and other property, personal or real, of every nature and description whatsoever, now belonging and which shall hereafter accrue or become due and payable to the Graaff-Reinet college, shall be vested in and administered by the college council for the purposes of the said college.

College fund how to be invested.

XVIII. The Graaff-Reinet college fund, to the amount of five thousand pounds, shall be invested by the college council on interest on good and sufficient security, and shall not be otherwise appropriated, except with the consent of three-fourths of the registered holders of the certificates in the eleventh section of the Act mentioned, given in writing at some meeting of such holders of certificates held for that purpose, upon a notice of not more than thirty and

not less than twenty days, published in the Government Gazette and some local newspaper, but the interest may be used towards the payment of salaries and other necessary expenses incurred on behalf of the said college.

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XIX. The college council shall provide the necessary buildings, apartments, and other requisites for the college and school.

Council to provide buildings and other requisites.

XX. The college council shall appoint the professors and teachers required for the college and school from time to time, on such terms and at such salaries as the said council shall find expedient, and shall regulate and fix the fees to be paid by the students and scholars, and how the same shall be appropriated.

To appoint professors and teachers and regulate fees.

XXI. The college council shall appoint a secretary and treasurer, and such other officers as shall be deemed necessary, on such terms and with such instructions as the said council shall deem expedient.

Secretary and treasurer to be appointed.

XXII. The college council shall from time to time frame such rules and by-laws, for their own guidance and for the better regulation of the affairs of the college and school, as the said council shall find expedient, and all such rules and by-laws shall be in force and have effect until cancelled by the said council, provided the same be not repugnant to any of the provisions of this Act.

Council to frame rules and regulations.

XXIII. The college council shall cause true and correct records to be kept of all its proceedings, and true and correct accounts of all moneys received and paid on behalf and account of the college and school, and shall in the month of January, in each year, transmit to the Colonial Secretary, for the information of the Governor and of Parliament, a statement of the revenue and expenditure during the preceding year, and a general report of the state and affairs of the college and school; and shall cause a copy of the said report and of the account of revenue and expenditure to be published in the Government Gazette.

Records of proceedings to be kept.

Annual statement of revenue and expenditure to be laid before Parliament and published in Gazette.

XXIV. Two of the members of the college council, nominated thereto by the council, shall, together with the professors of the college and the principal

How college senate to be constituted.

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teacher of the preparatory school, form a senate, in which shall be vested the superintendence and regulation of the discipline and instruction of the several departments and classes of the college and school.

Council and senate to determine subjects to be taught and arrangement of college departments.

XXV. The council and senate jointly shall determine what subjects shall be taught and what books shall be used in the college and school, what departments shall be taken by each professor, and the hours during which instruction shall be given, and shall also make arrangements for periodical public examinations, of which there shall be at least one in every year. Both in the college and in the preparatory school a portion of each day shall be devoted to reading the Holy Scriptures.

Holy Scriptures to be read daily.

Complaints on behalf of students to be made in first instance to Senate. Appeal thence to council.

XXVI. All complaints against or on the part or on behalf of the students or scholars shall, in the first instance, be made to and decided upon by the senate, subject to appeal to the council, whose decision shall be final.

Governor may appoint free students.

XXVII. The Governor shall have the power to admit to the college five free students.

Annual grant from treasury.

XXVIII. The sum of four hundred pounds per annum shall be paid to the council of the Graaff-Reinet college from the public treasury of the Colony, in monthly instalments, payable at the end of each month, the receipts for which shall be signed by the secretary to the said council.

Proceedings at law to be in the name of the secretary.

XXIX. All actions and other proceedings at law to be instituted by or against the council of the Graaff-Reinet college shall be so instituted and proceeded in, by, or against the secretary to the said council for the time being.

No. 30—1860.] AN ACT [July 17, 1860. No. 30—1860.

To enable the Bishops of Cape Town and Graham's Town, respectively, to alienate, under certain conditions and restrictions, Property vested in their respective Sees.

**W**HEREAS, before the separation of the diocese of Graham's Town from the diocese of Cape Town, certain immovable property lying and being within what is now the diocese of Graham's Town became vested in the Bishop of Cape Town and his successors: And whereas it is fitting that the Bishop of Cape Town should be enabled to transfer such property to the Bishop of Graham's Town and his successors, and that both and each of the said bishops should be enabled to alienate, under certain conditions and restrictions, properties vested in their respective sees: And whereas doubts exist whether any such alienations as aforesaid can legally be made by the Bishops of Cape Town and Graham's Town for the time being, and it is expedient to remove such doubts by empowering the said bishops for the time being to effect such alienations: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly of the said Colony as follows:

I. It shall be lawful for the Bishop of Cape Town for the time being to transfer to the Bishop of Graham's Town for the time being, and his successors, all or any of the lands or other immovable property now vested in the Bishop of Cape Town and his successors, but situate, lying, and being within the diocese of Graham's Town: Provided that every such property so transferred shall be subject to the same trusts in all respects after such transfer as it was subject to at the time of such transfer.

Bishop of Cape Town may transfer to Bishop of Graham's Town, lands within the diocese of the latter.

II. The said Bishops of Cape Town and Graham's Town respectively, and their respective successors, shall be and they are hereby authorized to sell, exchange, or otherwise alienate and transfer lands,

Bishops of Cape Town and Graham's Town may alienate lands belonging to their respective sees.

No. 30—1860.

With consent of minister and churchwardens of parish interested; and of the majority of the clergy and parishioners.

buildings, tenements, and premises for the time being vested in their respective sees: Provided that no such sale, exchange, or other alienation or transfer shall be made without the consent in writing of the following persons first had and obtained; that is to say, of the minister and churchwardens of the parish which has the use or benefit of or is interested in the property proposed to be alienated, of the greater part in number of the clergy of the deanery or archdeaconry wherein such parish shall be situated, of the archdeacons of the diocese, and of the chancellor of the diocese, should there be one, as also the consent of the majority of the parishioners in vestry meeting duly convened of the parish which has the use or benefit of or is interested in the property aforesaid, or if the property aforesaid was at any time subject to the use or benefit of the parishioners of a district which has been subdivided into two or more parishes, then the parishioners of the whole of such district shall meet in manner aforesaid, and the majority of such meeting shall consent as aforesaid; the resolutions adopted by the majority at such meetings being duly signed by the chairman thereof: And provided, also, that as often as the property proposed to be alienated, or any part of it, shall have been obtained by grant from the Crown, the consent of the Governor of this Colony to such alienation shall be necessary, together with the consent of the certain other persons aforesaid: Provided, further, that the Governor shall, before giving such consent as aforesaid, publish, by notice in the Government Gazette, for a period of not less than one month, the particulars of the application made to him for such consent: And provided, lastly, that nothing in this Act contained shall extend to any property in regard to which the title-deed or deeds shall contain any express clause or condition prohibiting or limiting the power of alienation by either of the bishops aforesaid.

If a Crown grant, consent of Governor necessary.

Proceeds, how to be applied.

III. All lands, moneys, or other proceeds obtained for or in consideration of any property so alienated as aforesaid shall be applied for the benefit of the same parish or subdivided parishes which had the use

or benefit of or was interested in the alienated property, in such manner and form as the bishop, together with the minister or ministers and the majority of the parishioners in vestry meeting duly convened by the churchwardens of the said parish or subdivided parishes shall agree upon and determine.

IV. As often as any transfer of any immovable property shall be about to be made by either of the two bishops aforesaid or by the successors of either of them, a certificate under the hand of such bishop, addressed to the Registrar of Deeds, and certifying that all the persons whose consent was by this Act required to such transfer have consented to the same, shall be sufficient proof of such consent for the purpose of the deed's registry, and thereupon the proposed transfer shall be passed.

Registrar of deeds to require certificate consent before transfer can be passed.

V. In the interpretation of this Act the term "parish" shall mean any defined district of town or country placed by the bishop of the diocese, acting in accordance with the laws and usages of the Church of England, as received and accepted in this Colony under the pastoral charge of a particular minister; and the bishop and clergy mentioned in this Act shall mean the bishops and clergy of the said church, and the term "vestry meeting" shall mean a meeting of persons resident in the parish, or otherwise entitled to vote at parish meetings, and the term "duly convened" shall mean any such meeting of which one month's notice has been given, by the churchwardens affixing a public notice of the same on the doors and entrances of the said church.

Interpretation of terms.

No. 31—1860.] AN ACT [July 17, 1860.

For Constituting the Town of Port Elizabeth a Municipality.

WHEREAS it is expedient to repeal so much of Preamble.  
the Ordinance No. 9, 1836, entitled "An Ordinance for the creation of Municipal Boards in

No. 31—1860.

the towns and villages of this Colony," and of the Ordinance No. 2, 1844, entitled "Ordinance for amending the Ordinance No. 9, 1836," as relates to the municipality of Port Elizabeth, and to annul the local regulations in operation in the said municipality and to make other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

Previous laws and regulations repealed.

I. The said Ordinances No. 9, 1836, and No. 2, 1844, so far as relates to the municipality of Port Elizabeth, shall be, and the same are hereby repealed; and all the local regulations of the said municipality heretofore proclaimed and published from time to time in the Government Gazette of this Colony, under and by virtue of the provisions of the said Ordinances, except as hereinafter provided by section forty of this Act, are hereby repealed.

Limits of the municipality.

II. The town of Port Elizabeth, including all lands and property within the area bounded on the south by a line from the sea drawn through the Roman rock beacons to the south-east corner of Walmer farm, thence along the east boundary of said farm to the north-east corner, thence westward along the Walmer boundary to the north-west corner of the same, thence in a straight line to the beacon near Harries Kraal, thence in a north-easterly direction along the boundaries of Newcombe's farm and Korsten, to the south-east beacon of Korsten, and to the northward of Second Creek, thence following the line of the Deal Party's Grant to the sea, and from thence along the beach at high-water mark to the first-mentioned point, shall be and the same is hereby constituted a municipality.

Style of town corporation.

III. There shall be in the said municipality a body corporate, which shall take and bear the name of "the Mayor, Councillors, and Householdors of Port Elizabeth," and by that name shall have perpetual succession, and shall have a common seal, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate as such may do and have.



IV. The council of the said municipality shall consist of twenty-one councillors, one of whom shall be the mayor.

*No. 31—1860.*  
Town council.

V. The said municipality shall be divided into seven wards, to wit :

Municipality to be divided into wards.

No. 1. Comprising all immovable property within the municipal limits south of Baaken's River.

No. 2. Eastern boundary, the sea ; northern, the line of White's road ; western, the western boundary of the municipality ; southern, the boundary on the north of No. 1.

No. 3. Eastern boundary, the sea ; northern, the line of Rodney and Donkin-streets ; western, the boundary on the west of the municipality ; southern, the boundary on the north of No. 2.

No. 4. Eastern boundary, the sea ; northern, St. Andrew's-street and the line of Hyman's Kloof ; western, the boundary on the west of the municipality ; southern, the boundary on the north of No. 3.

No. 5. Eastern boundary, the sea ; northern, the line of Palmerston-street and Palmerston-road ; western, the boundary on the west of the municipality ; southern, the boundary on the north of No. 4.

No. 6. Eastern boundary, the sea ; northern, Cooper's Kloof ; western, the western boundary of the municipality ; southern, Hyman's Kloof.

No. 7. Eastern boundary, the sea ; northern, the limits of the municipality northward ; western, the boundary of the municipality on the west ; southern, Cooper's Kloof.

VI. The said council, after the first election thereof, shall from time to time, if they shall think fit, alter the boundaries of the said wards.

Council may alter boundaries of wards.

VII. Three councillors shall be elected for each ward in manner hereinafter mentioned.

Three councillors to be elected for each ward.

VIII. Every male person of full age who is the

Who entitled to vote as householder.

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occupier of any immovable property in any ward of the municipality, in regard to which property no municipal rate shall, at the time of any election of councillors or a councillor of such ward, be due and in arrear, shall be qualified and entitled to vote as a householder at such election.

Who disqualified from voting.

IX. The following persons shall be disqualified from voting at any such election :

Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.

Who may be elected councillor.

X. No person shall be eligible to be elected a councillor for any ward who has not been an occupier of immovable property within the municipality for not less than twelve months next before the election, or who is the occupier of any such property in regard to which any municipal rate shall, at the time of the commencement of such election, be due and in arrear: Provided that different premises or properties occupied in immediate succession shall satisfy this section as fully as if they had been one and the same premises or properties.

Who may be candidate.

XI. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward, unless he shall have been invited to become such candidate by a requisition signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, to the mayor, or before the first election to the resident magistrate, at least fourteen days before such election is appointed to take place.

Names of candidates to be published.

XII. The mayor, or before the first election of councillors, the resident magistrate, shall, at least ten days before the day appointed for the election in each ward, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter mentioned.

Annual election of councillors.

XIII. On the second Tuesday in the month of December in this and every subsequent year, an election shall take place for councillors for the said municipality.

XIV. The poll in every ward shall be taken at the first election before some person appointed for the purpose by the resident magistrate, and at every subsequent election by some person to be appointed for that purpose by the mayor.

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Poll how to be taken.

XV. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers of votes.

XVI. The election shall take place in the following manner: Every householder qualified as aforesaid may vote for any candidate, not being more than the number to be elected for the ward, by delivering to the returning officer a voting paper containing the christian and surname of the candidate or candidates, and signed by the person voting, or by the returning officer at his request, and stating his place of abode and description.

Manner of election.

XVII. The returning officer shall preserve such voting paper and shall register each vote.

Returning officer to register votes.

XVIII. The poll shall commence at ten o'clock in the forenoon, and shall finally close at two o'clock in the afternoon of the same day.

Poll when to commence and when to close.

XIX. No inquiry shall at any election be permitted to be made as to the right of any person to vote, except as follows—that is to say, the returning officer may, of himself or at the request of any qualified householder, put to any voter the following questions, or either of them, and no other:

Certain questions may be put to voter.

1st. Are you the person whose name appears as "A.B." to the voting paper now delivered in by you?

2nd. Has the last municipal rate assessed upon the immovable property now occupied by you been paid?

XX. If any person shall wilfully make a false answer to either of these questions he shall be liable to a penalty not exceeding ten pounds, to be recovered in any competent court.

Penalty for false answers.

XXI. At the close of the election, the returning officer shall ascertain the number of votes given for each candidate, and so many candidates, being equal to the number to be chosen, as shall have the greatest

Returning officer to declare result of election.

No. 31—1860.

number of votes shall be declared by the returning officer to be duly elected.

To transmit names and final state of poll—at first election to magistrate, and at subsequent elections to mayor.

XXII. The returning officer shall then transmit the names of the persons so elected, together with the final state of the poll—at the first election to the resident magistrate, and at every subsequent election to the mayor, who shall forthwith cause a list thereof, with the numbers of the wards for which such persons are elected, to be published in manner hereinafter set forth.

When first elected councillors to enter upon office.

XXIII. At the first election of councillors under this Act the householders shall elect, in manner hereinbefore provided, three councillors for each ward, who shall enter upon their office on the first of January following.

When to vacate office.

XXIV. Of the persons so elected as in the last preceding section mentioned, the councillor in each ward who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the said first day of January; and in case, by reason of any such councillors having been elected by an equal number of votes, it shall be uncertain which of them shall vacate his seat, the mayor shall cause such question to be determined by lot, and the remaining councillors for each ward shall vacate their seat in like manner at the expiration of two and three years respectively; and upon the retirement from office of such councillors respectively, they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every subsequent yearly election there shall be elected one councillor for each ward, who shall enter upon his office on the first day of January next after his election, and continue therein for three years; and every retiring councillor shall be eligible for re-election.

What to constitute a vacancy.

XXV. If any councillor shall die, resign, or become insolvent, or shall be absent from the ordinary meetings of the council for a period of six calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for

which the councillor who has vacated office, and whom he shall succeed, would otherwise have remained in office.

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XXVI. On the first Wednesday in the month of January, in every year, the mayor and council shall appoint from among the householders two persons to be auditors of the municipality, who shall continue in office until the same day in the year following.

Mayor and council to appoint auditors.

XXVII. No person shall be eligible as an auditor who shall not be a duly qualified householder, or who shall be a councillor, treasurer, clerk, or other officer of the municipality.

Who disqualified from being auditor.

XXVIII. If any auditor shall die, resign, or be declared insolvent, or compound by deed with his creditors, another auditor shall be elected in his stead, on a day to be fixed by the mayor.

How in case of vacancy.

XXIX. In case of an equality of votes at any election of councillors, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.

How, if votes are equal at election of councillor.

XXX. On the Thursday following the first general election under this Act, the councillors shall choose from among themselves, by a majority of votes, the mayor of the municipality, who shall hold office for one year from the first day of January then next ensuing.

Mayor to be chosen for first year.

XXXI. That on the Thursday following every subsequent yearly election, those of the councillors then in office who shall have to continue in office for the following year, in terms of section twenty-five, together with the newly-elected councillors, shall choose from amongst themselves, by a majority of votes, the mayor of the municipality for the following year; and every such mayor shall enter upon his office on the first day of January next after his election, and shall continue therein for one year.

How to be chosen in after years.

XXXII. It shall be lawful for the mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do.

Mayor may resign office.

XXXIII. That if any mayor shall die, or resign, When mayor to be

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considered as having  
vacated office.

or shall become insolvent, or shall be absent from the municipality without the permission of the council, for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months, such mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the year.

Councillors and officers of council not to be interested in any contract with council. Councillors not to receive any fee or reward.

XXXIV. If any member of the council, or person holding any office in the gift or disposal thereof, shall directly or indirectly have any share or interest in any contract with or employment by the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting, or supplying with water, or insuring against fire, any part of the said municipality, or shall receive any fee, reward, or compensation from any vote given or act performed in his capacity of councillor, he shall thenceforward cease to be a member of the council, or to hold such office as aforesaid, and shall, upon conviction, be liable to a penalty not exceeding fifty pounds.

Powers and duties of council in regard to general purposes of municipality.

XXXV. The council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges within the limits of the municipality, to excavate, construct, and lay watercourses, waterpipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes or to execute any other like works; to take order for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines with pipes and utensils; to order, establish, alter, or remove markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and place for slaughtering cattle and the state and condition of the

slaughter-houses; to appoint one or more competent persons to examine meat, fish, and other provisions exposed for sale, and who, in case such meat, fish, or other provisions be found unfit for food, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality; and for fixing the number and description of cattle which each householder shall be allowed to depasture on such lands: to establish and provide for the management of public pounds: Provided that no toll, due, or fee, or charge for any permit or licence, or any punishment or penalty, shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the next succeeding section mentioned.

XXXVI. It shall be lawful for the council, at any meeting at which three-fourths of the members shall be present, to frame from time to time all such municipal regulations as may seem meet for the good rule and government of the municipality.

Council to frame municipal regulations.

XXXVII. No municipal regulation shall be of force to subject any person to any fine, penalty, or payment, until it shall have been by the council submitted to the Governor, and shall have been approved of by him, with the advice of the Executive Council, and published in the Government Gazette.

Regulations to be submitted to Governor and Executive Council.

XXXVIII. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it to prove that three-fourths of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Publication of such regulation sufficient proof of its validity.

XXXIX. It shall not be competent by any municipal regulation to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding five pounds: Provided that it shall be competent for any such municipal regulation to provide that if the person convicted of contravening

Limits of penalties for contravening regulations.

No. 31—1860.

the same shall not forthwith pay the fine imposed upon him he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation: Provided, moreover, that such period must not exceed three months.

Public lands.

## POWERS OF COUNCIL AS TO PUBLIC LANDS, &amp;C.

Lands belonging to municipality vested in council.

XL. All land or immovable property heretofore vested in the commissioners of the municipality shall, after the passing of this Act and by virtue hereof, be transferred to and vested in the council of the said municipality, upon the like trusts and purposes for which the same were originally granted or transferred.

Council may sell or mortgage lands.

XLI. The council may, with the consent of His Excellency the Governor of this Colony, raise by sale at public auction, or by mortgage, of any land belonging to the corporation, any sum of money which shall be necessary in order to carry on any important public work; provided that the sum so raised in any year shall not exceed double the amount of the sum which shall in the same year be raised by rate or assessment in manner, hereinafter mentioned, and provided that the council shall, at least two months previously to such intended sale or mortgage, cause to be published a full and clear statement of the situation, nature, and extent of such land, and the object and purpose for which the money is required.

May raise loans upon rates.

XLII. The said council may, for the like purpose in the preceding section mentioned, with the consent of a majority of the householders of the said municipality, to be convened in manner hereinafter provided, mortgage or otherwise charge one third of the rates of the said municipality for a period not exceeding ten years: Provided, nevertheless, that only one such loan shall exist at the same time, and that every such loan shall be taken up by public tender.

May lease lands for building purposes.

XLIII. The council may lease any portion of the lands belonging to the municipality for building purposes for a period not exceeding thirty-three years, and for any other purpose for a period not exceeding twenty-one years; provided that such leases shall be



put up to public competition, and that they shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

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XLIV. The council may, by public sale or tender, lease the privilege of working any mines or quarries belonging to the corporation.

Mines and quarries.

XLV. No lessee of any such land, or of any mines or quarries, shall assign or sub-let the same without the previous consent in writing of the council.

May be sub-let with consent of council.

XLVI. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or carry away any materials belonging to any person or persons within the said municipality, or to appropriate or make use of any springs, streams, or other supplies of water belonging to any person or persons who shall not be bound in law to allow the town council so to do, then and in that case it shall be lawful for the said council, and it is hereby authorized and empowered, to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, materials, springs, streams, or other supplies of water as aforesaid, and generally to enter into such contract or contracts, relative to the obtaining of any such land, buildings, materials, springs, streams, or other supplies of water upon such terms and conditions as the said council shall judge expedient; and in case any such person or persons and the said council shall not agree upon the purchase-money or hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within fourteen days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice,

Council may purchase or hire lands, buildings, or materials for public improvements.

How such purchases and agreements to be made.

If parties do not agree, how arbitration to be conducted.

then the said council shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council, within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed, on behalf of the said corporation, by the town clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law brought for or on account of the same subject-matter. And in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorized, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid in its first notice in this section mentioned, for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorized and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said

council a sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

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XLVII. In case the said council shall require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water in the last preceding section mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the Government Gazette and one or more local papers for four successive weeks, describing as accurately as may be, the materials, land, buildings, springs, streams, or other supplies of water which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, materials, springs, streams, or other supplies of water, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorized by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner or owners shall so apply within the said period, then the like proceedings in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some

How if owners of property be absent or not discoverable.

Property to be appraised and value to be paid into Guardians' Fund.

No. 31—1860.

competent person, to be approved of by the civil commissioner of the division, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such person shall make oath before some justice of the peace, that he hath to the best of his judgment fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water in question at into the Guardians' Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony, and the said council, upon so paying the said sum, shall be authorized and entitled to take or to use the land, buildings, materials, springs, streams, or other supplies of water in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

Majority of councillors to decide all questions when not less than seven present.

XLVIII. All acts hereby authorized or required to be done by the council, and all questions that may come before them, shall, except as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-sixth and fifty-ninth sections of this Act.

Ordinary meetings of council.

XLIX. An ordinary meeting of the council shall take place at least once in every week, and all such ordinary meetings shall be open to the public.

Special meetings.

L. The mayor may at any time call a special meeting of the council, provided that he cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him

or by the town-clerk, to be served on every councillor, either personally or at his usual place of abode, twenty-four hours at least before such meeting.

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LI. At every meeting of council, the mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from among themselves.

In the absence of mayor, chairman to be elected.

LII. In all cases of an equality of votes, the mayor or chairman shall have a second or casting vote.

Chairman to have casting vote.

LIII. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

Minutes of proceedings to be kept.

LIV. It shall be lawful for the council to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which in the judgment of the council would be better managed by means of a committee: Provided, always, that the proceedings of every such committee shall be submitted to the council for its approval. The mayor to be *ex officio* member of all such committees.

Council may appoint committees.

LV. It shall be lawful for the council, from time to time, to appoint fit persons (not being members of the council) to be town-clerk and treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable; and unless it shall be otherwise stipulated in the contract of service, to remove all such officers, upon a notice of not less than three months, or, in case of misconduct, without any notice.

Council may appoint town clerk, treasurer, and other officers.

LVI. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied street-keepers and policemen as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality by day and by night; and to provide all such street-keepers and policemen with such clothing, arms, ammunition, and weapons, and shall ap-

Street-keepers, policemen, &c.

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point to them such duties and hours or times of duty, and shall also make such rules, orders, and regulations relative to such street-keepers and policemen and their duties as shall be deemed fit.

To act as constables.

LVII. All such street-keepers and policemen shall act as constables while in execution of their duties under the Act, and are hereby invested with and shall have and enjoy the like powers and authorities, privileges and immunities, and shall be subjected to such and the like penalties and forfeitures as constables are invested with, or shall or may have or enjoy, or are or may be subject or liable to by law.

Revenues.

## REVENUES.

Landlords' rates to be levied.

LVIII. For the purpose of raising the means for making new roads, streets, market-places, bridges, drains, sewers, water-courses, reservoirs, aqueducts, and other waterworks, for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council, for the purchase of water-pipes, fire-engines, and appurtenances, and for the effecting of all other permanent public works and improvements within the municipality, the council shall have the power, as often as shall be deemed necessary, to make and levy in manner hereinafter provided a rate or assessment upon all immovable property within the limits of the municipality, such rate or assessment to be called the "landlords' rate," and to be made and levied on an estimate of the value of such property, to be made as hereinafter provided.

Tenants' rate.

LIX. For the purpose of raising the means for effecting the repairs of all such works as the council are hereby empowered to have made, for the maintaining of water-works, fire-engines, police establishments, markets, and pounds, for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water-rates, and pound fees as shall be deemed necessary and reasonable; and shall be authorized by any such municipal regulations as

aforesaid, and shall also have the power, as often as shall be deemed necessary, to make and levy in manner hereinafter provided a rate or assessment upon all immovable property within the municipality, such rate or assessment to be called the "tenants' rate," and to be made and levied on the annual value or rental of such property, to be ascertained in manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed at least fifteen members of the said council; and provided, also, that no rate or assessment shall be imposed upon any movable property belonging to Her Majesty the Queen, nor on public prisons or police stations, nor on any buildings appropriated to public worship, nor upon burial-grounds, nor upon any buildings solely appropriated to the purposes of education.

LX. In order to ascertain the value of the ratable property within the municipality for the purpose of assessing the landlords' rate, the council shall, in the month of January next, and thereafter in the month of January in every third year, cause a valuation to be made of all such property, which valuation shall lie open for public inspection at the office of the council for a space of not less than one calendar month, of which due notice shall be given in one or more of the newspapers of the municipality.

Valuation of property for landlords' rates.

LXI. At any time within one calendar month from and exclusive of the day of the publication of such notice as aforesaid it shall be lawful for any person who shall think himself aggrieved thereby to appeal against the same to the resident magistrate having jurisdiction within the municipality, who is hereby authorized and directed to hear and determine such appeal on any day on which it shall be competent for any civil case to be heard: Provided that two clear days' notice in writing of every such appeal shall be given to the town clerk of the municipality, specifying the time and place for the hearing thereof.

Appeal against valuation.

LXII. In order to ascertain the annual value or rental of the ratable property within the municipality

How tenants' rate to be assessed.

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for the purpose of assessing the tenants' rate, and also to procure the other information required under the provisions of this section, the council shall, in the month of January in each year, cause a printed schedule to be left at the house of every householder, to be filled up by the occupier under separate and distinct heads, setting forth the names of the proprietor, the occupier, and all inmates; also, the annual rental, or, if no rent be paid, the estimated annual value of the property, and such other particulars as the council may, by any such municipal regulation as aforesaid, require; from which schedules, duly signed by the householders, and to be returned by them, without demand, to the councilors of their respective wards, within seven days from the date of their being left as aforesaid, the council shall cause a roll of assessment to be made within one month from the said date, upon which the tenants' rate or rates of and for the current year shall be levied; and when in any ward any schedule shall not have been returned, or where any of the schedules shall appear to the council to misrepresent the value of the properties or to be in any other respect incorrect, it shall be competent for the council to cite, by due notice, all persons whom they shall think necessary to appear before them on a certain day, not earlier than three clear days from the service of such notice, in order to afford any evidence or information in regard to any property or other matter relative to any schedule which shall not have been returned by the householder, or of which the correctness of the return made shall be questioned or disputed; and if such persons shall then neglect to attend for the aforesaid purpose the council shall fix such annual value on all such properties as may appear just and reasonable, and the valuation so fixed shall be binding on all concerned: Provided that, in the case of all unoccupied land not having any buildings thereon, the annual value shall be deemed and taken to be six per cent. per annum on the value thereof, assessed for the landlords' rate: And provided that the roll of assessment aforesaid shall be open for public inspection at the office of the

Unoccupied lands.



council for the space of one month; and the council shall give notice in one or more of the newspapers of the municipality that the same lies open for inspection; and the provisions of the sixty-first section of this Act shall apply to the hearing and deciding upon objections against such roll.

LXIII. The council shall annually, in the month of February, make an estimate of the amount of money required for the purposes aforesaid, and shall assess the landlords' rate and tenants' rate accordingly, and give public notice thereof in one or more of the newspapers of the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further landlords' or tenants' rate, or landlords' rate and tenants' rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any landlords' rate or rates amounting in the aggregate to more than one penny in the pound on the value of the immovable property subject to such rates, nor any tenants' rate or rates amounting in the aggregate to more than sixpence in the pound on the annual value or rental of the immovable property assessed, without obtaining the consent of the majority of the householders present and entitled to vote at a public meeting to be called for the purpose of considering such rate or rates; of the object and the time and place of holding such meeting, at least seven days' notice shall be given in manner hereinbefore mentioned: Provided, also, that the landlords' and tenants' rates so to be assessed and levied as aforesaid shall always bear the relative proportion of one penny to sixpence; and provided that correct accounts shall be kept, showing separately the mode in which the landlords' rate and the tenants' rate shall have been respectively expended.

LXIV. As soon as any rate or rates shall have been assessed as aforesaid, the council shall appoint, under the corporate seal, fit persons to collect such rate or rates, which shall, on non-payment thereof, be recoverable at the suit of any such collector, by

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Estimates to be published, and more than one rate may be levied in one year.

But landlords' rate in any one year, not to exceed one penny in the pound, and tenants' rate not to exceed sixpence in the pound.

Separate accounts of expenditure to be kept.

Council to appoint collectors of rates.

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action in the court of the resident magistrate having jurisdiction within the said municipality.

Owner and occupier may be sued together or separately.

LXV. In case by reason of the non-payment of any rate, whether landlords' or tenants', it shall be necessary to sue for the same as in the last preceding section mentioned, the council may, through its collector, and it is hereby authorized, to sue the owner or the occupier, either separately or both of them in one and the same action, each for the whole rate :

Owner or occupier may recover one from the other landlords' or tenants' rate.

Provided, however, that the occupier of any property who shall not at the same time be the owner thereof, and who shall not have entered into such occupation in pursuance of a contract or agreement for becoming the owner of the same, shall, in the absence of any written agreement to the contrary, be entitled to retain or recover from such owner the amount of any landlords' rate as aforesaid which such occupier shall have paid ; and the owner of any such property shall in like manner be entitled to recover from the tenant thereof the amount of any tenants' rate levied during the occupancy of such tenant, which such owner may have paid.

Rates in arrear to be published annually.

LXVI. The council shall, once in every year, publish in one or more of the newspapers of the municipality a statement of every sum in arrear, and of the property in respect of which the same is due.

Council may impose tolls.

LXVII. It shall be lawful for the council, by any such municipal regulation as aforesaid, to impose such toll or dues as may be reasonable upon all persons making use of any road, bridge, or market-place within the municipality which the council is hereby empowered to make and maintain ; and in cases of the non-payment of such tolls and dues, to recover the same by legal process, or in such other manner as may by the municipal regulations be in that behalf provided.

Who exempt from tolls.

LXVIII. No toll shall be payable by any officer or soldier, or member of any volunteer corps, being in proper staff, or regimental or military uniform, dress or undress, and on duty, or by any judicial or civil officer, mail-carrier, or other Government servant, whilst travelling on public duty ; and

further, that no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock on the next succeeding night, for or in respect of the same vehicle or animal.

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LXIX. The treasurer of the said municipality shall, in books to be kept for that purpose, enter the accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance-sheet thereof, shall yearly, at such times as the council shall appoint, be handed by him to the auditors, and to such members of the council as the mayor shall name, for the purpose of being examined and audited; and such abstract or balance-sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the treasurer in one or more of the newspapers published within the municipality.

Treasurer to furnish books for inspection of auditors. Annual balance sheet to be published.

LXX. Every notice calling a public meeting of the householders, and every notice or other document or thing required by this Act to be published, shall be so published by causing a copy thereof to be inserted in one or more of the newspapers of the municipality, and a copy of the same shall also be affixed in some conspicuous place upon or near the town-hall.

How notices to be published.

LXXI. All fines or penalties imposed by this act or by any municipal regulations made by virtue thereof shall be prosecuted for in any competent court by the council, by the name of "The Municipal Council of Port Elizabeth," and shall, when recovered, be paid to the treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be grounded.

How fines and penalties to be prosecuted for.

LXXII. That the storing of gunpowder or other explosive material shall not be permitted, except in such places as may be approved of and licensed by the town council for that purpose.

Licence of council for storing gunpowder.

No. 31—1860.

Council may cause burial-grounds to be closed.

LXXIII. That so soon as any burial-ground or portion thereof shall become so crowded as to be, in the opinion of two-thirds of the council, dangerous to the public health, the council shall be empowered to give six months' notice that burials therein shall cease, and that after the expiration of the said term of six months any person or persons causing any interment to be made therein shall be liable to pay a fine not exceeding twenty pounds, to be recovered in any competent court.

Meaning of term "householder."

LXXIV. The word "householder" used in this act shall include the occupier of immovable property, although no house be built thereon.

Mayor and councillors substituted for municipal commissioners in the management of the Provincial Hospital and Grey Institute.

LXXV. For the purpose of the second section of the Act No. 5, 1856, entitled "An Act for regulating the Provincial Hospital for Port Elizabeth," and of the second section of the Act No. 6, 1856, entitled "An Act for regulating the Public Schools of Port Elizabeth upon the Grey Foundation," and of any other former act or ordinance by which any office, duty, power, or function has been conferred or imposed upon the municipal commissioners of Port Elizabeth for the time being, the mayor and councillors created by this Act shall be deemed and taken to be the persons meant and intended precisely as if the words "mayor and councillors" were in the said acts substituted for the word "commissioners."

No. 1—1861.] AN ACT [July 19, 1861.

For the Creation of a Municipal Board for the City of Cape Town.

Preamble.

WHEREAS the Ordinance No. 1, of 1840, entitled "For the better regulation of the Municipal Board for Cape Town, and the vicinity thereof," and the Ordinance No. 14 of 1848, entitled "To amend the Ordinance No. 1 of 1840, for the better regulation of the Municipal Board of Cape Town, and the vicinity thereof," did expire on the 1st day of January, 1861, and it is expedient that a Municipal

Board for Cape Town, and the vicinity thereof, should be again constituted and established: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. From and after the commencement and taking effect of this Act, a municipality shall be created, which shall be styled "The Municipality of Cape Town," and which shall include the space of ground situate within the following limits,—that is to say, from the commencement of the Military Lines at Fort Knokke along the said lines to their termination at Zonnebloem; thence, in a straight line to the summit of the Devil's Mountain; thence, along the edge of the summit of Table Mountain to the point of the edge of the said mountain nearest the Lion's Head; thence, in a straight line, to the Government Fountain in the Kloof near the Blockhouse; thence, along the ravine through which the said fountain empties itself into the sea—from the point where the said fountain empties itself into the sea along low-water mark to where the western boundary line of the property formerly belonging to the late Mr. Frederik Liesching (called Botany Bay), prolonged northwards, runs into the sea; thence, along the last-mentioned boundary line to its southern extremity; thence, by a line running in a straight direction to the Lion's Head; thence, eastwards along the ridge and on the line which divides the waters flowing therefrom to the north and south to a point where the line of the west side of Strand-street, prolonged northwards, shall intersect the southern boundary line of the land now belonging to Mr. Wessels (being lot No. 1 of the Green Point lots), prolonged upwards and westwards; thence, downwards along the said boundary line, and by a prolongation of the said boundary line in a straight direction downwards and eastward across the Somerset or Green Point road, to a point twenty yards to the eastward of the said road; thence, by a line running parallel with and twenty yards to the eastward of the said road and of the cross-road branching therefrom to Three-Anchor

Creation and style of municipality.

Its extent.

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Bay to low-water mark; thence, along low-water mark to the point first mentioned—and shall be styled and called “The Municipality of Cape Town;” and that the same, for the purposes of this Act, shall be under the administration of a municipal board consisting of twelve commissioners, to be elected annually, in manner hereinafter provided.

To be under administration of a board of twelve commissioners.

Municipality to be divided into twelve districts, each represented by two wardmasters; nine to form a quorum.

II. The said municipality shall be divided into twelve districts, and two wardmasters shall be elected annually, in manner hereinafter provided, for each of the said districts respectively, and at every duly-constituted meeting nine of them shall form a quorum.

Who to be a householder and eligible as commissioner or wardmaster.

III. Every male person who is the occupier of any land, house, warehouse, counting-house, shop, or office, either as proprietor or renter, of the yearly value or rent of not less than ten pounds sterling, shall be, and be deemed and taken to be, a householder within the meaning of this Act, eligible to be elected either a commissioner or wardmaster, and that at the several meetings of such householders as aforesaid, hereinafter appointed and authorized to be holden, every such householder who shall be personally present shall have and be entitled to one vote and no more.

Joint occupiers to be regarded as separate householders; the value of the occupancy of each being not less than £10.

IV. Where any premises as aforesaid shall be jointly occupied by more persons than one as proprietors or renters, each of such joint occupiers shall be entitled to be considered a householder within the meaning of this Act, in respect of the premises so jointly occupied, in case the yearly value or rent of such premises shall be of an amount which, when divided by the number of such joint occupiers, shall give a sum of not less than ten pounds for each and every such joint occupier.

List of householders framed under Ordinance 1, 1840, to continue until superseded by fresh list.

V. The list of householders drawn out by the commissioners of said municipality, under the provisions of the Ordinance No. 1 of 1840, and in use at the expiration of the said Ordinance, shall remain and be conclusive evidence of the qualification of any person to be elected a commissioner or a wardmaster, and to vote at every election of commissioners and wardmasters, until the commissioners for the

time being shall have drawn out another or fresh list, in pursuance of the provision hereinafter contained for having such lists drawn out annually.

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VI. The persons who composed the board of commissioners at the expiration of the Ordinance No. 1 of 1840, and who shall be acting as such at the time of the commencement and taking effect of this Act, shall remain in office until the new commissioners elected under this Act shall have been chosen and shall have met at their first meeting, but no longer; and such commissioners hereby continued in office shall be and they are hereby empowered and required to call upon the householders of the municipality, by a public notice in the Government Gazette and one or more papers published in the said city, to nominate in writing candidates for seats in the board of commissioners on or before some day to be mentioned in such notice, not being earlier than fourteen days nor later than twenty-one days from and after the first publication of said notice in the Government Gazette and one or more papers published in the said city.

Acting commissioners continued in office. Their duties under this Act.

VII. Any two householders duly registered as such upon the list of householders shall be entitled to nominate any number of candidates not exceeding twelve to form a board of commissioners.

Who may nominate commissioners.

VIII. All such nominations shall be in writing, and shall be sent in to the commissioners for the time being, who shall as soon as the day named in the notice as the last day for receiving such nominations shall have expired publish in the Government Gazette and one or more papers published in the said city the names of the several candidates who shall have been so nominated.

Such nominations how to take place.

IX. At the same time with or as soon as may be after the publication of the names of the candidates as aforesaid, the commissioners shall, by a notice to be published in the Government Gazette and one or more papers published in the said city for not less than fourteen days, call a general meeting of the householders of the whole municipality to elect a board of twelve commissioners, at which meeting the householders present shall choose their own

General meeting of householders to elect board of commissioners.

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chairman, and every householder duly registered as such upon the list of householders shall be entitled to give one vote for each of any number of candidates not exceeding twelve, but not more votes than one to any candidate; and the twelve candidates who shall receive the greatest number of votes shall form the board of commissioners: Provided that no person not nominated as aforesaid shall be eligible to be chosen a commissioner, and that all votes given for any such person shall be considered as thrown away. Every board of commissioners shall hold office for one year from the day of its election, and shall then go out of office, to be succeeded by a new board; and so on as long as this Act shall remain in force.

Election of commissioners how to take place. Who eligible. How long to hold office.

Annual meeting for election of commissioners.

X. On the Monday immediately preceding the day on which any such term of one year shall expire a meeting shall be holden for the election of commissioners for the year next ensuing; and such elections shall proceed in such manner as is hereinbefore by the seventh, eighth, ninth, and tenth sections of this Act provided for the election of the first commissioners under this Act.

Vacancies how to take place and how to be refilled.

XI. Any commissioner who shall cease to possess the qualification in the third section mentioned, or shall absent himself from meetings of the board for four consecutive weeks without leave from the said board having been sought and obtained, or shall assign his estate for the benefit of his creditors, or shall become bankrupt or insolvent, or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease, or who shall accept any office of emolument under the appointment of the commissioners, 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 case of any casual vacancy happening in any manner whatever in such office, the commissioners for the time being shall forthwith in the manner hereinbefore directed by this Act call a meeting of such householders as aforesaid for the purpose of filling up such vacancy or vacancies, and the person or persons then elected



shall serve until the next general election of commissioners.

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XII. As soon as any new board of commissioners shall have been elected as aforesaid the commissioners then in office shall issue summonses to the commissioners so elected, informing the said commissioners individually that the first meeting of the said commissioners will be held in the Town-hall in Cape Town on a certain day and at a certain hour to be named in said summonses; and at this meeting shall be chosen by a majority of votes one commissioner to be called and styled the chairman of the board of commissioners, and one other commissioner to be called and styled the vice-chairman thereof, to hold their said offices respectively until the next general election of commissioners, as hereinbefore provided; and in case of the death, resignation, or other incapacity of such chairman or vice-chairman then a successor shall forthwith be chosen by the remaining commissioners from amongst themselves, to serve till the next general election of commissioners.

Retiring commissioners to summon elected commissioners to first meeting.

Chairman and vice-chairman to be chosen.

XIII. Such commissioners shall meet at other times, and so often as at any previous meeting shall be determined upon; and it shall be at all times competent for the chairman or any three commissioners, by writing under his or their hands, to summon, upon at least twenty-four hours' notice, the commissioners for any special purpose therein named; and at all meetings of such commissioners a number of commissioners not less than four shall constitute a quorum for transacting business; and whenever at any meeting of the said commissioners, whether general or special, the votes of the said commissioners are equally divided the chairman, vice-chairman, or other commissioner presiding shall have a casting vote besides his original vote.

Ordinary and special meetings.

Quorum. Casting vote of chairman or presiding member.

XIV. At all meetings whatsoever of the said commissioners, whether stated or special, the chairman so elected as aforesaid shall of right preside; and in case of the absence of the said chairman then the vice-chairman so elected as aforesaid; and in case both the chairman and the vice-chairman shall be

Chairman to preside at all meetings. When absent, how his place supplied.

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Commissioners to  
frame municipal  
regulations. Matters  
regarding which re-  
gulations shall be  
made, and how they  
shall be adopted.

absent then any commissioner thereto specially elected by the commissioners present shall preside.

XV. The board of commissioners so first chosen in manner aforesaid shall forthwith proceed to frame and agree upon such municipal regulations as the said commissioners may deem expedient for regulating the time and place of its own meetings and the order to be observed thereat, and also the duties to be performed by the wardmasters hereinafter mentioned, and for the valuation of the immovable property within the said municipality, and for the supply and distribution of water and for the construction and preservation of wells, water-courses, bridges, dams, or sluices, or other matters connected with the due supply of water, and for making, repairing, cleaning, and lighting the streets, and for regulating weights and measures, the establishing and regulating of markets, and the assize of bread, and for preventing and abating public nuisances in the said municipality, and for promoting the regularity in the erection of buildings, and for regulating the width and direction of new streets and thoroughfares—so as to promote the health and comfort of the inhabitants, for the licensing of cabs, wagons, drays, or omnibuses plying for hire within this city, to fix a tariff of fees or charges, and to frame regulations for the same, and for all and every other purpose of general utility within the said municipality, which shall appear to require such regulations, and shall without delay publish such regulations in the Government Gazette and one or more papers published in the said city, in the English and Dutch languages, and shall submit the same after the expiration of at least one week from the day of such publication to a meeting of the wardmasters hereinafter mentioned, to be called in the manner hereinafter provided, upon a notice of at least seven days from the first day of the first complete publication of the said regulations in the Government Gazette and one or more papers published in the said city, and at such meetings of wardmasters the said commissioners shall have a right to speak but not to vote, and the question shall be put by the chairman chosen to pre-

side over such meeting on each and every clause of the said regulations submitted by the said commissioners *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 conjointly as the case may be shall or shall not be adopted: Provided, always, that the said meeting of wardmasters shall not be competent of themselves to alter or amend any of the said regulations, but the said meeting shall and may, should it so think proper, return the said regulations to the said commissioners, with the suggestions in writing as it may deem desirable; and if such commissioners shall not think it fitting and expedient to concur in all the said suggestions, then the said commissioners shall, upon public notice of not less than seven days from the transmission of the said suggestions by the said wardmasters to the said commissioners, call a meeting of the householders of the municipality to be held at the Town-hall, to which meeting the said regulations shall be submitted, and the said meeting shall have full power and authority to determine upon the point or points of difference between the said commissioners and the said wardmasters in whatever way the said meeting shall by majority of its members decide: Provided, however, that in case of a division at such meeting of householders no commissioner or wardmaster shall be competent to vote thereat; and provided, also, that such meeting of householders shall not be entitled to add to or alter the said regulations or to do more than determine the point or points in controversy between the commissioners and the wardmasters in favour of the one party or the other party.

XVI. In case such regulations shall be adopted at any meeting of wardmasters as aforesaid or of householders as aforesaid the same shall forthwith be transmitted by the said commissioners to the Governor of the Colony for the time being, for the approval, amendment, or disallowance thereof of the said Governor, by and with the advice of the Executive Council; and in case such regulations shall be approved, notice of such approval shall be

Regulations to be submitted to Governor in Executive Council, and if approved to be proclaimed.

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given by proclamation to be made in that behalf; and the said regulations shall be published in the Government Gazette and one or more papers published in the said city, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein; and in the event of the said regulations being amended by the said Governor, by and with the advice of the Executive Council, the regulations so amended shall forthwith be transmitted to the said commissioners, who shall forthwith, upon a notice of not less than seven days, call a meeting of the wardmasters of the municipality, who shall by a majority of votes decide whether the said regulations so amended shall be adopted or not: and if the regulations be adopted, the said commissioners shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation, and cause the same to be published in the Government Gazette and one or more papers published in the said city, and upon such publication the same shall become as legal, valid, and effectual as if the same had been inserted herein: Provided, always, that nothing contained in such regulations or in any of the regulations mentioned in this Act shall be repugnant to or inconsistent with the true intent and meaning of the provisions of this Act.

How if regulations are amended by Governor.

How if disallowed, or if amendments are not agreed to by wardmasters.

XVII. If the said regulations when submitted to the said Governor shall be disallowed by him, by and with the advice of the Executive Council, or if such regulations, after being amended by the Governor by and with the advice of the Executive Council, shall not be adopted by the majority of votes at the meeting of the wardmasters of the municipality aforesaid, then and in every such case the municipal commissioners shall again, *de novo*, frame other municipal regulations; and the like proceedings shall be taken for having the same submitted to and adopted by and, when amended by the Governor, decided upon by the wardmasters of the municipality, and submitted to and approved or amended by the said Governor, by and with the advice of the Executive Council, as by the provisions

of the sixteenth section of this Act are prescribed to be taken as to the municipal regulations therein mentioned, and so on until such regulations as have been adopted by the wardmasters in manner aforesaid shall have been approved of by the said Governor in manner aforesaid, or when amended by him in such manner shall have been adopted by such wardmasters in manner aforesaid.

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XVIII. The commissioners for the time being shall, after the municipal regulations shall have been once duly approved and established as aforesaid, meet at least once in every month, and at such other times, if any, as may be specified in the municipal regulations for the time being; and at every such meeting it shall be lawful for any person to appear and prefer any complaint which he may think proper to make concerning any matter or thing done by force, or in pursuance or under pretence of the provisions of this Act or of the said municipal regulations, or concerning any thing which shall have been left undone contrary to any of the said provisions.

Commissioners to hold stated meetings. Who may appear thereat.

XIX. At any time after the publication of any such regulations as aforesaid it shall be lawful for the said commissioners assembled at any duly constituted meeting of the same to add to, amend, or repeal the existing regulations or any of them or any part of any of them: Provided that the said additions, amendments, or repealing provisions, as the case may be, shall be published in the Government Gazette and one or more papers published in the said city, and submitted to a meeting of wardmasters, and in all respects dealt with and decided upon in the same manner as is hereinbefore directed and provided with respect to the original rules and regulations hereinbefore referred to and provided for.

Regulations may be amended, added to, or repealed.

XX. It shall be the duty of every first meeting of each successive board of commissioners to be elected annually as aforesaid to commence their duties by choosing, in the manner hereinbefore specified with respect to the first board of commissioners, a chairman and vice-chairman to act as such for the term of one year then ensuing.

Chairman and vice-chairman to be chosen at first meeting of every successive board of commissioners.

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Meeting of householders for the election of wardmasters.

XXI. So soon as any new board of commissioners for the said municipality shall have been chosen in manner aforesaid, the said board shall, and they are hereby required, by a notice to be published for not less than fourteen days in the Government Gazette and one or more papers published in the said city, call a meeting, for each respective district of the householders residing within such district to elect two wardmasters for such district; and the householders present at any such meeting shall choose their own chairman, and such chairman shall within twenty-four hours after such election make a return thereof to the said commissioners duly signed by him, and the name of every wardmaster elected shall be published by the said commissioners in the Government Gazette and one or more papers published in the said city for general information.

How election of wardmasters to take place.

XXII. At every meeting for the election of any wardmaster every candidate shall be proposed at the said meeting by some person duly qualified to vote thereat and shall be seconded by some other such qualified person, and every vote which at any such election shall be given for any person who has not been so proposed and seconded shall not be taken into account in such election, but shall be considered as thrown away; and the votes shall be taken by ballot, and the person or persons having the greatest number of votes shall be elected wardmaster or wardmasters as the case may be: Provided, always, that when by reason of any two or more candidates having obtained an equal number of votes any ballot shall prove indecisive as to them such candidates shall forthwith be balloted for a second time, and he or they who shall obtain the greatest number of votes shall be elected wardmaster; but if such second ballot shall also be rendered indecisive by reason of an equality of votes, the chairman of the meeting shall decide the election by his casting vote; Provided, always, that at every election of a wardmaster for any particular district every householder of the said municipality who shall be found upon the list hereinbefore mentioned as possessing a qualification as such resident householder within

such district shall be competent to vote at such election, although such resident householder may be found upon the said list as qualified to vote in some other district or districts by virtue of some other property therein occupied, and may have exercised or may claim to exercise his right of voting therein.

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XXIII. Any such householder as aforesaid shall be eligible to be elected a wardmaster for the district within which he shall at the time reside, and shall be proposed at the meeting of householders for such district called as aforesaid by some person duly qualified to vote thereat and shall be seconded by some other person in like manner qualified.

Who eligible as wardmasters.

XXIV. Every person who shall be elected a wardmaster as aforesaid shall go out of office at the end of one year from the general election of wardmasters, in case all the wardmasters of the different districts shall be elected in one day; but in case all the said wardmasters shall not be elected in one day, then at the end of one year from the day on which the two or more wardmasters last elected shall have been chosen; and in place of such wardmasters so going out of office a like number of other wardmasters for the said districts respectively, to be elected as hereinbefore provided, shall come into office and remain in office for the following year, and at the expiration thereof shall in like manner go out of office, and be succeeded by other wardmasters for a like term of one year, and so on for ever: Provided that any of such outgoing wardmasters shall be re-eligible and may be re-elected for any such district and in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

Wardmasters when to go out of office and how to be succeeded.

XXV. On the Monday immediately preceding the day on which a term of one year from the day of the last general election of wardmasters shall expire, a meeting of householders of each respective district shall be held for the election of two wardmasters for such district for the next succeeding year, and such election shall proceed in like manner as is hereinbefore by the twenty-third and twenty-fourth sections provided for the election of the first wardmasters under this Act.

Meeting of householders for the election of new wardmasters.

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How office of ward-  
master shall be  
vacated and how re-  
filled.

XXVI. Any wardmaster who shall cease to be such householder as aforesaid, or shall cease to reside within the district for which he shall have been elected, or shall absent himself therefrom for any period exceeding three months, or shall absent himself without leave of the board of wardmasters from four successive meetings of the said board, or shall become bankrupt or insolvent, or assign his estate for the benefit of his creditors, or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease, or who shall accept any office of emolument under the appointment of the commissioners, shall *ipso facto* vacate his office, and in case any person so elected a wardmaster shall die, or shall resign, or refuse to accept the office of wardmaster, or in case of any casual vacancy happening in any manner whatever in such office, notice shall be forthwith given by the acting wardmaster to the commissioners, who shall forthwith in the manner hereinbefore directed by this Act call a meeting of such householders as aforesaid resident within such district for the purpose of filling up such vacancy, and the person then elected shall serve until the next general election of wardmasters, unless he shall become disqualified in manner as aforesaid.

Person elected to fill  
such vacancy to hold  
office until next general  
election.

How irregularity in  
the holding of meet-  
ings for the election  
of commissioners or  
wardmasters is to be  
remedied.

XXVII. In case it shall happen that by reason of any failure or neglect, or any other cause whatever, any meeting for the election of a board of commissioners or of a commissioner, or for the election of a board of wardmasters or of a wardmaster, as the case may be, shall not be duly and regularly holden, or that at any such meeting the commissioners or commissioner or the wardmasters or wardmaster for the purpose of choosing whom such meeting was convened shall not be duly elected, then and in every such case the commissioners for the time being shall as soon as any such event shall have been duly notified to them, by a notice to be published for not less than seven or more than fourteen days in the Government Gazette and one or more papers published in the said city, call a meeting of householders for the purpose of electing such commissioners or



commissioner or such wardmasters or wardmaster as the case may be, in the same manner as hereinbefore directed, and as often as any failure to elect shall occur in the case of a general election of commissioners or wardmasters then the commissioners or wardmasters who shall have been in office next before the time when such event shall have occurred shall remain and continue in office until their successors shall in the manner herein provided have been duly elected, upon which the former shall, provided their regular terms of service shall have expired, forthwith go out of office, and be succeeded by the person or persons newly chosen.

XXVIII. It shall not be lawful for any person to hold the office of commissioner and of wardmaster at the same time: Provided, however, that should it happen at any time that any person, being a wardmaster, shall be elected to be a commissioner, or, being a commissioner, shall be elected to be a wardmaster, such person shall within eight days thereafter give notice to the commissioners for the time being whether he will continue to discharge the office he shall at the time hold, or whether he will resign the same and accept the office he shall have been last elected to, and not giving such notice he shall be taken *ipso facto* to have vacated the office to which he shall have been last elected; and in reference to any vacancy created by the choice of such person, or by his failing as aforesaid to make any choice, the commissioners for the time being shall and they are hereby required, upon the motion of any one commissioner, to call a meeting of householders, and in the manner hereinbefore provided, for the purpose of filling up such vacancy.

No person to hold office as commissioner and wardmaster at the same time; but if, holding one, he be elected to another, he may choose which he will retain or accept.

XXIX. No person being an officer in Her Majesty's army or navy, in full pay or in active employment as such officer, or being employed in the civil service of Her Majesty's Government, or persons in holy orders, shall be eligible to be elected as a commissioner or as a wardmaster, and any such person being a commissioner or wardmaster who shall be employed or accept any employment under Her Majesty's military, naval, or civil Government

Who disqualified from being commissioners or wardmasters.

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shall be considered *ipso facto* to have vacated such appointment of commissioner or wardmaster, and the commissioners for the time being shall call a meeting of householders for the purpose of filling up such vacancy.

No commissioner or wardmaster shall, without consent of meeting of householders, receive any salary, fee, or reward.

XXX. No person elected and appointed under and by virtue of this Act a commissioner or wardmaster for the purpose of carrying into effect the provisions thereof shall, without the consent of a meeting of householders duly called according to the provisions of this Act, 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 this Act.

Commissioners to frame annual list of householders.

XXXI. The commissioners for the time being shall, every year, three months previous to the next ensuing election of commissioners and wardmasters, draw out a list of all such persons as they shall then find to be qualified to vote as householders under the provisions of this Act in each district respectively, which list having been signed by them shall be affixed to some conspicuous place at the Town-hall in Cape Town, there to remain for a period of fourteen days at least, and the said commissioners shall give public notice in the Government Gazette and one or more papers published in the said city that the said lists have been so affixed. And it shall be lawful for any householder within the meaning of this Act at any time within fourteen days from the time of affixing the said lists as aforesaid, to claim before the said commissioners, upon not less than twenty-four hours' notice given to the said commissioners, that the name of any other householder qualified and eligible to be placed upon the list aforesaid shall be placed upon the same, or to claim that the name of any person placed upon the said list shall be erased therefrom; and the said commissioners are hereby empowered to hear and determine any such claim or objection, and the commissioners shall alter and amend the said list as they shall see occasion, but the said commissioners shall not erase the name of any person from the list

Notice of posting of lists.

Claims and objections.

until such person shall have received at least forty-eight hours' notice of the investigation into his qualification, and shall be fully heard in regard thereto, should he so desire. And at the expiration of the said period of fourteen days from the time of the affixing of the said list as aforesaid, the said commissioners shall make out and keep in safety an amended list of the persons qualified to act as householders in each respective district, and the fact that the name of any particular person is to be found upon the said amended list shall be final and conclusive evidence of the eligibility of such person to be elected a commissioner or a wardmaster, or to act as a householder, as the case may be, at any time, until a new list as hereinbefore mentioned and directed shall have been framed and completed in the manner hereinbefore stated. And no person whose name shall not be found upon the said amended list shall, except as in the next succeeding section is excepted, be taken to be qualified to be chosen a commissioner or wardmaster, or to act as a resident householder, as the case may be.

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List when amended to be conclusive proof of municipal qualification.

XXXII. The list hereinbefore in the thirty-first section of this Act particularly mentioned shall remain as aforesaid with the said commissioners until a new list as in the preceding section directed shall have been posted as before-mentioned at the Town-hall, and if imperfect or inaccurate, amended, after which such new list shall supersede the former list, and become in turn the sole conclusive evidence of municipal qualification until another list shall again be framed; and so on for ever, as long as this Act shall remain in force and operation: Provided, always, that at any time during which the amended list aforesaid, whether that first complete, or any other, shall in its finished and amended shape remain in the custody of the said commissioners, it shall be lawful for any person, whether a person having been before the completion of the same or a person first becoming, after the completion thereof, fit and eligible to be elected a commissioner or qualified as a householder, as the case may be, upon giving forty-eight hours' notice of his intention to

How list may be further amended.

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the commissioners to claim before them that his name be put upon the aforesaid list; and to claim, upon the said notice to be given to any party whose qualification may be impeached, that the name of such party may be expunged from the said list, as having been or become disqualified. And the said commissioners shall in every such case hear and determine as in the thirty-first section specified; but no person whose name shall have been put upon the said list, after the same shall have been finished and completed in manner aforesaid, shall be eligible to be elected a commissioner or wardmaster, and to vote as a householder within the space of one month from the period when his name shall under the circumstances aforesaid have been placed upon the said list.

Commissioners to appoint secretary, treasurer, and other officers.

XXXIII. It shall be lawful for the said commissioners for the time being, acting in pursuance of any municipal regulations to that effect, and they are hereby authorized and required to appoint during pleasure a secretary, a treasurer, an engineer, and such other officers as shall be specified in any such regulations, and to remove and displace the same.

Treasurer to give security.

XXXIV. It shall be lawful for the said commissioners, and they are hereby required, to take security from the treasurer to be appointed by virtue of this Act, for the due execution of his office of treasurer, according to the true intent and meaning of this Act, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time. And in case any such treasurer shall neglect or refuse, for the space of three weeks next after his appointment, to give or offer such security to the satisfaction of the said commissioners, then the appointment of 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 ensuing 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.

If treasurer fail to give security his appointment to be null.

XXXV. Every such secretary and other officer appointed by virtue of this Act shall under his hand, and at such time or times, and in such manner as the said commissioners shall direct, deliver to the said commissioners, or such person as they shall appoint, true and perfect accounts in writing of all matters and things committed to his charge by virtue of this Act, and also of all moneys which shall have been by such officer received by virtue or for the purpose of this Act, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the treasurer for the time being, or to such person or persons as the said commissioners shall appoint to receive the same; and if any such treasurer, officer, or other person shall refuse or neglect to make or render such account, or refuse to deliver up the vouchers relating to the same or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said commissioners or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said commissioners by notice in writing under the hand of the chairman or vice-chairman, giving to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said commissioners or such other person or persons as aforesaid respecting the same, then and in every such case upon complaint made by the said commissioners or by such person or persons as they shall appoint for that purpose of any such refusal or wilful neglect as aforesaid to the Supreme Court or any judge thereof, the said court or judge shall, if they or he shall see fit, summon the officer so refusing or neglecting to appear before him, and if it shall appear to the said court or judge, upon the hearing of the case, that any moneys remain due from such officer, such court or judge may, by decree of the said court or warrant under the hand of the said judge, cause such money to be levied by

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Secretary and other officers to keep accounts of moneys received and paid.

How in case of wilful refusal or neglect to render accounts.

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distress and sale of the goods and chattels of such officer, and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money and the charges of distraining and selling the said goods and chattels, or if it shall appear to such court or judge that such officer had refused or wilfully neglected to render and give such account or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Act, remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case it shall be lawful for such court or judge to commit such offender to the common gaol or house of correction within the municipality, there to remain without bail until he shall have given a true and perfect account as aforesaid or until he shall have paid such moneys as aforesaid, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof to the said commissioners or to such other person or persons as aforesaid, or until such other or further time as the said court or judge shall direct: Provided that nothing herein contained shall prevent such treasurer, officer, or other person from being tried, and if found guilty convicted and sentenced according to law for any crime or offence which he may have committed relative to any matter or thing entrusted to him under the provisions of this Act; and provided, further, that nothing herein contained shall prevent the commissioners for the said municipality from bringing their action for the recovery of any sum or sums due by the treasurer, officer, or other person to the said municipality.

XXXVI. No prosecution or commitment under the provisions of this Act of any treasurer or other officer or person to be appointed under the power of this Act shall acquit and discharge any surety or security that shall or may have been taken by or given to the commissioners for the due and faithful execution of his or their office or the payment of the moneys received or to be received by him or them respectively.

Prosecution or commitment of treasurer or other officer not to exonerate their sureties.

XXXVII. All acts, orders, and proceedings of the said commissioners at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by the chairman or person acting as such and 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 *primâ facie* evidence of all such acts and proceedings upon any appeal, or trial, or information, or any proceeding, civil or criminal, and in any court or courts whatever.

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Proceedings of commissioners to be entered in a book, which may be used in evidence.

XXXVIII. 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 at the Town-hall in Cape Town, which shall not under any pretence whatever be taken from thence, except by process of the Supreme Court or any judge thereof or other court, in which shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be opened to the inspection of the said commissioners and of every such resident householder as aforesaid without fee or reward; and the said commissioners and other persons aforesaid or any of them, shall or may take copies of or extracts from the said book or books without paying for the same; and in case the said commissioners or any of them or any secretary or other officer of the commissioners shall refuse to permit or shall not permit the said persons aforesaid to inspect the same or take copies or extracts as aforesaid, such commissioner or commissioners, secretary or other officer, shall each forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

Commissioners to keep books of accounts, which shall be open for inspection.

XXXIX. In the month of January in every year a true account shall be made in writing of all moneys

Annual account to be laid before meeting of wardmasters, and

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abstract thereof to be  
published.

received and paid by virtue of this Act during the preceding year ending on the thirty-first day of December, and the same shall be laid before a meeting of wardmasters, to be called by the said commissioners as hereinafter authorized in the first week of February in each and every year; and a copy or duplicate of such account, verified on oath before any justice of the peace, by the said treasurer, and certified by the chairman and two of the said commissioners, shall be deposited with the said commissioners, and shall be open to the inspection of any resident householder or any party interested, and an abstract thereof published in the Government Gazette and one or more papers published in the said city for general information before the first day of March following.

Annual estimates of  
revenue and expendi-  
ture to be laid before  
joint meeting of com-  
missioners and ward-  
masters.

**XL.** The said commissioners shall also in the month of January in every year draw out an estimate of the probable revenue and expenditure for the current year, showing the several taxes or rates to be levied or assessed during the same, which estimate shall be signed by the treasurer and countersigned by the chairman and two commissioners, and an attested copy thereof deposited in their office at the Town-hall, and shall there be open to the inspection of any householder or any party interested, and an abstract thereof published in the Government Gazette and one or more papers published in the said city for general information before the fifteenth day of the said month of January; and the said estimate shall be laid before a joint meeting of commissioners and wardmasters, to be called by the said commissioners upon a notice of not less than fourteen days; which meeting shall be competent to alter the said estimate in regard to probable revenue or probable expenditure, or both, as the said meeting shall deem to be necessary or expedient; and at this meeting, as well as any other joint meeting of commissioners and wardmasters which may be held under this Act, twelve shall form a quorum.

Joint meeting to be  
called to assess rates.

**XLI.** After the said abstracts in the two preceding sections of this Act mentioned shall have been published as therein directed, during fourteen days,



the said commissioners shall, directly after the expiration of the same, call a joint meeting of commissioners and wardmasters, upon not less than seven days' notice to be published in the Government Gazette and one or more papers published in the said city, for the purpose of assessing any such rate or rates on the immovable property situate within the municipality, and to endure for such period not exceeding twelve months as the majority of persons present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this Act.

XLII. The rates in the last preceding section mentioned shall be voted and levied for specific services or objects in manner and to the extent following, that is to say,—one rate shall be voted and levied for the water-works and generally for the supply of water to the inhabitants, and another rate for public works, sewerage, draining, paving, cleaning, repair and watering of streets, and generally for all purposes of a municipal nature, exclusive of the water-works and the supply of water: Provided that no rate voted for water-works and the supply of water shall be invalidated or impeached by reason that no rate shall have been voted at or by the same meeting for any other municipal purpose, and conversely, that no such last-mentioned rate shall be invalidated or impeached by reason that no rate shall have been voted for water-works or the supply of water: Provided, also, that separate and distinct accounts shall be kept, showing the receipts from and the expenditure of each separate rate which shall be voted, and that the funds arising from any rate voted for any specific purpose shall be applied to that specific purpose, and to none other: Provided, also, that the funds arising from water-rates and private water-leavings shall not be spent upon or applied to any purpose other than the supply of water to the inhabitants.

Purposes for which rates shall be levied.

To be applied to specific objects and none other.

XLIII. All minutes of the proceedings of the boards of commissioners and wardmasters respectively for the time being, and all books, writings, accounts, and records thereof shall be made and kept in the English language.

Minutes of proceedings to be in the English language.

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Commissioners may call meeting of wardmasters for any special purpose.

**XLIV.** The board of commissioners for the time being shall be empowered, for the purposes in any of the preceding sections mentioned, or for any other purpose which to the said commissioners shall seem a fit and proper one, to call, by a public notice of not less than forty-eight hours, a meeting of the wardmasters of the municipality, to be held in the Town-hall, and to submit to such meeting of wardmasters all such questions, matters, and things as the said commissioners shall deem expedient.

Commissioners to appoint collectors of rates.

**XLV.** After the rates to be levied by virtue of this Act shall have been assessed in manner aforesaid it shall and may be lawful for the said commissioners to appoint collectors for the purpose of collecting the amounts due and payable in manner aforesaid, and the said collectors are hereby authorized to demand and receive the amounts so to be collected, and the said collectors shall be furnished with an order under the hands of the said commissioners or any two of them, directing the said collectors to demand and receive the amount mentioned in the said order; and such collectors shall give security to the said commissioners for the due execution of their office to such amount as they shall deem sufficient: Provided, however, that nothing herein contained shall disqualify any of the wardmasters from being appointed such collector within the limits of their respective districts.

Collectors to give security.

Wardmaster may be collector.

Proprietor or occupier may be sued for rates separately or together.

**XLVI.** If the amount of any rate which under the provisions of this Act shall have been assessed on any immovable property within the said municipality shall not on demand made by the person duly authorized to collect the same be paid by the occupier of such property or by the proprietor thereof, it shall be lawful for the said commissioners, and they are hereby empowered, to sue either the said occupier or the said proprietor, separately or both of them in one and the same action, each for the whole, before any competent court, and to obtain the judgment and process of such court for the recovery of the same, reserving to such occupier and proprietor respectively such relief against each other as they may be lawfully entitled to: Provided,

But not for rates pre-

always, that no person shall, as occupier of any such immovable property, be liable to pay or to be sued for any rate which had been assessed on the same in respect of any period, or which had become due and payable at any time before such person entered on the occupation of such property; and that every person who as occupier of any such property shall at any time have become liable to pay any rate which may have been assessed thereon shall continue to be liable and may be sued in manner aforesaid for the same, notwithstanding that such person shall have ceased to occupy such property; and provided, also, that the payment of any rate assessed on and due in respect of any such immovable property as aforesaid, by either the proprietor or occupier of the same, shall free and discharge the other from all claim and demand for the payment of such rate as far as regards the municipality aforesaid.

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vious to possession or  
occupation.

XLVII. The said collectors to whom any such order as aforesaid shall be issued shall deposit in one of the banks in Cape Town, by the direction of the commissioners, on account and in the name of the "Municipality of Cape Town," all such sums as they shall have received during any day on the day the same shall have been received, or on the next succeeding day on which the said bank shall be open for receiving deposits, provided such sums shall amount to or exceed five pounds, and in case such sums so received shall be under five pounds then the said collectors shall deposit the said sums on the day on which such sums together shall amount to the sum of five pounds, or at farthest on the next succeeding day on which the said bank shall be open as aforesaid; and at the end of every week shall render an account thereof to the treasurer, with vouchers for the same; and in case any collector shall neglect or refuse to deposit any sum or sums so received by him as aforesaid within such time as aforesaid, such collector shall forfeit all commission for collecting the same, and shall pay, by way of penalty, ten per cent. upon the amount he shall have so failed to deposit; and no such sum or sums of money shall be drawn out of such bank but upon cheques signed by

Collectors to deposit  
sums collected by  
them in a bank.

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the treasurer and countersigned by two commissioners: Provided, however, that nothing herein contained shall extend or be construed to extend to release the sureties for the said collectors from their liability as such sureties.

Commissioners to pay annually to colonial treasury one fourth part of the expense of Cape Town police.

XLVIII. The commissioners aforesaid for the time being shall yearly and every year pay and hand over to the 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 executive police of Cape Town for and during the year then last past, such payment to be made on or before the 31st March in the year next after that for or in regard to which it is so made.

What items to constitute expense of police.

XLIX. The items which shall for the purpose of such contributions 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 heretofore made 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 additional police shall be so engaged without the concurrence of the commissioners of the municipality.

Certificate of Auditor-General to be *primâ facie* evidence of amount of expense.

L. 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 purpose of this Act of the police force aforesaid for the year mentioned in such certificate, shall be deemed and taken to be *primâ 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.

Commissioners to keep up fire-engines.

LI. It shall be lawful for the said commissioners and they are hereby empowered from time to time to keep up fire-engines, with pipes and other utensils proper for the same, for the use of the municipality, and to provide a proper place or places for the keeping of the said fire-engines, and to place the same

under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable, and to make such further rules and regulations thereon as they shall think necessary.

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LII. It shall be lawful for the said commissioners and they are hereby empowered from time to time to cause such lamp-irons or lamp-posts or other posts to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or enclosures (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner within all or any of the said roads, streets, and places within the limits of the said municipality as shall be deemed proper; and also to cause such number of lamps of such sizes and sorts to be provided and affixed and put upon such lamp-irons and lamp-posts as shall be necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with oil, gas, or otherwise, during such hours as shall be necessary, and also from time to time to make such regulations thereon as they shall find necessary.

And to put up lamp-posts.

LIII. It shall be lawful for the said commissioners and they are hereby empowered from time to time to provide and to carry and lay any pipe or pipes for the conveyance of water to which the inhabitants of the municipality shall at any time have or acquire a common right from any reservoir, river, or spring to any house, building, or other place within the limits of the municipality, and also from time to time to make such regulations touching the same, and the quantity of water to be supplied to the inhabitants, and the time or times at which such supply is to be received, as shall be proper and necessary; and also touching the most expedient mode of preventing any waste of drinkwater within the said municipality.

To lay down water-pipes and make regulations regarding the supply and preservation of water.

LIV. The inhabitants of the municipality of Green Point shall have the right and shall be entitled to be furnished and provided from the water-works now existing or which may hereafter be made, erected, or provided for supplying water to the inhabitants

Inhabitants of Green Point to be supplied with water from water-works in Cape Town.

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of Cape Town, in whomsoever the property, management, or administration of any such water-works shall for the time being be vested, with a supply of water, in the same proportions, on the same terms, at the same rates, and under the same regulations, in, on, at, and under which the inhabitants of Cape Town, shall for the time being have or be entitled to have water supplied to them; and in consideration of such water-rates to be paid by the inhabitants of the municipality of Green Point as aforesaid the community or communities, person or persons in whom the property, management, or administration of such water-works as aforesaid shall for the time being be vested, shall, and they are hereby required to provide, keep in good order, and repair a main pipe extending from the said water-works as far as the main pipe by which water is now supplied to the inhabitants of Green Point and Sea Point at present extends, and also the fountains or pumps connected with the said main pipe now existing, or as many of them as from time to time shall be necessary for the due supply of water to the inhabitants of the municipality of Green Point.

Water-rate to be paid by inhabitants of Green Point.

LV. Every rate which shall be voted in manner and form as in the forty-second section of this Act for the water-works, and generally for the supply of water to the inhabitants, shall be chargeable upon and payable by the inhabitants of the municipality of Green Point according to the valuation for the time being of the immovable property of the said municipality, in like manner as by the inhabitants of the municipality of Cape Town.

Every house in Cape Town and Green Point to be supplied with fifty gallons of water daily, free of charge.

LVI. The commissioners shall be and are hereby required to supply, as soon and as far as may be practicable, every dwelling-house within the municipalities of Cape Town and Green Point with not more than fifty and not less than twenty-five gallons of water per diem free of charge: Provided, however, that the said commissioners may supply in addition to such fifty gallons of water such further quantity as any proprietor or occupier of any dwelling-house, store, or tenement within the said municipalities may require: Provided, further, that for

such quantity of water beyond the fifty gallons in this section mentioned supplied by the said board such charge may be made as the said board may deem expedient, such charge, however, in no case to exceed the rate of one pound and ten shillings per annum for every daily supply of one hundred gallons.

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LVII. The commissioners shall and are hereby required to maintain at all times an adequate supply of water to every public fountain and fire-plug, to the cisterns from which the shipping in the harbour of Table Bay is supplied; and to all dwelling-houses and private water-leading for which special rates are paid the board shall maintain such supplies of water as under the provisions of this Act such dwelling-houses and private water-leading may be entitled to; and in order to enable the board to supply every dwelling-house with the water which they are hereinbefore required to supply free of charge the proprietor of every such dwelling-house shall within twenty-one days after receiving written notice to that effect from the board, lay on a private service-pipe to the main or branch service as may be directed, and in all cases when the proprietor shall refuse or neglect, the board is hereby empowered to supply and lay on such private service-pipe at his expense; and for such purpose, and in the case of renewing or relaying such pipes as may already have been lawfully laid, or in the laying on at the expense of proprietors private service-pipes or water-leading to dwelling-houses, the said commissioners shall have power to enter on private property.

Commissioners to maintain supply of water to fire-plugs, public fountains, and shipping.

Proprietors to lay on service-pipes to dwelling-houses.

LVIII. Should the commissioners find it necessary to impound the water of any fountain or stream now used for washing clothes they shall in that case be required to make provision at some convenient place or places for the requisite supply of water to be used for the washing of clothes.

Provision to be made for washing clothes.

LIX. The commissioners shall be and are hereby required to make and maintain at all times in serviceable order and efficient repair, all dams, tanks, reservoirs, and other works necessary for the im-

Dams, reservoirs, mains, &c., to be kept in efficient repair.

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pounding of an adequate supply of water to the inhabitants of the municipalities of Cape Town and Green Point, with the shipping in Table Bay; as also all mains, branch service-pipes, and other appurtenances required to convey that supply to every locality or district entitled to it by the provisions of this Act.

Commissioners to make bridges and keep the same in repair.

LX. It shall be lawful for the said commissioners and they are hereby empowered to cause to be made, provided, erected, and built, cover in, or remove such bridges, sluices, dams, reservoirs, watercourses, drains, and ditches as now are or shall be deemed necessary within the municipality, and shall cause the same to be kept at all times in good and sufficient repair; and from time to time to make such rules and regulations thereon as they shall find necessary.

Commissioners of Green Point municipality may terminate arrangement for supply of water from Cape Town.

LXI. It shall be lawful for the commissioners of the municipality of Green Point, upon a notice of not less than three months to be given by them to the commissioners of the municipality of Cape Town, to terminate and annul the arrangement mentioned in section fifty-four either in the whole or in part regarding the supply of water from the water-works of Cape Town for the time being to the inhabitants of the municipality of Green Point; and upon the expiration of such notice, or sooner, should both boards of commissioners so agree, all and singular the provisions of the fifty-fourth, fifty-fifth, and fifty-sixth sections shall cease, determine, and become void as to the district or districts in respect to which the notice is applicable: Provided, always, that if any such arrangement be terminated and annulled either in the whole or in part, the municipality of Cape Town shall sell at a fair value to the municipality of Green Point the service-pipes and water-leadings belonging to the municipality of Cape Town situate in the district or districts in respect of which such arrangement shall terminate.

Commissioners to keep streets in repair and make new ones where necessary.

LXII. It shall be lawful for the said commissioners and they are hereby empowered and required to cause the public streets, roads, and places within the limits of the municipality to be at all times kept in good and sufficient repair; and they are hereby em-



powered, as far as the funds of the municipality shall permit, to cause such new streets and roads to be made within the limits aforesaid as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair, and from time to time to make such rules and regulations thereon as to them shall seem fit.

LXIII. It shall be lawful for the said commissioners and they are hereby empowered and required from time to time as occasion may require to keep up and establish within the limits of the said municipality a market or markets for the sale of cattle, meat, fish, poultry, vegetables, fruit, and the like, and to cause suitable houses or buildings to be built and erected for the convenience of persons attending, holding, and superintending such market or markets, and to cause the same to be kept in good and sufficient repair, and also to frame and make such regulations and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets.

Commissioners to establish markets.

Commissioners may make market regulations.

LXIV. It shall be lawful for the said commissioners and they are hereby empowered from time to time to make the necessary rules for the due and proper care of weights, measures, and the quality and assize of bread, and the quality of meat; and they are hereby empowered at all times to visit and enter into the shops or places where bread, meat, or fish is sold, for the purpose of assizing the bread and examining the weights and measures, and also of taking proper care that the bread, meat, or fish therein sold is good and wholesome.

May examine weights and measures, and assize bread, meat, &c.

LXV. It shall be lawful for the said commissioners and they are hereby empowered from time to time if necessary and expedient to make rules for the due and proper care of the common pasture lands of the municipality, and therein to specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kinds; and also to impose fines on any person contravening such regulations, and to establish and erect one or more pound or pounds within the said municipality, and to appoint one or

Commissioners to make regulations for pasture lands, public pounds, &c.

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more poundmasters, and to make all such pound regulations as shall be necessary or expedient: Provided, always, that the said commissioners shall not be authorized or permitted to dispose of, alienate, build upon, enclose, or cultivate any such common pasture lands nor suffer any person to build upon, enclose, or cultivate the same, and any such alienation by sale, gift, or otherwise, except made in the manner and by authority hereinafter in the seventy-fifth section mentioned, shall be and is hereby declared to be null and void.

Punishment for wilfully damaging lamp-posts, &c.

LXVI. If any person shall wilfully break, throw down, spoil, or damage any lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any lamp, or shall break, spoil, or damage any building the property in which is by the provisions of this Act vested in the said commissioners, or shall wilfully break or damage any public water-course, drain, or ditch within the limits of the said municipality, it shall be lawful for any person who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act and without any warrant to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before the resident magistrate for Cape Town or any justice of the peace having jurisdiction; and if the party accused shall be convicted of any such offence by such resident magistrate, he, she, or they, shall forfeit severally any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender and the other moiety shall be applied for the purposes of this Act; and in case any such offender shall not on conviction pay the said forfeiture and satisfaction, such magistrate is hereby required to commit him, her, or them to the common gaol or house of correction, there to be kept at hard labour, if such magistrate shall so order,

Moiety of fine to go to the person apprehending the offender.

for any time not exceeding three calendar months, unless such forfeiture and satisfaction shall be sooner paid: Provided nothing herein contained shall prevent the commissioners from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said magistrate.

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LXVII. If any person shall carelessly or accidentally do any such damage or injury as hereinbefore is mentioned, and shall not upon demand make satisfaction to the said commissioners for the damage or injury so done, it shall and may be lawful for the said resident magistrate, and he is hereby required, upon the application or complaint of the commissioners, or any two of them, to summon the party complained of, and upon hearing the parties on both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money by way of satisfaction to the said commissioners for such damage as such resident magistrate shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same and all expenses attending the recovery thereof may be levied and recovered as any penalty or forfeiture is by this Act directed to be levied and recovered in other cases: Provided, however, that nothing herein contained shall prevent the commissioners from bringing any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said magistrate.

Proceedings in case of injury through carelessness.

Offender may be sued in Supreme Court.

LXVIII. The commissioners shall use all due endeavours to keep the impounded water from being fouled or in any way rendered impure; and for this end every person convicted upon the prosecution of the said commissioners of any of the following offences shall forfeit to the use of the said board a sum not exceeding five pounds nor less than one pound; in failure of the payment of such fine the party convicted shall be liable to imprisonment, with or without hard labour, for any period not exceeding fourteen days:

Penalties for polluting water in public reservoirs.

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- a* Every person who shall bathe or wash himself in any stream, reservoir, or other water-works belonging to the board, or wash, throw, or cause to enter therein any dog or other animal;
- b* Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, or other water-works, or wash, or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing;
- c* Every person who shall cause the water of any sink, sewer, or drain, or any filthy water whatever belonging to him or under his control to run or be brought into any such stream, reservoir, or other water-works, or do any other act whereby the water under the charge of the commissioners shall be fouled or made impure. And every such last-mentioned person shall also forfeit the sum of one pound aforesaid for each day, if more than one, during which the last-mentioned offence shall be continued.

LXIX. It shall be lawful for the board of commissioners, with the previous consent of a joint meeting of commissioners and wardmasters, to be called by the commissioners, upon a notice of not less than fourteen days, for the purpose of considering the subject, and the said commissioners with such consent are hereby empowered to borrow any sum or sums not exceeding twenty thousand pounds sterling in all, for public permanent improvements within or in reference to the said municipality; but it shall not be lawful for the said commissioners and wardmasters to borrow any greater sum without having first obtained the sanction of the householders of the municipality assembled at a general meeting, to be called by the commissioners upon a notice to be published for not less than twenty-one days in the Government Gazette and one or more papers published in the said city.

Commissioners with consent of wardmasters may borrow money.

Commissioners with

LXX. In case the said commissioners shall re-

quire to take or use any land, with or without the buildings if any erected thereon, or any frontage or stoep belonging to any premises for the purpose of making or improving causeways or pavements, or to dig out or carry away any materials or to appropriate or make use of any springs, streams, or other supplies of water belonging respectively to any person or persons who shall not be bound by law to allow the commissioners so to do, then and in that case it shall be lawful for the said commissioners, with the concurrence of the wardmasters, and they are hereby authorized and empowered to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, materials, springs, streams, or supplies of water as aforesaid, or for payment of consequential damages, and generally to enter into any such contract or contracts relative to the obtaining of any such land, buildings, materials, springs, streams, or any other supplies of water as aforesaid on such terms and conditions as they shall deem expedient; and if any such person or persons and the said commissioners shall not agree upon the purchase-money or hire or recompense for consequential damages, to be respectively given by one party and received by the other, then the said commissioners shall cause to be served upon such person or persons, or to be left at his last known place of residence, a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said commissioners or to some person by them appointed, within a certain limited time to be specified in the said notice, not being less than fourteen clear days if the party shall then be within one hundred miles of Cape Town, and not less than six months if he shall then be at a greater distance than one hundred miles, whether he is willing to accept the sum therein mentioned or not. And in case such person shall refuse to accept the sum offered or shall neglect to reply to the said notice then said commissioners shall by another notice in writing call upon such person to refer to arbitration

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consent of wardmasters may treat with persons for the purchase of lands, buildings, &c.

Arbitration may be referred to.

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the amount of recompense or compensation to be paid to him by the said commissioners, and for that purpose to transmit to the said commissioners, within a certain reasonable time to be specified in the said last mentioned notice, the name of some person whom he shall elect to be an arbitrator upon such arbitration; and the said commissioners, upon receiving the name of the person so elected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said commissioners by the secretary of the said commissioners for the time being and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators in case of a difference of opinion to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire as the case may be shall be made a rule of the Supreme Court, and shall be binding and conclusive and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject-matter. And in case such person as aforesaid shall refuse to accept the sum offered, or to submit to arbitration the amount of such purchase-money or hire or compensation shall be inquired into and assessed by the majority of a special jury of eleven persons in the following manner, namely: On a day fixed, and on three days' previous notice to be given by the municipality to the owner, both parties shall appear personally or by their attorneys or counsel before the High Sheriff, and in his presence, then and there, each of the said parties shall elect out of the jury list the names of eleven persons, making together twenty-two, whereof record shall be made by the Sheriff, signed by himself and parties, and delivered to the magistrate when applied for; and thereafter, on the application of the municipality, the magistrate shall fix a day for the hearing and assessment by the said jury aforesaid, and summon the said twenty-two jurors to attend in his court; provided that the said day of hearing be so fixed that ten full days may be given

If arbitration be unsuccessful, special jury to decide.

by the municipality to the other party. On the day fixed as aforesaid the said parties shall appear with their attorneys, counsel, and witnesses if they have any, and in their presence the magistrate shall out of a box containing the aforesaid twenty-two names draw the names of eleven jurors, and the first eleven names so drawn out shall form the court of inquiry and assessment; and in the said court the magistrate shall preside, administer the oath of the jurors that they shall truly and faithfully inquire of and assess such value, hire, or compensation, and also the oath to the witnesses, if any, and receive and record the verdict of the jury. And the parties appearing before the said jury shall be entitled to plead and examine witnesses, and the party claiming compensation shall be deemed the plaintiff and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law. The said jury shall be entitled, either before or after hearing of the parties, to inspect the property sought to be taken; and in the consideration of their verdict shall have regard not only to the value of the property to be purchased or taken as aforesaid but also to the damage, if any, to be sustained by the owner in consequence thereof, or by reason of the severing of the land taken from the other lands of such owner, or otherwise injuriously affecting the property of the owner by the exercise of the powers of this Act: Provided that no party shall at any time be required to sell to the municipality any part only of any house or other buildings or manufactory if such party be willing and able to sell the whole thereof. And if the jury after inquiry aforesaid shall assess the value, hire, or compensation as aforesaid, and if the jury shall assess a greater sum than the sum previously offered by the municipality, all the costs of such inquiry shall be borne by the said municipality; but if the said jury shall assess the same for the sum previously offered or less, all the costs of the said inquiry shall be defrayed by the owner. And the verdict of the said jury, which shall be final, shall be signed by at least the majority of said jurors, and delivered to the magistrate in

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Jury how to be selected.

Proceedings before jury.

How costs to be given.

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open court, and be made of record by the magistrate, under his signature, and shall be good and sufficient evidence in all courts.

How if owner of lands or buildings required by municipality be absent or undiscoverable.

LXXI. In case the said commissioners shall require to take or use any of the lands or buildings, or to dig out or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water in the last preceding section mentioned of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said commissioners and they are hereby authorized to cause a notice to be inserted in the Government Gazette and one or more papers published in the said city for four successive weeks, describing as accurately as may be the land, buildings, materials, springs, streams, or other supplies of water as aforesaid which is required to be taken or used, and calling by name on the owner or owners of the said land, buildings, materials, springs, streams, or other supplies of water as aforesaid if known, or if not known, then upon the owner or owners whoever he or they may be, to take notice that the said commissioners are ready and willing to treat with the owner or owners or any person duly authorized by him or them for the recompense or compensation to be made or paid by the said commissioners for the said land, buildings, materials springs, streams, or other supplies of water as aforesaid, and requiring such owner or owners to apply within six months from the day of such notice, which shall be the day of its first publication, to the said commissioners, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners shall not apply to the said commissioners within the said period, then it shall and may be lawful for the commissioners to appoint some com-



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petent person to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water as aforesaid required, and such person shall make oath before some justice of the peace or other officer, which oath every justice of the peace or other officer is hereby empowered to administer, that he hath to the best of his judgment fairly appraised such value; and thereupon it shall and may be lawful for the said commissioners to pay whatever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water as aforesaid in question at into the Guardians' Fund, to the credit or credits of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony; and the said commissioners upon so paying the said sum shall be authorized and entitled to take or use the land, buildings, materials, springs, streams, or other supplies of water as aforesaid in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid and as if all acts by law required for vesting in the said commissioners a sufficient title to the use of all property in the land, buildings, materials, springs, streams, and other supplies of water as aforesaid had been duly done and performed.

Value to be paid into  
Guardians' Fund.

LXXII. It shall be lawful for the said commissioners and they are hereby authorized and required to remove, put down, and abate all nuisances of a public nature within the said municipality, or which may tend either to injure the health or in any way affect the safety or the rights of the inhabitants at large, and if need be to proceed at law before the resident magistrate or Supreme Court against any person or persons so committing any such nuisance as for the abatement thereof and aforesaid damages; and, further, that the said commissioners shall, and they are hereby required to cause all streets, water-courses, drains, roads, and places within the said municipality to be kept clean and free from dirt,

Commissioners to  
abate nuisances.

Commissioners to  
cause streets, water-  
courses, &c., to be  
kept clean.

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filth, or rubbish; and any person convicted upon the complaint made by the commissioners to the resident magistrate of throwing dirt, filth, or rubbish into any such street, road, water-course, drain, or place as aforesaid, shall forfeit and pay any sum of money not exceeding five pounds; and in case of neglect or refusal forthwith to pay such money then the same and any expenses attending the recovery thereof may be levied and recovered as any other penalty or forfeitures by this Act directed to be levied and recovered in other cases.

Commissioners may enter into contracts.

LXXIII. It shall and may be lawful for the municipal commissioners from time to time to enter into any contract with any person or company whatsoever for any work to be done and performed or for any materials to be furnished to and for the said commissioners by virtue and for the purposes of this Act, which contract shall specify the work to be done and the price to be paid for the same, and the time when the work shall be completed, and the penalty to be suffered in case of non-performance thereof, and shall be signed by the chairman and by two or more of the said commissioners and also by the person or persons contracting; which contract or a copy thereof shall be entered in a book to be kept for that purpose; but no contract above the value of fifty pounds shall be entered into unless fourteen days' notice be previously given in one or more of the public newspapers published in this city, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the said commissioners at a certain time and place in such notice to be mentioned: Provided, always, that if the said commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price it shall be lawful for the said commissioners to contract with such other person or persons as they shall think proper; and such person or company so contracting shall give security for the due performance thereof to the satisfaction of the commissioners: Provided, however, that no

No commissioner or

commissioner nor wardmaster, as the case may be, shall be allowed, either directly or indirectly, to become a contractor or to tender for any contract, either in his name or in the name of or jointly with any other person, on pain of forfeiture of all their share and interest in such contract for the benefit of the municipality, and shall also be considered to have vacated their offices of commissioners or wardmasters *ipso facto*, and be ineligible to be elected at any future period to serve as a commissioner or wardmaster.

LXXIV. No commissioner of the said municipality shall from and after the commencement and taking effect of this Act be deemed or taken to have vacated his office of commissioner or to have incurred any penalty or forfeiture whatever by reason merely that the board of commissioners to which he belongs shall have entered into any such contract as in the last preceding section of the Act aforesaid mentioned, or any other dealing or transaction with the directors or other managers of any joint-stock company in this Colony, of which such commissioner shall be a shareholder, or in which he shall be otherwise interested, nor shall any shareholder or person otherwise interested in any joint-stock company with which company the commissioners of the municipality shall have entered into any executed or still subsisting contract, dealing, or transaction be deemed or taken to be ineligible to be elected or to act as a commissioner of the said municipality by reason merely of such contract, dealing, or transaction: Provided, always, that no commissioner of the said municipality who is also such a shareholder or so otherwise interested as aforesaid shall be allowed to vote as a commissioner upon the question of making or entering into any contract, dealing, or transaction, with the joint stock company in which he is interested; and any commissioner who shall so vote in contravention of this restriction shall for every such offence forfeit the sum of one hundred pounds: Provided, also, that nothing herein contained shall be deemed or taken to prevent the chairman of the said commissioners, being such a shareholder as

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wardmaster to be a contractor.

Shareholders in joint-stock companies having transactions with municipality may hold office as commissioners.

But may not vote on questions touching such transactions.

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To constitute a quorum, wardmasters may supply place of commissioners disqualified from voting under this section.

aforsaid, from signing any such contract as by the seventy-fourth section aforsaid is required: Provided, further, that if by reason of the number of any shareholders as aforsaid who shall be such commissioners as aforsaid it shall at any time happen that there shall not be sufficient commissioners competent to vote upon any such question as aforsaid to form a quorum for the transaction of such business, then the number deficient of such competent commissioners shall for the purpose of that question, but no other, be supplied by wardmasters not being such shareholders, to be chosen by ballot by such competent commissioners; and every wardmaster so chosen shall in regard to the discussion and determination of such question be entitled to sit, deliberate, and vote as if he were such a commissioner, and shall for all purposes of law in regard to such question be received and regarded as if he were a commissioner duly elected.

Certain lands and buildings vested in municipality.

LXXV. The property hereinafter mentioned and situate within the municipality: to wit, the town-hall, the town market, the butchers' shambles, the granary buildings, the fish market, the water-works and the buildings belonging thereto, together with all the waste ground or land situate within the municipality, together with all the stone quarries therein situate and all right, title, and interest in the same, and which was before the 1st day of January, 1828, vested in or committed to the administration of the late Burgher Senate, and which by Ordinance No. 34 was afterwards vested in trustees, and all other property which at the time of the expiration of Ordinance No. 1, 1840, was legally vested in the commissioners, shall be and the same are hereby vested in the commissioners appointed under this Act, to be administered and the revenue thereof employed and made use of for the benefit of the municipality and for the purposes of this Act: Provided that the said commissioners shall not be authorized or permitted to sell or otherwise alienate the said buildings or lands without having first obtained the consent of the Governor for the time being to such sale or alienation, and

Not to be alienated without consent of Governor.

without having after obtaining such consent published such resolution to sell during three successive weeks in the Government Gazette and one or more papers published in the said city: Provided, also, that nothing herein contained shall effect, or be construed to affect, any right or title which Her Majesty's Board of Ordinance has or may have in the immovable property hereinbefore mentioned or any part thereof, or to vest in the commissioners aforesaid any greater or other right in or to the granary buildings aforesaid than shall have been lawfully vested in them on the 31st December, 1860, under the provisions of the Ordinance No. 1, 1840.

LXXVI. The property of and in the lamps, lamp-irons, lamp-posts, bridges, sluices, dams, market-houses, pipes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within the limits of the said municipality, and of and in all iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by the contract with the said commissioners), also all the movable property which now is under the administration of the municipality of Cape Town and employed by them for the use of Cape Town and its vicinity, shall be and the same is hereby vested in the said commissioners, and may be used, sold, and disposed of by them from time to time as they shall deem necessary, and the money arising from such sale shall be applied towards the purposes of this Act; and the said commissioners are hereby authorized and empowered to bring or cause to be brought any civil or criminal action in manner as hereinbefore is provided against any person or persons who shall steal, break, or otherwise damage any of the buildings or other things the property which is hereby vested in the said commissioners, subject, however, to the provisions of the Ordinances Nos. 40 and 73, or of any law or Ordinance which may hereafter be created or then be in force in that behalf; and in all such actions it shall be and be deemed and taken to be sufficient to state generally that the article or thing for or on

Lamps, lamp-irons, bridges, and certain movable property vested in municipality.

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account of which such action shall be brought is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Offences against this Act to be prosecuted in magistrate's court.

LXXVII. All offences committed in contravention of this Act or of any municipal regulation may lawfully be prosecuted in the court of the resident magistrate for Cape Town; and if any person shall be duly convicted of any such offence and shall not pay or satisfy the amount of fine imposed upon him it shall be lawful for the said resident magistrate to sentence such offender to any period of imprisonment not exceeding three months; and the amount of all such fines when recovered shall be paid to the treasurer of the municipality for the time being for the purposes of this Act.

This Act not to affect private rights.

LXXVIII. Nothing herein contained shall extend or be construed to extend to injure or impair the rights of property which any person or persons may have in, to, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this Act or of any municipal regulation by which the right of property of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same: Provided, always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

Pensions may be granted to superannuated officers.

LXXIX. It shall be lawful for the board of commissioners, with the consent of the board of wardmasters, to pay to such officers of the municipality as shall be superannuated or become unfit for duty such pensions or retiring allowances as the length and efficiency of their services may entitle them to.

Valuation of immov-

LXXX. The immovable property within the mu-

nicipality shall be valued for municipal purposes every five years, and to that end the commissioners shall every five years employ one or more valuers to make such valuation. Every such valuation shall, when made, be laid before the boards of commissioners and wardmasters respectively, but shall not become fixed until the owner or occupier of each property included in such valuation shall have had from the commissioners notice of and an opportunity of objecting before them to the value placed upon such property: Provided that such owner or occupier, if dissatisfied with the determination of the commissioners in regard to his objections may bring the same in review before the Supreme Court: And provided that as often as any new building shall be erected in the interval between any two general valuations it shall be lawful for the commissioners to cause the same to be valued forthwith in manner aforesaid for municipal purposes, reserving to the owner or occupier if dissatisfied such right of review as aforesaid.

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able property to take place every five years.

LXXXI. In any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act or for or in respect of any other matter or thing relating to this Act, by or against the said 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 municipality of Cape Town:" 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

Municipality how to sue and be sued.

Commissioners examinable as witnesses.

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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.

Expenses of carrying out this Act to be paid out of funds of municipality.

LXXXII. All the necessary costs, charges, and expenses attending the carrying the provisions of this Act and of the municipal regulations into effect shall be paid out of the money authorized to be received by the commissioners under the provisions of this Act.

Inhabitants competent as witnesses in actions or suits under this Act or municipal regulations.

LXXXIII. No inhabitant of the said municipality shall, on that account, be deemed an incompetent witness in any action, suit, or information, complaint, appeal, prosecution, or proceeding to be had, made, prosecuted, or carried on under the authority of this Act or the municipal regulations of the said municipality.

How in case of a return of no goods to a writ of execution against municipality.

LXXXIV. In case it should at any time appear by the return of the Sheriff to any writ of execution sued out by any judgment creditor of the board aforesaid that the Sheriff had not found any goods or chattels of the said board, wherewith to satisfy the said judgment or any part thereof, or that he had not found such goods or chattels sufficient to satisfy the said judgment, it shall be lawful for the said creditor to apply by petition to the Supreme Court, annexing copies of the judgment and of the writ and return, and praying for such relief in the premises as the said court shall under this Act be empowered to afford.

Motion for an order of Supreme Court to inquire into debts of municipality.

LXXXV. The creditor who shall have filed any such petition as aforesaid may apply to the Supreme Court by motion founded upon such petition and its annexures for an order that it be referred to the Master of the said court to inquire and report whether any, and if so what, other debts are due by the said board, to the end that all such debts may be liquidated: Provided that notice of such motion shall be given to the said board at their office.

Proceedings such motion. upon

LXXXVI. Upon the hearing of such motion, then, unless the said board shall satisfy the said court that the said board will be prepared within a reasonable time, to be approved of by the said court,



to satisfy from the rates assessed or to be assessed, or other assets, the debt of the creditor who shall have petitioned as aforesaid, together with costs and all interest accrued due thereupon, the said court shall make an order referring it to the Master to inquire and report what other debts, if any, are due by the said board.

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LXXXVII. The master in acting upon any such order shall, by a notice of not less than twenty-one days in the Government Gazette and one or more papers published in the said city, call a meeting of all persons claiming to be creditors of the said board for proof of debts, and such debts if not admitted by the said board or not evidenced by their books and accounts shall be proved by affidavit.

Master to call meeting of creditors.

LXXXVIII. When by report of the Master the Supreme Court shall be informed of the whole amount of the debts due and owing by such board it shall be lawful for the said court and it is hereby required to assess and impose such a rate not exceeding one penny per pound of the value of every rateable tenement within the municipality aforesaid as shall appear to be sufficient to satisfy, from and out of net proceeds of such rate, all debts due as aforesaid by the said board, together with all costs and interest legally chargeable thereon; provided that if a single rate of one penny per pound as aforesaid shall be insufficient to satisfy the whole of the said debts then the net proceeds of the first rate shall, after paying to the petitioning creditor his costs of suit and of his said petition, be divided *pro rata* amongst the creditors, and a second rate not exceeding one penny per pound shall be assessed, and so on until the debts of the said board and all interest legally chargeable thereupon shall have been finally discharged: Provided that not less than twelve months shall elapse between the day on which any preceding rate became due and payable and the day upon which any succeeding rate shall become due and payable.

Supreme Court may assess a rate to pay off debts.

LXXXIX. As often as the Supreme Court shall assess any rate for the purpose of paying creditors such court shall appoint a receiver, who shall be charged with the recovery of such rate and who

Court to appoint a receiver of rates.

No. 1—1861.

Notice of rate assessed, and when due.

shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said court shall fix; and shall conform to all instructions regarding the custody of the moneys received by him or other matters as the said court shall from time to time issue for his guidance. Notice shall be given in the Government Gazette and one or more papers published in the said city of every rate assessed as aforesaid, and of the day on which such rate will become due and payable, and such notice shall be in substance as follows:

MUNICIPALITY OF CAPE TOWN.—RATE UPON IMMOVABLE PROPERTY.

Notice is hereby given that the Honourable the Supreme Court has this day assessed, under the provisions of "The Cape Town Municipal Act, 1861," for payment of debts, a rate of ——— per pound upon the value of every rateable tenement within the municipality of Cape Town, which rate will become due and payable on the ——— day of ———, 18—, and of which rate, A. B., of Cape Town, has been appointed the receiver.

Dated at Cape Town, this ——— day of ———, 18—.

T. H. B.,

Registrar of the Supreme Court.

Provided that such notice as aforesaid shall be published for not less than twenty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

Rate recoverable in any court.

XC. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent court.

Surplus to be paid to municipality.

XCI. Any surplus of the amount of any such rate as aforesaid which may happen to exist after the discharge of all the debts which it was assessed to liquidate shall be paid to the board aforesaid.

Effect of order of court on debentures and other securities.

XCII. Any such order of court as aforesaid referring it to the Master to report upon the debts of the

board aforesaid shall have the effect of making all debentures, securities, and engagements granted by the said board due and payable forthwith, notwithstanding that the same might not but for such order have been payable till some future date.

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XCIH. The several existing regulations of the aforesaid municipality, in so far as the same are not repugnant to or inconsistent with the true intent and meaning of this Act, shall remain as legal, valid, and effectual as if the same had been word for word inserted in this Act until such time as the same shall have been altered by the said commissioners in due form of law.

Existing regulations to remain in force.

XCIV. Every meeting of commissioners or wardmasters, or of commissioners and wardmasters, held under the provisions of this Act shall be open to the public.

Meetings open to the public.

XCV. All acts, matters, and things done by the persons who composed the respective board of commissioners and wardmasters for the municipality of Cape Town at the time of the expiration of the Ordinance aforesaid, No. 1 of 1840, at any time during the interval between the expiration of the said Ordinance and the taking effect of this Act, and all acts, matters, and things done during the said interval by any person acting under the authority of the said boards, shall be judged of in all respects and be of the same force precisely as if the said Ordinance No. 1 of 1840 had during the said interval been in force and operation.

Acts of late acting commissioners ratified.

XCVI. The board of commissioners constituted under this Act shall be subject and liable to every contract, engagement, debt, and demand to which the persons who composed the board of commissioners at the time of the expiration of the Ordinance aforesaid, No. 1, 1840, shall be subject or liable to at the time of the taking effect of this Act, and in like manner shall be vested with or entitled to all rates, assets, or claims to which the said last-mentioned persons regarded as a lawful board of commissioners were at the time of the taking effect of this Act vested with or entitled to.

Contracts entered into by acting commissioners to subsist.

XCVII. This Act may be cited for any purpose as "The Cape Town Municipal Act," and shall commence and take effect from the promulgation thereof.

Short title of Act.

No. 2—1861.

No. 2—1861.] AN ACT [August 14, 1861.

For Increasing in regard to certain Articles the Duties of Customs.

Preamble.

WHEREAS it is expedient to increase in regard to certain articles imported into this Colony the duties of Customs: Be it enacted by 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  
Tariff Act, 1855, re-  
pealed.

I. So much of the "Customs Tariff Act, 1855," as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Duties on articles  
enumerated.

II. From and after the taking effect of this Act there shall be levied and paid unto Her Majesty the Queen, in her colonial revenue, upon the following goods imported or brought into any part of this Colony, the several and respective duties of Customs following, in lieu and stead of all other duties of Customs heretofore chargeable upon the said goods, that is to say:

Tariff.

	£	s.	d.
1. Spirits of all sorts, including liqueurs, cordials, and sweetened spirits, not exceeding the strength of proof by Sykes' hydrometer, and so on in proportion for any greater strength, the gallon ... ..	0	5	0
2. Wine, viz.: In bottles, the gallon...	0	3	6
Not in bottles, the gallon ... ..	0	3	0
3. Tobacco, viz.: Not manufactured, per lb. ... ..	0	0	6
Manufactured (not cigars), and snuff, per lb. ... ..	0	1	0
Cigars (at the option of the officers of Customs), per 1,000 ... ..	1	5	0
Or the lb. ... ..	0	2	6
4. Ginger, preserved, and chow-chow, the lb. ... ..	0	0	2
5. Coals, coke, or patent fuel, per ton	0	0	6

Short title.

III. This Act may be cited for all purposes as the "Customs Tariff Amendment Act, 1861."

No. 3—1861.]

AN ACT [August 14, 1861.

No. 3—1861.

For Improving the Administration of Criminal  
Justice.

**W**HEREAS offenders frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case: And whereas such technical strictness may safely be relaxed in many instances, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defence: And whereas a failure of justice often takes place on the trial of persons charged with offences against the law by reason of variances between the statement in the indictment on which the trial is had and the proof of names, dates, matters, and circumstances therein mentioned, not material to the merits of the case, and by the misstatement whereof the person on trial cannot have been prejudiced in his defence: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. So much of any former law, Act, or Ordinance, and of any rule of the Supreme Court, or of the Circuit Court, or of the courts of resident magistrates as shall be repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

Repugnant laws repealed.

II. From and after the taking effect of this Act whenever on the trial of any indictment in the Supreme or any Circuit Court for any crime or offence there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof in the name of any division, city, municipality, field-cornetcy, or place mentioned, or described in any such indictment, or in the name or description of any person or persons or body politic or corporate therein stated or alleged to be the owner or owners of any property movable or immovable which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate therein stated or alleged to be injured or

Certain discrepancies between indictment and evidence may be corrected.

No. 3—1861.

damaged, or intended to be injured or damaged by the commission of such offence, or in the Christian name or surname or both Christian name and surname or other description whatever of any person or persons, whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended according to the proof by some officer of the court or other person, both in that part of the indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury as such court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had occurred.

Trial to proceed on amended indictment.

Verdict as valid as if indictment had been originally correct.

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

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

IV. In any indictment for murder or culpable homicide preferred after the taking effect of this Act it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder to charge that the defendant did wrongfully, unlawfully, and maliciously kill and murder the deceased, and it shall be sufficient in every indictment for culpable homicide to charge that the defendant did wrongfully and unlawfully kill the deceased.

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

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In indictment for for-  
gery copy of forged  
instrument not neces-  
sary.

VI. In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof.

Nor in any other case  
concerning written or  
printed documents.

VII. From and after the taking effect of this Act it shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument whatsoever, or for committing or attempting to commit theft by means of false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

Proof of intent to de-  
fraud sufficient with-  
out proving whom  
intended to defraud.

VIII. And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof; for remedy thereof be it enacted that if on the trial of any person charged with any crime or offence it shall appear to the jury or court of resident magistrate, as the case may be, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at

How if on trial for  
commission of an  
offence its attempt  
only be proved.

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liberty to return as their verdict, and the court aforesaid to pronounce as its judgment, that the defendant is not guilty of the crime or offence charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular crime or offence charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the crime or offence for which he was so tried.

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

IX. If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for assaulting with intent to rob<sup>(X)</sup> and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

Assault with intent to murder.

And as often as any person shall be charged with the crime of assault with intent to murder, he may be found guilty of an assault with intent to do some grievous bodily harm, or of a common assault; and in like manner a person charged with assault with intent to do some grievous bodily harm may be found guilty of a common assault.

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

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

It shall be sufficient

XI. It shall be lawful in any indictment for theft



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

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to allege the dates  
between which thefts  
took place.

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

Not necessary to specify particular coin or bank-note stolen.

XIII. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved; nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name; nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence; nor for stating the offence to have been committed on a day subsequent to the filing of the indictment, or on an impossible day, or on a day that never happened; nor for want of or imperfection in the addition of any defendant or any other person; nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price or the amount of damage, injury, or spoil, is not of the essence of

Certain omissions or imperfections not to invalidate an indictment.

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Limit as to error in date.

the offence : Provided that as often as any particular day shall be laid in any indictment as the day on which any act or crime was committed, proof that such act or crime was committed on any other day or time, not more than three months before or after the day laid in the indictment, shall be taken to support such averment in case time be not of the essence of the crime : And provided that, in the case in the last preceding proviso mentioned, proof may be given that the act or crime in question was committed on a day or time more than three months before or after the day laid in the indictment, in case the court before which the trial shall be had shall consider that the defendant cannot be prejudiced thereby in his defence upon the merits : Provided, however, that as often as such court shall consider that the defendant might be thereby prejudiced in his defence upon the merits, such court shall reject such proof and shall discharge the jury from giving a verdict in the said case ; or, if a court of resident magistrate shall pronounce no judgment, and the defendant shall be in the same plight and condition as if he had not been arraigned.

How if defence be an *alibi*.

XIV. If in any case the defence of any defendant shall be that commonly called an *alibi*, and the court before which the trial shall be had shall consider that the defendant might be prejudiced in making such defence if proof were admitted that the act or crime in question was committed on some day or time other than the day or time laid in the indictment, then, although the day or time proposed to be proved shall be within the space of three months before or after the day laid in the indictment, the said court shall reject such proof, and thereupon all and singular the same consequences shall take place as are in the last proviso of the last preceding section mentioned, anything in the said section to the contrary notwithstanding. And if in any case no day shall be stated in the indictment, or an impossible day, or a day that never happened, then it shall be lawful for the defendant at any time before his arraignment to apply to the Supreme Court or any judge thereof, or any Circuit Court, and such court

If no day or an impossible day be stated

or judge, upon being satisfied by affidavit or otherwise that such defendant might be prejudiced in his defence upon the merits unless some day or time were stated, shall make such order in that behalf as under the circumstances of the particular case shall to justice appertain.

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XV. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken by exception or by motion to quash such indictment before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by such officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared: Provided, also, that, although such indictment may have been presented by a grand jury, the consent of such grand jury shall not be necessary, anything in the ninety-ninth rule or order of the Supreme and Circuit Courts to the contrary notwithstanding.

Objections to indictment how and when to be made.

XVI. In any plea of a former conviction or a former acquittal it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

Statement of defendant sufficient plea of former conviction or acquittal.

XVII. In any criminal case prosecuted in any Circuit Court at the instance of the public prosecutor, the process of such Circuit Court may be sued out for summoning as a witness in such case any person required to give evidence, although such person shall reside or be within some district of the Colony other than that in or for which such Circuit Court shall be appointed to be holden; and as often as it shall be necessary to summon any such last-mentioned person, the process of the Circuit Court in which such criminal case is pending shall be forwarded for execution to the deputy sheriff of the district in which such witness shall reside or be, or such other officer in such district as shall be proper for the execution of similar process when issued by or out of the Circuit Court of or for such

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

Process how to be served.

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

Defendant to be committed for trial by an inferior court before he can be indicted before Supreme or Circuit Court.

XVIII. It shall not be lawful for any prosecutor, public or private, to sue out or obtain the process of the Supreme Court or any Circuit Court for summoning any defendant to answer to any indictment which defendant shall not previously have been committed for trial by some competent court or magistrate for or in respect of the crime or offence charged in such indictment; and in case any defendant after having been so committed for trial shall have been again liberated by order of the Attorney-General, no such process as aforesaid shall be sued out without the leave of the Supreme or some Circuit Court or some judge thereof for that purpose first had and obtained: provided, always, that nothing herein contained shall be construed so as to deprive the Supreme or any Circuit Court or any judge thereof of any power which such court or judge may now by law possess, to direct, upon the application of any party interested, any magistrate to take a preparatory examination or to order any person to be committed for trial, whether any preparatory examination shall have been taken against such person or not.

Supreme or Circuit Court may order preparatory examination.

Indictment not to charge former conviction.

XIX. From and after the taking effect of this Act it shall not be lawful in any indictment against any person for any crime or offence to charge or allege that such person had been formerly convicted of any crime or offence; nor, except as hereinafter is ex-

cepted, shall it be competent to prove at the trial of any person for any crime or offence that he was formerly convicted of any crime or offence: Provided that if upon the trial of any person for any crime or offence such person shall give evidence of his good character, it shall be lawful for the prosecutor in answer thereto to give evidence of the former conviction of such person of any crime or offence which might before the taking effect of this Act have been in the indictment for the crime or offence then in course of investigation charged as an aggravation.

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When proof of such conviction may be adduced.

XX. In case any person indicted for any crime or offence shall have been formerly convicted of any crime or offence which might before the taking effect of this Act have been charged in the said indictment as an aggravation, it shall be lawful for the prosecutor to give notice to such person that in the event of his being found guilty of the crime for which he is indicted proof will be given of such former conviction.

How in regard to convictions which might previous to this Act have been charged as aggravation.

XXI. The notice in the last preceding section shall be written or printed, or partly written and partly printed, and shall be in substance as follows :

Notice that proof of former conviction will be offered.

“ A. B., take notice that in the event of your being found guilty of the crime charged in the indictment of which a copy is now served upon you, and for which you are to be tried on the — day of — next, proof will be offered that you were formerly convicted of the crime of (here state the crime), namely at the Circuit Court for the division of — (or otherwise, as the case may be), on the — of —, 186—.

“ Dated this — day of —, 186—.

“ W. P., Attorney-General.

“ (or E. F., Attorney for the Private Prosecutor.) ”

XXII. The notice in the last preceding section mentioned shall be served upon the defendant by the officer charged with the service upon such defendant of the copy of the indictment in the said notice mentioned, and shall be served together with such copy, or at all events not later than by law such copy

How notice to be served.

No. 3—1861.

should be served, in order that the said defendant should have due notice of trial.

Return of service.

XXIII. The officer serving any such notice as aforesaid shall forthwith deliver or transmit to the clerk of the peace or other functionary from whom such officer shall have received such notice for service a return of the mode in which such service was made, and such return shall be *primâ facie* evidence that service of such notice was made in manner and form as in such return stated.

Jury to inquire into proof of former conviction.

XXIV. In case the defendant shall be found guilty of the crime or offence charged against him in such indictment as aforesaid, but not otherwise, it shall be lawful for the prosecutor to inform the court before sentence shall have been passed that he proposes to prove such former conviction as aforesaid; and thereupon, and upon reading the return aforesaid attesting the due service of such notice as aforesaid, the court shall direct the same jury to inquire whether the defendant was formerly convicted of the crime or offence mentioned in such notice or not; and in case upon the evidence the jury shall find that the defendant was so convicted, the court shall direct such finding to be recorded and pass such sentence as to such court shall seem meet.

Sentence accordingly.

Procedure in magistrates' courts regarding criminal cases remitted by Attorney-General.

And whereas it is expedient to declare the practice proper to be observed in the courts of resident magistrates in regard to criminal cases remitted by the Attorney-General to such courts, whether the same shall be remitted under the Act No. 12, 1860, entitled "An Act for increasing the Jurisdiction of the Courts of Resident Magistrates in Criminal Cases in which the Persons accused admit their Guilt," or under the ordinary jurisdiction conferred by the Act No. 20, 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates:" And whereas as often as the resident magistrate to whose court any such case shall have been remitted under such last-mentioned Act shall himself have been the person by or before whom the preparatory examination shall have been held, the expense and inconvenience

of recalling the witnesses examined at the preparatory examination in order to take their evidence *de novo* or to read over in their presence their former depositions may in general be safely dispensed with: Be it enacted as follows:

XXV. As often as any case shall under the Act aforesaid, No. 12, 1860, be remitted by the Attorney-General to any court of resident magistrate, such magistrate shall with all convenient dispatch cause the accused person to be brought before his court, and shall inform him that the preparatory examination, in the course of which he voluntarily admitted his guilt, having been forwarded to the Attorney-General, has been remitted by that officer to the said court, and such magistrate shall ask the said accused person whether he has anything to say why sentence should not then be passed upon him for the offence of which he has confessed himself guilty.

In a case remitted by the Attorney-General under Act 12, 1860, sentence may at once be passed.

XXVI. If in answer to the question last aforesaid the said accused person shall desire to have any witness formerly examined recalled, or any person not yet examined called as a witness, or if such accused person shall state any other ground why sentence should not then be passed upon him, the magistrate shall consider what is urged by such accused person in support of his application for further evidence, or of his objection to be then sentenced, and shall pass or postpone sentence as he shall in his judgment deem to be most in accordance with real and substantial justice.

Unless accused apply for further evidence or delay.

XXVII. If such magistrate shall in any such case as is in the last preceding section mentioned deem it to be his duty to pass sentence at once he shall make a note of the application or objection made by the person accused and of the reasons for the disallowance thereof by such magistrate, and shall annex such note, signed by himself, to the record of proceedings in the case, and shall forward the same with such record to the Registrar of the Supreme Court.

If application be disallowed note thereof to be made in the record.

XXVIII. No statement in writing or complaint, as the same is described in the sixty-third of the

Statement required by sixty-third rule of court not necessary

No. 3—1861.

in cases remitted  
under Act 12, 1860.

rules, orders, and regulations of the courts of resident magistrates, shall be necessary in reference to any case remitted to any court of resident magistrate under the Act aforesaid, No. 12, 1860: Provided that every such case shall forthwith after sentence be entered in the Criminal Record Book, leaving blank the column provided for recording the day of lodging the complaint and the column for recording the judgment, and stating in the column provided for remarks, "Case remitted under Act No. 12, 1860."

Procedure in regard  
to cases remitted  
under Act 20, 1856.

XXIX. Cases remitted by the Attorney-General to courts of resident magistrate exercising their ordinary jurisdiction under the Act aforesaid, No. 20, 1856, shall be proceeded with in such courts in like manner in all respects as if no preparatory examination had been previously taken in such cases, save and except that when and as often as the resident magistrate who shall try any such case shall be himself the person by or before whom the preparatory examination in such case was taken it shall not be imperative upon him to recal any witness who formerly gave his evidence in the presence of such magistrate and of the person accused, and it shall be competent and sufficient to read as evidence the deposition of such witness: Provided that no deposition of any witness not previously examined in the presence of both such magistrate and such accused person shall be read or used at the subsequent trial, but such witness, if a necessary one, shall be again summoned and be examined in like manner as if he had not been before examined in the case: And provided that as often as it shall appear to such magistrate himself, or be made to appear to him by either the prosecutor or the person accused that the ends of justice might be served by having a witness formerly examined in the presence of such magistrate and of the person accused summoned again for further examination, then such witness shall be summoned and examined accordingly.

Witnesses not examined to be summoned again or if necessary re-examined after having already given evidence.

Meaning of term indictment.

XXX. In the construction of this Act the word "indictment" shall be understood to include any charge or complaint in any court of resident magis-



## Cases remitted under Act. 12. 1860—

R. M. must cause accused to be brought before him so soon as possible, and must inform him that the case had been remitted to him, in which he voluntarily admitted his guilt, and R. M. shall ask accused what he has to say & why sentence should not be passed on him. And when accused ~~with~~ wishes witnessed to be examined again or other witnesses not yet examined to be called or shall give other reason why sentence should not be passed, then R. M. may call such witnesses and may postpone case. But may also reject such wishes of accused and pass sentence at once stating grounds; for such rejection to be sent to Atty. General with record of case; why he rejected such. And no statement in writing or complaint need be given, in cases under act. 12. 1860, as is described in the 63<sup>rd</sup> Rule of Resident Magistrates' Court Rules, &

Provided that every such case be entered in the Criminal Record Book, leaving blank columns for entering such day(s), complaint and judgment & enter in the column for remarks

" Case remitted under Act. No. 12. 1860 "

## Cases remitted under Act. No. 20. 1856.

Such cases to be proceeded with as if no preparatory exam. had been taken, except when case tried by R. M. or before R. M. such R. M. shall be some person who sent case to Atty. Gen., and in this case he need only read the evidence of witnesses taken before in the presence of accused. Provided that no deposition of witness, who had not been examined in presence of both such R. M. & accused shall be used as evidence in such a trial; but shall be summoned & re-examined, if a necessary one. And if it shall appear that a witness already examined should again be examined he shall be summoned & re-examined to serve the ends of Justice.

trate or in any other court, and also any plea, replication, or other pleading.

No. 3—1861.

XXXI. This Act may be cited for all purposes as the "Criminal Law Amendment Act, 1861." Short title.

No. 4—1861.] AN ACT [August 14, 1861.

For Amending the Law of Evidence.

WHEREAS it is expedient to amend the law of evidence in divers particulars: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows: Preamble.

I. So much of the Ordinance No. 72, 1830, entitled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within this Colony," and of the Ordinance No. 14, 1846, entitled "Ordinance for improving the Law of Evidence," and of any other law or ordinance heretofore in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed. Repugnant laws repealed.

II. On the trial of any issue joined or of any matter or question or in any inquiry arising in any suit, action, or other proceeding in any court of justice or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the parties thereto and the persons in whose behalf any such suit, action, or other proceeding may be brought or instituted or opposed or defended, and the husbands and wives of the said parties and of the said persons, shall, except as hereinafter excepted, be competent and compellable to give evidence either *vivâ voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding. Husbands or wives of parties on the record competent as witnesses.

III. Nothing herein shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or com- Husband and wife not competent to give evidence for or against each other.

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pellable to give evidence for or against her husband, in any criminal proceeding.

Nor compellable to disclose communications between them.

IV. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

No person competent to give evidence for or against himself.

V. Nothing in this Act contained shall render any person who in any criminal proceeding is charged with the commission of any crime or offence competent or compellable to give evidence for or against himself.

Right of reference on oath of adverse party.

VI. The adducing of any party as a witness in any cause or proceeding by the adverse party shall not have the effect of a reference to the oath of the party so adduced: Provided, always, that it shall not be competent to any party who has called and examined the opposite party as a witness thereafter to refer the cause or any part of it to his oath, and that in all other respects the right of reference to oath shall remain as at present established by the law and practice of this Colony.

Witnesses not compellable to answer certain questions.

VII. Nothing in this Act contained shall be construed so as to compel any person whomsoever adduced as a witness to answer any such questions as by law witnesses are not compellable to answer.

Parties to a suit not entitled to expenses when giving evidence in their own behalf.

VIII. No person being a party to any suit, action, or proceeding, and who shall be adduced as a witness therein in his own behalf, shall (except as hereinafter excepted) be entitled in the taxation of any costs which may be awarded against the opposite party to any expenses as a witness: Provided that it shall be competent for the court upon the application of any such party so adduced as a witness to direct, at its discretion, that such party shall be allowed his expenses in case the said court shall be of opinion that such party was a necessary witness.

When adduced by opposite party, expenses receivable.

IX. Any party to any suit, action, or proceeding who shall be adduced as a witness by the opposite party shall be entitled to his expenses as a witness in like manner as any other witness.

When affirmation be substituted for oath.

X. If any person called as a witness or required or desiring to make an affidavit or deposition shall

refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person instead of being sworn to make his or her solemn affirmation or declaration in the words following, viz. :

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“I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to my religious belief unlawful; and I do also solemnly, sincerely, and truly affirm and declare,” &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form : Provided that any person professing or admitting himself to be a Quaker, a Moravian, or a Separatist shall make his affirmation in like manner and form as if this Act had not been passed : Provided, also, that any person professing or admitting himself to be a Mennonist shall be allowed in all courts of justice to make an affirmation or declaration instead of an oath, which affirmation or declaration shall be of the same force and effect as if an oath.

Affirmation of Quakers, Moravians, Separatists, and Mennonists.

XI. The sixth section of the Ordinance aforesaid, No. 14, 1846, is hereby repealed.

Section 6, Ordinance 15, 1846, repealed.

XII. Persons produced for the purpose of giving evidence, who from ignorance arising from youth, defective education, or other cause, shall be found not to understand the nature or recognize the religious obligation of an oath, shall and may be admissible to give evidence in any court within this Colony without being sworn or being upon oath : Provided, always, that before any such person shall proceed to give evidence the judge or magistrate before whom he shall be offered as a witness shall admonish him to speak the truth, the whole truth, and nothing but the truth, and shall further administer or cause to be administered to such person any form which shall either from his own statement or other source of information appear to be calcu-

When unsworn testimony admissible.

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lated to impress his mind and bind his conscience, and which shall not, as being of an inhuman, immoral, or irreligious nature, be obviously unfit to be administered: And provided, also, that any such person who shall wilfully and falsely state anything which if sworn would have amounted to the crime of perjury shall be deemed to have committed the said crime, and shall, upon conviction, be subject to such punishment as is or shall be by law provided for in regard to the said crime.

Evidence of the genuineness of disputed writings.

XIII. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to the court or jury (as the case may be) in any case, civil or criminal, as evidence of the genuineness or otherwise of the writing in dispute.

In criminal proceedings certificate of conviction or acquittal of accused sufficient without production of record.

XIV. And whereas it is expedient as far as possible to reduce the expense attendant upon the proof of criminal proceedings: Be it enacted that whenever in any proceeding whatever it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Certified copies or extracts of documents admissible.

XV. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no law exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before any person how or hereafter having by law or by consent of parties authority to hear,

receive, and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding four pence for every folio of ninety words.

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XVI. If any officer authorized or required by this Act to furnish any certified copies or extracts shall wilfully certify any document as being a true copy or extract knowing that the same is not a true copy or extract, as the case may be, he shall be liable, upon conviction, to imprisonment, with or without hard labour, for any term not exceeding eighteen months.

Punishment for false certificate.

XVII. Every court, judge, justice, officer, commissioner, arbitrator, or other person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence is hereby empowered to administer an oath, affirmation, or admonition respectively as aforesaid to all such witnesses as are legally called before them respectively.

Who empowered to administer oaths.

XVIII. This Act may be cited for all purposes as “The Law of Evidence Amendment Act, 1861.”

Short title of Act.

No. 5—1861.] AN ACT [August 14, 1861.

For Amending in certain respects the Law relating to Tacit Hypothecations.

WHEREAS it is expedient to amend the law relating to tacit hypothecations: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. All former laws and usages in so far as they may be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Repugnant laws and usages repealed.

II. The tacit hypothecation possessed by the local

Tacit hypothecation

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of Government for  
arrears rents or taxes  
limited.

Executive Government of this Colony upon the estates of persons indebted to the said Government for the arrears of any rent or other periodical payment issuing out of land, or for the arrears of any tax or other periodical payment of a like nature, shall in no case be claimable for any sum exceeding a sum equal to three whole years of such rent, tax, or other payment.

Hypothecation of  
minors and insane  
persons on the estates  
of guardians and  
curators.

III. The tacit hypothecation possessed by minors upon the estates of their guardians, and by insane persons, persons adjudged prodigals, and interdicted persons, upon the estates of their curators, in security of the debts due and owing by such guardians or curators in their said capacities, shall only subsist for and during a period of three years, reckoned, in the case of minors, from the day on which they attained their majority, and in the case of the other persons aforesaid, from the day on which they ceased to be under curatorship: Provided that should the person entitled to any such hypothecation be absent from this Colony at the time when he became of age or ceased to be under curatorship (as the case may be) he shall be entitled to such hypothecation for and during a period of three years from the day of his return to this Colony: Provided, however, that in no case shall any such hypothecation subsist for a longer period than five years, whether the person who was absent at the time aforesaid shall return to this Colony or not.

Of legatees on estates  
of testators.

IV. The tacit hypothecation possessed by legatees in security of their legacies upon the estates of the testators by whom the legacies were bequeathed shall subsist only for a period of twelve months, reckoned from the day on which such legacies became due or demandable: Provided that if upon such last-mentioned day any legatee shall be a minor, or under coverture, or absent from the Colony, such legatee shall be entitled to such hypothecation for a period of twelve months, reckoned from the period when such disability shall cease: Provided, however, that in no case shall any such hypothecation subsist for a longer period than five years, whether such disability shall have ceased during that period or not; unless

In no case to subsist  
longer than five years.

in the case of a person who shall be a minor when such period of five years shall expire, in which case such person shall have a further term of three years, after attaining his majority, in which to claim the benefit of the tacit hypothecation.

No. 5—1861.

V. The tacit hypothecation possessed by landlords or letters to hire of fixed property shall not be claimable for any sum greater than one whole year's rent or hire of the premises in regard to which such hypothecation shall be claimed.

Tacit hypothecation of landlords to hire of premises limited.

VI. If any person entitled to any such tacit hypothecation as aforesaid shall die at any time before such hypothecation shall under the provisions of this Act have expired, the heirs or executors of such person shall possess such hypothecation for the same time that the person so dying would, if living, having possessed it: Provided, always, that every such heir and executor shall have a term of not less than twelve months next after the death of such person so dying within which to claim the benefit of such tacit hypothecation.

Hypothecation to survive in favour of heir.

VII. Nothing in this Act contained shall be construed so as to give to any person whomsoever any greater or other tacit hypothecation than he would by law have possessed in case this Act had not been passed, nor to impair or affect the validity of any debt considered as a concurrent debt which may be due to any person who shall by virtue of this Act have ceased to possess a tacit hypothecation in security for such debt.

This Act not to give rights of hypothecation not possessed by law.

VIII. All and singular the tacit hypothecations following, or such of them as now by law exist, shall be and the same are hereby abolished, that is to say:

Certain tacit hypothecations abolished.

1. The tacit hypothecation of the local Executive Government of this Colony upon the estates of auctioneers and deputy postmasters considered as collectors or receivers of the public revenue, in security of any debts or demands due by them in their said capacities to the said Government.
2. The tacit hypothecation of the said Government

Hypothecation of Government on estate of auctioneers and postmasters.

On estates of contractors.



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upon the estates of persons who shall have entered into contracts with the said Government in security for the performance of such contracts or for any damages sustained by the non-performance thereof: Provided that no person liable for any rent or other periodical payment issuing out of land as in the second section of this Act mentioned shall be deemed to be a contractor within the meaning of this clause.

Of minors on estates of protutors and agents.

3. The tacit hypothecation of minors upon the estates of their protutors, and upon the estates of agents or others (not being their guardians) intermeddling with the property or affairs of such minors, and upon the estates of tutors who have been substituted, assumed, or surrogated, or who have been appointed by order of court, in security for the debts due and owing by such persons in such capacities to such minors: Provided that nothing in this clause contained shall be construed so as to deprive any child of any tacit hypothecation which he may now by law possess upon the estate of either of his parents after the death of the other of them, or upon the estate of any step-father of such minor, in security of any property of such minor in the hands of and not duly accounted for by his surviving parent.

Of public bodies on estates of collectors.

4. The tacit hypothecation possessed by municipalities, churches, and generally any public body or institution whatsoever upon the estates of persons intrusted with the collection, custody, or administration of their revenues, in security for the revenues not accounted for by such persons.

Hypothecations for costs of building ships and houses.

5. The tacit hypothecation of persons by whom ships and houses have been built or repaired, for the costs and charges thereby incurred: Provided that nothing herein contained shall be construed so as to deprive any person of any right which he may now by law possess to retain any property whatsoever which shall be in his actual possession, until his costs and

charges incurred thereon shall have been paid.

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6. The tacit hypothecation possessed by persons who have lent money for the purpose of being expended in the repair of houses and other property, in security for the money so lent. For money lent in repairs of houses.
7. The tacit hypothecation which certain classes of servants have upon the estates of their masters, in security of their wages in arrear. Of servants on estates of masters for arrear wages.
8. The tacit hypothecation possessed by persons supplying ships with tackle, apparel, furniture, or stores, in so far as such hypothecation might be claimed by persons supplying such articles in this Colony to ships owned by persons resident in this Colony. For supplying ships with certain articles.

IX. No house, farm, or other fixed property shall, after transfer thereof to a purchaser who purchased the same by a true and *bonâ fide* bargain for valuable consideration, be subject to any tacit hypothecation to which it might have been subject in the hands of some former owner of the said property: Provided that no bargain shall, for the purpose of this section, be deemed to be true and *bonâ fide* in regard to which it shall be made to appear by the person claiming such tacit hypothecation that the purchaser, when he so purchased, acted in collusion with the person selling the same and for the purpose of defeating wholly or in part the claim of the person entitled to such tacit hypothecation, or purchased with notice that a certain or probable consequence of his so purchasing would be that the said claim would be so defeated: Provided that no mortgagee shall for the purpose of this section be deemed to be a purchaser.

Tacit hypothecation on fixed property extinguished by sale.

X. Nothing in this Act contained shall extend to or affect any right of tacit hypothecation in security of any debt or claim already at the time of the taking effect of this Act due by any person or estate, and which shall be demanded within twelve months next after the taking effect of this Act, which right shall be judged of in all respects as if this Act had not been passed.

This Act not to affect securities for existing debts.

XI. This Act may be cited for all purposes as Short title of Act.

No. 5—1861.

“The Tacit Hypothec Amendment Act, 1861,” and shall commence and take effect at the expiration of twelve months from and after the promulgation of the same.

No. 6—1861.] AN ACT [August 14, 1861.

For Amending the Law regarding the Period of Time by the lapse of which certain Suits and Actions become barred by Prescription.

Preamble.

WHEREAS certain debts and demands of such a nature that they ought, if just and true, to have been recovered without any unreasonable delay, do not by law become barred by prescription until after the expiration of thirty years or upwards from the date when they became due : And whereas it is expedient to amend the law in this respect so as to protect the public, and especially the heirs of deceased persons, against such debts and demands as aforesaid, when set up at a date so remote as to lead to a presumption that they must have been settled and satisfied, although from accident or inadvertence no positive evidence of that fact has been preserved : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

Repugnant laws and usages repealed.

I. All former laws and usages in so far as they may be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Action for liquid debts barred by prescription of eight years.

II. Except as hereinafter is excepted, no suit or action upon any bill of exchange, promissory note, or other liquid document of debt of such a nature as to be capable of sustaining a claim for the sort of interlocutory judgment, commonly called a “provisional sentence” shall be capable of being brought at any time after the expiration of eight years from the time when the cause of action upon such liquid document first accrued, or in case any such cause of action shall have already accrued, then after

the expiration of eight years from the time of the taking effect of this Act: Provided that nothing in this Act contained shall extend to or effect any mortgage bond, general or special, or any judgment of any court in this Colony or elsewhere.

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III. The provisions of the last preceding section shall extend and apply to the respective suits and actions following, that is to say: to suits and actions for money due for goods sold and delivered,—for money lent by the plaintiff to the defendant,—for money paid by the plaintiff for the use of the defendant,—for money had and received by the defendant for the use of the plaintiff (including the “*condictio indebiti*”),—for rent upon any lease or contract for hire,—for money claimed upon or by virtue of an admission of an amount due upon an account stated as settled,—for money due upon an award of arbitrators,—for money due as the purchase money of fixed property,—for money claimed for work and labour done and materials for the same provided,—and for money claimed upon or by virtue of any policy of assurance.

Suits and actions to which preceding section applies.

IV. The one hundred and sixty-fifth article of the Placaat of the Emperor Charles V., of the 4th October, 1540, establishing in certain cases a prescription of two years, is hereby repealed, to the end that the substance thereof, with certain amendments, may be re-enacted by this Act.

Placaat of 1540 repealed.

V. No suit or action for the fees or for the fees and disbursements of advocates, attorneys, public notaries, conveyancers, land surveyors, or persons practising any branch of the medical profession, or for the amount of any baker's, or butcher's, or tailor's, or dressmaker's, or boot and shoemaker's bill or account,—nor any suit or action for the salary or wages of any merchant's clerk or other persons employed in any merchant's or dealer's store, counting-house, or shop,—nor any suit or action for the wages as a servant of any person coming under the definition of the term “servant” given in the Masters and Servants Act, No. 15 of 1856, shall (except as hereinafter is excepted) be capable of being brought at any time after the expiration of

Prescription of three years established in certain cases.

No. 6—1861.

three years from the time when the cause of action in any such case as aforesaid first accrued, or in case such cause or action shall have already accrued, then after the expiration of three years from the time of the taking effect of this Act: Provided that as often as any acknowledgment of or promise in writing to pay any such debt as is in this section mentioned shall have been made or given at any time before the expiration of such term of three years, then such debt may be sued for at any time within eight years from the date of such acknowledgment or promise, or in case such acknowledgment or promise shall specify some future time for the payment of the debt, then within eight years from the date at which the said debt became, by or according to the tenor or effect of such acknowledgment or promise, due and payable; and provided that nothing in this section contained shall prevent the application to any such debt as is in this section mentioned of any of the provisions of the eighth section of this Act.

How in regard to minors or persons under legal disability.

VI. If at the time when any such cause of action as is in the second, third, and fifth sections of this Act mentioned first accrued, the person to whom the same accrued shall have been a minor, or under coverture, or of unsound mind, or absent from the Colony, then such person or the person claiming through him may, notwithstanding that the period of prescription hereinbefore limited in regard to such cause of action shall have expired, bring a suit or action upon such cause of action at any time within eight years or three years (as the case may be) next after the time at which the person to whom such cause of action first accrued shall have ceased to be under any such disability as aforesaid or shall have died, whichever of these two events shall have first happened.

This Act not to prevent a judicial interruption of term of prescription.

VII. Nothing in this Act contained shall extend to alter the existing law relative to the effect of a judicial interpellation by the creditor of his debtor in staying or interrupting the course of any incomplete term or period of prescription, which law shall apply in all respects to any term of prescription by this Act established, precisely as if such term were the term now by law established.

VIII. In any suit or action in this Colony in which any question shall arise concerning the effect if any of any acknowledgment of debt or any promise to pay any debt, or any payment of interest on any debt, or any part-payment of the principle of any debt made by any person whomsoever, whether the person sought to be charged in such suit or action or not, in taking any cause of action out of the operation of this Act, such question shall be judged of and determined in this Colony in like manner and by the same rules and principles as it would be judged of and determined in any of Her Majesty's courts of record at Westminster in case the effect of the same acknowledgment, promise, or payment were in question at the same time in any of such last-mentioned courts.

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Questions as to the effect of an acknowledgment of debt in taking the case out of the operation of this Act.

IX. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other liquid document, by or on behalf of the party to whom such payment shall be made, shall be deemed to be sufficient proof of such payment so as to take the case out of the operation of this Act.

Simple endorsement of payment not sufficient to take the case out of the operation of this Act.

X. If any suit or action shall be brought for the amount or balance of an account containing any number of items or matters of claim more than one of such a nature as are in this Act mentioned, no claim in respect of an item or matter which arose at a date beyond the period of prescription by this Act established shall be claimable by reason only of some other matter of claim comprised in the same account having first arisen within the said period.

Prescription may affect certain items of claim and not the others.

XI. If at the time when any such cause of action as is in this Act mentioned first accrued the person against whom such cause of action had arisen shall be absent from this Colony, then the person to whom such cause of action so accrued shall have the same time after the return of such other person to this Colony within which to bring his action as by this Act he would have had after such cause of action first accrued, in case the person against whom the same had arisen had then been within this Colony: Provided, also, that in case any such cause of action

How when person against whom cause of action has arisen is absent from the Colony.

No. 6—1861.

as aforesaid shall have already arisen against any person who shall be absent from this Colony at the time of the taking effect of this Act, such cause of action shall for the purpose of this section be deemed to have first accrued upon the day on which such person shall return to this Colony.

How in case of joint debtors when one is absent from the Colony.

XII. Where any such cause of action as is in this Act mentioned lies against two or more joint debtors, the person to whom such cause of action shall have accrued shall not be entitled to any time beyond the time fixed by this Act within which to commence any action or suit for enforcing such cause of action against any one or more of such joint debtors who shall not be absent from this Colony at the time when such cause of action first accrued, by reason only that some one or more of such joint debtors was or were at the time such cause of action so accrued absent from this Colony: Provided, also, that the plaintiff in any such last-mentioned action shall not be barred from maintaining an action against the joint debtor or joint debtors who was or were absent from the Colony at the time the cause of such action accrued after his or their return to this Colony, by reason only that judgment for such cause of action was already recovered against one or more of such joint debtors who was not or were not absent from this Colony at the time in that behalf aforesaid.

Power of court to judge of shorter terms of prescription not affected.

XIII. Nothing in this Act contained shall be construed so as to deprive any court in this Colony of any power which it may now by law possess to take into consideration as matter of evidence in any suit or action pending in such court any lapse of time shorter than the period of prescription established by this Act, and to give such weight to such evidence as it may, under the particular circumstances of the case, appear to be entitled to.

Short title.

XIV. This Act may be cited for all purposes as "The Prescription Amendment Act, 1861."

No. 7—1861.] AN ACT [August 14, 1861.

No. 7—1861.

To Amend the Law relating to Grand and Petit Juries.

**W**HEREAS by the Ordinance No. 2, 1845, entitled "Ordinance for fixing the mode of making out Jury Lists for Cape Town and the District thereof," certain duties connected with the preparation of certain jury lists were imposed upon the Judge and Superintendent of Police in Cape Town: And whereas under and by virtue of the Act No. 11, 1860, the office of Judge and Superintendent of Police in Cape Town has been abolished: And whereas it is expedient to provide for the performance of the said duties and also to amend in certain other respects the law relating to grand and petit juries: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. From and after the taking effect of this Act all and singular the several duties which under and by virtue of the Ordinance aforesaid, No. 2, 1845, the Judge and Superintendent of Police in Cape Town was charged with and authorized and required to perform shall be charged upon and performed by the Resident Magistrate of Cape Town, or such other officer as the Governor shall by proclamation nominate and appoint for that purpose, in like manner as if the Resident Magistrate aforesaid, or such other officer, were named in the said Ordinance No. 2, 1845, in place and stead of the Judge and Superintendent of Police.

Jury list for Cape Town and district to be made out by resident magistrate.

II. If it shall happen in any district of this Colony that by reason of any failure or neglect or other cause the jury list mentioned in the seventh section of the Ordinance 84, entitled "Ordinance for altering and amending the Law relative to the Qualification of Persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning Lists of the same," shall not be affixed, or that the court in the said seventh section mentioned shall not

How in case of failure to post list.



No. 7—1861.

be held upon the day in that behalf in the said section directed, it shall and may be lawful for the Governor, by proclamation, to fix and appoint some other convenient day for the affixing such list or the holding of such court (as the case may be), and such day shall thereupon be deemed and taken to be the day appointed by the said Ordinance No. 84.

Section 3 Ordinance  
84 repealed.

III. The third section of the Ordinance aforesaid, No. 84, is hereby repealed.

Who qualified to serve  
on the grand jury.

IV. Every man qualified and liable under or according to the said Ordinance No. 84 to serve as a juror, who shall reside in Cape Town, or in the district thereof, or the Cape district, and who shall be the owner of land or buildings of the value of one thousand five hundred pounds sterling, situated within this Colony; or not being such an owner, shall be the occupier or tenant, under any lease or contract of hire originally entered into for any term not less than five years, of land or buildings of the value of two thousand five hundred pounds sterling, shall be qualified and liable to serve on any grand jury which shall be lawfully empanelled in the Supreme Court: Provided that the value of any such property as aforesaid shall, for the purposes of this section, be the value placed upon such property in and by the valuation for the time being made for road purposes under the Act No. 9, 1858, or under any other Act providing for a valuation of fixed property for road purposes: And provided that if at any time there shall not exist any valuation of such property for road purposes, then the value thereof for the purposes of this section shall be estimated or appraised by the officer or officers charged with the duty of preparing the jury lists for Cape Town and the district thereof and the Cape district: Provided, also, that nothing herein contained shall extend to prevent the owner and the occupier of any property, being different persons, from being both of them qualified by or out of the same property.

Property to be valued  
according to Act 9,  
1858, or by officer  
preparing list.

How in case of joint  
proprietorship or oc-  
cupation.

V. As often as any land or buildings shall be jointly owned, or shall be jointly occupied without being owned, by more persons than one, then every joint owner or joint occupier shall for the purposes

of the last preceding section of this Act be qualified and liable to serve on any such grand jury as aforesaid, in case the total value of such land or buildings when divided by the number of such joint owners or occupiers shall yield, in the case of joint owners, for every joint owner the sum of one thousand five hundred pounds, and in the case of joint occupiers who shall not be owners the sum of two thousand five hundred pounds sterling: Provided that in case such joint owners shall own or such joint occupiers shall be interested in such land or buildings in unequal shares or proportion, no such joint owner or joint occupier shall be qualified or liable to serve on such grand jury unless his share or proportion shall, regard being had to the total value of the land or buildings, yield, if a joint owner, the sum of one thousand five hundred pounds, and if a joint occupier, not being an owner, the sum of two thousand five hundred pounds.

VI. So much of the forty-second, eighty-first, and eighty-second of the rules and orders of the Supreme and Circuit Courts, and so much of any other law or Ordinance as is repugnant to the provisions of the next succeeding sections of this Act is hereby repealed.

Certain rules of court repealed.

VII. Persons against whose names the words "grand juror" are marked in the jurors' book shall be liable to be summoned to serve as petit jurors in the Supreme Court.

Grand jurors may serve as petit jurors.

VIII. The number of persons marked in the jurors' book as grand jurors to be summoned as in the eighty-second of the rules and orders aforesaid is directed, shall hereafter be twenty-seven instead of thirty-four.

Number of grand jurors to be summoned.

IX. It shall be lawful for the Chief Justice and the Puisne Judges of the Supreme Court, by any rule or order of the said court, to make provision for the just apportionment of jurors' duty amongst the various persons qualified to serve as grand jurors, so that as much as may be, each of them shall in his turn discharge, as compared with his fellow grand jurors, and with persons liable to serve as petit jurors only, his fair share of duty, and no more: Provided

Provision as to apportionment of duty.

No. 7—1861.

that for the purpose of any such rule or order attending to serve upon a grand jury at any criminal session of the Supreme Court and service for the purpose of the petit jury at the same session shall be considered as equal to each other.

Short title of Act.

X. This Act may be cited for all purposes as “The Jury Law Amendment Act, 1861.”

No. 8—1861.] AN ACT [August 14, 1861.

To Amend the Laws regulating the Payment of Transfer Duty.

Preamble.

WHEREAS by the tenth section of the Act No. 15 of 1855, entitled “An Act to amend the Ordinance No. 18 of 1844, for Regulating the Payment of Transfer Duty in the Colony,” it is provided that 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 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: And whereas it is expedient to limit the time within which such cancellation and rescission must take place, and to amend the law regulating the payment of transfer duty in other respects: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant portions of Act 15, 1855, and of previous laws repealed.

I. So much of the tenth section of the Act aforesaid, No. 15 of 1855, and of any former law or Ordinance as shall be repugnant to or inconsistent with any of the provisions of this Act shall be and the same is hereby repealed.

10th section of Act 15, 1855, to apply only to sales cancelled within six months.

II. The tenth section aforesaid of the Act aforesaid shall extend and apply to no sale except one

which shall have been cancelled and rescinded within the space or term of six months next after the date of such sale.

No. 8—1861.

III. If in any case any vendor who shall have made any sale upon which transfer duty shall be payable shall make a second or subsequent sale of the same property to another purchaser, then in case the transfer duty shall not have been paid by the first purchaser and in case the vendor shall not by law be entitled to claim that the said duty shall be remitted, it shall be lawful for such vendor to pay such amount of duty upon the first sale as the first purchaser was liable to pay, and such vendor shall be entitled to recover the sum so paid from the first purchaser as so much money paid for his use: Provided that the solemn declaration to be made by the vendor in regard to such first sale shall be in the common and ordinary form of a vendor's declaration, and no declaration from the vendor shall be necessary; and provided that the solemn declaration to be made by the vendor, in regard to any second or subsequent sale of the same property, shall be in the form marked F to this Act annexed.

Transfer duty on cancelled sale may in case of second sale be recovered from first purchaser.

Declaration in regard to second sale.

IV. As often as any immovable property shall by the will of a deceased spouse be so limited and settled that it is upon the death of the surviving spouse, who is by such will entitled to a life interest therein, to go and belong to some child or other descendant of the deceased spouse, who would, under or according to letter C of the Schedule No. 1 annexed to the Act aforesaid, No. 15, 1855, or by any other law, be entitled in case such surviving spouse were dead to obtain transfer of such property free of duty, then, in case such survivor shall during life see fit to waive and give up his or her life interest in favour of the child or other descendant in remainder, such child or other descendant shall be entitled to take during the life of such survivor, transfer of such property free of duty, precisely as if such survivor were dead.

No transfer duty chargeable when an heir takes over an estate during the lifetime of the surviving spouse who has survived the life interest therein.

V. As often as the trustee of any insolvent estate, in the exercise of the powers by law possessed by him as such trustee, shall refuse to fulfil any contract

No duty payable on sales made previous to sequestration but subsequently abandoned by trustee in the insolvent estate.

No. 8—1861

for the sale of fixed property made by the insolvent before sequestration, no transfer duty upon such sale shall be payable by the purchaser from such insolvent, and such duty if paid before the sequestration shall be returned.

Nor upon purchases similarly abandoned; but duty if paid by insolvent not to be returned.

VI. As often as the trustee of any insolvent estate shall, under and by virtue of the one hundred and third section of the Ordinance No. 6, 1843, elect to abandon any agreement which shall have been entered into by the insolvent for the purchase or exchange of any immovable property, no transfer duty shall be payable by such trustee upon such sale: Provided that such duty, if it have been paid by the insolvent, shall not be returned; and provided that the solemn declaration to be made by the vendor, in case he shall make any second or subsequent sale, shall be in the form marked F to this Act annexed.

No duty payable on property allowed to be returned by insolvent.

VII. As often as any insolvent shall by agreement with his creditors be permitted to retain or take over any of the immovable property which belonged to such insolvent at the date of the order of sequestration and still remaining unregistered in the name of such insolvent, no transfer duty shall be payable upon such transaction.

Period within which single duty shall be paid to be reckoned from date of contract of sale and not from date of possession.

VIII. As often as any contract of sale of any immovable property shall be entered into, by which contract it is stipulated that possession of such property shall not be given, or that the said sale shall not take effect until some future date, the date at which such contract was entered into, and not such future date, shall be the date from which the space or term of six months mentioned in the thirteenth section of the Ordinance No. 18, 1844, shall be reckoned.

How in case of conditional sale.

IX. As often as any sale of immovable property shall be a conditional sale, then, if such condition be a suspending condition, the space or term of six months aforesaid shall begin to be reckoned from the date at which the said condition happened, but if such condition be a dissolving condition, then the said space or term of six months shall begin to be reckoned from the day on which such contract of

sale was first entered into: Provided that in case any such contract of sale shall become dissolved by reason of the happening of any dissolving condition after the payment of transfer duty, then upon proof given of such dissolution such duty shall be returned.

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X. As often as any dispute or question shall arise between a supposed seller and a supposed purchaser, the supposed seller alleging that a sale of certain immovable property by the one of them to the other of them was actually completed, and the supposed purchaser on the other hand denying the fact that such a sale took place, it shall be lawful for the Governor aforesaid, at any time within six months next after such supposed sale, upon the application of such supposed seller, and upon proof made to his satisfaction that no collusion exists between the supposed seller and the supposed buyer, to authorize such supposed seller, in case of a future sale of the same property to a different person, to alter the ordinary form of solemn declaration to be made in reference to such future sale, by stating in such declaration that he never sold the said property to any person except the person named in such declaration as the purchaser, if not to one A B, who, however, disputed and denied the fact of such sale, whereupon the said sale was given up and abandoned by the person making such declaration, and the Governor's authority obtained for altering the form of the said declaration so as to make it conformable to the fact.

How when sale is disputed by alleged purchaser.

Declaration to be altered.

XI. This Act may be cited for all purposes as Short title of Act. "The Transfer Duty Amendment Act, 1861."

#### SCHEDULE.—FORM F.

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 ——, 18——, 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 further declare that the only person other than the said E F to whom I ever sold

Schedule referred to in section 3.

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the said property, or who at any time purchased the said property from me, was C D, to whom I sold the same on the — day of —, 18—, for the sum of £—: And I further declare that I have, acting under the third section of the Transfer Duty Amendment Act of 1861, paid the transfer duty payable by the said C D (or in regard to section six of this Act: And I further declare that since the said sale to the said C D, he has become insolvent without paying transfer duty, and that the trustee of his insolvent estate has elected to abandon the said sale). And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1843, entitled an “Ordinance for substituting Declaration in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.”

Declared before me, &c., &c. (Signed) A B.

No. 9—1861.] AN ACT [August 14, 1861.

To Amend the Act No. 5, 1855, entitled “An Act for creating Divisional Councils in this Colony.”

Preamble.

WHEREAS it is provided by the Act No. 5, 1855, entitled “An Act for creating Divisional Councils in this Colony,” that there shall be triennial elections for the members of the said divisional councils: And whereas it is by the twenty-third section of the said Act provided that the civil commissioner of the division shall, in regard to every such triennial election, fix, by notice published in the Government Gazette, some day or days for the taking of a poll in such field-cornetcy not later than seven days nor earlier than twenty-eight days next before the day on which any term of three years shall expire: And whereas from accident or other causes it has happened that the provisions of the said twenty-third section have not, in one or more divisions, been strictly complied with, and also that in divisions in which the provisions of the Act have been strictly complied with, one or more districts of those divisions have failed to elect: And whereas it is expedient to provide a remedy for such accidents and failures: Be it enacted by the Governor of the

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

No. 9—1861.

I. If it shall happen that by reason of any accident or other cause the civil commissioner of any division shall not, in regard to the election of a new divisional council for such division, give, within the time by the twenty-third section of the Act No. 5, 1855, in that behalf provided, the notice in the said section mentioned, it shall be lawful for the Governor, upon the application of such civil commissioner, to authorize such civil commissioner to publish, or cause to be published, such a notice as aforesaid, fixing such day or days for the taking of the poll aforesaid, in the several districts of such division as may seem convenient, and the members of the old or expiring divisional council shall remain in office until the publication in manner and form as in the seventeenth section of the said Act No. 5, 1855, directed of the names of the members elected in pursuance of such last-mentioned notice.

How in case of failure to give notice of the election of new council within the time prescribed by Act 5, 1855.

II. Every poll which at any time before the taking effect of this Act has by the authority of the civil commissioner of any division been taken in such division upon a day other than a day on which, according to the Act aforesaid, such poll ought to have been taken for the election of any divisional council, shall be deemed and taken to have been and the same is hereby rendered and made as legal, valid, and effectual, and of the same force and effect precisely as if such poll had been fixed for and taken upon a day on which according to the said last-mentioned Act it might lawfully have been taken.

Elections which have taken place after prescribed time confirmed.

III. If any district of any division shall from accident or other cause, not being the neglect of the voters to attend, as hereinafter mentioned, fail at any poll appointed for such district to elect a member of the divisional council for such district, or if any such district shall before the taking effect of this Act have so failed to elect, it shall be lawful for the Governor aforesaid, upon the application of the civil commissioner of such division, to authorize the taking in such district, upon such day or days as

As to failure of election from any cause excepting non-attendance of voters.



No. 9—1861.

How when from non-attendance of voters.

may seem convenient, of another poll, and such other poll shall be deemed to be as legal, valid, and effectual as if it were the poll first appointed for such district: Provided that as often as it shall be certified to the Governor by the civil commissioner of any division that at the poll duly appointed for any district or subdivision no member of the divisional council was elected by reason that no voter for such district attended to give his vote, and that the said civil commissioner, after inquiry, has not ascertained the existence of any sufficient impediment preventing the attendance of one or more of the voters of such district at the said poll, then the said Governor shall direct that a poll be taken by the civil commissioner upon some convenient day, of which not less than twenty-one days' notice shall be given, in manner hereinbefore mentioned, and at some convenient place at or near the office of such civil commissioner to be named in such notice, at which poll every voter of the division shall, without reference to districts, be entitled to vote; and the person elected at such poll shall, until he shall vacate office, be deemed to be the member for the district which shall as aforesaid have failed to elect by reason that no voter attended at the poll first appointed, and be in the same plight and condition as if he had been elected at such last-mentioned poll: Provided, also, that when the member so chosen as aforesaid shall vacate office, then the district for which he sat in the divisional council shall again be entitled to elect its member, precisely as if this section never had been passed.

Failure to elect in one district not to delay publication of members elected in others.

IV. The failure as aforesaid of any district to elect at the poll first appointed shall not delay the publication, as in the seventeenth section of the Act No. 5, 1855, directed, of the names of the members elected by the other districts; and the member who may be elected at any such second poll as aforesaid shall hold office after such election for the same time as if he had been elected at the first poll and no longer.

Persons to be appointed to act as polling officers in case of ill-

V. The civil commissioner of each division shall, previous to each election of members or a member of

any divisional council, and after communicating with the field-cornet of each ward in his division, appoint in writing some fit and proper person in each ward to act in place and stead of such field-cornet, in case by reason of illness, absence, or other unavoidable cause, such field-cornet should be prevented from attending in person at the taking of the poll for a divisional councillor in such ward, and the poll taken by any such person shall be as legal, valid, and effectual as if the same had been taken by such field-cornet: Provided, also, that if at any time before the taking effect of this Act any poll for a divisional councillor shall in any ward have been taken in the absence of the field-cornet of such ward by any person deputed by him to act in his place and stead, such poll shall not by reason thereof be liable to be impeached or questioned, but shall be of the same force and effect precisely as if it had been taken by the field-cornet himself: Provided, further, that if it shall happen in any ward that there shall not, at the time proper for the taking of any such poll as aforesaid, be any field-cornet for such ward the civil commissioner shall appoint in writing some fit and proper person to take such poll, who shall have the right and power so to do as if he were the field-cornet of such ward.

No. 9—1861.

ness or absence of field-cornet.

Polls taken by persons deputed by field-cornet ratified.

No. 10—1861.] AN ACT [August 14, 1861.

To Amend the Acts No. 23, of 1858, entitled “ An Act for declaring Main Roads and Regulating Tolls,” and No. 25 of 1859, entitled “ An Act to amend the Act No. 23 of 1858, entitled ‘ An Act for declaring Main Roads and Regulating Tolls.’ ”

**W**HEREAS it is expedient to make certain alterations and conditions to the main roads mentioned in schedule A to the Act No. 23 of 1858 and in the third section of the Act No. 25 of 1859 : Preamble.

No. 10—1861.

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 :

Deviation of main line through Lange Kloof.

I. That part or portion, of the fourth section of the main trunk line to Graham's Town and eastwards, described in paragraph five of section two of schedule A to the Act No. 23 of 1858, which passes through the farm Diep River, before reaching Keurboom's River, shall proceed through the Diep River by the Sand Drift, thence in an easterly direction along the north side of the river and over the ridge or neck to the northward of the Wolvehuiskop, thence descending by the first hollow so as to join the continuation of the line to Keurboom's River height as described in the aforesaid Act No. 23 of 1858.

Main road from Fort Beaufort to Post Relief abolished.

II. The tenth paragraph of the second section of schedule A to the Act No. 23 of 1858, in which the ninth section of the main trunk line to Graham's Town and eastwards is described, is hereby cancelled and annulled.

Line from Yzernek to Avontuur to be a main road.

III. The road from Yzernek to Avontuur in Langekloof, described, as follows, shall be a main road, that is to say: From Yzernek past a place called Buffelsnek, thence through the farm of Mr. F. Scholtz, Klein River, thence through a small strip of Government Ground near the Diep River, thence through the properties Kafferskraal of W. G. B. Wehmeyer, and Cloete's Kraal of Mr. S. van Huysteen, Kat, and others, thence through the farm called Vlught, the joint property of Messrs. Buckley, Reid, and others, thence through a place called Voight's Kraal, belonging to Mr. Zondag, thence through the farm Avontuur, also the property of Mr. Zondag, till it joins the present post-road to the frontier.

No. 11—1861.] AN ACT [August 14, 1861. No. 11—1861.

For Continuing the Act No. 26, 1857, entitled “An Act for Punishing Emissaries from Kafirland and others delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace.”

**W**HEREAS the Act No. 26, 1857, entitled “An Act for punishing Emissaries from Kafirland and others delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace,” was limited so as to continue in force until the 31st December, 1858, and no longer; and whereas the said Act was by Act No. 24, 1860, continued until the 31st December, 1861: And whereas it is expedient that the said Act should be continued in force until the 31st December, 1862: Be it enacted by 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. 26, 1857, shall be and continue in force until the 31st December, 1862, and no longer. Act 26, 1857, continued.

II. This Act shall commence and take effect from and after the expiration of the Act aforesaid, No. 24, 1860, and not sooner.

III. This Act may be cited for any purpose as Short title.  
“The Kafir Emissaries Act, 1861.”

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No. 12—1861.] AN ACT [August 14, 1861.

To Regulate till the Expiration of the Year 1862 the Dealing in Gunpowder, Fire-arms, and Lead.

**W**HEREAS the Act No. 20, entitled “An Act to regulate till the expiration of the year 1861 the Dealing in Gunpowder, Fire-arms, and Lead,” will expire with the expiration of the last-mentioned year: And whereas it is expedient that the provisions of the Act No. 14, 1857, which was continued in force by the said Act No. 20, 1860, until the Preamble.

No. 12—1861.

expiration of the Year 1861, should be further continued so as to remain in force till the 31st December, 1862: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Act 14, 1857, continued to 1862.

I. The Act aforesaid, No. 14, 1857, entitled "An Act to regulate until the expiration of the Year 1858 the Dealing in Gunpowder, Fire-arms, and Lead," shall continue and be in force and operation from the expiration of the Year 1861 till the expiration of the Year 1862.

Act when to commence.

II. This Act shall commence and take effect at and upon the expiration of the Act aforesaid, No. 20, 1860, and not sooner.

Offences against this Act to be charged as contraventions of Ordinance 2, 1853.

III. Every offence against the Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, committed after the commencement and taking effect of this Act, and before the 31st December, 1862, shall in any indictment relative thereto be charged as a contravention of the said Ordinance, No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, and 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.

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No. 13—1861.] AN ACT [August 14, 1861.

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

Preamble.

WHEREAS it is provided by the Act No. 10, 1855, entitled "An Act for the better Administration of Justice," that the Supreme Court of this Colony shall consist of one Chief Justice and three puisne judges: And whereas by the schedule marked A annexed to a certain Ordinance appended to a certain order of Her Majesty in Council, bearing date the 11th day of March, 1853, and which Ordinance is entitled "Ordinance enacted by the Honourable

the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for regulating in certain respects the appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof," the salaries of the Chief Justice aforesaid and of the puisne judges of the said Supreme Court are secured by law: And whereas it is fitting and expedient that the salaries of the whole number of the judges of the said Supreme Court should be equally secured by law: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

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

£1,200 payable annually to the third puisne judge.

No. 14—1861.] AN ACT [August 14, 1861.

To Regulate the Retiring Pensions of the Judges of the Supreme Court.

**WHEREAS** no provision has been made for the retirement of the Chief Justice or other Judges of the Supreme Court of this Colony, and it is expedient that such provision should be made: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof as follows:

Preamble.

I. Any person having served the office of judge of the Supreme Court for the full period of ten years shall be entitled to retire from the said office and to receive a pension, to be ascertained as follows: that is to say, if he shall have served such office for a period of ten years or upwards, he shall be entitled

Pension after service of ten years and upwards.

No. 14—1861.

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

No pension claimable before the age of 60, unless disabled.

Period of Justice Cloete's service how to be reckoned.

II. And whereas the Honourable Henry Cloete, Esq., LL.D., now one of the judges of the Supreme Court of the Colony of the Cape of Good Hope was, when appointed to be such judge, Recorder of Natal, which at the time of his appointment as such Recorder formed part of the Colony of the Cape of Good Hope: Be it enacted that for the purpose of this Act the services of the said Henry Cloete in the said office of Recorder shall be reckoned as if they had been given by him as a judge of the Supreme Court of the Colony of the Cape of Good Hope.

No. 15—1861.] AN ACT [August 14, 1861. No. 15—1861.

To Enable the Governor to increase the Number of Harbour Commissioners appointed under Ordinance 21, 1847 ; and to cause all Meetings of such Boards of Commissioners to be held with Open Doors.

**W**HEREAS by the second section of Ordinance Preamble.  
 No. 21, 1847, entitled “ Ordinance for improving the Ports, Harbours, and Roadsteads of this Colony,” it is provided that every such board of commissioners as is in the said Ordinance mentioned shall consist of not less than three nor more than five persons : And whereas in certain ports and places of this Colony it is expedient that the harbour board thereof should consist of more than five persons : And whereas it is expedient that the meetings of all such boards shall be held with open doors : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

I. So much of the second section of the Ordinance Repugnant portions of Ordinance 21, 1847, repealed.  
 aforesaid as is repugnant to or inconsistent with the provisions of this Act shall be and the same is hereby repealed.

II. From and after the taking effect of this Act Harbour boards to consist of certain number of members.  
 every board of commissioners appointed under and by virtue of the said Ordinance mentioned shall consist of so many fit and proper persons, not less than three nor more than seven, as the Governor shall deem sufficient.

III. Every meeting of a board of harbour commissioners held after the promulgation of this Act Meetings to be open to the public.  
 shall be open to the public : Provided that the board of commissioners mentioned in the fifth section of the Act No. 6, 1860, shall for the purpose of this section be deemed to be a board of harbour commissioners.



No. 16—1861.

No. 16—1861.] AN ACT [August 14, 1861.

To Authorize the Table Bay Breakwater Commissioners, from and out of the Funds under their administration and control, to construct Docks.

Preamble.

WHEREAS the fourth section of the Act No. 6, 1860, entitled "An Act to amend the Act No. 20, 1858, entitled 'An Act for constructing a Breakwater to form a Harbour of Refuge in Table Bay and otherwise improving the said Harbour,' " is as follows: "The breakwater to which the funds and moneys mentioned in the said Act No. 20, 1858, and in this Act are to be devoted, shall be constructed upon or with reference to the plan of harbour improvements lately prepared by John Coode, Esq., Civil Engineer, so that such plan or any further part or parts thereof may be hereafter undertaken, should Parliament think it fitting to authorize the undertaking of the same:" And whereas it is expedient that Parliament should authorize the construction, from and out of the said funds and moneys, of the docks laid down in the said plan of harbour improvements prepared by the said John Coode: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Construction of docks may be commenced at once.

I. It shall be lawful for the said board of commissioners mentioned in the fifth section of Act aforesaid, No. 6, 1860, to apply so much of the funds, dues, revenues, and moneys in the said Act No. 6, 1860, and in the said Act No. 20, 1858, mentioned as the said commissioners shall find necessary and deem meet in constructing, when and as soon as they shall think expedient, the docks which form part of the plan of harbour improvements aforesaid prepared by the said John Coode, it being the true intent and meaning of these presents that the said commissioners shall have power at their discretion to commence the construction of the said docks at once, and to complete them, or such of them as they may think fit, before carrying the said breakwater farther out into Table Bay than the said commissioners

shall judge to be sufficient for sheltering the entrance of the said docks : Provided that nothing in this Act contained shall be construed so as to vest in or place under the administration of the said commissioners any funds, dues, revenues, or moneys whatsoever other than those now by law vested in them or placed under their administration by the Acts aforesaid, No. 20, 1858, and No. 6, 1860.

No. 17—1861.] AN ACT [August 14, 1861.

To Remove Doubts regarding the Claims of the Simon's Bay Dock or Patent Slip Company in reference to the Cranage and Wharfage Dues payable in Simon's Bay.

**W**HEREAS the thirtieth section of the Act No. 13, Preamble. 1859, entitled "An Act to incorporate the Simon's Bay Dock or Patent Slip Company," is as follows : "When and so soon as it shall be made to appear to the Governor of this Colony by the directors of the company for the time being that the docks have been sufficiently advanced to permit the entrance of ships or vessels therein, or that there are sufficient conveniences for the landing and shipment of goods thereat, it shall and may be lawful for the said Governor, by his proclamation to be issued for that purpose, and published in the Government Gazette, to announce that from and after some certain day to be specified in such Proclamation, so much of the Ordinance No. 6, 1851, as relates to the levying and payment of the several dues of wharfage and cranage on all goods landed or shipped in Simon's Bay shall be repealed, and that there shall thenceforth be levied by and paid to the said directors or such other person or persons as shall be appointed to receive the same, for their use, upon all goods, articles, matters, and things included in the schedules to the Ordinance No. 6, 1851, landed or shipped in Simon's Bay, such dues of wharfage and cranage, not exceeding the several rates of dues respectively

set forth in the said schedule as the said Governor shall approve of and appoint, and such dues from time to time by proclamation to alter, but so, however, as never to exceed the rates set forth in the said schedules; and the directors shall be entitled by legal process to recover all such dues from the owners of the goods, articles, matters, and things aforesaid, and shall, moreover, have the right of retaining the same until such wharfage dues shall have been paid, as well as the right of preventing any goods, articles, matters, or things from being shipped at or from the said docks, or any wharves or piers connected therewith, until the wharfage dues payable in respect thereof shall have been paid: Provided that the said directors shall erect or provide such cranes or other conveniences as may be necessary for landing or shipping at the said docks." And whereas a patent slip has been constructed in Simon's Bay aforesaid by the company aforesaid, but no docks have been constructed there by the said company, nor are any intended so to be: And whereas by or according to the terms and construction of the thirtieth section aforesaid of the Act aforesaid, the right of the said company to receive dues of crantage and wharfage is made dependent upon the construction of docks wherein or whereat goods might be landed or shipped, and does not arise from or out of the construction of a patent slip: And whereas the said company has, besides the construction of a patent slip with its appurtenances, gone to considerable expense in constructing a pier or wharf for facilitating the landing and shipping of goods in Simon's Bay, and in providing other conveniences for such landing or shipping, whereby the trade of the said bay has been and is likely to be promoted: And whereas whilst it is just and fitting that the said company should, from and out of the dues of crantage and wharfage payable in Simon's Bay, be fairly recompensed for all outlay made by the said company in providing for landing and shipping in the said bay, it would be inexpedient to make over to such company the whole of such dues: Be it enacted by the Governor of the Cape of Good

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

No. 17--1861.

I. The thirtieth section aforesaid of the Act aforesaid, No. 13, 1859, is hereby repealed.

Section 30, Act 13, 1859, repealed.

II. It shall be lawful for the Governor aforesaid to agree with the company aforesaid upon or in regard to the amount which shall be deemed and taken to have been expended by the said company at the time of the taking effect of this Act in making provision for the landing and shipping of goods in Simon's Bay, and to pay to the said company from and out of the dues of crannage and wharfage received in Simon's Bay such interest upon such amount as the said Governor and the said company shall from time to time agree upon, not exceeding twelve per cent. per annum: Provided that if in any year or years the receipts of crannage and wharfage aforesaid shall not amount to the interest aforesaid then the deficiency shall be carried forward as a charge upon the said wharfage and crannage, and be made good out of the same as soon as circumstances will permit.

Interest upon amount expended by company to be paid out of wharfage and crannage dues.

III. In case the said company shall hereafter at the request or with the concurrence of the said Governor provide additional means or facilities for the landing and shipping of goods in the said bay, then the cost of such additional means or facilities, after being agreed upon between the said Governor and the said company, shall be added to the amount bearing interest as in the last preceding section mentioned, and interest upon the sum total shall be payable as by the said section authorized.

Certain additional expenses may be added to the amount bearing interest.

IV. The said company shall at all times keep in good and sufficient repair the piers, wharves, cranes, and other conveniences as aforesaid for the time being.

Company to keep wharves, &c., in repair.

V. In case a difference should at any time arise between the said Governor and the said company regarding any amount or sum in this Act mentioned, such difference shall be decided by three arbitrators, one to be named by the said Governor, one to be named by the said company, and one to be named by the other two before entering upon the arbitration,

Differences between Government and company to be referred to arbitration.

No. 17—1861.

such three arbitrators to sit and act together, and their award or the award of any two of them to be final.

Wharfage dues to be collected by person appointed by Governor.

VI. The dues of wharfage and crannage payable in Simon's Bay shall be payable to and be collected by such person or persons as shall for that purpose be appointed by the Governor aforesaid, anything in any former law or Ordinance directing that the said dues should be paid to and collected by the Collector of Customs at Simon's Town to the contrary notwithstanding.

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No. 18—1861.] AN ACT [August 14, 1861.

To Declare the Consent of the Parliament of the Cape of Good Hope to the erection of a Lighthouse upon Robben Island, and to the Collection of Dues in respect of such Lighthouse.

Preamble.

WHEREAS by the Merchant Shipping Act Amendment Act, 1855, it is enacted that in any case in which any lighthouse has been or is hereafter erected on or near the coasts of any British possessions by or with the consent of the legislative authority of such possession, Her Majesty may, by order in Council, fix such dues in respect thereof to be paid by the owner or master of every ship which passes the same or derives benefit therefrom as Her Majesty may deem reasonable, and may in like manner from time to time increase, diminish, or repeal such dues, and from the time specified in such order for the commencement of the dues thereby fixed, increased, or diminished, the same shall be leviable throughout Her Majesty's dominions in manner in the said Act mentioned, and that no such dues shall be levied in any Colony unless and until the legislative authority in such Colony has either by an address to the Crown or by an Act or Ordinance duly passed signified its opinion that the same ought to be levied in such Colony: And whereas a lighthouse is about to be erected upon Robben Island: And whereas it is expedient that the Parliament of this Colony

should declare by an Act thereof its consent to the erection of said lighthouse, and its opinion that such dues as Her Majesty may by any order in Council to be issued in pursuance of the Merchant Shipping Act Amendment Act, 1855, fix in respect of the said lighthouse should be levied in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

No. 18—1861.

I. The assent and consent of the Legislature of the Colony of the Cape of Good Hope to the erection of the proposed lighthouse upon Robben Island are hereby testified and declared.

Consent to erection of lighthouse on Robben Island.

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 the said lighthouse ought to be levied in the Colony in the manner provided by the Merchant Shipping Act Amendment Act, 1855, on all ships arriving or touching at any port or place in this Colony, which ships shall by the said Act be liable to the payment of such dues as shall by any such order in Council be fixed in respect of such lighthouse.

Dues to be levied.

No. 19—1861.] AN ACT [August 14, 1861.

For the Regulation of Railways in this Colony.

WHEREAS it is expedient for the public safety and advantage to provide for the regulation in certain respects of railways in this Colony: Be it enacted by the Governor of the Cape of 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 board of directors of any railway company owning or working any railway in this Colony from time to time to make such by-laws as they shall think fit, for the purpose of regulating the conduct, whilst on duty, of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatever, and from time

Railway companies may make their own by-laws.

No. 19—1861.

to time to alter and repeal such by-laws and to make others; and such by-laws shall be printed, and a copy of such by-laws shall be given to every officer and servant of the company affected thereby.

Certain by-laws to be approved by Governor.

II. No by-law affecting or imposing penalties upon persons other than the servants of the company shall be of any force or effect until it shall have been approved of by the Governor, with the advice of the Executive Council, and published in the Government Gazette.

Officers of company or police constables may apprehend servants of company committing certain offences.

III. It shall be lawful for any officer of any railway company, or for any police constable duly appointed, and all such persons as such officer or constable may call to his assistance, to apprehend without warrant any engine-driver, wagon-driver, guard, porter, servant, or other person employed by any railway company in conducting traffic upon the railway belonging to such company or in repairing and maintaining the works of the said railway who shall be found drunk while so employed upon the said railway, or who shall commit any offence against any of the by-laws, rules, or regulations of the said company which shall have been published as aforesaid in the Government Gazette, or who shall wilfully, maliciously, or negligently do or omit to do any Act, by doing or omitting which the life or limb of any person passing along or being upon such railway, or the works or appurtenances thereof respectively shall be or might be injured or endangered, or the passage of any engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such person so apprehended with all convenient dispatch before the resident magistrate of the district or place within which such offence shall be committed; and every such person so offending shall upon conviction be liable to be imprisoned, with or without hard labour, for any term not exceeding two months, or to pay any fine not exceeding ten pounds sterling, or to both such imprisonment and such fine: Provided that if the person offending shall be charged with the contravention of any such by-law as aforesaid he shall be liable to the fine provided by such by-law, and to none other:

Punishment.

Contravention of by-law punishable by fine.

Provided, also, that if any person sentenced under and by virtue of any such by-law shall not upon conviction forthwith pay or secure the fine imposed upon him he shall be liable to be imprisoned with or without hard labour for any term not exceeding one month.

No. 19—1861.

IV. Every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in and upon the same, or shall aid or assist therein, shall, being convicted thereof, be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

Punishment for obstructing passage or endangering safety of passengers.

V. If any person shall wilfully obstruct or impede any officer of any railway company in the execution of his duty upon any railway or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway or any of the stations or other works connected therewith, and shall refuse to quit the same upon request to him made by any officer of the said company, every such person so offending shall and may be apprehended without warrant by any such officer or agent or any person whom he may call to his assistance, until such offender or offenders can be taken before the resident magistrate of the district or place wherein such offence shall be committed, and every such person so offending shall upon conviction be liable to a fine not exceeding five pounds sterling, and in default of payment thereof to imprisonment, with or without hard labour, for any term not exceeding one month.

Persons obstructing officers or trespassing on railway how to be dealt with.

And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways for the purpose of repairing or renewing the same and to do such works as may

Accidents to cuttings or embankments.



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be necessary for the purpose, be it enacted as follows :

Adjoining lands may be entered upon to prevent or repair such accidents.

VI. It shall be lawful for the Governor to empower, by any writing under the hand of the Colonial Secretary, any railway company in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose : Provided that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid without having obtained the previous authority of the Governor ; but in any such case such railway company shall, within forty-eight hours after such entry, make a report to the Governor specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the Governor shall, after considering the said report, certify that their exercise is not necessary for the public safety : Provided, also, that such works shall be as little injurious to the adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible dispatch ; and that full compensation shall be made to the owner and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation in case of any dispute about the same shall be settled in the same manner as cases of disputed compensation are by the Act under which the said railway shall have been constructed directed to be settled ; and in case there be no such Act, then by suit or action in some competent court.

to  
Compensation owners of lands.

Punishment for obstructing officers acting under preceding section.

VII. If any person shall wilfully obstruct any person acting under authority of any railway company acting in the lawful exercise of their power in setting out the line of the railway, or shall wilfully pull up or remove any poles or stakes driven into the ground for the purpose of so setting

out the line of the railway, or deface or destroy any marks made for the same purpose, he shall, upon conviction, be liable to a fine not exceeding five pounds, and, in default of payment, to imprisonment, with or without hard labour, for any term not exceeding one month.

VIII. If on demand any person fail to pay the tolls due to any railway company in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage or all or any part of such goods, or if the same shall have been removed from the premises of the company, to sell or detain any other carriages or goods within such premises belonging to the party liable to pay such tolls, and out of the moneys arising from such sale to retain the tolls payable as aforesaid and all charges and expenses of such detention and sale, rendering the overplus, if any, of the moneys arising from such sale and such of the carriages and goods as shall remain unsold to the person entitled thereto, or it shall be lawful for the company, if they shall so elect, to recover any such tolls by action at law: Provided that fourteen days' notice of such sale shall have been previously given in the Government Gazette and some other local newspaper.

IX. If any difference shall arise between any toll-collector or other officer or servant of the railway company, and any owner of or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such railway, respecting the weight, quantity, quality, or nature of such carriage or goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge, or otherwise measure the same; and if upon measurement or examination such goods appear to be of greater weight or quantity or of any other nature than that stated by the person who shall be in charge thereof, then the owner of such carriage and the owner of such goods shall be liable to pay the costs of such measurement and examination; but if such goods appear to be of the same or less weight or quantity than and of the same nature

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Tolls due to railway company how to be recovered.

How in case of dispute as to amount of toll payable.

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as shall have been stated by the person in charge thereof, then the company shall pay such costs, and they shall also pay to the owner of such carriage or to the respective owners of such goods such damage, if any, as shall have arisen from such detention.

Persons wilfully evading payment of fare may be fined or imprisoned.

X. If any person shall travel or attempt to travel in any carriage of any railway company without having previously paid his fare, and with intent to avoid payment thereof, or if any person having paid his fare for a certain distance shall knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance and with intent to avoid payment thereof, or if any person shall knowingly or wilfully refuse or neglect on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, forfeit upon conviction any sum not exceeding forty shillings, and upon non-payment thereof shall be liable to be imprisoned, with or without hard labour, for any period not exceeding seven days.

Offenders against preceding section may be detained by company's officers.

XI. Any person committing or attempting to commit any such offence as in the last preceding section mentioned may be detained by any officer or servant of the company, and all constables or other officers of the law proper for the execution of criminal warrants may lawfully detain such person until he can conveniently be taken before the resident magistrate of the district or place in which the offence shall have been committed, to be dealt with according to law.

Dangerous goods carried on railways how to be treated.

XII. No person shall be entitled to carry or to require the company to carry upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods or articles which in the judgment of the company may be of a dangerous nature, and which shall be described in any by-law of the said company; and if any person send by the railway any such goods without distinctly marking their nature upon the outside of the package containing the same, or otherwise giving notice in writing to the bookkeeper or other servant of the company with

whom the same are left at the time of so sending the same, he shall, upon conviction, incur a fine not exceeding twenty pounds for every such offence, and upon non-payment thereof shall be liable to be imprisoned, with or without hard labour, for any term not exceeding six months.

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XIII. It shall be lawful for the company to refuse to take any parcel that they may suspect to contain any such dangerous goods or articles as aforesaid, or to require such parcel to be opened to ascertain the contents.

Such goods may be refused on suspicion.

Parcels may be opened.

XIV. If any collector of tolls or other officer employed by the company shall be discharged or suspended from his office, or die, or abscond, or absent himself, and if such collector or other officer, or the wife, widow, or any other of the family, or the legal representative of any such collector or other officer, refuse or neglect, after seven days' notice in writing to that effect, to deliver up to the company or to any person appointed by them for that purpose, any station, dwelling-house, office, or other building with its appurtenance, or any books, papers, or other matters belonging to the company in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, upon application being made by the company to the resident magistrate of the district or place where such building, books, papers, or other matters shall be, it shall be lawful for such resident magistrate to order any constable, with proper assistance, to enter upon such station or other building and to remove any person found therein, and to take possession thereof, and of any such books, papers, or other matters, and to deliver the same to the company or any person appointed by them to receive the same.

On the removal of toll collector or other officer, all matters and things in his custody to be delivered up to the company.

XV. Any person guilty of any of the offences hereafter in this section described, shall, upon conviction, be liable to be imprisoned and kept at hard labour for any term not exceeding twenty-one years, that is to say :

Punishment for certain offences.

1. If he shall wilfully and maliciously put, place, cast, or throw upon or across any railway

Maliciously obstructing course of railway.

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any wood, stone, or other matter or thing, or shall wilfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall wilfully or maliciously make or show, hide, or remove, any signal or light upon or near to any railway, or shall wilfully or maliciously turn, move, or divert any points or other machinery thereof, or do or cause to be done any other matter or thing with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, or injure, or destroy any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway.

Throwing stones, &c.  
With intent to endanger personal safety.

2. If such person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being upon or in such carriage, tender, engine, or truck.

Setting fire to railway buildings.

3. If such person shall wilfully and maliciously set fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway.

Or to goods in buildings.

4. If such person shall wilfully and maliciously set fire to any goods or chattels being in any building, the setting fire to which is by the last preceding section made punishable.

Any person may apprehend offenders.

XVI. It shall be lawful for any person whomsoever to apprehend without warrant any person who shall be found committing any of the offences in the last preceding section mentioned, and to convey him to prison, or deliver him to some constable or other officer of the law to be so conveyed, in order to his being dealt with according to law.

Company not liable for certain losses or injuries.

XVII. No railway company shall be liable for the loss of or injury to any article or articles or property

of the description following (that is to say), gold or silver coin of this realm or of any foreign State, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, notes of any bank of the Colony of the Cape of Good Hope or elsewhere, orders, notes, or securities for payment of money, English or foreign, stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs or lace, or any of them, contained in any parcel or package which shall have been delivered either to be carried for hire or to accompany the person of any passenger on any railway, when the value of such article or articles or property aforesaid contained in such parcel or package shall exceed the sum of ten pounds, unless at the time of delivery thereof at the office, warehouse, or receiving-house of such railway company or to their bookkeeper or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

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Unless risk has been paid for.

XVIII. As often as any parcel or package containing any of the articles above specified shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of ten pounds, it shall be lawful for such railway company to demand and receive an increased rate of charge, to be notified by some notice affixed in legible characters in some public or conspicuous part of the office, warehouse, or other receiving-house where such parcels or packages are received by them for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage, as a compensation for the greater risk

Charges for increased risk to be notified and affixed.

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and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such articles as aforesaid at such office, shall be bound by such notice without further proof of the same having come to their knowledge.

Proof necessary in regard to value of articles lost or injured.

XIX. No railway company shall be bound as to the value of any such parcel or package as aforesaid by the value so declared as aforesaid, but they shall in all cases be entitled to require from the party suing in respect of any loss thereof or injury thereto proof of the actual value of the contents by other evidence, and the railway company shall be liable for such damages only as shall be so proved, not exceeding the declared value, together with the increased charges before mentioned.

Damages for loss or injury of animals carried on railway.

XX. No greater damages shall be recovered from any railway company for the loss of or for any injury done to any animals beyond the sums hereinafter mentioned; that is to say, for any horse forty pounds, for any neat cattle per head twelve pounds, for any sheep or pigs per head, two pounds, unless the person sending or delivering the same to such company shall at the time of such delivery have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care they occasioned a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge: Provided that such percentage or increased rate of charge shall be duly notified by some such by-law as aforesaid: Provided, also, that the proof of the value of such animals, articles, goods, and things and the amount of the injury done thereto shall in all cases lie upon the person claiming compensation for such loss or injury.

Particulars of offences against this Act or by-laws to be affixed at certain places.

XXI. Every railway company shall cause the short particulars of the several offences for which any punishment or penalty is provided by the Act or by any by-law affecting persons other than the

shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, in the English and Dutch languages, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed.

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XXII. Every company shall manage, regulate, work, and use their railway and every portion thereof in a proper and safe manner, and according to the system of management from time to time adopted on the generality of English railways for the conveyance of passengers, animals, minerals, goods, merchandise, and other traffic whatsoever on the railway, and the reception, accommodation, and delivery of the traffic whatsoever, and the reception and transmission by the electric telegraph and delivery of messages, and in all other respects duly keep the same open for the convenient and safe use thereof by the public.

Company to regulate use of railway according to English system.

XXIII. Every company shall engage and employ on and about their railway, and every portion thereof, such a number of competent and careful managers, station-masters, clerks, engine-drivers, stokers, guards, pointsmen, watchmen, porters, labourers, and other officers and servants as shall be proper and sufficient for the efficient and safe management and working of the same, and the proper accommodation of the public with reference thereto.

Company to employ sufficient number of competent officers, servants, &c.

XXIV. Every company shall provide and maintain in complete repair and in an efficient working state and good condition, and employ and use for the purposes of the traffic whatsoever on the railway, and the general accommodation of the public with reference thereto, all such locomotive and other

To provide or maintain proper locomotives, &c.



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engines and other power, horses, carriages, trucks, carts, machinery, apparatus, utensils, implements, and things whatsoever as shall be fully adequate in that behalf.

Company to afford all just facilities for traffic.

XXV. Every railway company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivery of traffic upon and from the railway belonging to or worked by such company, and no company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company or any particular description of traffic in any respect whatsoever, nor shall any such company subject any particular person or company or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Tolls or fares to be charged equally to all persons.

XXVI. All tolls, fares, or rates for passengers or goods shall be at all times charged equally to all persons and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances, and no reduction or advance in any such tolls, fares, or rates shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.

Traffic accounts to be kept.

XXVII. Every company shall duly ascertain and keep full, true, and perfect accounts of all passengers, animals, minerals, goods, merchandise, and other traffic whatsoever conveyed upon their railway or any part thereof, and of all the receipts, credits, payments, and liabilities in respect of the management, regulation, maintenance, repair, insurance, working, and uses of the railway, and the reception, accommodation, transmission, and delivery of the traffic thereon, and of their receipts and credits from all other sources, and their payments and liabilities on all other accounts; and the accounts to be so kept shall comprise all such names, places, dates, numbers, distances, quantities, qualities, weights,

measure, and other particulars as shall be proper and sufficient for the full elucidation thereof, and such company shall duly obtain and preserve all such vouchers and documents and other evidence as shall be proper and sufficient for the verification of the accounts to be so kept.

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XXVIII. Any company contravening any of the foregoing regulations contained in sections twenty-two to twenty-seven shall, for every such contravention, incur the forfeiture of a sum not exceeding fifty pounds, to be recovered by civil action with costs of suit by Her Majesty's Attorney-General in any competent court.

Penalty for contravening sections 22 and 27.

XXIX. All railway companies shall be obliged to erect and keep in repair, to the satisfaction of the Colonial Engineer or such other person as the Governor may appoint, good and sufficient fences along and throughout the whole of their respective lines. Any company failing or neglecting to do so after being in writing requested so to do by such Engineer or other person so appointed shall be liable to pay to the Colonial Treasury the sum of five pounds for every day after the receipt of such notice during which such company shall fail or neglect to put such fence into proper repair, such sum or sums to be recovered, with costs of suit, by action in any competent court at the suit of Her Majesty's Attorney-General.

Railways to be fenced in.

XXX. If the railway cross any public road on a level the company shall erect and at all times maintain good and sufficient gates across such roads on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway: and such gates shall be of such dimensions and so constructed as when closed to fence in the railway and prevent cattle or horses passing along the road from entering upon the railway; and the person entrusted with the care of such gates shall cause the

Provision in cases where roads are crossed on a level.

Penalty for neglecting to close gates.

No. 19—1861.

Gates may be kept  
constantly closed  
across railway.

same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein: Provided, always, that it shall be lawful for the Governor of this Colony in any case in which he is satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

As to crossings on  
levels adjoining sta-  
tions.

XXXI. Where the railway crosses any road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Governor of this Colony.

Short title of Act.

XXXII. This Act may be cited for all purposes as "The Regulation of Railways Act, 1861."

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No. 20—1861.] AN ACT [August 14, 1861.

For the Regulation of Electric Telegraphs.

Preamble.

WHEREAS it is expedient to provide for the construction, regulation, and protection of lines of electric telegraphs in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Construction of tele-  
graph to be sanctioned  
by Governor.

I. From and after the passing of this Act no line of electric telegraph shall be constructed in this Colony until the Governor, with the advice of the

Executive Council, shall have sanctioned the construction of such line, and every line of electric telegraph constructed or to be constructed within this Colony shall be subject to the several provisions of this Act.

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II. It shall be lawful for the Governor, with the advice of the Executive Council, to authorize the establishment and construction either by individuals or co-partners of such line or lines of electric telegraph as he may think fit; and for the purpose of facilitating the construction and maintenance of such line or lines of electric telegraph, such person or persons and others acting under his or their authority may enter into and upon such lands as may be required for the construction of any line of communication by electric telegraph, and any other works incident or relative thereto, and may erect, set up, and maintain all necessary masts or poles for the supporting of any cord or wire of any such line, or bury or lay such cord or wire in the ground, and all and singular the tenth, eleventh, twelfth, and thirteenth sections of the Act No. 9, 1858, entitled "Act to provide for the management of the Public Roads of the Colony," shall *mutatis mutandis* apply to the entering upon, taking, and using of lands required for any of the purposes aforesaid, precisely as if such line of communication had been a public road.

Individuals or co-partnerships may be authorized to construct lines and may enter upon and use lands for the purpose.

III. It shall be lawful for the person or persons as aforesaid and any person authorized by him or them to carry any line of communication by electric telegraph upon, along, or across any public or private road in this Colony or any shore of the sea: Provided that every cord or wire of any such line which shall be carried along any such road, or within eighty feet of the centre of any such road, shall be placed at least ten feet from the ground, and that every such cord or wire which shall cross any such road above ground shall, where it crosses, be at least fourteen feet from the ground: Provided, also, that the free use and enjoyment of any road over, along, or across which any such line of communication shall be carried be not hindered or obstructed,

Provision against obstruction of roads by lines passing over or along them.

No. 20 - 1861.

Conditions to be observed in passing over private property.

and that no masts, posts, or other erection shall be placed upon the road or within eighty feet of the centre thereof without the consent, if a main road, of the Chief Commissioner of Roads, and if any other public road, of the divisional council of the division: Provided, further, that if any cord or wire shall pass over private lands, the said cord or wire shall not be placed lower than ten feet from the ground, and shall at any particular spot or spots necessary for the convenient use of such lands by the occupier thereof be placed at least fourteen feet from the ground; such particular spot or spots to be fixed by the civil commissioner of the division in case the proprietors of the line of telegraph and the occupier of the lands shall not agree upon the same.

Regulations in regard to fees and to the transmission of messages subject to approval of Governor.

IV. It shall be lawful for the proprietors or superintendent of any line of electric telegraph to make rules and regulations appointing the amount of fees, rates, or dues to be demanded or received for the transmission or conveyance of any dispatch, message, or communication, and also for the transmission and conveyance of all dispatches, messages, or communications by means of any such line, and for the payment of such fees, rates, and dues, and generally for the conduct, management, working, and maintenance of any such line of communication; and any such rules or regulations to repeal, alter, or vary, and make such others as may be deemed expedient; and such rules and regulations shall from time to time, if approved of by the Governor by writing under his hand, come into effect, and be advertised in the Government Gazette at least once in each year; and all such fees, rates, or dues as aforesaid shall be at all times charged equally to all persons, and no reduction or advance in any such fees, rates, or dues shall be made in favour of or against any particular company or person for whom any dispatch, message, or communication may be transmitted or conveyed by means of any such line; and all dispatches, messages, and communications shall be sent for all persons alike in regular succession, without delay, favour, or preference: Provided that any dispatch, message, or communication in

Certain messages to have precedence.

relation to the preservation of the tranquillity of the Colony or of the adjacent territories, to the arrest of criminals, the discovery or prevention of crime, or any other matter connected with the administration of justice shall take precedence of any other dispatch, message, or communication: Provided, also, that no person shall be permitted to occupy the telegraph by sending messages, dispatches, or communications of unreasonable length, so as to impede the speedy transmission of other messages, dispatches, or communications.

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General communication not to be impeded by messages of unreasonable length.

V. Any person who shall wilfully in any way injure, disturb, obstruct, or interrupt the free use or working of any line of electric telegraph or any works incidental thereto or connected therewith, or shall wilfully attach any string, wire, or any conductor or other thing to any line of communication or any part thereof, without the authority of the superintendent of the said line, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining any such line of communication or any part thereof, shall upon conviction forfeit a sum not less than five pounds nor more than one hundred pounds, or be imprisoned with hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that the court of the resident magistrate of the district in which such offence shall have been committed shall have jurisdiction to try such offence, but shall not be competent to punish in any higher or more severe manner than by a fine not exceeding ten pounds sterling, or by imprisonment, with or without hard labour, for any period not exceeding three months, or by both fine and imprisonment: Provided, also, that nothing herein contained shall alter or affect any law in force in this Colony for the punishment of the crime of malicious injury to property.

Punishment for injuring or obstructing construction or free use of telegraph.

Court of resident magistrate to have jurisdiction.

Limit of punishment.

VI. It shall be lawful for any person or persons who may witness the commission of any such offence as in the last preceding section mentioned to apprehend the offender, and by the authority of this Act and without any warrant to deliver him to any field-

Offenders may be apprehended by any person witnessing the offence.

No. 20—1861.

cornet, constable, or peace officer, to be kept in safe custody in order to be dealt with according to law.

Compensation for  
damage caused by  
carelessness.

VII. If any person should through carelessness do damage to any such line of communication as aforesaid, the resident magistrate of the district in which such damage shall have been done shall upon the application or complaint of the superintendent of such line summon the party complained of, and after hearing the parties on both sides, or on the non-appearance of the party complained of, examine the matter of complaint, and may award such sum of money not exceeding twenty pounds, by way of compensation for such damage, as to such resident magistrate shall appear reasonable, and in case of refusal or neglect forthwith to pay such money or to give security to the satisfaction of such magistrate for the payment thereof, such resident magistrate may sentence the party so neglecting or refusing to imprisonment, with or without hard labour, for any period not exceeding one month: Provided, however, that nothing herein contained shall prevent the said superintendent from suing for damages by civil action in the Supreme or any competent Circuit Court should he consider the amount of such damage to exceed twenty pounds.

Penalty for refusal to  
quit telegraph office  
when required, or for  
obstructing telegraph  
officers.

VIII. Any person who shall without permission enter any telegraph office and refuse to quit the same when requested by the person in charge of such office, or shall wilfully obstruct or impede any officer or servant employed upon any telegraph line in the discharge of his or her duty, shall be liable to a fine not exceeding ten pounds, or to imprisonment, either with or without hard labour, for any term not exceeding three calendar months, or to both such fine and such imprisonment.

Punishment for frau-  
dulent or improper  
conduct on the part  
of telegraph officers  
in regard to the trans-  
mission of messages.

IX. Any clerk or messenger who shall be employed in the working of any line of electric telegraph who shall fraudulently or maliciously secrete, make away with, alter, or omit to transmit any message which he may have received for transmission or delivery, or not being a witness in a court of justice shall divulge the contents of any message

or dispatch transmitted or conveyed or to be transmitted or conveyed without the consent of the person sending or receiving such message or dispatch, shall upon conviction be liable to a fine not exceeding one hundred pounds, or to be imprisoned, with or without hard labour, for a period not exceeding six calendar months, or to both such fine and such imprisonment.

X. Any person who shall transmit by electric telegraph any message upon which the prescribed charge has not been paid, intending thereby to defraud the proprietor or proprietors of such telegraph, or shall fraudulently or maliciously transmit or cause to be transmitted any message or intelligence which he knows to be false, shall, upon conviction, be liable to a fine not exceeding one hundred pounds, or be imprisoned, with or without hard labour, for any period not exceeding six calendar months, or to both such fine and such imprisonment.

Defrauding proprietors of telegraph of their rightful charges or transmitting false messages.

XI. The superintendent of any line of communication by electric telegraph, or any person authorized by him and acting on his behalf, shall be competent to prosecute any such offender as aforesaid in the court of the resident magistrate for any offence committed against or in respect of such line of communication without previously applying to or being authorized by the public prosecutor, and all fines and penalties recovered under this Act shall be paid one half into the said public treasury and the other half to the informer: Provided that it shall be competent for the Governor of this Colony to mitigate or wholly remit any such fine or penalty.

Superintendent of line may prosecute offenders.

Penalties may be reduced or remitted.

XII. By electric telegraph is intended any means of conveying signs or signals by the agency of electricity, magnetism, electro-magnetism, or other like agency.

Meaning of "electric telegraph."

XIII. This Act may be cited for any purpose as "The Electric Telegraphs Act, 1861."

Short title.



No. 21—1861.

No. 21—1861.] AN ACT [August 14, 1861.

For promoting the Construction and Maintenance of  
a line of Electric Telegraph between Cape Town  
and Graham's Town.

Preamble.

WHEREAS it is desirable that a line of electric telegraph between Cape Town and Graham's Town, *viâ* Port Elizabeth, should be constructed: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Government subsidy.

I. The Governor aforesaid is hereby authorized and empowered to pay from and out of the public revenue of this Colony, for a term of fifteen years, to any joint-stock company, co-partnership, or individual who shall enter into a contract with the Colonial Government to construct and maintain, and shall construct and maintain, a line of electric telegraph between Cape Town and Graham's Town, *viâ* Port Elizabeth, an annual sum not exceeding fifteen hundred pounds sterling.

Conditions of contract.

II. The contract under or by virtue of which the said sum not exceeding fifteen hundred pounds shall be payable as aforesaid for the term of fifteen years shall provide for the fulfilment of the following conditions, stipulations, and provisions, together with any others which the said Government shall deem desirable, and shall agree upon with the other contracting party, that is to say:

Termini.

1. The termini of the line at Cape Town and Graham's Town respectively shall be fixed by the contract, and shall be such spots in either city as the Government shall approve of as convenient.

Direction of line.

2. The line shall pass through the municipalities of Caledon, Swellendam, Riversdale, Aliwal (Mossel Bay), George, Port Elizabeth, and Uitenhage, and such other places, if any, as may be agreed upon between the said Government and the other contracting party, so as to extend to those towns and places and their neighbourhoods the advantages of such line.

3. The line shall be in all respects equal, as regards its construction, to the average of the lines in use in England, and the sort or sorts of wood to be used as masts or poles, as well as the size thereof, shall be such as shall be approved by the Government. No. 21—1861.  
Construction.
4. The party contracting for the construction of the said line shall be bound to maintain it in good working order, and to work the same efficiently for a term of not less than fifteen years from the completion thereof. Maintenance.
5. The contract shall provide for the payment by the contracting party of pecuniary penalties to be paid for any and every default not arising from inevitable accident which shall be made during the term last aforesaid in keeping the said line and every part thereof, as well as any extension thereof, in working order. Default in keeping the line in working order.
6. The contract shall fix a time within which the line shall be completed, and shall specify some sum to be deducted from the annual payments as aforesaid, for or in respect of every month beyond the time stipulated during which the line shall remain incomplete. Term for completing the line.
7. No payment shall be made to the party contracting with the Government until the line shall have been completed and in operation, from which time the term of fifteen years aforesaid shall be reckoned. Line to be in operation before payment of subsidy.
8. All Government messages shall for the term of fifteen years in the first section mentioned be transmitted by the said line, or any part thereof, or any extension thereof, free of charge, and the contract shall define what messages sent from any part of the line to any other part are to be considered Government messages for the purposes of this exemption. Government messages free.
9. The party contracting with the Government for the construction, maintenance, and Provision for future extension of the line.

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working of the said line shall also contract to extend the said line and maintain and work it in the direction of King William's Town in one way, and Graaff-Reinet, Cradock, and Colesberg in another, as the Government with the sanction of Parliament shall determine, at an annual charge to be agreed on between the Government and the other contracting party, and inserted in the contract, but not exceeding two pounds sterling per mile for every mile of such extension, such annual charge to be payable from the time at which any such extension shall be completed, and to continue to be paid for fifteen years from and after that time, but not longer.

Provisions of Electric Telegraphs Act.

III. All and singular the provisions of the Electric Telegraphs Act, 1861, shall extend and apply to the line of electric telegraph specified in this Act.

Short title.

IV. This Act may be cited for all purposes as "The Cape Town and Graham's Town Electric Telegraph Act, 1861."

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No. 22—1861.] AN ACT [August 14, 1861.

For Promoting the Extirpation of the Burr Weed called Xanthium Spinosum.

Preamble.

WHEREAS the growth of the noxious plant known as the Xanthium Spinosum, or Burr Weed, has increased to an alarming extent in various parts of the Colony, and whereas the presence of the burr will be most detrimental to the value of the wool fleece, and highly prejudicial to the wool-growing interests of the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Chairman of divisional council to publish notices warning per-

I. It shall be the duty of the civil commissioner of each division, in his capacity of chairman of the

divisional council of such division, to cause a public notice in the English and Dutch languages, warning all occupiers of landed property of the liability they will incur by neglecting to eradicate or burn any of the burr weed called *Xanthium Spinosum* which may have sprung up upon their lands or ground, to be posted at or near the court-house of every resident magistrate in such division, at or near all places of public worship within such division, at the place in any town or village within such division as may be used by the inhabitants for posting public notices and at all other places within such division at which the civil commissioner shall deem it desirable to post the same.

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sons against neglecting to extirpate weed.

II. All field-cornets in any division and occupiers of landed property in such division, are hereby authorized and required to give or cause to be given to the divisional council of such division notice in writing that any occupier of landed property within such division has neglected, for a period of sixty days or upwards, reckoned from the day of the posting at the court-house aforesaid of the notice aforesaid, to eradicate and burn certain of the said weed growing upon the farm or ground by him occupied.

Field-cornets and landed proprietors to report to divisional council any disregard of notice.

III. Every divisional council receiving any such notice as aforesaid shall by notice in writing call upon the occupier in regard to whose alleged neglect such notice shall have been given, to show cause why the said council should not at his expense take immediate measures for eradicating and burning the weed aforesaid so growing as aforesaid, and unless such occupier shall give security to the said council that he will within a reasonable time to be fixed by such council eradicate and burn all of the said weed so growing as aforesaid, then it shall be lawful for such council, and it is hereby required, to employ all labourers necessary for eradicating and burning the said weed so growing as aforesaid, and all the charges thereby incurred shall, from the said occupier, be recoverable with costs in the court of the resident magistrate by action at the suit of the secretary to the divisional council: Provided that as

Duty of divisional council on receiving such report.

Council may employ

No. 22—1861.

means for destroying weed at the expense of proprietor.

often as the said council shall grant time as aforesaid to any such occupier as aforesaid to eradicate and burn the said weed, the said council shall reserve to itself sufficient time before the next seeding time of the said weed, to enable the said council to cause the said weed to be eradicated and burnt in the event of the neglect of the occupier aforesaid so to do.

Council to take measures for destroying weed growing on public roads or Crown lands.

IV. It shall be lawful for the divisional council of any division and it is hereby required to employ, through the instrumentality of the field-cornets or otherwise, labourers to eradicate and burn the said weed wherever it may be found growing on public roads on Crown lands, or on public outspan-places within such division, and to pay the charge so incurred out of any divisional council funds at the time or thereafter in the hands of the said council.

Council may levy a rate for the purposes of this Act.

V. It shall and may be lawful for the divisional council of any and every division and they are hereby empowered to levy a special rate upon the fixed property of the division in which any such council is situated, sufficient to defray the costs and charges incurred under and in consequence of the provisions of the fourth section of this Act: Provided, also, that if in one year the costs and charges thereby incurred in any division by the divisional council thereof for the eradication and destruction of the said weed shall exceed the sum of one hundred pounds sterling (£100), then one half of the expense incurred over and above that sum shall be paid from and out of the public revenues of the Colony, and shall be recoverable by the divisional council in the usual manner of recovering claims for expenses incurred for and on behalf of Government: And provided that the valuation from the time being of the fixed property of any division for road purposes shall be the valuation thereof for the purpose of the rate by this section authorized.

When Government to contribute.

Commissioners of municipality to cause weed to be destroyed when growing on municipal lands.

VI. Whenever the said weed shall be found growing on municipal lands the commissioners of the municipality within the limits of which it shall be found are hereby required to cause the said weed to be destroyed, and in default it shall be lawful for the divisional council of the division to cause the

same to be destroyed as by the third section provided.

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VII. All road inspectors and overseers of free road parties of convicts are hereby required to cause the working parties under their direction to eradicate and burn all plants of the said weed whenever they may be found growing within the limits of their respective works.

Road inspectors and road parties to do the same.

VIII. This Act shall continue and be in force until the 30th of June, 1863, and no longer.

Duration of Act.

No. 23—1861.] AN ACT [August 14, 1861.

To Limit the Liability of Members of certain Joint-stock Companies.

WHEREAS it is expedient to enable members of certain joint-stock companies to limit the liability for the debts and engagements of such companies to which they are or may be subject: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. The term "joint-stock company" in this Act shall mean every partnership whereof the capital is divided, or agreed to be divided into shares, and so as to be transferable without the express consent of all the partners; and also every partnership which at its formation or by subsequent admission shall consist of more than twenty-five members: Provided, however, that nothing in this Act contained shall apply to any joint-stock company formed for the purpose of banking.

Meaning of term "joint-stock company."

II. Any joint-stock company may obtain a certificate of registration with limited liability from the Registrar of Deeds of the Colony upon complying with the conditions following, that is to say:

How limited liability may be obtained by future companies.

1. The directors or provisional directors shall, in their application to the Registrar of Deeds for such registration, state that such

- company is to be formed with limited liability.
2. The word "limited" shall be the last word of the name of the company.
  3. The deed of settlement shall contain a statement to the effect that the company is formed with limited liability.
  4. The deed of settlement shall be executed by shareholders not less than twenty-five in number, holding shares to the amount in the aggregate of not less than three-fourths of the nominal capital of the company, and there shall have been paid up by each of such shareholders on account of his shares not less than ten pounds per centum.
  5. The payment of the above percentage shall be acknowledged in or endorsed on the deed of settlement, and the fact of the same having been *bonâ fide* so paid shall be verified by a declaration of the directors or provisional directors, or any two of them, made before a justice of the peace under the provisions and penalties of Ordinance No. 6, 1845, for "substituting declarations in the place of certain oaths and for the suppression of voluntary and extra-judicial oaths and affidavits," and a true copy of such deed of settlement and of the names of all the persons who shall at the time the company applies for a certificate of registration with limited liability hold shares in the company, with their places of residence and the number of shares held by each, attested as such true copy by a declaration of the directors or provisional directors, or any two of them, made before a justice of the peace under the provisions and penalties of the said Ordinance No. 6 of 1845, shall be lodged with the said Registrar of Deeds, to be kept by him for future reference.

And upon such conditions being complied with and such other matters and things done, the Registrar of

Deeds shall grant a certificate of registration with limited liability to any such company.

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III. Any joint-stock company except as aforesaid already established may obtain a certificate of registration, with limited liability, in manner and subject to the conditions following, that is to say: The directors of such company may—with the consent of not less than three-fourths in number and value of its shareholders who may be present personally or by proxy (where proxies are allowed by the deed of settlement) at any general meeting summoned for that purpose, by a notice of not less than six weeks in the Government Gazette and in some one or more papers published at the place, or if there is no paper published thereat, in some one or more papers published in the town or village nearest to the place where the business of such company is carried on—make such alteration in the name, the amount of capital paid up, and in the deed of settlement of the company generally as may be necessary for enabling it to comply with the conditions hereinbefore mentioned with respect to joint-stock companies seeking to obtain certificates of registration with limited liability; and upon compliance with such conditions the Registrar of Deeds shall grant to such company, by its new name, a certificate of registration with limited liability; and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers shall attach to the company named in such certificate, its shareholders, directors, and officers.

How by companies  
already established.

IV. Every company that has obtained a certificate of registration with limited liability shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, cheques, orders for money, bills of parcels, invoices, receipts, letters, and other writings

Regulations to be observed when certificate of registration has been obtained.



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used in the transaction of the business of the company.

Penalties for non-observances of regulations.

V. If such company do not paint or affix and keep painted or affixed, its name in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any director or other officer of the company, or any person on his behalf, use any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid, or issue or authorize the issue of any notice, advertisement, or other official publication of such company, or of any bill of exchange, promissory note, cheque, order for money, bill of parcels, invoice, receipt, letter, or other writing used in the transaction of the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of twenty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money for the amount thereof, unless the same shall be duly paid by the company.

Increase to nominal capital to be registered.

VI. No increase to be made in the nominal capital of any company that has obtained a certificate of registration with limited liability shall be advertised or otherwise treated as part of the capital of such company until it has been registered with the Registrar of Deeds; and no such registration shall be made unless a deed is produced to the Registrar, executed by shareholders holding shares to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company, nor unless it is proved to the Registrar by such acknowledgment and declaration as hereinbefore mentioned that upon each of such shares there has been paid up by the holder thereof an amount of not less than ten pounds per centum; and if any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty

Penalty.

of fifty pounds; and the payment of the above percentage shall be acknowledged in or endorsed on the deed so produced, and the fact of the same having been *bonâ fide* so paid shall be verified by a declaration of the directors, or any two of them, made before a justice of the peace under the provisions and penalties of Ordinance No. 6, 1845, for "substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits."

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VII. Within one month after the date of any new or supplementary deed of settlement, which may at any time or times during the continuance of any joint-stock company which has obtained a certificate of registration with limited liability under this Act, there shall be transmitted by the directors of every such company to the Registrar of Deeds a true copy of such new or supplementary deed of settlement, attested as such true copy in the manner aforesaid, and to be kept for future reference as aforesaid. And in the months of January and July in every year the directors of every such joint-stock company which has obtained a certificate of registration with limited liability shall make or cause to be made the following return to the Registrar of Deeds, namely :

Copies of new or supplementary deed of settlement to be registered.

A return, according to the schedule hereunto annexed, and containing the particulars therein set forth of every transfer of any share in such company which shall have been made in the share transfer list or book kept by the said company since the preceding half-yearly return, or, in the case of the first of such returns made by such company, since the registration thereof as aforesaid by the Registrar of Deeds, and also of the changes in the names of all shareholders of such company whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the registration of the company by the Registrar of Deeds, as the case may be.

Half-yearly returns of transfers of shares to be made to Registrar of Deeds.

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Penalty for default.

And if within any such period any such return be not made, then every director of such company shall be liable to a fine not exceeding twenty pounds: Provided that if any joint-stock company which has obtained a certificate as aforesaid shall have its chief place of business in any division of the Colony other than Cape Town and the district thereof, and the Cape division, then a true copy of the aforesaid return, attested as such true copy in the manner aforesaid, shall, besides being transmitted to the Registrar of Deeds, be transmitted to the civil commissioner of such division; and in case such return shall not be so transmitted in the months aforesaid, every director of the company so failing to make such return shall be liable to a fine not exceeding twenty pounds.

Copy of return to be sent to civil commissioner.

Penalty.

Return of single transfer may be made.

VIII. If at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith on such request the directors shall make the same accordingly: Provided, however, that the directors may require the party making such request to defray any expense they may be put to in making the return aforesaid.

Returns, &amp;c., to be open to inspection.

IX. Every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said Registrar of Deeds and civil commissioners in pursuance of the provisions of this Act; and there shall be paid for such inspection such fees as may from time to time be appointed by the Governor, with the advice and consent of the Executive Council, in that behalf, not exceeding one shilling for each such inspection; and any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said Registrar of Deeds; and there shall be paid for such certified copy or extract such fee as the Governor, with the advice and consent of the Executive Council, may from time to time appoint in that behalf, not exceeding nine pence for each folio of such copy or extract; and that in all courts of the Colony every such copy or extract so certified shall be received in evidence, without proof of the

Fees for inspection and for taking copy.

signature thereto or of the seal of office affixed thereto.

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X. Every company shall, on being registered or on receiving a certificate of registration with limited liability, pay to the Registrar of Deeds the following sums :

Fees for registration of company.

When the nominal capital shall be five thousand pounds or under, the sum of ten pounds.

When the nominal capital shall be above five thousand and not exceeding twenty thousand pounds, the sum of twenty pounds.

When the nominal capital shall be above twenty thousand pounds, the sum of thirty pounds.

And besides these sums and the fees hereinbefore provided to be paid, there shall be paid by such joint-stock companies registered as aforesaid such other fees in respect of any services to be performed by the Register of Deeds under this Act as the Governor, with the advice and consent of the Executive Council, may from time to time appoint in that behalf.

XI. The members of any joint-stock company which has so obtained a certificate of registration with limited liability, after such certificate is granted shall not be liable (any law to the contrary notwithstanding) under any judgment, decree, or order which shall be obtained against such company, or for any debt or engagement of such company, further or otherwise than is hereinafter provided.

Members of company not liable for any debts except as provided for by this Act.

XII. If any execution or other process in the nature of execution, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the shareholders to the extent of the portions of their shares respectively in the capital of the company not then paid up ; but no shareholder shall be liable to pay in satisfaction of any one or more such execution or other process a greater sum than shall be equal to the portion of his shares not paid up : Provided, always, that no such execution shall issue against

Effect of execution against company.

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any shareholder except upon an order of the court or of a judge of the court in which the action, suit, or other proceeding shall have been brought or instituted; and such court or judge may order execution to issue accordingly, with the reasonable cost of such application and execution, to be taxed by the taxing officer of the said court; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

If there be no goods to satisfy an execution against the company former shareholders may be proceeded against.

XIII. If any execution or other process in the nature of execution shall have been issued against the property or effects of any shareholder for the time being, and there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any former holder or holders of the shares held by such shareholder for the time being for such amount as such shareholder for the time being shall have failed to pay in satisfaction of the execution or other process in the nature of execution issued: Provided, however, that nothing herein contained shall be taken to render any such former holder or holders of shares aforesaid liable for any larger amount than he or they would have been liable for under the provisions of this Act if he or they had been, at the time of the issuing of such execution or other process in the nature of execution, the holder or holders of such shares: Provided, also, that in the case of execution against any former shareholder, such shareholder shall have been a shareholder at the time when the contract or engagement for which such judgment, decree, or order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained: Provided, further, that in no case shall execution be issued on such judgment, decree, or order against the person, property or

effects of any such former shareholder, after the expiration of two years next after the return of the transfer of the shares of the person or persons sought to be charged shall have been made to the Registrar of Deeds, as provided in sections seven and eight of this Act: And provided, further, that the provisions of this section shall (anything in this Act to the contrary notwithstanding) apply to every joint-stock company established for the purpose of banking: Provided, however, that in no case shall execution be issued on any judgment, decree, or order against the person, property, or effects of any former shareholder in such banking company after the expiration of two years next after the shares of such former shareholder sought to be charged shall have been transferred in the books of the said company upon the approval of the directors of the said company, and the said former shareholder shall have given notice in the Government Gazette and in some one or more newspapers (if there be any) published in the town or village where such banking company has its chief place of business, if such chief place of business be in any division of the Colony other than Cape Town and the district thereof and the Cape Division, that he has ceased to be a shareholder in such banking company: And provided, also, that every such shareholder in any such banking company shall as such former shareholder be liable to the same amount as if this Act had never been passed.

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Excepting such as have transferred their shares for upwards of two years.

XIV. If the directors of any such company shall declare and pay any dividend when the company is known by them to be insolvent, or any dividend the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office: Provided that the amount for which they shall be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection in writing with the

If dividends be made the directors knowing the company to be insolvent, they shall be severally liable.

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clerk of the company, they shall be exempted from the said liability.

Notes of shareholders not receivable as instalments on shares.

XV. No note or obligation given by any shareholder to the company whereof he is a shareholder, whether secured by any pledge or otherwise, shall be considered as payment of any money due from him on any share held by him.

Rights of creditors of existing companies preserved.

XVI. Where any company established previous to the taking effect of this Act shall obtain a certificate of registration with limited liability, the grant of such certificate shall not prejudice or affect any right which previously to the grant of such certificate has accrued to any creditor or other person against the company in its corporate capacity, or against any person then being or having been a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being or having been a member of such company as he would have been entitled to in case such certificate had not been obtained.

Change in the name of a company under this Act not to affect its rights nor those of other parties.

XVII. No alteration made by virtue of this Act in the name of any company shall prejudice or affect any right which previously to such alteration has accrued to such company as against any other company or person, or which has accrued to any other company or person as against such company, but every such company as against any other company or person, and every other company or person as against such company, and the members thereof, shall be entitled to all such remedies as they or he would have been entitled to if no such alteration had been made, and no such alteration shall abate or render defective any legal proceeding pending at the time when such alteration is made.

Certain companies excluded from the operation of this Act.

XVIII. Every company in which the liability of the shareholders shall have been limited by any special Act passed during the present or any previous session of Parliament, or by any Ordinance of any former legislature of this Colony, shall be subject to the provisions of sections four, five, six, seven, eight, nine, ten, thirteen, fourteen, fifteen, and seven-

teen of this Act, in so far as these provisions are not repugnant to the provisions of any such special Act or Ordinance aforesaid; and the directors and other officers of every such company shall be liable to the penalties in the said sections of this Act provided in case of their neglecting or failing to comply with the provisions of the said sections. And the word "Limited" shall, as is provided in the case of all joint-stock companies coming within the operation of this Act, be the last word of the name of every such company, anything in any special Act or Ordinance aforesaid to the contrary notwithstanding: Provided, however, that it shall not be necessary for any such company to receive from the Registrar of Deeds a certificate of registration with limited liability, or to pay to the said Registrar the sums mentioned in section ten to be paid by every company on being registered or on receiving such certificate of registration with limited liability: Provided that nothing in the Ordinance No. 8, 1839, entitled "Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary," or in the Ordinance No. 11, 1844, entitled "Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name as Trustees or Tutors, and to sue and be sued in the name of their Secretary," or in the Act No. 9, 1855, entitled "Act for Incorporating the South African Association," or in an Act passed during this present session of Parliament, entitled "An Act for Incorporating the Union Fire and Marine Insurance and Trust Company, and enabling them to sue and be sued in the name of their Secretary," or in another Act passed during this present session, entitled "An Act for the Regulation of the Affairs of the General Estate and Orphan Chamber," shall be taken or construed to limit the liability of the shareholders or members of any of the said companies or associations, or to bring the said companies or associations, or any of them, under any of the provisions of this Act.

XIX. This Act may be cited for all purposes as Short title.  
 "The Joint-stock Companies' Limited Liability Act, 1861."



376 SPECIAL PARTNERSHIPS' LIMITED LIABILITY ACT.

No. 23—1861

SCHEDULE.—SEE SECTION VII.

Return, made pursuant to the "Joint-stock Companies' Limited Liability Act, 1861."

TRANSFER OF SHARES.

Name of Company.	Business or Purpose.	Place (or Principal Place, if more than one) of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	Distinctive Numbers of the Shares transferred.	Date of Transfer.

SHAREHOLDERS WHOSE NAMES HAVE BECOME CHANGED BY MARRIAGE OR OTHERWISE.

Former Name.	Former Place of Abode.	Present Name.	Present Place of Abode.	Distinctive Number of Shares.

(Date) \_\_\_\_\_

(Signature) \_\_\_\_\_

No. 24—1861.] AN ACT [August 14, 1861.

To Limit the Liability of certain Members of certain Partnerships.

Preamble.

WHEREAS it is expedient to limit in certain cases and under certain conditions, the liability of certain members of certain partnerships formed

for the purpose of carrying on trade or business in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

I. The partnerships coming within the meaning of this Act shall not include such as are joint-stock companies nor such partnerships as may be formed for the purpose of banking.

Joint-stock and banking companies not within the meaning of this Act.

II. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business, except as is hereinbefore excepted, may be formed within this Colony upon the terms and subject to the conditions and liabilities hereinafter mentioned.

Limited partnerships may be formed.

III. The said partnerships may consist of one or more persons who shall be called general partners, and shall be jointly and severally responsible as partners now are by law, and who only shall be authorized to transact business and sign for the partnership, and to bind the same; and of one or more persons who shall contribute to the common stock a specific sum in actual cash payment, and who shall be called special partners, and who shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned, beyond the amount so paid in by them: Provided, however, that nothing in this Act contained shall be deemed or taken to make a special partner liable for any debts contracted by the general partners previous to the formation and registration of such limited partnership.

To consist of general and special partners.

IV. Any persons forming such partnership shall make and severally sign a certificate which shall contain the name or firm under which the said partnership is to be conducted, the names and residences of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has paid in to the common stock, the general nature of the business to be transacted, the time when the partnership is to commence, and the time when the partnership is to terminate.

Partners to sign a certificate.

No. 24—1861.

No partnership valid until certificate is registered in Deeds office.

Copy of certificate to be filed with civil commissioner.

False statement.

Certificate of renewal of partnership to be filed, otherwise partnership to become general.

Business to be conducted under name of general partners.

Suits how to be brought.

V. No such partnership shall be deemed to have been formed until a certificate containing the particulars as aforesaid shall be acknowledged by all the partners before a justice of the peace, and registered in the office of the Registrar of Deeds of the Colony, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have a place of business situated in any division of the Colony other than Cape Town and the district thereof and the Cape division, then a copy of the aforesaid certificate, certified by the Registrar of Deeds of the Colony, shall be filed and registered in like manner in the office of the civil commissioner of every such division; and if any false statement shall be made in any such certificate all the persons interested in the partnership shall be liable, as general partners are under this Act, for all the engagements thereof.

VI. Upon every renewal or continuation of any such limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, and registered in like manner as is hereinbefore provided for the original formation of limited partnerships; and in every such partnership which may be renewed and continued, but not renewed and continued in conformity with the provisions of this Act, all the partners shall be deemed and taken to be general partners, and liable, as general partners under this Act are, for all the engagements of the partnership.

VII. In all limited partnerships the business of the partnership shall be conducted under a name or firm which shall not include the name of any special partner; and if the name of any special partner shall be used in such firm with his consent or privity, he shall be deemed and treated as a general partner.

VIII. All suits respecting the business of such partnership shall be brought and prosecuted by and against the general partners in the same manner as if there were no special partners; except in those cases in which it is provided in this Act that the special partners shall be deemed general partners and that special partnerships shall be deemed general

partnerships; in which cases all the partners deemed general partners may join or be joined in such suits.

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IX. No dissolution of a limited partnership shall be held to have taken place except by operation of law, before the time specified in the certificate in the fourth section of this Act mentioned, unless a notice of such dissolution shall be registered in the Deeds Registry office and in every civil commissioner's office in which the original certificate or the certificate of the renewal or continuation of the partnership was registered, and unless such notice shall also be published for not less than three successive weeks in the Government Gazette, and in some newspaper or newspapers, if there should be any published in the division or divisions in which the certificate in the fourth section mentioned, or the certificate of the renewal or continuation of the partnership, was registered; and if no newspaper shall at the time of the dissolution be published in any such division, then the notice of such dissolution shall be published for not less than three successive weeks in any newspaper published in the town or village nearest to the division or divisions in which such certificate was registered.

No dissolution to take place until notice thereof be registered and published in Gazette.

X. Every alteration which shall be made in the names of the partners, in the nature of the business, in the amount of capital thereof, or in any other matter stated in the original certificate shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made therein shall be deemed a general partnership, except renewed as a special partnership, according to the provisions of this Act.

Alteration of names of partners to be deemed a dissolution of partnership.

XI. No part of the sum which any special partner shall have paid into the capital stock, and which shall be stated in the certificates hereinbefore provided to be registered in the Deeds Registry office or office of civil commissioner as aforesaid, shall be withdrawn by him or paid and transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership, but any partner may annually receive interest on the

No part of sum contributed by special partner to be withdrawn by him.

No. 24—1861.

How if capital is reduced by paying interest to special partner.

sum so contributed by him, if the payment of such interest shall not reduce the amount of such capital below the amount originally paid in; and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits: Provided, however, that if it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest thereon, from the date when they were so withdrawn respectively.

Special partner may examine into concerns of partnership but may not transact business on its account.

XII. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business on account of the partnership, or be employed for that purpose as agent, attorney, or otherwise; and if he shall personally enter into any transaction, or make any contract respecting the concerns of the partnership with any person except general partners, he shall be deemed and treated as a general partner in relation to such transaction or contract, unless it shall be made to appear that in entering into such transaction or making such contract he acted as a special partner only.

General partners to account to each other and to special partners.

XIII. The general partners shall be liable to account to each other and to the special partners for their management of the business, as other partners now are by law.

As to claims of special partners when partnership becomes insolvent.

XIV. In case of the insolvency of any limited partnership, no special partner shall under any circumstances be allowed to claim as a creditor until all the claims of all the other creditors of the partnership shall be satisfied.

Short title.

XV. This Act may be cited for all purposes as "The Special Partnerships' Limited Liability Act, 1861."

No. 25—1861.] AN ACT [August 14, 1861.

No. 25—1861.

To Increase for a limited time the rate of Transfer Duty.

WHEREAS by the Act No. 6, 1857, and No. 7, Preamble.  
1858, the rate of transfer duty payable in this Colony was reduced from four per cent. to two per cent. : And whereas it is expedient to increase for a limited time the rate of Transfer Duty payable in this Colony from two per cent. to three per cent. : Be it enacted by 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 the Act No. 7, 1858, entitled “ An Repugnant laws re-  
pealed.  
Act for amending the law relative to the payment of Transfer Duty,” and so much of any former Act or Ordinance as may be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

II. For and in respect of every sale, whether Three per cent. duty  
on all sales.  
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 three per centum upon the price or purchase-money paid or to be paid for the said property.

III. An equal duty to that aforesaid, to wit, a The same duty on all  
exchanges of other  
modes of acquiring  
property.  
duty of three 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 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.

IV. The additional duties commonly called fines Fines for non-pay-  
ment increased.  
to be incurred for neglect to pay in proper time the transfer duties imposed by this Act, shall be, and the same are hereby fixed at three-fourths of the additional duties set forth in the scale or tariff contained in the thirteenth section of the Ordinance

No. 25—1861.

No. 18, 1844, entitled “Ordinance for regulating the payment of Transfer Duty in this Colony.”

Exceptions provided by previous laws to stand.

V. All and singular the provisions of the Ordinance No. 18, 1844, in the Act No. 15, 1855, and in the Act No. 7, 1858, relative to exemption in certain cases from payment of transfer duty, shall apply to the duty of three per cent. provided by this Act.

Increased duty when to commence.

VI. This Act, and the rate of transfer duty and of additional duties or fines imposed thereby, shall apply to and shall be payable upon or in regard to every sale or other change of proprietors as in the second and third sections of this Act mentioned, which shall take place between the thirty-first day of August, 1861, and the first day of September, 1864, but not to any other sales or any other changes of proprietors: Provided that no sale or other change of proprietors which shall take place upon either of the two days aforesaid shall come under the operation of this Act.

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No. 26—1861.] AN ACT [August 14, 1861.

To Authorize the Raising upon Loan of a Sum not exceeding £200,000.

Preamble.

WHEREAS in reference to the several sums set forth in the schedule to this Act it is estimated that by a loan not exceeding £200,000, the services in the said schedule mentioned will be sufficiently provided for: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Loans to be raised in England.

I. It shall be lawful for the Governor to borrow and take up, by debentures to be issued in England, upon the best and most favourable terms that can be obtained, any sum or sums of money not exceeding in the whole the sum of £200,000.

Charged upon the general revenue.

II. All sums borrowed under the authority of this Act shall, together with the interest to accrue due

thereon, be charged upon and made payable out of the general revenue of this Colony, and shall be paid off, from, and out of the said revenue as early as the state of the said revenue will permit.

No. 26—1861.

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

Accounts to be paid before Parliament.

IV. Nothing in this Act contained shall extend or be construed so as to authorize the application of any part of the said sum of £200,000 to any service in the schedule to this Act mentioned not authorized by Parliament: Provided that the loans heretofore effected by the Government, and numbered 3, 4, and 5 in the schedule to this Act, having been incurred for services which had been authorized by Parliament, shall be payable out of the said sum of £200,000.

To be applied to services authorized by Parliament and enumerated in schedule.

SCHEDULE.

1. Arrear votes for steam mail service ... ..	£24,000
2. Arrear vote, colonial allowance to troops ... ..	10,000
3. To repay loan from Guardian Fund ... ..	14,000
4. To repay loan from wharfage dues ... ..	6,700
5. To repay loan from Commissariat ... ..	10,000
6. To pay compensation to Kat River settlers ... ..	17,000
7. To pay compensation to military settlers ... ..	10,000
8. To complete new gaols according to Colonial Engineer's estimate ... ..	70,026
9. For construction and maintenance of roads and bridges ... ..	100,000
10. Sundry services not as yet estimated for, say	5,000
11. To provide sufficient available balances in treasury and civil commissioners' chests ... ..	120,000



No. 27—1861.

No. 27—1861.] AN ACT [August 14, 1861.

For Applying a Sum not exceeding Five Hundred and One Thousand Three Hundred and Sixty-eight Pounds and Five Shillings for the Service of the Year 1861.

Preamble.

WHEREAS, by the Act No. 27 of 1860, entitled “An Act for applying a sum not exceeding one hundred and twenty-eight thousand seven hundred and seventy-four pounds for the service of the year 1861,” the said sum of one hundred and twenty-eight thousand seven hundred and seventy-four pounds was charged upon the revenue of this Colony, for the service of the Government of the Colony until the 30th of April, 1861: 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 1861, 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. 27, 1860, and to provide by one Act for the service of the year 1861: Be it enacted by 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 27, 1860, repealed. I. The Act aforesaid, No. 27, 1860, is hereby repealed.

Expenditure, 1861. II. The public revenue of the Colony is hereby charged with a sum not exceeding five hundred and one thousand three hundred and sixty-eight pounds and five shillings, for the service of the year 1861, in addition to the sums already by law provided for such service, which sum of five hundred and one thousand three hundred and sixty-eight pounds and five shillings shall be applied in the manner following, that is to say:

Civil establishments. For the expenditure of the Civil Establishments, a sum not exceeding eighty-three thousand one hundred and twenty-one pounds and fifteen shillings.

For the expenditure of the Judicial Establishments, a sum not exceeding thirty-three thousand pounds and fifteen shillings. No. 27—1861.  
Judicial establishments.

For the expenditure of the Educational Establishment, a sum not exceeding sixteen thousand four hundred and eighty-eight pounds and ten shillings. Educational establishment.

For the expenditure of the Medical Establishments, a sum not exceeding eighteen thousand two hundred and forty-eight pounds and ten shillings. Medical establishments.

For the expenditure of the Police and Gaol Establishments, a sum not exceeding sixty-three thousand seven hundred and sixty-seven pounds and fifteen shillings. Police and gaol establishments.

For the expenditure on account of the Border Department (Aborigines), a sum not exceeding fifty-two thousand and twenty-eight pounds. Border department (aborigines).

For the expenditure on account of Pensions, Charitable Allowances, and Gratuities, a sum not exceeding three hundred pounds. Pensions.

For the expenditure on account of Works and Buildings, a sum not exceeding thirteen thousand seven hundred and forty-two pounds. Works and buildings.

For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding one hundred and sixty-nine thousand two hundred and thirteen pounds. Roads and bridges.

For the expenditure on account of Miscellaneous Services, a sum not exceeding thirty-four thousand eight hundred and eight pounds. Miscellaneous.

For the expenditure on account of Interest, a sum not exceeding sixteen thousand six hundred and fifty pounds. Interest.

Amounting in the whole to five hundred and one thousand three hundred and sixty-eight pounds and five shillings, as detailed in the schedules 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. Application of supplies.

No. 28—1861.

No. 28—1861.] AN ACT [August 14, 1861.

For Applying a Sum not exceeding Two Hundred and Sixty-two Thousand Nine Hundred and One Pounds for the Service of the Year 1862.

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 June, 1862 :

Expenditure, 1862.

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 two hundred and sixty-two thousand nine hundred and one pounds be charged upon the revenue of the said Colony towards the service of the year 1862, 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. 27 of 1861, 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 thirty-six thousand five hundred and thirty pounds.

Judicial establishments.

III. For the expenditure of the Judicial Establishment, a sum not exceeding sixteen thousand and five hundred pounds.

Educational establishments.

IV. For the expenditure of the Educational Establishment, a sum not exceeding eight thousand two hundred and forty-four pounds.

Medical establishments.

V. For the expenditure of the Medical Establishments, a sum not exceeding nine thousand one hundred and twenty-four pounds.

Police and gaol establishments.

VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding thirty-one thousand eight hundred and eighty-three pounds.

Border department (aborigines).

VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding twenty-six thousand and fourteen pounds.

Charitable allowances.

VIII. For the expenditure on account of Charitable Allowances and Gratuities, a sum not exceeding one hundred pounds.

IX. For the expenditure on account of Works and Buildings, a sum not exceeding fifty-two thousand five hundred and eighty-eight pounds. No. 28—1861.  
Works and buildings.

X. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding sixty thousand four hundred and eighty-four pounds. Roads and bridges.

XI. For the expenditure on account of Miscellaneous Services, a sum not exceeding thirteen thousand one hundred and nine pounds. Miscellaneous services.

XII. For the expenditure on account of Interest, a sum not exceeding eight thousand three hundred and twenty-five pounds. Interest.

XIII. Amounting in the whole to two hundred and sixty-two thousand nine hundred and one pounds. Total.

XIV. The said aids or 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. Application of supplies.

No. 29—1861.] AN ACT [August 14, 1861.

For Establishing a Municipality for the City of Graham's Town.

WHEREAS it is expedient to repeal so much of Preamble.  
the Ordinance No. 9 of 1836, entitled "An Ordinance for the erection of Municipal Boards in the Towns and Villages of this Colony," and of the Ordinance No. 2 of 1844, entitled "Ordinance for amending the Ordinance No. 9 of 1836," of the Ordinance No. 8 of 1848, entitled "An Ordinance for enlarging in certain respects the powers of Municipal Commissioners in regard to the common Pastures of Land," and of the Ordinance No. 5 of 1852, entitled "An Ordinance to enable the Municipal Commissioners to purchase or hire Immovable Property for Municipal purposes," in so far as such Ordinances severally and respectively apply to the municipality of Graham's Town, and also to the

No. 29—1861.

annual local regulations in operation in the said municipality, and to make other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Existing laws to stand until first election of councillors under this Act.

I. The said Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, and No. 5 of 1852, in so far as the same are applicable to the municipality of Graham's Town, as also all the local regulations of the said municipality, heretofore proclaimed and published from time to time in the Government Gazette of this Colony under and by virtue of the provisions of the said Ordinances, shall continue to be of legal force and operative as heretofore until after the first election of councillors as provided in and by this Act; and immediately upon and after the declaration of the names of the said councillors shall have been published as hereinafter provided, the said Ordinances in so far as the same apply as aforesaid, and the municipal regulations aforesaid, shall be and the same are hereby repealed.

Extent of municipality of Graham's Town.

Boundaries.

II. The municipality of Graham's Town shall comprehend the town and township of Graham's Town, including all common lands and property within the area formed by the boundaries hereinafter more particularly mentioned and described: to wit, on the south by the northern boundaries of Featherstone's and Amos' farms, to the south-western beacon of Mr. Fuller's farm; thence to the north-west corner of Mr. Fuller's farm to the south-west corner of Hart's farm (now Carlisle's); thence in a northerly direction along the western boundaries of Hart's and Fynn's farms (now Carlisle's), to the northern boundaries of Fynn's and junction of Burnet's farm (also now Carlisle's); thence in a northerly direction along the north-west and north boundaries of Burnet's farm (now Carlisle's) to a junction with Carlisle's farm, Belmont; thence along the south-western boundary to the north-east corner beacon of Belmont; and thence along the north-east boundary of the said estate to a junction of Grobbelaar's Kloof; thence along the north-west

and north-eastern boundaries of Grobbelaar's Kloof and R. H. Rubidge's farm to a junction beacon of W. Clark's and A. B. Diet's farms (now Carlisle's); thence along the south-western boundaries of Diet's (now Carlisle's) farm and Campbell's farm (now Cawood's) to the southern boundaries of Saxfold and Burntkraal, to the north-east corner of Zyperfontein; thence in a southerly direction along the eastern boundaries of the said farm to the north junction beacon of Goodwin's Kloof; thence north-east along the east and southern boundaries of the said farm to the north-east beacon of Howison's Poort; thence along the south-east boundary of said last-mentioned farm to the south-western and north-western boundaries of Featherstone's farm (now Wood's).

III. There shall be in the said municipality a body corporate, which shall take and bear the name of "the mayor, councillors, and citizens of Graham's Town," and by that name shall have perpetual succession, and shall have a common seal, and shall by the council thereof do all acts and have and enjoy all the rights and privileges which bodies corporate as such may do and have.

Creation and style of corporation.

IV. The council of the said municipality shall consist of twenty-four councillors, one of whom shall be the mayor.

Mayor and councillors.

V. The said municipality shall be divided into eight wards,—to wit:

Wards.

Ward No. 1. Bounded south by Prince Alfred-street; east by Somerset-street; north by town boundary; west by town boundary.

Ward No. 2. Bounded south by New-street; east by Hill-street; north by town boundary; west by Somerset-street.

Ward No. 3. Bounded south by town boundary; east by Hill-street; north by New-street; west by Sir George Grey-street.

Ward No. 4. Bounded south by High-street; east by town boundary; north by Sir Walter Currie's land and town boundary; west by Hill-street.

Ward No. 5. Bounded south by town boundary;

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east by Bathurst-street; north by High-street; west by Hill-street.

Ward No. 6. Bounded south by Beaufort-street; east by town boundary; west by Bathurst-street; north by High-street.

Ward No. 7. Bounded south by town boundary; east by York-street; north by Beaufort-street; west by Bathurst-street.

Ward No. 8. Bounded south by town boundary; east by town boundary; north by Beaufort-street; west by York-street.

Council may alter boundaries.

VI. The said council, after the first election thereof, shall from time to time, if they shall think fit, alter the boundaries of the said wards.

Three councillors to each ward.

VII. Three councillors shall be elected for each ward in manner hereinafter mentioned.

Who qualified to vote at election of councillors.

VIII. Every male person of full age, being duly enrolled in manner hereinafter mentioned, who is the occupier of any immovable property in any ward of the municipality of the yearly value or rental of not less than ten pounds sterling, in regard to which property no municipal rate shall, at the time of any election of councillors or a councillor of such ward, be due and in arrear, shall be entitled and qualified to vote as such occupier, if so enrolled, at such election.

Who disqualified.

IX. The following persons shall be disqualified from voting at any such election: Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.

As to joint occupiers or proprietors.

X. When every or any such property as aforesaid is jointly occupied by more persons than one as proprietors or occupants, each of such joint occupiers shall, being duly enrolled, be entitled to vote in respect of such property, provided the yearly value or rental of such property shall be an amount, when divided by the number of such joint occupiers, equal to the sum of ten pounds for every and each such joint proprietor.

Who ineligible as councillor.

XI. No person shall be eligible to be elected a councillor for any ward who has not been an occupier of immovable property within the municipality for

not less than twelve months next before the election, or who is the occupier of any such property in regard to which any municipal rate shall, at the time of the commencement of such election, be due and in arrear: Provided that different premises or properties occupied in immediate succession shall satisfy this section as fully as if they had been one and the same premises or properties.

XII. No person shall be deemed a candidate at any election nor qualified to be elected a councillor for any ward unless he shall have been invited to become such candidate by a requisition signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, to the mayor, or before the first election to the resident magistrate, at least fourteen days before such election is appointed to take place.

Candidates to have requisitions.

XIII. The mayor, or before the first election of councillors, the resident magistrate, shall, at least ten days before the day appointed for the election in each ward, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter mentioned.

Names of candidates and requisitionists to be published.

XIV. On the first Wednesday in July, 1862, in this and every subsequent year an election by ballot shall take place for councillors for the said municipality.

Councillors to be elected by ballot.

XV. The resident magistrate shall on or before the first Wednesday in May, 1862, cause a true list to be made, in alphabetical order, of all men qualified to vote at the election of councillors for the city of Graham's Town, setting forth the Christian and surname of each at full length, the place of his abode, his business or quality, the nature of his qualifications, and the ward or wards in which he is entitled to vote.

Previous to first election resident magistrate to prepare list of voters.

XVI. On or before the first Monday in September in every year after the first election of the council for the city of Graham's Town, the town-clerk shall make the list mentioned in the preceding section, and shall transmit the same to the mayor.

Town-clerk to prepare subsequent lists.

XVII. The mayor, or before the first election, the

List to be published.



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resident magistrate, shall forthwith cause such list to be published, and to every list so published he shall subjoin a notice of not less than fourteen days that all objections thereto will be heard and determined at such time and place as he may fix for that purpose.

List to be revised and amended.

XVIII. The resident magistrate, before the first election, and after the first election, the mayor, and two councillors to be elected for that purpose, shall have the power after hearing such objections in open court to strike out of the lists the names of all persons not entitled to be therein, and also to insert in the said lists the names of any persons which have been improperly omitted.

To be styled Citizens' Roll, and be renewable annually.

XIX. The list shall be called the Citizens' Roll of the municipality of the city of Graham's Town, shall be brought into use on the first Wednesday in November in such year, and shall continue to be used for one year thence next ensuing.

Roll to be published and posted.

XX. The mayor, or before the first election, the resident magistrate, shall forthwith cause such roll to be published by posting in front of the municipal office.

Meetings of citizens to be called for the election of councillors.

XXI. Within fourteen days after the publication of the names of the several candidates invited to stand as councillors, the mayor, or before the first election, the resident magistrate, shall, by a public notice of not less than fourteen days, call separate meetings of the citizens of each of the wards respectively, to be holden at some convenient place or places for the election of three councillors out of the number of candidates invited for each ward.

Returning officer to preside at election.

XXII. Every such meeting for the election of any councillor or councillors shall be presided over by a returning officer, to be appointed for that purpose by the mayor, or before the first election, by the resident magistrate.

Electors to vote in person.

XXIII. At every meeting for the election of any councillor or councillors who shall have a requisition in manner aforesaid, every qualified citizen duly enrolled as aforesaid shall be entitled to vote in person, but not otherwise.

Votes to be taken by ballot.

XXIV. The votes shall be taken by ballot, and the person or persons having the greater number of votes shall be taken to be duly elected.

XXV. If such ballot shall be rendered indecisive by reason of an equality of votes, the returning officer shall determine by lot which of the persons shall be elected for whom an equal number of votes shall have been given.

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How in case of equality of votes.

XXVI. In the event of only three candidates being invited in writing to stand as councillors for any particular ward, it shall not be necessary to convene a meeting for the election of such candidates as councillors, but their names shall be transmitted by the returning officers in the same manner as if otherwise elected, as provided in and by the next clause.

When number of candidates equal to number of vacancies.

XXVII. The returning officer shall immediately transmit the names of the persons elected, together with the final state of the poll, at the first election to the resident magistrate, and at any subsequent election to the mayor.

Return of poll to be made.

XXVIII. When the resident magistrate or mayor has received the names of the persons so elected, he shall forthwith cause a list thereof, with the names of the wards for which they are elected, to be published.

Names of successful candidates to be published.

XXIX. Of the persons so elected as hereinbefore mentioned the councillor in each ward who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the first Wednesday in July and in case by reason of any such councillors having been elected by an equal number of votes it shall be uncertain which of them shall vacate his seat, the mayor shall cause such question to be determined by lot, and the remaining councillors for each ward shall vacate their seats in like manner at the expiration of two and three years respectively, and upon the retirement from office of such councillors respectively they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every subsequent yearly election there shall be elected one councillor for each ward, who shall enter upon his office on the first Wednesday in July next after his election, and continue therein for three years; and every retiring councillor shall be eligible for re-election.

Councillors how long to remain in office.

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Casual vacancies how to be filled.

XXX. If any councillor shall die, resign, or become insolvent, or shall be absent from the ordinary meetings of the council for a period of four calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead in manner hereinbefore provided, who shall hold office for the remainder of the term for which the councillor who has vacated office and whom he shall succeed would otherwise have remained in office.

Auditors to be appointed.

XXXI. On the second Wednesday in the month of July in every year, the mayor and council shall appoint from among the householders two persons to be auditors of the municipality, who shall continue in office until the same day in the year following.

Who disqualified from being auditor.

XXXII. No person shall be eligible as an auditor who shall not be a duly qualified citizen or who shall be a councillor, treasurer, clerk, or other officer of the municipality.

How on death, resignation, &amp;c., of auditor.

XXXIII. If any auditor shall die, resign, or become insolvent, another auditor shall be elected in his stead, on a day to be fixed by the mayor.

Equality of votes at election of auditors.

XXXIV. In case of an equality of votes at any election of auditors, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected in case such persons cannot be both or all of them elected.

How and when first mayor to be chosen.

XXXV. On the Thursday following the first general election under this Act, the councillors shall choose from among themselves by a majority of votes, the mayor of the city, who shall hold office for one year from the first Thursday in July then next ensuing.

Subsequent mayors.

XXXVI. On the Thursday following every subsequent yearly election, those of the councillors then in office, who shall have to continue in office for the following year, in terms of the section thirty (No. 30), together with the newly-elected councillors, shall choose from amongst themselves, by a majority of votes, the mayor of the municipality for the following year, and every such mayor shall enter upon

his office on the first Thursday in July next after his election, and shall continue therein for one year.

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XXXVII. It shall be lawful for the mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do.

Mayor may resign after giving one month's notice.

XXXVIII. If any mayor shall die, or resign, or shall become insolvent, or shall be absent from the municipality without the permission of the council for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months, such mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the year.

What to constitute vacation of office.

XXXIX. If any member of the council or person holding any office in the gift or disposal thereof shall directly or indirectly have any share or interest in any contract with or employment by the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting or supplying with water or insuring against fire any part of the municipality, or shall receive any fee, reward, or compensation for any vote given or act performed in his capacity of councillor, he shall thenceforward cease to be a member of the council or to hold such office as aforesaid, and shall, upon conviction, be liable to a penalty not exceeding fifty pounds sterling.

No councillor or officer to share in contracts, &c.

XL. The council shall have power and authority to do the following acts: To make, alter, and keep in repair the roads, streets, dams, sewers, drains, and bridges within the limits of the municipality; to excavate, construct, and lay water-courses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes, or to execute any other like works; to take order for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines with pipes and utensils;

Powers and duties of council.

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to order, establish, alter, or hold markets; to light the streets; and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures; to grant permits and licences; and to levy tolls and dues as hereinafter provided; to regulate the time and place for slaughtering cattle and the state and condition of the slaughter-houses; to appoint one or more competent persons to examine meat and other provisions exposed for sale, and who, in case such meat or other provisions be found unfit for human food, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality; and for fixing the number and description of cattle which each householder shall be allowed to depasture on such lands; to establish and provide for the management of public pounds, provided that no toll, due, or fee, or charge for any permit or licence, or any punishment or penalty shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the next succeeding section mentioned.

Council to frame  
municipal regulations.

XLI. It shall be lawful for the council at any meeting at which three-fourths of the members shall be present to frame from time to time all such municipal regulations as may seem meet for the good rule and government of the municipality.

To be sanctioned by  
Governor.

XLII. No municipal regulation shall be of force until it shall have been by the council submitted to the Governor and shall have been approved of by him, with the advice of the Executive Council, and published in the Government Gazette.

Publication of regu-  
lation sufficient proof  
of its validity.

XLIII. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it to prove that three-fourths of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

XLIV. It shall not be competent by any municipal regulation to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding ten pounds : Provided that it shall be competent for any such municipal regulations to provide that if the person convicted of contravening the same shall not forthwith pay the fine imposed on him he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation : Provided, moreover, that such period shall not exceed three months.

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Limit of penalties for contravening regulations.

## POWERS OF COUNCIL AS TO PUBLIC LANDS, &amp;C.

XLV. All land or immovable property heretofore vested in the commissioners of the municipality shall, after this Act shall come into force, and by virtue thereof, be transferred to and vested in the council of the said municipality, upon the like trusts and purposes for which the same were originally granted or transferred ; and in like manner all liabilities, debts, contracts, or engagements incurred, made, or entered into by the commissioners for the time being or their predecessors on behalf of the municipality of Graham's Town, shall be taken over by the council.

Municipal lands vested in council.

Liabilities to be taken over.

XLVI. The council may, with the consent of His Excellency the Governor of this Colony, raise by sale at public auction, or by mortgage of any land belonging to the municipality any sum of money which shall be necessary in order to carry on any important public work : Provided that the sum so raised in any year shall not exceed double the amount of the sum which shall in the same year be raised by rate or assessment in manner hereinafter mentioned : And provided that the council shall at least two months previously to such intended sale or mortgage cause to be published a full and clear statement of the situation, nature, and extent of such land, and the object and purpose for which the money is required.

Council may sell or mortgage lands.

XLVII. The said council may, for the like purpose in the preceding section mentioned, with the consent of the majority of the householders of the said muni-

May borrow on surety of rates.

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cipality present at such meeting, to be convened in manner hereinafter provided, mortgage or otherwise charge one third of the rates of the said municipality for a period not exceeding ten years: Provided, nevertheless, that only one such loan shall exist at the same time, and that every such loan shall be taken up by public tender.

May lease public lands.

XLVIII. The council may lease any portion of the lands belonging to the municipality for building purposes, or any building already erected, for a period not exceeding twenty-one years: Provided that such leases shall be put up to public competition and that they shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

Mines and quarries.

XLIX. The council may, by public sale or tender from time to time, lease the privilege of working any mines or quarries belonging to the municipality for any term not exceeding five years.

May enter upon lands and appropriate streams and fountains.

L. In case the said council shall require to take or use any land, with or without the buildings if any erected thereon for the purpose of making, widening, or improving any street, market, or public building; or to dig out or carry away any materials belonging to any person or persons within the said municipality, or to appropriate or make use of any springs, streams, or other supplies of water belonging to any person or persons who shall not be bound in law to allow the town council so to do, then and in that case it shall be lawful for the said council, and it is hereby authorized and empowered, to treat and agree with every such person or persons for the purchase or hire as the case may be of any such land, buildings, materials, springs, streams, or other supplies of water as aforesaid, and generally to enter into such contract or contracts relative to the obtaining of any such land, buildings, materials, springs, streams, or other supplies of water upon such terms and conditions as the said council shall judge expedient; and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon

Compensation to be given to owners.

such person or persons a written notice offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council or to some person by it appointed, within a certain limited time to be specified in fourteen days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said council shall, by another notice, in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said council upon receiving the name of the person so selected shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said municipality by the town-clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators before commencing such arbitration to appoint an umpire to act with them, and their decision shall be final; and the award of such arbitrators or umpire as the case may be shall be made a rule of the Supreme or any Circuit Court of this Colony, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law brought for or on account of the same subject-matter. And in case such persons as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorized, to lodge in some joint-stock bank in the Eastern Province of this Colony the sum of money offered by it as aforesaid in its first notice in this section

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Arbitrators to be appointed.



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mentioned, for or on account and at the risk of such person aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council upon so lodging the said sum shall be authorized and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of and property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

How if owners are absent from the Colony or undiscoverable.

LI. In case the said council shall require to take or use any of the land with or without the buildings if any erected thereon, or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water in the last preceding section mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited or shall not be discoverable, then it shall be lawful for the said council and it is hereby authorized to cause a notice to be inserted in the Government Gazette and one or more local papers for four successive months, describing as accurately as may be the materials, land, buildings, springs, streams, or other supplies of water which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, materials, springs, streams, or other supplies of water, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorized by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner or owners to apply, within six weeks from the date of such notice, which shall be the day of its publication, to

the said council, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period then the like proceedings in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the civil commissioner of the division, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such person shall make oath before some justice of the peace that he hath, to the best of his judgment, fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, materials, springs, streams, or other supplies of water in question at, into the Guardians' Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the Guardians' Fund belonging to persons absent from the Colony; and the said council upon so paying the said sum shall be authorized and entitled to take or to use the land, buildings, materials, springs, streams, or other supplies of water in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid had been duly done and performed.

Value of property to be paid into Guardians' Fund.

LII. All acts hereby authorized or required to be done by the council and all questions that may come before them shall, except as hereinafter excepted, be done and decided by the majority of

Questions to be decided by majority of meeting.

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councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the forty-first and sixty-second sections of this Act.

Ordinary meetings.

LIII. An ordinary meeting of the council shall take place at least once in every week, and all such ordinary meetings shall be open to the public.

Special meetings.

LIV. The mayor or any three councillors may at any time call a special meeting of the council, provided that he or they cause notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them or by the town-clerk, to be served on every councillor, either personally or at his usual place of abode, twelve hours at least before such meeting.

In the absence of mayor, chairman to be elected.

LV. At every meeting of council, the mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from among themselves.

Mayor or chairman to have casting vote.

LVI. In all cases of an equality of votes, the mayor or chairman shall have a second or casting vote.

Minutes of proceedings to be kept.

LVII. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

General and special committees.

LVIII. It shall be lawful for the council to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which in the judgment of the council would be better managed by means of a committee: Provided, always, that the proceedings of every such committee shall be submitted to the council for its approval. The mayor to be *ex-officio* member of all such committees.

Town-clerk, treasurer, and other officers to be appointed by council.

LIX. It shall be lawful for the council from time to time to appoint fit persons (not being members of the council) to be town-clerk and treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall

deem reasonable; and unless it shall be otherwise stipulated in the contract of service, to remove all such officers upon a notice of not less than three months, or in case of misconduct without any notice.

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LX. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied streetkeepers and policemen as shall be required for the protection of the inhabitants and property, streets and public places within the municipality, by day and by night, and to provide all such streetkeepers and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours and times of duty, and shall also make such rules, orders, and regulations relative to such streetkeepers and policemen and their duties as shall be deemed fit.

Streetkeepers and policemen.

LXI. All such streetkeepers and policemen shall act as constables while in execution of their duties under the Act, and are hereby invested with and shall have and enjoy the like powers and authorities, privileges and immunities, and shall be subjected to such and the like penalties and forfeitures as constables are invested with or shall or may have or enjoy or are or may be subject or liable to by law.

To be constables.

## REVENUES.

LXII. For the purpose of raising the means for making new roads, streets, market-places, bridges, drains, sewers, water-courses, reservoirs, aqueducts, and other waterworks; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines, and appurtenances; for the effecting of all other permanent public works and improvements within the municipality; for the purpose of raising the means for effecting the repairs of all such works as the council are hereby empowered to have made; for the maintaining of water-works, fire-engines, police establishments, markets, and pounds; for the payment of salaries and all other ordinary current expenses required to

Council to raise funds for public improvements.

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By imposing certain  
dues and fees.

be borne by the municipality, the council shall have the power to impose, levy, and recover all such market-dues, water-rates, and pound-fees as shall be deemed necessary and reasonable and shall be authorized by any such municipal regulations as aforesaid; and shall also have the power as often as shall be deemed necessary to make and levy in manner hereinafter provided a rate or assessment upon all immovable property within the municipality, to be made and levied on the annual value or rental of such property, to be ascertained in manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed at least fifteen members of the said council: And provided, also, that no rate or assessment shall be imposed upon any immovable property belonging to Her Majesty the Queen, nor on public prisons or police-stations, alms-houses, or hospitals, nor on any buildings appropriated to public worship, nor upon burial-grounds, nor upon buildings or lands attached thereto solely appropriated to the purposes of education.

Levying rates on fixed  
property.How assessment to be  
made.

LXIII. In order to ascertain the annual value or rental of the ratable property within the municipality for the purpose of assessing the rate, and also to procure the other information required under the provisions of this section, the council shall, in the month of August in each year, cause a printed schedule to be left at the house of every householder, to be filled up by the occupier under separate and distinct heads, setting forth the names of the proprietor, the occupier, and all inmates; also the annual rental, or if no rent be paid the estimated annual value of the property, and such other particulars as the council may by any such municipal regulation as aforesaid require; from which schedules, duly signed by the householders, and to be returned by them, without demand to the councillors of their respective wards within seven days from the date of their being left as aforesaid, the council shall cause a roll of assessment to be made within one month from the said date, upon which

the rates of and for the current year shall be levied; and when in any ward any schedule shall not have been returned, or where any of the schedules shall appear to the council to misrepresent the value of the properties or to be in any other respect incorrect, it shall be competent for the council to cite by due notice all persons whom they shall think necessary to appear before them on a certain day, not earlier than three clear days from the service of such notice, in order to afford any evidence or information in regard to any property or other matter relative to any schedule which shall not have been returned by the householder, or of which the correctness of the return made shall be questioned or disputed; and if such persons shall then neglect to attend for the aforesaid purpose the council shall fix such annual value on all such properties as may appear just and reasonable, and the valuation so fixed shall be binding on all concerned: Provided that in the case of all unoccupied land not having any buildings thereon the annual value shall be deemed and taken to be eight per cent. per annum on the value thereof, such valuation to be made by the council in the month of August aforesaid in each year: And provided that the roll of assessment aforesaid shall be open for public inspection at the office of the council for the space of one month; and the council shall give notice in one or more of the newspapers of the municipality that the same lies open for inspection, and for the hearing and deciding upon objections against the roll.

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Roll of assessment to be open for inspection.

LXIV. The council shall annually, in the month of February, make an estimate of the amount of money required for the purposes aforesaid, and shall assess the rate accordingly, and give public notice thereof in one or more of the newspapers of the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any rates amounting in the

Council to frame annual estimates of expenditure.

Annual levy of rates limited.

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aggregate to more than one shilling in the pound on the annual value or rental of the immovable property assessed without obtaining the consent of the majority of the citizens entitled to vote at a public meeting to be called for the purpose of considering such rate or rates: of the object and the time and place of holding such meeting at least seven days' notice shall be given in manner hereinbefore mentioned: Provided that it shall be lawful for any two or more citizens at such meeting to demand a poll of the citizens enrolled to vote, which poll shall be taken the following day, to commence at ten o'clock and to be closed at the hour of four o'clock p.m. the same day.

Council to appoint collectors of rates.

LXV. As soon as any rate or rates shall have been assessed as aforesaid, the council shall appoint under the municipal seal fit persons to collect such rate or rates, which shall on non-payment thereof be recoverable at the suit of any such collector by action in the court of the resident magistrate having jurisdiction within the said municipality.

Owner or occupier may be sued separately or together.

LXVI. In case by reason of the non-payment of any rate it shall be necessary to sue for the same as in the last preceding section mentioned, the council may through its collector, and it is hereby authorized to sue the owner or the occupier, either separately or both of them in one and the same action, each for the whole rate.

Arrears of rates to be published.

LXVII. The council shall once in every year publish in one or more of the newspapers of the municipality a statement of every sum in arrear and of the property in respect of which the same is due.

Council may establish tolls.

LXVIII. It shall be lawful for the council by any municipal regulation as aforesaid to impose such toll or dues as may be reasonable on all persons making use of any road, bridge, or market-place within the municipality which the council is hereby empowered to make and maintain, and in cases of the non-payment of such tolls or dues, to recover the same by legal process or in such other manner as may by the municipal regulations be in that behalf provided.

LXIX. No toll shall be payable by any officer or soldier or member of any volunteer corps, being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any judicial or civil officer, mail-carrier, or other Government servant whilst travelling on public duty. And further, that no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock on the next succeeding night, for or in respect of the same vehicle or animal.

No. 29—1861.  
Who exempt from  
payment of toll.

LXX. The treasurer of the said municipality shall, in books to be kept for that purpose, enter the accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid: all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance-sheet thereof, shall yearly, at such times as the council shall appoint, be handed by him to the auditors and to such members of the council as the mayor shall name, for the purpose of being examined and audited; and such abstract or balance-sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the treasurer in one or more of the newspapers published within the municipality.

Treasurer to keep accounts which shall be audited and abstracts published.

LXXI. Every notice calling a public meeting of the householders, and every notice or other document or thing required by this Act to be published, shall be so published by causing a copy thereof to be inserted in one or more of the newspapers of the municipality, and a copy of the same shall also be affixed in some conspicuous place upon or near the town-hall.

Publication of notices, &c., under this Act.

LXXII. All fines or penalties imposed by this Act or by any municipal regulations made by virtue thereof shall be prosecuted for in any competent court by the name of "The Council of the Municipality of the City of Graham's Town," and shall when recovered be paid to the treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced

Fines and penalties how to be sued for.



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later than three months from and after the date of the Act or omission upon which such prosecution shall be grounded.

Gunpowder to be stored in licensed buildings.

LXXIII. The storing of gunpowder or other explosive material shall not be permitted except in such places as may be approved of and licensed by the town council for that purpose.

Council may order burial-grounds to be closed.

LXXIV. So soon as any burial-ground or portion thereof shall become so crowded as to be in the opinion of two-thirds of the council dangerous to the public health, the council shall be empowered to give six months' notice that burials therein shall cease, and after the expiration of the said term of six months any person or persons causing any interment to be made therein shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent court.

Meaning of term "householder."

LXXV. The word "householder" used in this Act shall include the occupier of immovable property, although no house be built thereon.

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No. 30—1861.] AN ACT [August 14, 1861.

To continue the Ordinance No. 11, 1837, entitled  
 "An Ordinance for Establishing, Regulating,  
 and Providing for the South African College."

Preamble.

WHEREAS the Act No. 19 of 1858, entitled "An Act to continue 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 31st day of December 1861: And whereas it is expedient that provision should be made to continue 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 continued. 11, 1837,

I. The said Ordinance No. 11, 1837, "For Establishing, Regulating, and Providing for the South African College," shall continue and remain in force until repealed.

No. 31—1861.] AN ACT [August 14, 1861.

No. 31—1861.

For the Regulation of the Affairs of the General  
Estate and Orphan Chamber.

**W**HEREAS certain persons did, by a deed bearing date at Cape Town in this Colony of the Cape of Good Hope, the ninth day of March, one thousand eight hundred and fifty-six, enter into a contract of co-partnership for the purpose of administering all such property and estates as they might be lawfully appointed to as executors, administrators, tutors, or curators, and trustees, under the style or title of, in English, "The General Estate and Orphan Chamber," and in Dutch, "De Algemeene Boedel en Weeskamer:" And whereas the joint stock or capital sum of twenty thousand pounds sterling mentioned in the said deed, divided into one hundred shares, was vested in certain trustees appointed from the directors of the said General Estate and Orphan Chamber to serve as an available fund to satisfy any claim or demand which any person might have upon the said co-partnership, has since been annually increased according to the provisions in the said deed contained, and now amounts to the sum of twenty thousand five hundred and seventy-eight pounds: And whereas the following are the persons who now constitute the shareholders of the said Chamber, that is to say: John Addey, Henry Mathew Arderne, Emily Susan Arderne, Richard Labrun Attwell, Christian Friedrich Barth, Johannes Arnoldus Bartman, Anthony Joseph Becker, Charles Davidson Bell, Michael Benjamin, Oloff Marthinus Bergh, Marthinus Adrianus Bergh, Christina Jacoba Vos Bergh, Dorothea Henrietta Bergh, Henry Bickersteth, M.D., Joseph Blackburn, Christian Hendrik Bösenberg, Christian Jacobus Bosman, William Boyes, George David Brunette, Jonathan Calf, James Carey, René Julien Clement, senior, René Julien Clement, junior, Henry Anthony Cooke, Robert James Crozier, Margaretha Wilhelmina Cruywagen, John Thomas Deane, William Wallace Dickson, George Christopher Dodd,

Preamble.

Names of shareholders.

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Charles Robert Eaton, Hendrik Pieter Ekermans, Matthew Farrall, Ryk le Sueur Fischer, William Fisher, James Forrester, Jan Daniel Freislich, Henry Hall, John Harris, Mary Harris, Widow of Albert Pieter Hiebner, Rev. John William van Rees Hoets, Rev. Nicolas Servaas Hofmeyr, Rev. Servaas Hofmeyr, Johannes Jacob Hofmeyr, Stephanus Johannes Hofmeyr, J. H. son, Edward Hull, Rice Daniel Jones, Wid. of Petrus Johannes Keeve, William Kuhr, Agatha Katharina van der Lingen, Adriaan Johannes Louw, Jacobus François Malan, senior, Jacobus Johannes Malan, J. F. son, Gideon Joshua Malherbe, Johannes Ramner Marquard, Leopold Marquard, junior, Nicolas Wollaston Meyer, Isaac Joshua Minnaar, Tobias Mostert, David Mudie, Gysbert van Reenen Muller, Benjamin Norden, Johanna Maria van Rheede van Oudtshoorn, Archibald Penney, Michiel Pentz, J. F. son, Petrus Johannes Pentz, J. F. son, Jacobus Fredricus Gerhardus Pietersen, Barend Pieter du Plessis, Isaac Petrus Henricus van der Poel, Marthinus Melck van Reenen, Jan Daniel Karnspek Reitz, Pierre Gile François Rocher, François Joseph Rocher, Isaac Albertus Johannes Roos, Tieleman Roos, Frederick Foulger Rutherford, Bernard Scheitlin, Carl August Wilhelm Schmieterloew, John Shepherd, Johan Conrad Silberbauer, Martha Fredrica Silberbauer, Carel Jacob Smuts, Carel Pieter Spolander, Rev. Johan Melchior Kloek van Staveren, Johan George Steytler, junior, Dorothea Henrietta la Sueur, Rev. Henry Sutherland, Anna Susannah Syfret, George Henry Syme, M.D., David Tennant, Jacobus Gerhardus Tier, Guillian Johannes du Toit, E. son, David Pieter du Toit, E. son, Henry Knight Tredgold, Jan Stephanus de Villiers, junior, David Andreas de Villiers, Abraham Barend de Villiers, P. J. son, Willem Wiedeman, Thomas James Welch, Petrus Jacobus de Wet: And whereas under the provisions of the said deed the directors are authorized and empowered to obtain an Act to incorporate the said General Estate and Orphan Chamber and in order the better to enable them to carry the said object into effect: Be it therefore enacted by the Governor,

by and with the advice and consent of the Legislative Council and the House of Assembly, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said sum of twenty thousand five hundred and seventy-eight pounds, and of all such sums as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of "The General Estate and Orphan Chamber."

II. A copy of the said deed, duly authenticated by the secretary of the said General Estate and Orphan Chamber appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope within one month after the passing this Act; and in like manner a return of the names of the several persons at the time being members of the said General Estate and Orphan Chamber, with their respective places of abode, and the name and place of abode of the chairman and of each director thereof and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office.

Trust-deed and list of shareholders to be filed with Registrar of Deeds.

III. A copy of all alterations in or additions to the said deed which may at any time be made in conformity with the provisions therein contained shall, within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed in the office of the said Registrar.

Alterations in deed to be similarly filed.

IV. Whenever the transfer of any share in the said co-partnership or company shall be made, a return in like manner authenticated shall, within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer, the name and place of abode of the person to whom or in whose behalf such transfer is made.

Transfers of shares.

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Names and abodes of chairman, directors, and secretary.

V. A return in like manner authenticated shall, from time to time, as occasion shall render it necessary, be filed in the office of the said Registrar of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, within one month after such appointment shall have been made.

Certified copy or extract of deed or return may be used in evidence.

VI. A copy made from the said deed and of any alteration in or addition thereto which may have been made and filed as aforesaid, and a copy of any such return of any such chairman, director, secretary, or members, certified under the hand of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence or proof of such deed, and of any such alteration or addition as aforesaid, and of the authority of the officer named in any such return, and also of the fact that all persons therein named as members were such at the date of such return.

Appointments Chamber valid.

by VII. All appointments under and by virtue of any last will and testament, codicil, or of any deed or act which shall have been at any time previous to the passing of this Act, or which shall hereafter be duly made and executed, of the directors of the General Estate and Orphan Chamber or of the secretary of the General Estate and Orphan Chamber as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, or agent as the case may be, shall be deemed and taken to be a valid appointment of the General Estate and Orphan Chamber hereby constituted.

Evidence of members admissible.

VIII. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a member of the said General Estate and Orphan Chamber shall be admissible in like manner as if such person were not a member thereof.

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

IX. All actions and suits and all other proceedings at law to be commenced or instituted for and on behalf of the said General Estate and Orphan Chamber against any person or persons, bodies politic or corporate, or others (whether members of the said General Estate and Orphan Chamber or otherwise), for recovering any debts or enforcing

any claims or demands due to the said General Estate and Orphan Chamber, or for any other matter relating to the concerns of the said General Estate and Orphan Chamber, shall and lawfully may, after the passing of this Act, be commenced or instituted and prosecuted to a final judgment or sentence in the name of the secretary of the General Estate and Orphan Chamber, as the nominal plaintiff, applicant, or petitioner for and on behalf of the said General Estate and Orphan Chamber, and shall and lawfully may, subject to the provisions of any Act, law, or Ordinance which may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against or with intent to defraud the said General Estate and Orphan Chamber, or the members thereof jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceedings as the case may be; and that all actions and suits and proceedings at law to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said General Estate and Orphan Chamber or otherwise, against the said General Estate and Orphan Chamber, or against the said members thereof jointly, shall and lawfully may be commenced, instituted, and prosecuted to a final judgment or sentence against the said secretary of the General Estate and Orphan Chamber as the nominal defendant or respondent for and on behalf of the said General Estate and Orphan Chamber aforesaid, and not against the General Estate and Orphan Chamber or against the members or any of them.

X. It shall and may be lawful for the secretary of the said General Estate and Orphan Chamber to bring and maintain any action, suit, or other proceeding at law against any person being an officer or member of the said General Estate and Orphan Chamber Officers or members may be sued.

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Chamber for or on account of any claim or demand which the said General Estate and Orphan Chamber may have against such person, in like manner as if he were not an officer or member thereof.

And may bring actions against the Chamber.

XI. It shall and may be lawful for any person being an officer or a member of the said General Estate and Orphan Chamber to bring and maintain any action, suit, or other proceeding at law against the secretary of the said General Estate and Orphan Chamber for or on account of any claim or demand which he may have against the said General Estate and Orphan Chamber, in like manner as if such person were not a member of the said General Estate and Orphan Chamber.

Shares or dividends not to be set off against debts due to Chamber.

XII. No claim or demand which any member of the said General Estate and Orphan Chamber may have in respect of his share of the capital stock of the said co-partnership, or of any dividends, interests, or profits payable in respect of such shares shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share or dividends or profits against any demand which the said General Estate and Orphan Chamber may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interests, or profits payable in respect thereof.

Two directors to execute deeds, &c.

XIII. It shall and may be lawful for any two directors of the said General Estate and Orphan Chamber to execute any bond or other act for and on behalf of the said General Estate and Orphan Chamber, to draw up and execute any inventory or liquidation, distribution, or other account; and all such bonds, acts, inventories, and accounts so executed shall be equally valid as if the same had been done and executed by every one of the members thereof.

Public Act.

XIV. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all judges, magistrates, and others, without being specially pleaded.

For Incorporating the Union Fire and Marine Insurance and Trust Company, and enabling them to sue and be sued in the name of their Secretary.

**W**HEREAS by a deed bearing date at Graham's Preamble.  
Town the tenth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, certain persons did become co-partners together in a certain joint-stock company, called "The Union Fire and Marine Insurance Company," for the insurance of movable and immovable property of every description against loss or damage by fire, and for the insurance of ships or vessels and goods, merchandise and effects, or other property from risk at sea, or in being carried to or from such ships or vessels, with a capital of one hundred thousand pounds sterling, divided into ten thousand shares of ten pounds sterling each: And whereas five thousand one hundred and fifty shares in the said company have been allotted, upon which the sum of seven thousand seven hundred and twenty-five pounds sterling has been paid up by the holders thereof as and for part of the said capital stock of the said company, and the remaining four thousand eight hundred and fifty shares have been reserved for the benefit of the shareholders of the said company: And whereas by a certain supplementary deed, bearing date at Graham's Town the twentieth day of November, in the year of our Lord one thousand eight hundred and sixty, and executed on behalf of the several shareholders of the said company by one Henry Crump, who was duly authorized and empowered in that behalf by a resolution of a special general meeting duly convened according to the conditions and provisions of the first-mentioned deed, it was declared and provided that the business of the said company shall be extended to the administration and management of such estates and other property as the said company shall be appointed to administer or manage as executors, trustees, ad-



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ministrators, tutors, guardians, curators, or agents, either under or by virtue of a rule or order of any competent court, or by the direction of the Master for the time being of the Supreme Court of this Colony in his official capacity, or by the last will and testament or by any valid act or deed of any person or persons whomsoever, or by virtue of any marriage settlement, power of attorney, or otherwise, and that the title and designation of the said company should be "The Union Fire and Marine Insurance and Trust Company:" And whereas the directors of the said company, acting for and on behalf of the said shareholders, and being duly authorized by them in that behalf, have applied for an Act to incorporate the said company as constituted under the said respective deeds, and in order the better to enable them to carry into effect the objects of the said company :

Incorporation and style of company.

I. Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act under the provisions of the said respective deeds to be and continue joint-stock proprietors of the said capital sum of one hundred thousand pounds and of all such other sums of money as they may hereafter acquire under the provisions of the said respective deeds, and to constitute and be a company for the purposes before mentioned, to be carried on under the style and firm of "The Union Fire and Marine Insurance and Trust Company."

Copy of trust-deed with list of present directors and shareholders to be filed in Supreme Court.

II. A copy of the said deed and also a copy of the said supplementary deed, duly authenticated by the secretary of the said company appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony within one month after the passing of this Act, and in like manner a return of the names and places of abode of the several persons at the time being shareholders of the said company, and of the names and places of abode of the chairman and of each director thereof, and of the secretary thereof.

III. A copy of all alterations in or additions to the said deed and supplementary deed, which may at any time be made in conformity with the provisions therein contained, shall within three months after any such alteration or additions shall have been duly made, in the like manner authenticated, shall be in the same manner filed in the office of the said Registrar.

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Alterations or additions to be likewise filed.

IV. Whenever the transfer of any share or shares in the said company shall be made a return, in like manner authenticated, shall within three months after such transfer shall have been made be in the same manner filed in the said office of the said Registrar, and which return shall contain the date of such transfer, and the name and place of abode of the person to whom or in whose behalf such transfer is made.

Transfer of shares.

V. A return in like manner authenticated shall from time to time, as occasion shall render it necessary, be filed in the office of the said Registrar of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, in the place of any former chairman, director, or secretary, within three months after such appointment shall have been made.

Names of future directors to be also filed.

VI. A copy of or extract from the copy of the said deeds, or either of them, and of any alterations therein or additions thereto which may have been made and filed as aforesaid, and copy of an extract from any such returns as aforesaid which may have been made and filed as aforesaid, purporting to be certified under the hand of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence as *prima facie* proof of all matters contained or recited in such certified copy or extract, and of the authority and appointment of the person or persons named therein, whether a shareholder, director, chairman, secretary, or otherwise, and of the fact of their being such at the date of such certificate, and such certified copy or extract shall be received in evidence without any proof of the handwriting of the said Registrar, or of his appointment.

Certified copies or extracts of deeds or returns to be taken as evidence.

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Appointment of company as executors, &amp;c., to be valid.

VII. All appointments by any competent court or authority, or by, under, or by virtue of any last will and testament, codicil, marriage settlement, power of attorney, or any other deed or act which shall have been at any time previous to the passing of this Act, or which shall be hereafter duly made and executed, of the directors or secretary of the said company as trustees, assignees, executors, administrators, tutors, curators, guardians, or agents; or as trustee, assignee, executor, administrator, tutor, curator, guardian or agent, as the case may be, shall be deemed and taken to be a valid appointment of the said company.

Evidence of shareholder admissible.

VIII. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a shareholder of the said company shall be admissible in like manner as if such person were not a shareholder thereof.

Actions to be brought by secretary.

IX. All actions, suits, and proceedings at law to be brought for or on behalf of the said company against any person or persons, bodies politic or corporate, or others, whether shareholders of the said company or otherwise, for or on account or in respect of any debt, claim, or demand due to the said company, or for or on account or in respect of any other matter or thing relating to the concerns of the said company, shall and may after the passing of this Act be brought and maintained in the name of the then secretary of the said company, as the nominal plaintiff, applicant, or petitioner for and on behalf of the said company, and all proceedings of a criminal nature for any fraud, crime, or offence committed against the said company or their property, or with intent to injure or defraud the said company shall and may, subject to the provisions of any Act, law, or Ordinance which may be in force or which may hereafter be enacted in that behalf, be prosecuted for and on behalf of the said company by and in the name of such secretary as aforesaid as nominal prosecutor, and in any indictment or information it shall be sufficient to describe the property of the said company as the property of such secretary, and any offence against or with intent to injure or de-

fraud such secretary as aforesaid; and all actions, suits, and proceedings at law to be brought by any person or persons, bodies politic or corporate, or others, whether shareholders of the said company or otherwise, against the said company, shall and may be brought and maintained against such secretary as aforesaid, as the nominal defendant or respondent for and on behalf of the said company, and not against the said company or the directors or shareholders thereof, or any of them. And no action, suit, or proceeding as aforesaid shall abate, discontinue, or be rendered ineffectual by reason of the death, removal, or resignation of such secretary, but in any such event and as often as the same may occur the name of the secretary for the time being shall be substituted in the subsequent proceedings.

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X. It shall and may be lawful for the secretary of the said company to bring and maintain any action, suit, or other proceeding at law against any person being an officer or shareholder of the said company, for or on account of any claim or demand which the said company may have against such person, in like manner as if he were not an officer or shareholder thereof.

Secretary may bring actions against officer or shareholder.

XI. It shall and may be lawful for any person being an officer or shareholder of the said company to bring and maintain any action, suit, or other proceeding at law against the secretary of the said company for or on account of any claim or demand which he may have against the said company, in like manner as if he were not an officer or shareholder thereof.

Any officer or shareholder may bring action against secretary.

XII. No claim or demand which any shareholder of the said company may have in respect of his share of the capital stock of the said company, or of any dividends, interest, or profits payable in respect of any such share shall be capable of being set off, and no claim in reconvention shall be brought on account of any such share, dividends, interest, or profits against any claim or demand which the said company may have against such shareholder on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter

Share in capital stock or dividends not to be set off against claims of company.

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or thing may be carried on as if no claim or demand existed in respect of such capital stock or of any dividends, interest, or profits payable in respect thereof.

Two directors may execute bonds, policies, &c.

XIII. It shall and may be lawful for any two of the directors of the said company to make and execute for and on behalf of the said company any bond, deed, policy of insurance, inventory, liquidation, distribution, or other account, or any act or instrument whatsoever, and every such bond, deed, policy of insurance, inventory, account, act, and instrument shall be as valid and effectual to and for all intents and purposes as if the same had been made, done, and executed by all or any of the directors or shareholders thereof.

Public Act.

XIV. This Act shall be deemed and taken to be a public Act, and shall be judiciously taken notice of as such by all judges, magistrates, and others, with or without being specially pleaded.

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No. 33—1861.] AN ACT [August 14, 1861.

To Incorporate the Cape Town and Green Point  
Tramway Company.

Preamble.

WHEREAS it is desirable and expedient that a company should be formed and incorporated for the purpose of constructing, maintaining, and working a line of tramway from Sea Point to Somerset Road, Waterkant, Bree-street, Strand-street, Long-street, Wale-street, and Burg-street, to Market-square, Cape Town: And whereas certain steps have already been taken by the appointment of a provincial committee, and the subscription of a fund considered sufficient to defray preliminary expenses toward the promotion of this object: And whereas it has been made to appear by plans, sections, and estimates lodged in the Deeds Registry Office that the cost of constructing such tramway will not exceed the capital of the company: And whereas it is deemed desirable that the liability of shareholders in the said company should be limited

to the amount of their respective shares: Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

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I. The several persons who are or shall become shareholders in the said company, their respective executors, administrators, successors, and assigns, shall be and are hereby united into one body corporate, under the name and title of the "Cape Town and Green Point Tramway Company," for the purpose of constructing a tramway, with all necessary sidings and appurtenances from Sea Point, at or near the point marked on the plan aforesaid, to Somerset Road, Waterkant, Bree-street, Strand-street, Long-street, Wale-street, and Burg-street, to Market-square, Cape Town; and the company hereby incorporated by the name aforesaid shall have perpetual succession and a common seal, and by such name shall and may, from time to time, sue and be sued, implead and be impleaded, answer and be answered unto in any competent court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, and possessions, and also all other property, chattels, or effects whatsoever; and such lands or other property, subject to any engagements affecting the same, shall be vested in the company by its corporate name, and without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants or conveyances thereof.

Incorporation style. and

II. The capital of the company shall be ten thousand pounds, in two thousand shares of five pounds each, and such shares shall be numbered in arithmetical progression, beginning with number one, and each share shall be distinguished by its appropriate number.

Capital of company.

III. Subscription lists for shares in the said company shall be opened and headed as follows: "We, whose names are hereunder written, hereby agree with each other to become shareholders in the Cape Town and Green Point Tramway Company, incorporated by Act of Parliament, and to take each of

Subscription lists for shares to be opened.

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us the number of shares set opposite our respective names ;” and every such list shall be signed by the shareholder himself, or by his lawfully authorized attorney ; and all such lists shall be preserved by the directors of the said company ; and the shareholders signing such lists shall from that time be bound to each other for the due fulfilment of the several obligations by this Act imposed upon the shareholders in the said company as fully and amply as if every shareholder had executed a trust-deed containing all and singular the provisions and stipulations of this Act.

Subscribers bound by terms thereof.

Liability of shareholders limited.

IV. No more than five pounds in all shall be due or payable in respect of any share in the said company, and the liability of any shareholder shall be and is hereby limited to the payment of that amount in instalments as hereinafter mentioned.

Shares to be paid up by instalments.

V. The amount of the shares in the said company shall be paid in manner following, namely,—two shillings per share in cash on subscribing, and the remaining four pounds eighteen shillings per share by instalments not exceeding ten shillings per share each, which instalments it shall be lawful for the directors to call up upon giving a notice to that effect of not less than one month in the Government Gazette and one or more of the local newspapers.

How if shareholder fails to pay call.

VI. If at the time appointed for the payment of any call as aforesaid any shareholder shall fail to pay such call, it shall be lawful for the company to sue such shareholder for the amount thereof in any court having competent jurisdiction, and to recover the same with interest at the rate of six per cent. per annum from the day on which such call shall have become due and payable.

Shares may be declared forfeited.

VII. If any shareholder fail to pay any call payable as aforesaid within one month from the time appointed for the payment of such call, the directors may, at a meeting duly convened by a resolution in writing, signed by not less than three of their number, declare such share or shares forfeited, whether the company shall have sued for the amount of such call or not ; and the said directors may forthwith dispose of them to any other person or persons, and

if needful issue fresh certificates of shares to the person or persons purchasing such forfeited shares.

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VIII. The general management of the affairs of the company shall be vested in seven directors who shall be elected by a ballot at a general meeting of the shareholders duly convened for that purpose: Provided, always, that no person shall be competent to be a director who shall not possess in his own right ten shares in the stock of the company.

Seven directors to be elected.

IX. That Petrus Emmanuel de Roubaix, Hercules Crosse Jarvis, Thomas Watson, James Murison, Jan Leibbrandt, Ralph Henry Arderne, and Marthinus Melck van Reenen shall be the first directors of the said company, and shall so continue until other directors are appointed in their place, or they or any of them die, resign, or be removed, or become incapacitated as hereafter mentioned.

First directors of the company.

X. At the meetings held for the election of directors or any other purpose connected with the affairs of the company the shareholders present, either personally or by proxy, shall vote according to the following scale, namely:

Proportion of votes to shares.

The holder of any number of shares less than ten, one vote.

„ of not less than ten shares and upwards, two votes, and no more.

XI. Any director becoming insolvent, or being absent from the Colony for six months, or who shall cease to be the holder of ten shares as aforesaid shall become disqualified and his seat be declared vacant.

Director when disqualified.

XII. In case the conduct of any director who shall be so elected shall at any time be such that his continuance in office would, in the opinion of at least thirty shareholders holding not less than one hundred and fifty shares, be prejudicial to the interests of the company, and notice thereof shall have been given to the directors in writing, the directors shall thereupon call a general meeting of proprietors for the purpose of determining whether such director shall continue in office: Provided, always, that not less than twenty-one days' notice of such meeting, and the purpose for which it is held,

Director may be removed from office.

Notice of meeting for removal of director.



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shall be given in the Government Gazette and one or more local papers, in which case it shall be lawful for a majority of the proprietors at such meeting to remove such director from his office.

Directors to be elected annually.

XIII. The whole of the directors shall go out of office annually, but shall be eligible for re-election: Provided, however, that if from any cause whatever no election should take place, the said directors shall remain in office until such time as other directors shall be appointed and consent to act.

Directors to choose permanent chairman, and in his absence temporary chairman.

XIV. The directors at their first meeting shall appoint a chairman from amongst themselves, who shall preside at all meetings of the directors; and in case of his absence the directors present shall by a majority of votes elect a chairman for the meeting, such chairman to have a vote as a director, also to have a casting vote, if there be an equality of votes; and at all meetings of shareholders they shall make choice of a chairman from among their number, who shall preside and have a vote as a shareholder, and also a casting vote if there be an equality of votes. Three directors shall form a quorum and be competent to perform all acts which the directors are empowered to do and perform.

Quorum.

Annual meeting of shareholders.

XV. The annual general meeting of shareholders shall be held in Cape Town on some day in the third week in July in each year, and a report shall be submitted to such meeting, setting forth the position and prospects of the company, together with an account of receipts and expenditure during the year ending 30th June preceding.

Special meetings.

XVI. In addition to the annual general meetings, general meetings of the company may be held for special purposes upon a requisition, in writing, setting forth such purpose, signed by not less than thirty shareholders, holding collectively not less than one hundred and fifty shares, and sent in to the chairman of the directors: Provided, however, that notice of such meetings, together with the purpose thereof, shall be published in the Government Gazette, and one or more of the local papers, at least twenty-one days previous; and provided, also, that no business except that described and set forth in

the published notice shall be brought before any such meetings.

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XVII. The accounts of the company shall be audited annually by two auditors, not being directors, such auditors to be appointed by the shareholders at each annual general meeting: Provided, however, that no person shall be eligible to act as an auditor unless he shall be the proprietor of at least ten shares in the capital stock of the company.

Auditors to be appointed.

XVIII. It shall and may be lawful for the said directors of the said company, and they are hereby authorized to enter upon all lands, and there to dig for, excavate, and carry away all such materials as may be required for the construction and maintaining of the said tramway, and that the extent of land, streets, and roads taken for the said tramway shall not exceed the width of five feet for the said line:

Directors may enter upon lands and remove materials.

And provided, further, that the proprietors of the said lands or materials so used and carried away shall be paid by the directors a full and sufficient sum by way of recompense for the value of such land or materials or for any damage which may be done by reason thereof: And provided, also, that in the event of the directors of the said company and any such proprietor not being able to agree upon the sum to be paid by the said directors and accepted by such proprietor, then the said directors shall cause to be served upon such proprietor a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor to state in writing to the said directors or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he or they are willing to accept the sum therein mentioned or not; and further stating that, in case he or they shall refuse to accept the sum offered or shall neglect to reply to the said notice, then the said directors shall call upon such proprietor, within such time as aforesaid, to refer to arbitration the amount of recompense or compensation to be paid to him, and for that purpose to transmit to the said directors or the person so appointed by them the name of some person whom he or they shall select to be an arbi-

Owners to be compensated.

Arbitration.

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trator upon such arbitration, and the said directors or other person as aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator, and the said directors shall cause a deed of submission to be prepared, which shall be signed by a quorum of the said directors, or the person so appointed and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the said arbitrators or any two of them shall be authorized to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall consider fair and reasonable, and the award of the said arbitrators or any two of them shall be made a rule of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter; and in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, then it shall be lawful for the said directors and they are hereby authorized to lodge in some joint-stock bank in Cape Town the sum of money offered by them as aforesaid, for or on account and at the risk of such person or persons as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his or their absolute property; and the said directors, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid or had been awarded by the arbitrators, and as if all acts by law required for vesting in the said company a sufficient title to the use of and property in the land or materials aforesaid had been duly done and performed.

How if party claiming compensation refuses to proceed to arbitration or rejects the award.

Direction of tramway.

XIX. That the said tramway shall commence at Sea Point as aforesaid, and shall be laid along the main road in the municipality of Green Point to Somerset-road, thence to Waterkant, thence to Bree-

street, thence to Strand-street, thence to Long-street, thence to Wale-street, thence to Burg-street, to Market-square, Cape Town: Provided, always, that it shall be lawful to the said company to extend, deviate from, and vary the said line and to carry the said tramway along any other land, streets, or roads than those mentioned, upon the consent of the owners of such lands and of the municipality of Cape Town or Green Point within whose limits said proposed variation shall be being first properly had and obtained.

XX. Provided, always, that so much of the said tramway as shall be laid down within the limits of the municipality of Cape Town and the works connected thereunto shall be laid down and executed under the supervision of the City Engineer and subject to his approval; and provided, also, that the roadway between the rails of the said tramway within the limits of the municipalities of Cape Town and Green Point respectively shall be maintained in good and efficient repair at the costs and charges of the said company; and that all damage done to the main road aforesaid, or to the streets, bridges, sewerage, and property of either of the said municipalities by reason of any work or works performed and executed by the said company shall in like manner immediately or as soon as practicable be made good at the proper costs and charges of the said company: and provided, also, that the commissioners of the respective municipalities of Cape Town and Green Point shall have the right at all times to take up, and shall and may from time to time, at their own proper costs and charges, take up any part of the said tramway which it shall be found necessary to take up for the purpose of constructing or cleaning drains or sewers, or laying down or replacing water-pipes, or for any other municipal or public purpose; and all such part or parts of the said tramway so taken up as aforesaid shall be again properly relaid as speedily as may be, at the cost and expense of the said commissioners: Provided, further, that if at any time the said line of tramway or any part thereof should be found to be injurious to either

City engineer to supervise construction of portion of tramway within Cape Town.

Damage to roads, streets, &c., to be made good by company.

Municipality may take up part of tramway when necessary.

Company may be compelled to take up tramway at twelve months' notice.

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of the aforesaid municipalities, the company shall, upon twelve months' notice given by the commissioners of the municipality making complaint, take up the line of tramway, or such portion thereof as may be objected to.

Not to obstruct traffic.

XXI. Nothing in this Act contained shall authorize the said company in any manner to obstruct or hinder the safe passage of the ordinary traffic on the now existing roads and streets, but in all cases a sufficient space shall be left at least on one of the sides of the said roads or streets to allow all carriages, cattle, and passengers to pass the carriages on the said tramway in a safe and convenient manner.

Shareholder to be registered three months before he can vote.

XXII. At any general or special meeting of the shareholders, no shareholder shall be entitled to vote in respect of any share or shares until he shall have been registered as the proprietor thereof, for a period of at least three months previous to such meeting.

Who may vote by proxy.

XXIII. No shareholder residing within twenty miles of Cape Town, where the meetings of the company shall be held (except females holding shares in their own right, and persons unable from illness to attend) shall be allowed to vote by proxy; and the proxy of such females or shareholders suffering from illness or being resident beyond twenty miles of the place of meeting shall be to the effect as follows :

Form of proxy.

I, A. B., of \_\_\_\_\_, one of the shareholders of the Cape Town and Green Point Tramway Company, do hereby authorize and appoint C. D., of \_\_\_\_\_, to be my proxy at all meetings of the shareholders of the said company, and to vote for me thereat upon all matters and things proposed relative to the concerns of the company, unless I shall be personally present.

Witness my hand at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. B.

Votes how to be taken.

XXIV. All resolutions of shareholders at meetings shall be determined by a show of hands, but any shareholder, feeling dissatisfied with such decision,

may demand a ballot, which ballot shall forthwith be proceeded with, the votes being given in writing, and reckoned according to the rule in that behalf hereinbefore provided; and in the event of votes being equally divided, the chairman of the meeting shall decide the question by his casting vote.

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XXV. A full and complete register of the shareholders in the company shall be open for the inspection of the public at all reasonable times, on the payment of a fee of one shilling for each inspection; and, further, any shareholder may require from the secretary of the company for the time being a certificate of the shares held by such shareholder in the company, which certificate shall at all times be deemed sufficient evidence of the interest held in the company by the respective parties to whom the same shall be granted; and the certificate so to be granted shall be of the following form, to wit:

Register of shareholders to be open for inspection.

Certificate of Share in the Cape Town and Green Point Tramway Company. Certificate of share.

This is to certify that A. B., of \_\_\_\_\_, is proprietor of \_\_\_\_\_ shares in the Cape Town and Green Point Tramway Company, incorporated by Act of the Colonial Legislature, subject to the provisions and regulations of the said company.

Given under the common seal of the company, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

XXVI. Any shareholder may transfer his share or shares, by endorsement upon each certificate, specifying the person to whom such share is transferred; but no such transfer shall have any force or effect as regards the affairs of the company until a registration of the same shall have been duly made in the books of the company, three directors shall have certified their consent, in writing, to such transfer, and the assignee or transferee shall, either in person or by attorney, acknowledge his proprietorship in substance as follows:

Transfer of shares.

I, C. D., do hereby acknowledge to have received, by transfer, from E. F., \_\_\_\_\_ shares, No. \_\_\_\_\_, in the Cape Town and Green Point Tramway

Acknowledgment of transfer.

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Company, subject to the conditions, regulations, and provisions of the Act of incorporation of the said company.

Liability \* transferred with share.

XXVII. Any shareholder transferring his share or shares as aforesaid shall be wholly released and discharged from all liability in respect thereof from date of registration, and the person to whom the same is transferred shall be subject to all and singular the same liabilities in respect of such share or shares as if such person had been the original shareholder.

Directors may enter into contracts, appoint officers and remove them.

XXVIII. The board of directors of the company is hereby empowered to enter into contracts for the supply of work or materials necessary for the construction, maintaining, and working of the said tramway, and may also appoint and employ engineers, overseers, masons, carpenters, navvies, or such other workmen as it may deem necessary for carrying out the provisions of this Act, and also to remove or dismiss any such persons and employ others in their stead; and to fix the duties and salaries of all such persons, and generally all matters and things necessary for the due and effective management of the affairs of the company.

When directors may borrow money.

XXIX. So soon as the whole of the capital of the company shall have been subscribed, and not less than one half thereof shall have been paid up and expended, it shall be lawful for the directors from time to time, when duly authorized thereto by the shareholders at a special meeting convened for the purpose, to borrow money on security of the undertaking and the future calls on the shareholders, and of the expected earnings of the line, the interest on such loan to be a first claim upon the net profits of the working of the tramway.

Dividends how to be determined.

XXX. The amount of dividends to be paid to the shareholders in the said company shall be determined by the directors for the time being, subject to the approval of the shareholders present at the annual general meeting: Provided, however, that no dividend shall be paid whereby the capital stock shall be in any way reduced.

Directors to frame tariff of charges.

XXXI. So soon as it shall be made to appear that

the line of tramway is in a fit condition for traffic, the directors for the time being shall frame a tariff of charges for the conveyance of passengers and goods, and such tariff shall be published in the Government Gazette, for general information: Provided, always, that the rates so chargeable may from time to time be altered by the directors; and, further, that the directors shall be entitled to recover, by legal process, all such charges as shall be in force for the time being from the owners of goods, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, merchandise, articles, or things until the charges appertaining to the same shall have been duly paid.

XXXII. The right to and property in all and singular the earthworks, bridges, culverts, materials, rolling-stock, and everything appertaining to the said tramway constructed under this Act shall be vested in the board of directors for the time being.

Property of company vested in directors.

XXXIII. In any action or suit which may be brought by or against the said directors, in their capacity as such, it shall and may be lawful for such directors to sue or be sued by the style or description of "The Directors of the Cape Town and Green Point Tramway Company:" Provided, always, that no director or shareholder shall be deemed to be an incompetent witness in any suit or proceeding as aforesaid, by reason of his holding the office of director or of holding shares in the said company: And provided, also, that the said directors shall be repaid, out of the funds of the company, under the provisions of this Act, all costs and expenses which they shall incur by reason of bringing or defending any suit or action, unless such suit or action shall have arisen from their own gross negligence or wilful default.

Directors how to sue and be sued.

Competent as witnesses, and entitled to expenses of suit.

XXIV. The chairman and directors, for the time being, may receive, out of the clear profits of the company, such sum or sums of money, by way of remuneration for their trouble, as the majority of the shareholders shall determine at the annual general meeting.

Remuneration to chairman and directors.



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Capital may be increased to extend the tramway.
- XXXV. It shall be lawful for the said company, at any time hereafter, by a resolution duly passed by a majority of two-thirds of the shareholders present at a general or special meeting properly convened after notice given, as in manner hereinbefore provided, of the purpose of such meeting, to increase the capital of the said company by a sum not exceeding ten thousand pounds for the purpose of extending the said tramway in such manner as the said meeting shall decide.
- How additional capital may be raised.
- XXXVI. Such additional capital sum of ten thousand pounds shall be raised, either by creating and issuing additional shares of five pounds each or by increasing the value of the original shares, as the shareholders present at such meeting as last aforesaid shall decide.
- Liability of additional shareholders limited.
- XXXVII. No more than five pounds in all shall be due in respect of any additional share or any increase in the value of the said original shares, and the further future liability of any shareholder arising out of any extension of the said tramway shall be and hereby is limited, in case of such extension, to the payment of a sum not exceeding five pounds per additional share, or the amount of the increased value of the original share, as the case may be.
- Additional shares or increased value how to be paid.
- XXXVIII. The amount of the additional shares, or of the increased value of the original shares, shall be paid as in manner provided in the fifth section of this Act, and may be recovered or forfeited as in manner provided in the sixth and seventh sections of this Act.
- Duration and title of Act.
- XXXIX. This Act shall continue in force until the 1st day of July, 1882, and may be cited for all purposes as the "Cape Town and Green Point Tramway Company Act, 1861."

No. 34--1861.] AN ACT [August 14, 1861. No. 34--1861.

To Incorporate the Sea Point Water-works  
Company.

WHEREAS it is desirable and expedient, for the Preamble.  
better supply of water to the inhabitants of  
Sea Point and Green Point, that a company should  
be formed and incorporated for the purpose of laying  
a line of water-pipes from a certain stream running  
now below the Round House on the property of His  
Honour Sir William Hodges, Chief Justice, across  
the waste and pasture land of said property; thence  
across ground the property of the Cape Town  
Municipality or Her Majesty's Board of Ordnance;  
thence in a north-easterly direction across other  
waste land, the property of the Cape Town Muni-  
cipality; thence in a northerly direction across the  
lower part of the grazing land of the estate "Clif-  
ton," the property of J. D. Thomson, Esq.; thence  
across waste land, the property of the Cape Town  
Municipality; thence in a north-westerly direction  
across the grazing ground on the lower part of the  
farm "Botany Bay," the property of Thomas Wat-  
son, Esquire; thence across the arable land of His  
Honour Sir William Hodges to the reservoir to be  
constructed, as marked upon the diagram lodged in  
the Deeds Registry Office: And whereas a pro-  
visional contract has been entered into with the said  
Sir William Hodges, whereby he has consented to  
yield to the company such rights as he possesses in  
and over the stream, upon condition that a certain  
quantity and proportion of the said water therein  
shall belong to him and his assigns, and be placed  
by the company at his and their disposal from and  
out of the reservoirs or from and out of the mains  
of the said company, in the manner hereinafter  
provided: And whereas it has been made to appear  
from surveys and estimates duly made and prepared  
that the cost of laying the aforesaid line of water-  
pipes with its necessary adjuncts will not exceed  
two thousand two hundred pounds: And whereas  
it is deemed desirable that the liability of share-

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holders in the said company should be limited to the amount of their respective shares: Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Creation and style of company.

I. The several persons who are or shall become shareholders in the said company, their respective executors, administrators, successors, and assigns, shall be and are hereby united into one body corporate, under the name and title of the "Sea Point Waterworks Company," for the purpose of laying a

Direction of line of water-pipes.

line of water-pipes from a certain stream running now below the Round House on the property of His Honour Sir William Hodges, Chief Justice, across the waste or pasture land of said property; thence across ground the property of the Cape Town Municipality or Her Majesty's Board of Ordnance; thence in a north-easterly direction across other waste land, the property of the Cape Town Municipality; thence in a northerly direction across the lower part of the grazing land of the estate "Clifton," the property of J. D. Thomson, Esq.; thence across waste land the property of the Cape Town Municipality; thence in a north-westerly direction across the grazing ground on the lower part of the farm "Botany Bay," the property of Thomas Watson, Esquire; thence across the arable land of His Honour Sir William Hodges to the reservoir to be constructed as marked upon the diagram lodged in the Deeds Registry Office; and the company hereby incorporated by the name aforesaid shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued, implead and be impleaded, answer and be answered unto in any competent court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, and possessions, and also all other property, chattels, or effects whatsoever; and such lands or other property subject to any engagements affecting the same shall be vested in the company by its corporate name, and without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants or conveyances thereof.

II. The capital of the company shall be two thousand five hundred pounds, in five hundred shares of five pounds each, and such shares shall be numbered in arithmetical progression, beginning with number one, and each share shall be distinguished by its appropriate number.

No. 34—1861.  
Capital of company.

III. Subscription lists for shares in the said company shall be opened and headed as follows :—“ We, whose names are hereunder written, hereby agree with each other to become shareholders in the Sea Point Waterworks Company, incorporated by Act of Parliament, and to take each of us the number of shares set opposite our respective names ;” and every such list shall be signed by the shareholder himself or by his lawfully authorized attorney ; and all such lists shall be preserved by the directors of the said company ; and the shareholders signing such lists shall from that time be bound to each other for the due fulfilment of the several obligations by this Act imposed upon the shareholders in the said company, as fully and amply as if every shareholder had executed a trust-deed containing all and singular the provisions and stipulations of this Act.

Subscription lists for shares, and obligations of subscribers.

IV. No more than five pounds in all shall be due and payable in respect of any share in the said company, and the liability of any shareholder shall be and is hereby limited to the payment of that amount in instalments as hereinafter mentioned.

Liability of each shareholder limited.

V. The amount of the shares in the said company shall be paid in manner following, namely,—ten shillings per share in cash on subscribing, and the remaining four pounds ten shillings per share by instalments, not exceeding ten shillings per share each, which instalments it shall be lawful for the directors to call up upon giving notice to that effect of not less than one month in the Government Gazette and one or more of the local newspapers.

How shares to be paid up.

VI. So soon as three hundred and fifty shares shall have been subscribed for and the deposit of ten shillings paid per share, and no sooner, it shall be competent for the directors to commence the works contemplated in this Act, always, however, excepting the expenditure which may be incurred

When works may be commenced.

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Shareholder failing to pay instalment may be sued.

in procuring this Act of incorporation, and other necessary expenses in establishing the company.

VII. If at the time appointed for the payment of any call as aforesaid any shareholder shall fail to pay such call, it shall be lawful for the company to sue such shareholder for the amount thereof in any court having competent jurisdiction, and to recover the same, with interest at the rate of six per cent. per annum from the day on which such call shall have become due and payable.

Shares may be forfeited.

VIII. If any shareholder fail to pay any call payable as aforesaid within one month from the time appointed for the payment of such call, the directors may, at a meeting duly convened by a resolution in writing, declare such share or shares forfeited, whether the company shall have sued for the amount of such call or not; and the said directors may forthwith dispose of them to any other person or persons, and, if needful, issue fresh certificates of shares to the person or persons purchasing such forfeited shares.

Directors how to be elected, and who eligible.

IX. The general management of the affairs of the company shall be vested in five directors, who shall be elected by ballot at a general meeting of the shareholders duly convened for that purpose: Provided, always, that no person shall be competent to be a director who shall not possess in his own right ten shares in the stock of the company.

First directors of the company.

X. That Aaron de Pass, Carl Simon Poppe, Johan George Steytler, Johannes Leibbrandt, and Wilhelmus Johannes van de Ven shall be appointed the first directors of the said company, and shall so continue until other directors are appointed in their place, or they or any of them die, resign, or be removed, or become incapacitated as hereaftermentioned.

Proportion of votes to shares.

XI. At the meeting held for the election of directors or any other purpose connected with the affairs of the company, the shareholders present, either personally or by proxy, shall vote according to the following scale, namely:

The holder of five shares, one vote.

„ of not less than ten shares, two votes.

„ of not less than twenty shares and upwards, three votes, and no more.

XII. Any director becoming insolvent or otherwise incapacitated to act in that behalf, or being absent from the Colony for six months, or who shall cease to be the holder of ten shares as aforesaid shall become disqualified and his seat be declared vacant.

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What to disqualify director from retaining his seat.

XIII. In case the conduct of any director who shall be so elected shall at any time be such that his continuance in office would, in the opinion of at least one half of the shareholders holding not less than two hundred shares, be prejudicial to the interests of the company, and notice thereof shall have been given to the directors in writing by at least twenty-five shareholders holding two hundred shares, the directors shall thereupon call a general meeting of proprietors for the purpose of determining whether such director shall continue in office: Provided, always, that not less than twenty-one days' notice of such meeting and the purposes for which it is held shall be given in the Government Gazette and one or more local papers, in which case it shall be lawful for a majority of the proprietors at such meeting to remove such director from his office.

Director may be removed from office.

XIV. The whole of the directors shall go out of office annually, but shall be eligible for re-election: Provided, however, that if from any cause whatever no election should take place, the said directors shall remain in office until such time as other directors shall be appointed and consent to act.

Directors to be elected annually.

XV. The directors at their first meeting shall appoint a chairman from amongst themselves, who shall preside at all meetings of the directors; and in case of his absence, the directors present shall by a majority of votes elect a chairman for the meeting, such chairman to have a vote as a director, also to have a casting vote, if there be an equality of votes; and at all meetings of shareholders they shall make choice of a chairman from among their number, who shall preside and have a vote as a shareholder, and also a casting vote, if there be an equality of votes. Three directors shall form a quorum and be competent to perform all acts which the directors are empowered to do and perform.

Permanent chairman to be chosen. In his absence, temporary chairman.

Quorum.

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Annual meeting of shareholders.

XVI. The annual general meeting of shareholders shall be held either in Cape Town or at Green Point during the second week in July in each year, and a report shall be submitted to such meeting, setting forth the position and prospects of the company, together with an account of receipts and expenditure during the preceding year.

Special meetings.

XVII. In addition to the annual general meetings, general meetings of the company may be held for special purposes, upon a requisition in writing setting forth such purpose, signed by not less than twenty-five shareholders holding collectively not less than two hundred shares, and sent in to the chairman of the directors: Provided, however, that notice of such meetings, together with the purpose thereof, shall be published in the Government Gazette and one or more of the local papers at least twenty-one days previous; and provided, also, that no business except that described and set forth in the published notice shall be brought before any such meetings.

Auditors to be appointed.

XVIII. The accounts of the company shall be audited annually by two auditors not being directors, such auditors to be appointed by the shareholders at each annual general meeting: Provided, however, that no person shall be eligible to act as auditor unless he shall be the proprietor of at least ten shares in the capital stock of the company.

Directors may enter upon lands and appropriate waters.

XIX. It shall and may be lawful for the said directors of the said company, and they are hereby authorized, to enter upon and take possession of such water, lands, and roads, subject to the provisions and stipulations contained in this Act, as may be required for the laying of the water-pipes and the construction and maintaining of the said water-works, and for any other necessary purpose relating to the execution of this Act, and also to enter upon all lands, and there to dig for, excavate, and carry away all such materials as may be required for the construction and maintaining of the said water-works: And provided, further, that the proprietors of the said water, lands, or materials so taken, used, and carried away shall be paid by the directors a reasonable sum by way of recompense for

Owners to be compensated.

the value of such water, land, or materials, or for any damage which may be done by reason thereof: And provided, also, that in the event of the directors of the said company and any such proprietor not being able to agree upon the sum to be paid by the said directors and accepted by such proprietor, then the said directors shall cause to be served upon such proprietor a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor to state, in writing, to the said directors, or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he or they are willing to accept the sum therein mentioned or not; and further stating that in case he or they shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said directors shall call upon such proprietor within such time as aforesaid, to refer to arbitration the amount of recompense or compensation to be paid to him, and for that purpose to transmit to the said directors, or the person so appointed by them, the name of some person whom he or they shall select to be an arbitrator upon such arbitration, and the said directors or other person as aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator, and the said directors shall cause a deed of submission to be prepared, which shall be signed by a quorum of the said directors or the person so appointed and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the said arbitrators or any two of them shall be authorized to fix and determine the amount of compensation to be paid as aforesaid, according to what they shall consider fair and reasonable, and the award of the said arbitrators or any two of them shall be made a rule of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter; and in case such person as

Arbitration.



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If party claiming recompense to proceed or award, decline to arbitration or reject

aforsaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforsaid or to sign the said deed of submission, then it shall be lawful for the said directors and they are hereby authorized to lodge in some joint-stock bank in Cape Town the sum of money offered by them as aforsaid, for or on account and at the risk of such person or persons as aforsaid, who shall at all times be entitled to draw the same out of the said bank as his or their absolute property; and the said directors upon so lodging the said sum shall be authorized and entitled to take and use the water, land, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid or had been awarded by the arbitrators, and as if all acts by law required for vesting in the said company a sufficient title to the use of and property in the land or materials aforsaid had been duly done and performed.

Contract with Sir William Hodges confirmed.

XX. And whereas by the aforsaid provisional contract the company have agreed to supply the said Sir William Hodges and his assigns with two thousand gallons of water per diem, and if the daily supply brought at any time to the reservoir shall exceed twenty thousand gallons per diem, then one-tenth part of the whole quantity so brought: Be it enacted that the said contract is hereby confirmed, and the said company shall and are hereby required at all times hereafter to supply, free from all charge, the said quantity or proportion of water, as the case may be, to the said Sir William Hodges, or to the person or persons for the time being claiming under him or his assigns, any portion or portions of the before-mentioned daily supply; the same water and portions thereof respectively to be supplied by the company from and out of the said reservoir, or at the option of the party entitled to any water from and out of the mains of the company, on the present estate of Sir William Hodges at Sea Point: Provided that the said Sir William Hodges and the person or persons so claiming to be supplied with the said water or any portion or portions thereof

Supply of water to Sir William Hodges' estate secured.

shall bear the expense of the various water-leadings from and out of the said reservoir or mains respectively: And provided, also, that the said Sir William Hodges and such person or persons as aforesaid shall be subject to all reasonable rules and regulations which the company may make for supplying the said water in a convenient and proper manner; and in case any difference shall arise between the said Sir William Hodges or any such person or persons as aforesaid and the said company as to the reasonableness of any such rule or regulation, or as to any other matter relating to the water hereby reserved as aforesaid, the same shall be decided by three arbitrators, to be appointed in the manner provided by section nineteen; and the award shall be made a rule of the Supreme Court, and shall be binding and conclusive between the parties.

XXI. The said Sir William Hodges and every person entitled to take any portion or portions of the said water as in the foregoing section is mentioned shall at all reasonable times have free access to the reservoirs of the company for the purpose of ascertaining the quantity of water daily delivered therein.

Certain persons to have access to reservoirs.

XXII. The company shall be at liberty to build and maintain a reservoir at the point marked A on the plan lodged in the Deeds Registry Office, and a reservoir at the point marked H on the plan lodged in the Deeds Registry Office. And the said reservoir (H) shall be surrounded by a wall and railing of not less than six feet in height, which enclosure shall hereafter be maintained and repaired by the company: Provided, always, that with the consent of the said Sir William Hodges or his assigns the sites of the said reservoirs may be changed.

Company may build and maintain certain reservoirs.

XXIII. At any general or special meeting of the shareholders, no shareholder shall be entitled to vote in respect of any share or shares until he shall have been registered as the proprietor thereof for a period of at least three months previous to such meeting.

Shareholders to be registered for three months before they can vote.

XXIV. Any shareholder residing beyond three miles of the town or place where any meetings of the company shall be held shall be allowed to vote

Proxy.

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by proxy, and the proxy of such shareholder shall be in effect as follows :

I, A. B., of ———, one of the shareholders of the Sea Point Water-works Company, do hereby authorize and appoint C. D., of ———, to be my proxy at all meetings of the shareholders of the said company, and to vote for me thereat upon all matters and things proposed relative to the concerns of the company, unless I shall be personally present.

Witness my hand, at ——— this ——— day of ——— 18—.

A. B.

Votes how to be taken at meeting of shareholders.

XXV. All resolutions of shareholders at meetings shall be determined by a show of hands, but any shareholders feeling dissatisfied with such decision may demand a ballot, which ballot shall forthwith be proceeded with, the votes being given in writing and reckoned according to the rule in that behalf hereinbefore provided ; and in the event of votes being equally divided the chairman of the meeting shall decide the question by his casting vote.

Register of shareholders to be open for inspection.

XXVI. A full and complete register of the shareholders in the company shall be open for the inspection of the public at all reasonable times on the payment of a fee of one shilling for each inspection ; and further, any shareholder may require from the secretary of the company for the time being, a certificate of the shares held by such shareholder in the company, which certificate shall at all times be deemed sufficient evidence of the interest held in the company by the respective parties to whom the same shall be granted ; and the certificate so to be granted shall be of the following form, to wit :

Certificate of Share in the Sea Point Water-works Company.

Certificate of share.

This is to certify that A. B., of ———, is proprietor of ——— shares in the Sea Point Water-works Company, incorporated by Act of the Colonial Legislature, subject to the provisions and regulations of the said company.

Given under the common seal of the company, this            No. 34—1861.  
— day of — 18—.

XXVII. Any shareholder may transfer his share or shares by endorsement upon each certificate, specifying the person to whom such share is transferred, but no such transfer shall have any force or effect as regards the affairs of the company until a registration of the same shall have been duly made in the books of the company, three directors shall have certified their consent in writing to such transfer, and until the assignee or transferee shall either in person or by attorney acknowledge his proprietorship, in substance as follows :

Transfers of shares how to be made.

I, C. D., do hereby acknowledge to have received by transfer from E. F. — shares, No. — in the Sea Point Water-works Company, subject to the conditions, regulations, and provisions of the Act of incorporation of the said company.

XXVIII. Any shareholder transferring his share or shares as aforesaid shall be wholly released and discharged from all liability in respect thereof from date of registration, and the person to whom the same is transferred shall be subject to all and singular the same liabilities in respect of such share or shares as if such person had been the original shareholder.

Liability transferred with share.

XXIX. The board of directors of the company is hereby empowered to enter into contracts for the supply of work or materials necessary for the construction and working of the said water-works, and may also appoint and employ such officers and workmen as it may deem necessary for carrying out the provisions of this Act, and also to remove or dismiss any such persons and employ others in their stead ; and to fix the duties and salaries of all such persons, and generally all matters and things necessary for the due and effective management of the affairs of the company.

Directors may enter into contracts, appoint officers and dismiss them.

XXX. So soon as the whole of the capital of the company shall have been subscribed, and not less

Directors when empowered to borrow money.

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than one half thereof shall have been paid up and expended, it shall be lawful for the directors from time to time, when duly authorized thereto by the shareholders at a special meeting convened for the purpose, to borrow money on security of the works and the future calls on the shareholders and of the expected earnings of the water supplies, the interest on such loan to be a first claim upon the net profits of the working of the said water-works.

Dividends how to be determined.

XXXI. The amount of dividends to be paid to the shareholders in the said company shall be determined by the directors for the time being, subject to the approval of the shareholders present at the annual general meeting: Provided, however, that no dividend shall be paid whereby the capital stock shall be in any way reduced.

Property of company vested in directors.

XXXII. The right to and property in all and singular the materials, stock, and everything appertaining to the said water-works constructed under this Act shall be vested in the board of directors for the time being.

Directors how to sue and be sued.

XXXIII. In any action or suit which may be brought by or against the said directors in their capacity as such, it shall and may be lawful for such directors to sue or be sued by the style or description of "The Directors of the Sea Point Water-works Company:" Provided, always, that no director or shareholder shall be deemed to be an incompetent witness in any suit or proceeding as aforesaid by reason of his holding the office of director or of holding shares in the said company: And provided, also, that the said directors shall be repaid out of the funds of the company under the provisions of this Act all costs and expenses which they shall incur by reason of bringing or defending any suit or action, unless such suit or action shall have arisen from their own gross negligence or wilful default.

Competent as witnesses and entitled to expenses.

Remuneration to chairman and directors.

XXXIV. The chairman and directors for the time being may receive out of the clear profits of the company such sum or sums of money by way of remuneration for their trouble as the majority of the shareholders shall determine at the annual general meeting.

XXXV. That the directors shall and may make such rules, orders, regulations, and by-laws for carrying on the business and management of the said company as to them shall seem just and expedient: Provided the same be not repugnant to law and to the provisions of this Act, and shall be consented to by the majority present at a general meeting of the shareholders convened upon fourteen days' notice in the Government Gazette and one other local newspaper, to consider such rules, orders, regulations, and by-laws.

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Directors to make rules for management of company's business.

XXXVI. That should it at any future time be deemed expedient for the extension of the operations of the said company to increase the capital stock of the company it shall be competent for a majority of five-sixths of the then existing shareholders, at a general meeting convened after notice given for the purpose, to create and issue such additional shares or by increasing the value of the original shares as shall be considered by them necessary to carry out such extension.

Additional shares when to be issued.

XXXVII. No more than five pounds in all shall be due in respect of any additional share or any increase in the value of the said original shares, and the further future liability of any shareholder arising out of any extension of the said water-works shall be and hereby is limited in case of such extension, to the payment of a sum not exceeding five pounds per additional share, or the amount of the increased value of the original share as the case may be.

Liability of additional shareholders limited.

XXXVIII. The amount of the additional shares or of the increased value of the original shares shall be paid as in manner provided in the fifth section of this Act, and may be recovered or forfeited as in manner provided in the sixth and seventh sections of this Act.

Sixth and seventh sections to apply to additional shares.

XXXIX. This Act may be cited for all purposes as the "Sea Point Water-works Company Act, 1861."

Short title.

No. 35—1861.

No. 35—1861.] AN ACT [August 14, 1861.

To Incorporate the Wynberg Railway Company.

Preamble.

WHEREAS it is desirable and expedient that a company should be formed and incorporated for the purpose of constructing, maintaining, and working a line of railway from Cape Town, by way of Mowbray, Rondebosch, and Claremont, to Plumstead, at Wynberg: And whereas certain steps have already been taken by the appointment of a provisional committee and the subscription of a fund considered sufficient to defray preliminary expenses toward the promotion of this object: And whereas it has been made to appear by plans, sections, and estimates now deposited in the Deeds Registry Office, certified by the Speaker of the House of Assembly, that the cost of constructing such railway will not exceed seventy thousand pounds, and that there is reason to believe that the traffic at present existing along the proposed route will at a reasonable rate of charge afford a fair return for the capital to be invested: And whereas it is deemed desirable that the liability of shareholders in the said company should be limited to the amount of their respective shares: Be it therefore enacted by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Incorporation and  
style of company.

I. The several persons who are or shall become shareholders in the said company, their respective executors, administrators, successors, and assigns, shall be and are hereby united into one body corporate, under the name and title of the "Wynberg Railway Company," for the purpose of constructing a railroad from Cape Town, by way of Mowbray, Rondebosch, and Claremont, to Plumstead, at Wynberg; and the company hereby incorporated by the name aforesaid shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued, implead and be impleaded, answer and be answered unto in any

competent court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, and possessions, and also all other property, chattels, or effects whatsoever; and such lands or other property, subject to any engagements affecting the same, shall be vested in the company by its corporate name, and without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.

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II. The capital of the company shall be one hundred thousand pounds, in ten thousand shares of ten pounds each, and such shares shall be numbered in arithmetical progression, beginning with number one, and each share shall be distinguished by its appropriate number.

Amount of capital and how constituted.

III. Subscription lists for shares in the said company shall be opened and headed as follows: "We, whose names are hereunder written, hereby agree with each other to become shareholders in the Wynberg Railway Company incorporated by Act of Parliament, and to take each of us the number of shares set opposite our respective names;" and every such list shall be signed by the shareholder himself or by his lawfully authorized attorney; and all such lists shall be preserved by the directors of the said company, and the shareholders signing such lists shall from that time be bound to each other for the due fulfilment of the several obligations by this Act imposed upon the shareholders in the said company, as fully and amply as if every shareholder had executed a trust deed containing all and singular the provisions and stipulations of this Act.

Subscription list for shares to be opened and obligations of parties signing them.

IV. No more than ten pounds in all shall be due or payable in respect of any share in the said company, and the liability of any shareholder shall be and is hereby limited to the payment of that amount in instalments as hereinafter mentioned.

Liability of shareholder limited to amount of share.

V. The amount of the shares in the said company shall be paid in manner following, namely,—two shillings per share in cash on subscribing and the remaining nine pounds eighteen shillings per share by instalments not exceeding one pound per share each, which instalments it shall be lawful for the

How shares to be paid up.



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directors to call up upon giving a notice to that effect of not less than one month in the Government Gazette and one or more local newspapers.

Shareholders failing to pay calls may be sued.

VI. If at the time appointed for the payment of any call as aforesaid any shareholder shall fail to pay such call it shall be lawful for the company to sue such shareholder for the amount thereof in any court having competent jurisdiction, and to recover the same with interest at the rate of six per cent. per annum from the day on which such call shall have become due and payable.

Shares may be forfeited.

VII. If any shareholder fail to pay any call payable as aforesaid within one month from the time appointed for the payment of such call the directors may, at a meeting duly convened by a resolution in writing signed by not less than five of their number, declare such share or shares forfeited, whether the company shall have sued for the amount of such call or not; and the said directors may forthwith dispose of them to any other person or persons and if needful issue fresh certificates of share to the person or persons purchasing such forfeited shares.

Directors how and when to be elected and how long to hold office.

VIII. The general management of the affairs of the company shall be vested in nine directors, who shall be elected by a majority of the shareholders present at a general meeting of the shareholders to be held in Cape Town upon the seventh day of October now next ensuing, at eleven o'clock in the forenoon, and of which meeting notice shall be given not less than fourteen days previously by advertisement in the Government Gazette of this Colony by the secretary of the aforesaid provisional committee; and the directors then elected shall continue to hold their office until the meeting of shareholders to be held on the second Monday of February in the year one thousand eight hundred and sixty-two: Provided, always, that no person shall be competent to be a director of the said company who shall not possess in his own right thirty shares in the stock of the said company.

Votes proportioned to shares.

IX. At the meetings held for the election of directors or any other purpose connected with the affairs of the company the shareholders present,

either personally or by proxy, shall vote according to the following scale, namely :

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- The holder of not less than five shares, one vote.  
 „ of not less than ten shares, two votes.  
 „ of not less than twenty shares, three votes.  
 „ of not less than thirty-five shares, four votes.  
 „ of not less than fifty shares, five votes.  
 „ of not less than one hundred shares and upwards, seven votes and no more.

X. Any director becoming insolvent or otherwise incapacitated to act in that behalf, or being absent from the Colony for six months, or who shall cease to be the holder of thirty shares as aforesaid, shall become disqualified and his seat be declared vacant.

When director disqualified from retaining his seat.

XI. In case the conduct of any director who shall be so elected shall at any time be such that his continuance in office would in the opinion of at least twenty shareholders holding not less than two hundred shares be prejudicial to the interests of the company, and notice thereof shall have been given to the directors in writing, the directors shall thereupon call a general meeting of proprietors for the purpose of determining whether such director shall continue in office: Provided, always, that no less than twenty-one days' notice of such meeting and the purpose for which it is held shall be given in the Government Gazette and one or more local papers, in which case it shall be lawful for a majority of the proprietors at such meeting to remove such director from his office.

Director may be removed from office.

XII. On the second Monday in February in the year one thousand eight hundred and sixty-two the nine directors who shall be chosen at the meeting to be held upon the seventh day of October now next ensuing, as provided by the eighth section of this Act, shall go out of office, and nine directors shall be elected in their stead, and in like manner the whole of the directors shall go out of office annually and shall be succeeded by nine directors to be then

Directors renewable annually.

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elected in their stead: Provided, however, that if from any cause whatever no election shall on such day in any year take place the directors then in office shall remain until other directors shall be elected and consent to act; and provided that the directors who shall go out of office shall be eligible for re-election.

Chairman to be chosen.

XIII. The directors at their first meeting shall appoint a chairman from amongst themselves who shall preside at all meetings of the directors; and in case of his absence the directors present shall by a majority of votes elect a chairman for the meeting, such chairman to have a vote as a director, also to have a casting vote if there be an equality of votes; and at all meetings of shareholders they shall make choice of a chairman from among their number, who shall preside and have a vote as a shareholder, and also a casting vote if there be an equality of votes. Four directors shall form a quorum and be competent to perform all acts which the directors are empowered to do and perform.

Quorum.

Annual meeting of shareholders.

XIV. The annual general meeting of shareholders shall be held in Cape Town on the second Monday in February in each year, and a report shall be submitted to such meeting, setting forth the position and prospects of the company, together with an account of receipts and expenditure during the preceding year.

Special meetings.

XV. In addition to the annual general meetings general meetings of the company may be held for special purposes, upon a requisition in writing setting forth such purpose, signed by not less than twenty shareholders holding collectively not less than one hundred shares, and sent in to the chairman of the directors: Provided, however, that notice of such meetings, together with the purpose thereof, shall be published in the Government Gazette and one or more of the local papers at least twenty-one days previous; and provided, also, that no business except that described and set forth in the published notice shall be brought before any such meetings.

Auditors to be appointed.

XVI. The accounts of the company shall be audited annually by two auditors not being directors,

such auditors to be appointed by the shareholders at each annual general meeting: Provided, however, that no person shall be eligible to act as an auditor unless he shall be the proprietor of at least ten shares in the capital stock of the company.

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XVII. It shall and may be lawful for the said directors of the said company to enter upon and to take possession of so much of any land belonging to the Queen's Most Excellent Majesty as shall be required for the construction and maintaining of the said railway or for any other purposes relating to the execution of this Act, and also to enter upon all lands of Her said Majesty lying convenient to the said railway, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said railway.

Public lands may be entered upon for the purpose of the railway.

XVIII. It shall and may be lawful for the said directors of the said company and they are hereby authorized to enter upon and take possession of such lands within the limits of deviation as may be required for the construction and maintaining of the said railway: Provided that no brick-field, garden, vineyard, plantation, avenue, orchard, or ground ornamentally planted shall be used for the purpose of depositing or excavating soil without the consent of the owner thereof; and provided that the extent of land taken for the said railway shall not exceed the width of thirty feet for the formation line and sufficient additional width required for the slopes, drainage, fencing, and stations and approach roads thereto; provided that in doing so as little damage as possible shall be done to such lands as aforesaid: And provided, further, that the proprietors of the said lands or materials so used and carried away shall be paid by the directors the just value by way of recompense for such land or materials or for any damage which may be done by reason thereof: and upon payment or satisfaction of such recompense the said land and materials shall be held and taken to be vested in the said company as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed by the respective proprietors or

Private lands may be taken possession of.

Consent of proprietors in certain cases.

Proprietors to be compensated.

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parties interested therein in favour of the said company according to the law and custom of this Colony, or as if all acts by law required for vesting in the said company a sufficient title thereto had been duly done and performed: And provided, also, that in the event of the directors of the said company and any such proprietor not being able to agree upon the sum to be paid by the said directors and accepted by such proprietor, then the said directors shall cause to be served upon such proprietor a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor to state in writing to the said directors or to some person by them appointed, within a certain limited time to be specified in the said notice, whether he or they are willing to accept the sum therein mentioned or not; and further stating that in case he or they shall refuse to accept the sum offered or shall neglect to reply to the said notice, then the said directors shall call upon such proprietor within such time as aforesaid to refer to arbitration the amount of recompense or compensation to be paid to him, and for that purpose to transmit to the said directors or the person so appointed by them the name of some person whom he or they shall select to be an arbitrator upon such arbitration, and the said directors or other person as aforesaid upon receiving the name of the person so selected shall nominate a second arbitrator, and the said arbitrators shall choose a third arbitrator, and the said directors shall cause a deed of submission to be prepared, which shall be signed by a quorum of the said directors or the person so appointed and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators; and the said arbitrators or any two of them shall be authorized to fix and determine the amount of compensation to be paid as aforesaid according to what they shall consider fair and reasonable, and the award of the said arbitrators or any two of them shall be made a rule of the Supreme Court, and shall be binding and conclusive, and may be pleaded

Arbitration.

in bar of any action or proceeding at law brought for or on account of the subject-matter. And in case such person as aforesaid shall refuse to accept the sum offered or to submit to arbitration, the amount of such recompense or compensation shall be inquired into and assessed by the majority of a special jury of eleven persons in the following manner, namely: On a day fixed, and on three days' previous notice to be given by the directors of the company to the owner, both parties shall appear personally or by their attorneys or counsel before the High Sheriff, and in his presence then and there each of the said parties shall elect out of the jury-list the names of eleven persons, making together twenty-two, whereof record shall be made by the Sheriff, signed by himself and parties, and delivered to the magistrate when applied for; and thereafter, on the application of the said directors of the company, the magistrate shall fix a day for the hearing and assessment by the said jury, and summon the said twenty-two jurors to attend in his court: Provided that the said day of hearing be so fixed that ten full days may be given by the directors aforesaid to the other party. On the day fixed as aforesaid the said parties shall appear with their attorneys, counsel, and witnesses if they have any, and in their presence, the magistrate shall, out of a box containing the aforesaid twenty-two names, draw the names of eleven jurors, and the first eleven names so drawn out shall form the court of inquiry and assessment, and in the said court the magistrate shall preside, administer the oath to the jurors that they shall truly and faithfully inquire of and assess such value, hire, or compensation, and also the oath to the witnesses, if any, and receive and record the verdict of the jury. And the parties appearing before the said jury shall be entitled to plead and examine witnesses, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law. The said jury shall be entitled, either before or after hearing of the parties, to inspect the property sought to be taken, and in the consideration of their verdict

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If arbitration be declined or fail, special jury to be elected.

Proceedings of Jury.

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Verdict to be final.

How if person claiming compensation refuse award of jury.

Transfer duty remitted.

shall have regard not only to the value of the property to be purchased or taken as aforesaid but also to the damage if any to be sustained by the owner in consequence thereof or by reason of the severing of the land taken from the other lands of such owner, or otherwise injuriously affecting the property of the owner by the exercise of the powers of this Act: And if the jury, after inquiry aforesaid, shall assess a greater sum for the value, hire, or compensation as aforesaid than the sum previously offered by the directors aforesaid, all the costs of such inquiry shall be borne by the said directors, but if the said jury shall assess the same for the sum previously offered or less, all the costs of the said inquiry shall be defrayed by the owner. And the verdict of the said jury, which shall be final, shall be signed by at least a majority of said jurors, and delivered to the magistrate in open court, and be made of record by the magistrate, under his signature, and shall be good and sufficient evidence in all courts. And in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrator as aforesaid or to sign the said deed of submission, or shall neglect on a day fixed as aforesaid to appear before the High Sheriff for the purpose of electing the jurors as aforesaid, then it shall be lawful for the said directors and they are hereby authorized to lodge in some joint-stock bank in Cape Town the sum of money offered by them as aforesaid for or on account and at the risk of such person or persons as aforesaid who shall at all times be entitled to draw the same out of the said bank as his or their absolute property, and the said directors upon so lodging the said sum shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid or had been awarded by the arbitrators and as if all acts by law required for vesting in the said company a sufficient title to the use of property in the land or materials aforesaid had been duly done and performed: Provided that no transfer duty shall be payable upon any purchase or other transaction under this section.

XIX. No party shall at any time be required to sell to the directors aforesaid any part of any house or other building or manufactory if such party be willing and able to sell the whole thereof.

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Owners of buildings not compelled to part with them.

XX. Should it be necessary to make any cuttings or form any embankment in the vicinity of any house or other building so as injuriously to affect such house or other building, full and fair compensation shall be given to the proprietors of such house or other building, the same to be assessed in the manner directed by section eighteen.

Damages by cuttings or embankments.

XXI. Whenever any interruption to a carriage road shall take place the directors shall cause proper approaches to be made before the road or access to any house be so interrupted, under a penalty of five pounds for every day such approaches shall not have been made, and the slope of any carriage road shall not be more than one foot in twenty feet.

Interruption of carriage roads.

XXII. The proposed line of railway shall be properly fenced off where required by the proprietors of adjoining lands as soon as the works are proceeded with on such portion of the line.

Railway to be fenced in.

XXIII. That the directors of the said company shall be bound and obliged to make and keep in repair so many convenient gates, bridges, arches, culverts, and passages, over, under, or by the side of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the said railway, and such works shall be made forthwith after that part of the railway passing over such land shall have been laid out or formed or during the formation thereof.

Company to make necessary provision at crossings.

XXIV. It shall be the duty of the directors within twelve months after the passing of this Act to cause the line where the railway is to cross any land to be definitely pointed out and marked by stakes driven in the ground, and no deviation therefrom shall take place except with the concurrence of the landed proprietor or proprietors.

Line to be staked out within twelve months.

XXV. That the directors of the said company shall be bound and are hereby required to finish and complete the said railway within three years reckoned from the date of the first commencement of the

Term for completing railway.



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works thereof, so that the said railway may be opened for the public conveyance of passengers and goods: Provided that the said company shall be bound to commence the said railway not later than three years from and after the taking effect of this Act; failing which, all and singular the powers and authorities conferred by this Act shall cease and determine.

Damage by sparks from locomotives.

XXVI. All loss or damage occasioned to plantations or houses arising from fires caused through negligence of the company by sparks from locomotives shall be paid for by the company.

Certificate of engineer before railway is opened.

XXVII. The railway shall not be opened for traffic until the certificate of the Colonial Engineer or other officer appointed by the Government shall have been obtained, at the expense of the company, that the same is sufficiently completed for the safe conveyance of passengers.

Shareholders to be registered for three months before they can vote.

XXVIII. At any general or special meeting of the shareholders, no shareholder shall be entitled to vote in respect of any share or shares, until he shall have been registered as the proprietor thereof for a period of at least three months previous to such meeting.

Proxies.

XXIX. No shareholder residing within twenty miles of the town where any meetings of the company shall be held (except females holding shares in their own right and persons unable from illness to attend) shall be allowed to vote by proxy, and the proxy of such females or shareholders suffering from illness or being resident beyond twenty miles of the place of meeting shall be in effect as follows:

I, A. B., of ———, one of the shareholders of the Wynberg Railway Company, do hereby authorize and appoint C. D., of ———, to be my proxy at all meetings of the shareholders of the said company, and to vote for me thereat upon all matters and things proposed relative to the concerns of the company, unless I shall be personally present.

Witness my hand, at ——— this ——— day of ——— 18—.

A. B.

XXX. All resolutions of shareholders at meetings shall be determined by a show of hands, but any shareholder feeling dissatisfied with such decision may demand a ballot, which ballot shall forthwith be proceeded with, the votes being given in writing, and reckoned according to the rule in that behalf hereinbefore provided; and in the event of votes being equally divided the chairman of the meeting shall decide the question by his casting vote.

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Resolutions at meetings how to be determined.

XXXI. A full and complete register of the shareholders in the company shall be open for the inspection of the public at all reasonable times on the payment of a fee of one shilling for each inspection; and, further, any shareholder may require from the secretary of the company for the time being a certificate of the shares held by such shareholders in the company, which certificate shall at all times be deemed sufficient evidence of the interest in the company by the respective parties to whom the same shall be granted; and the certificate so to be granted shall be of the following form; to wit:

Register of shareholders to be open for inspection.

Certificate of Share in the Wynberg Railway Company. Certificate of share.

This is to certify that A. B., of ———, is proprietor of ——— shares in the Wynberg Railway Company, incorporated by Act of the Colonial Legislature, subject to the provisions and regulations of the said company.

Given under the common seal of the company,  
this ——— day of ——— 18—.

XXXII. Any shareholder may transfer his share or shares by endorsement upon each certificate, specifying the person to whom such share is transferred, but no such transfer shall have any force or effect as regards the affairs of the company until a registration of the same shall have been duly made in the books of the company, three directors shall have certified their consent in writing to such transfer, and until the assignee or transferee shall, either in person or by attorney, acknowledge his proprietorship in substance as follows:

Transfer of share how to be made.

No. 35—1861.

I, C. D., do hereby acknowledge to have received by transfer from E. F.———shares, No.——— in the Wynberg Railway Company, subject to the conditions, regulations, and provisions of the Act of incorporation of the said company.

Liability transferred with share.

XXXIII. Any shareholder transferring his share or shares as aforesaid shall be wholly released and discharged from all liability in respect thereof from date of registration, and the person to whom the same is transferred shall be subject to all and singular the same liabilities in respect of such share or shares as if such person had been the original shareholder.

Directors may enter into contracts, appoint officers and remove them.

XXXIV. The board of directors of the company are hereby empowered to enter into contracts for the supply of work or materials necessary for the construction, maintaining, and working of the said railway, and may also appoint and employ engineers, overseers, masons, carpenters, excavators, or such other workmen as they may deem necessary for carrying out the provisions of this Act, and also to remove or dismiss any such person and employ others in their stead, and to fix the duties and salaries of all such persons.

Directors when empowered to borrow money.

XXXV. So soon as the whole of the capital of the company shall have been subscribed and not less than one half thereof shall have been paid up and expended, it shall be lawful for the directors from time to time, when duly authorized thereto by the shareholders at a special meeting convened for the purpose, to borrow money on security of the undertaking and the future calls on the shareholders and of the expected earnings of the line, the interest on such loan to be a first claim upon the net profits of the working of the railway.

Dividends how to be determined.

XXXVI. The amount of dividends to be paid to the shareholders in the said company shall be determined by the directors for the time being, subject to the approval of the shareholders present at the annual general meeting: Provided, however, that no dividend shall be paid whereby the capital stock shall be in any way reduced.

XXXVII. So soon as it shall be made to appear that the line of railway is in a fit condition for traffic, the directors for the time being shall frame a tariff of charges for the conveyance of passengers and goods, and such tariff shall be published in the Government Gazette for general information: Provided, always, that the rate so chargeable may from time to time be altered by the directors: and, further, that the directors shall be entitled to recover by legal process all such charges as shall be in force for the time being from the owners of goods, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, merchandise, articles, or things until the charges appertaining to the same shall have been duly paid.

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Directors to frame  
tariff of charges.

XXXVIII. The right to and property in all and singular the earthworks, bridges, culverts, permanent way, materials, rolling stock, and everything appertaining to the said railway constructed under this Act shall be vested in the board of directors for the time being.

Property of company  
vested in directors.

XXXIX. The company shall have the right to erect and maintain a line of electric telegraph on the site of the said railway, and may charge reasonable rates to the public for transmission of messages by means of the same.

Company to erect  
telegraph.

XL. In any action or suit which may be brought by or against the said directors in their capacity as such it shall and may be lawful for such directors to sue or be sued by the style or description of "The Directors of the Wynberg Railway Company:" Provided, always, that no director or shareholder shall be deemed to be an incompetent witness in any suit or proceeding, as aforesaid, by reason of his holding the office of director or of holding shares in the said company: And provided, also, that the said directors shall be repaid out of the funds of the company, under the provisions of this Act, all costs and expenses which they shall incur by reason of bringing or defending any suit or action, unless such suit or action shall have arisen from their own gross negligence or wilful default.

Directors how to sue  
and be sued.

Expenses of law suits.

No. 35—1861.

Junction with Wellington railway.

XLI. Whereas it is stipulated by the twenty-first section of the second schedule annexed to the contract executed between the Colonial Government and the Cape Town Railway and Dock Company that the Colonial Government shall have the right of forming branch lines to communicate with the Cape Town and Wellington Railway, it is hereby declared and provided that the Wynberg Railway Company shall have the right of forming a junction with the said Cape Town and Wellington Railway at the spot where the said Wynberg Railway shall join the said Cape Town and Wellington Railway, and that the provisions of the said twenty-first section and the sixth section of the said schedule shall be applicable to the provisions of this Act in like manner as if the said Wynberg line had been a branch line formed by Government.

Limits of deviation.

XLII. It shall be lawful for the company to deviate from the line delineated on the said plan, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the plans in the preamble of this Act mentioned.

Remuneration to chairman and directors.

XLIII. The chairman and directors for the time being shall receive out of the clear profits of the company such sum or sums of money by way of remuneration for their trouble as the majority of the shareholders shall determine at the annual general meeting.

No. 36—1861.] AN ACT [August 14, 1861.

For the Naturalization of PHŒBUS CARO.

Preamble.

WHEREAS Phœbus Caro, of Graaff-Reinet, in this Colony, general trader, an alien of good name and fame, and domiciled in this Colony, is desirous of 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. 36—1861.

I. When and as soon as the said Phœbus Caro 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 Phœbus Caro, 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 to be taken.

II. The resident magistrate or justice of the peace before whom the said Phœbus Caro 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.

To be filed in Supreme Court and notice thereof gazetted.

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

Act when to commence.

No. 37—1861.] AN ACT [August 14, 1861.

For Facilitating the Naturalization of Aliens.

WHEREAS it is expedient that the laws now in force affecting aliens should be amended and extended, and also that the Governor of this Colony for the time being should be authorized to grant to aliens letters of naturalization under such regulations and with such restrictions and exceptions as are hereinafter provided : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

Preamble.

I. So much of the tenth section of certain ordinance forming the schedule to the Order in Council of the

Repugnant laws repealed.

No. 37—1861.

11th March, 1853, which ordinance is commonly called the "Constitution Ordinance," together with so much of any other section therein contained and of any other law or ordinance heretofore in force in this Colony as be may repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed.

Governor may grant letters of naturalization to certain persons.

II. The Governor of this Colony is hereby authorized, and empowered, if he shall think fit, to grant under the public seal of the Colony letters of naturalization in this colony to any alien who shall have attained the full age of twenty-one years, and who shall be of good character and able to read and understand one or more of the languages of Europe, and to write his name, and shall have presented a memorial to the said Governor praying to be naturalized.

Residence of five years.

III. No alien shall (except as in the next succeeding section is excepted) be capable of receiving letters of naturalization unless he shall have been a resident within this Colony during the five years immediately preceding the presentation of his memorial praying to be naturalized.

When residents under five years may be naturalized.

IV. Any alien who shall be married to a natural-born subject of Her Majesty the Queen, or who shall be the owner of landed property within this Colony, and registered in his name, of not less a value than three hundred pounds over and above all special conventional mortgages affecting the same, shall be capable of obtaining letters of naturalization, although he shall not have resided in this Colony for the five years next preceding the presentation of the memorial aforesaid.

Who may not receive letters of naturalization.

V. No letters of naturalization shall be granted to any alien who shall be an uncertificated insolvent, or of unsound mind, or who shall have been convicted and sentenced for treason, murder, rape, theft, fraud, perjury, forgery, or any other serious criminal act.

Memorial for letters of naturalization to state certain matters.

VI. Every memorial for letters of naturalization by any alien as aforesaid shall state his birth-place, age, profession, trade or other occupation, and place of residence and the duration thereof in this Colony, and all other the grounds on which he seeks to obtain

letters of naturalization as aforesaid, supported by annexed affidavits or other documents for proving the truth of the allegations contained in such memorial.

No. 37—1861.

VII. When and as soon as such letters of naturalization shall have been obtained by any alien he shall be bound to take the oath of allegiance to Her Majesty the Queen, and which oath any judge of the Supreme Court, resident magistrate, or justice of the peace within this Colony is hereby authorized to administer; and upon taking such oath he 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 to be taken and by whom to be administered.

VIII. The resident magistrate or justice of the peace before whom any oath of allegiance in the terms or by virtue of the provisions of this Act is taken, shall forthwith transmit such oath to the Registrar of the Supreme Court of this Colony, to be preserved by him of record; and such Registrar, as soon as he shall receive the said oath, and when any such oath shall be taken before a judge, shall, by a notice to be published in the Gazette, announce that the said oath aforesaid has been deposited in his office in pursuance of this Act.

Oath to be filed with Registrar of Supreme Court and notification thereof given.

IX. Any alien woman already married or who shall be hereafter married to a natural-born subject or person naturalized under this or any other Act of Parliament shall be deemed and taken to be herself naturalized, and to have all the rights and privileges of a natural-born subject: Provided also that all minor children alien born of any alien parent who shall himself or herself be naturalized under this or any other Act, and which children shall be within this Colony at the time of the naturalization of their parent, shall be themselves naturalized, *ipso facto*, by such naturalization.

Alien women married to natural-born or naturalized subjects to be deemed naturalized.

Children alien-born of naturalized parents.

X. Every alien who shall have obtained a certificate of naturalization in the United Kingdom of Great Britain and Ireland or any part thereof, or in any of the British colonies, which certificate shall recite that the person mentioned therein has

Naturalization in United Kingdom or other British possession to hold good in this Colony.



No. 37—1861.

taken an oath of allegiance to Her Most Gracious Majesty, and shall grant to such person any of the rights and privileges of a British subject within the kingdom or Colony in which the same shall have been issued, shall be entitled to obtain the privileges of naturalization within this Colony upon the terms and in the manner herein set forth.

Certificate of such naturalization accompanied by declaration to be filed with Registrar of Supreme Court.

XI. Every such alien as in the last section mentioned shall deposit with the said Registrar of the Supreme Court the original certificate so granted to him and a true copy thereof, in such form as may for the time being be required by the said Registrar, and shall at the same time make and subscribe a declaration before the said Registrar, and which declaration the said Registrar is hereby authorized to receive, that he is the person named in such certificate, and that the same has been obtained without any fraud or intentional false statement, and that the signature and seal, if any, to the said certificate, are to the best of his knowledge and belief genuine, and shall also take and subscribe the oath of allegiance to Her Majesty the Queen, and which oath shall be taken and subscribed by him before and shall be duly administered to him by the said Registrar; and the Registrar shall thereupon endorse upon the original certificate, and also upon the copy deposited therewith, a statement under the hand and seal of office of such Registrar that the person mentioned therein hath made the declaration and taken the oath by this Act directed to be made and taken, and shall also endorse upon such copy a certificate that it has been examined with the original and has been found to be correct; and shall thereupon deliver to such person the original certificate with the endorsement thereon, and from and after such endorsement such alien 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.

Proceedings of Registrar thereupon.

Penalty for false declaration.

XII. If any alien shall wilfully make any false statement in the declaration so to be made and subscribed by him, the rights, capacities, and privi-

leges hereby granted shall absolutely cease and determine, and he shall incur the same penalties as by law provided against persons convicted of wilful and corrupt perjury.

No. 37—1861.

XIII. The copy of any such certificate and of the endorsement thereon may be inspected and copies thereof taken and granted as in the case of other instruments deposited with the Registrar.

Copy of certificate open to inspection.

XIV. Every letter of naturalization, and every certificate so endorsed, and every certified copy of the certificate so deposited and of the endorsements thereon respectively, shall be admissible in evidence without proof of the signature or seal authenticating the same and shall be *primâ facie* evidence of the person named therein being duly naturalized, and of the signature or seal authenticating the same, and of all the matters contained or recited in such certificate or certified copy respectively, and of the official character of the persons appearing to have signed the same.

Letters and certificates admissible in evidence.

XV. Every person obtaining letters of naturalization under this Act shall pay for the same for the benefit of the public revenue the sum of twenty pounds sterling: Provided that any person who shall have at any time heretofore obtained a deed of burgher-ship, and who shall desire to obtain letters of naturalization under this Act, shall be allowed whatever amount he shall have paid for the said deed in part payment of the sum of twenty pounds aforesaid.

Fees.

No. 1—1862.] AN ACT [August 7, 1862.

For Providing for taking a Census of the Population of the Colony of the Cape of Good Hope.

WHEREAS it is expedient that provision should be made for ascertaining from time to time the number of inhabitants and certain information with regard to the agricultural productions of the Colony of the Cape of Good Hope, and that such

Preamble.

No. 1—1862.

a census should be taken in the year one thousand eight hundred and sixty-three: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Civil commissioners to call upon the inhabitants in their respective divisions to furnish the information required by this Act.

I. On or before the fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty-three, the several civil commissioners within the Colony of the Cape of Good Hope shall within their respective divisions cause notices to be affixed on the several court-houses, police-stations, and such other conspicuous places as they may deem proper, requiring every householder and proprietor or occupier of land therein to be prepared upon a certain day between the fifteenth and thirtieth days of the following month of April, which day shall be appointed by proclamation of the Governor, published in the Government Gazette, to give all such information as is required by the schedules hereunto annexed, marked A and B, to the persons employed in manner hereinafter mentioned to collect the same.

Enumerators to be appointed.

II. The Governor shall upon the recommendation of the several civil commissioners of the divisions of this Colony, before the thirty-first day of March, 1863, appoint by notice in the Government Gazette one or more fit and proper persons to act as enumerators in each field-cornetcy or municipality, for the purpose of collecting the information required:

How in case of the death, resignation or incompetency of enumerator.

Provided that if after the appointment of any enumerator, he should die, resign, or become incompetent to perform his duty, and there be not sufficient time for the appointment of another person in his place under the preceding provision, it shall be the duty of the civil commissioner of the division within which such enumerator has been appointed to select and appoint a fit person to perform the duties of such enumerator.

Masters or keepers of certain institutions to be enumerators of the inmates.

III. The master or keeper of every gaol, house of correction, hospital, or lunatic asylum, and of every public or charitable institution, shall be the enumerator of the inmates thereof.

Householders and occupiers of land to furnish information

IV. Every householder and every occupier of land resident in the Colony of the Cape of Good Hope,

on the day to be hereafter appointed for taking the census, shall be required to furnish the information contained in the schedules A and B annexed to this Act regarding himself and all the members of his family and other persons residing with him, and regarding all persons employed by him and resident on his property, including visitors, on the night preceding the day so appointed, and regarding the land occupied by him and stock possessed by him within the division or municipality.

No. 1—1862.  
required by schedules  
A and B.

V. The enumerators appointed as aforesaid shall, upon the day proclaimed for taking the census, proceed to receive or take an account in writing of the number of persons who were within the limits of their respective districts on the night preceding the day so fixed by proclamation, and to inform themselves of the several particulars specified in the said schedule, using a separate form for each family occupying a separate house or property or a separate portion of a house or property.

Duties of enumerators.

VI. In order to facilitate the filling in and collection of the returns aforesaid, the several civil commissioners shall cause to be distributed blank forms of schedules A and B, in English and Dutch, at least seven days before the day appointed for the taking of the census, to every householder and every occupier of land within their respective divisions, for the purpose of the same being filled in upon the morning of the day appointed for taking the census, and being delivered to the enumerators when called for. Every enumerator shall before accepting these forms examine them, and if they be filled in shall satisfy himself that the entries are correctly and legibly made; and if not satisfied in these respects, or if the returns be not filled in, he may require the information or any part thereof to be furnished to him.

Civil Commissioners to distribute blank forms of schedules.

Duty of enumerator if forms are not properly filled in.

VII. Every person having no fixed residence or being absent from any house or dwelling on the night preceding the day fixed by proclamation for taking the census shall, on the said day or as soon afterwards as possible, appear before the civil commissioner of the division, or the field-cornet, or the

Persons having no fixed residence, or being absent from their dwellings, to make returns to the civil commissioner, field-cornet, or enumerator.

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enumerator of the ward in which he may then be, and shall with the assistance of the civil commissioner, or field-cornet, or the enumerator, make or cause to be made returns correctly and legibly made to the said civil commissioner, or field-cornet, or the enumerator; and the several field-cornets or the enumerators receiving any such returns shall forward them to the civil commissioners of their divisions respectively; and every civil commissioner receiving any returns made by a person not residing in his division shall forward them to the civil commissioner of the division in which the usual residence of such person is situate.

Civil Commissioners and enumerators empowered to put certain interrogatories.

VIII. In order the better to enable the civil commissioners and enumerators to obtain the information necessary for the purposes of this Act, they are hereby authorized and empowered to ask such questions of the persons residing or being within their respective districts concerning themselves and the number, relationship, age, origin, and rank or occupation of the persons constituting their respective families, and concerning the extent and production of land under culture and the nature and number of stock in their possession, as shall enable them to fill up the schedules to this Act annexed, and concerning all such other particulars as shall be necessary to fill up the said schedules; and every such person refusing or neglecting to answer or wilfully giving a false answer to any such question or wilfully furnishing a false return shall for every such refusal or neglect or false answer or return forfeit and pay a sum not exceeding five pounds nor less than five shillings, with the costs of prosecution, at the discretion of the resident magistrate, before whom complaint thereof shall be made.

Penalty for refusing to answer the same.

Enumerators to make returns to civil commissioners.

IX. Every enumerator shall, within fourteen days after the day proclaimed for taking the census, deliver the original returns received or taken in writing and subscribed by him, or fair copies thereof, or of any portion thereof, to the civil commissioner of the division.

Penalty for wilful default.

X. Every enumerator appointed as aforesaid

making wilful default in any of the matters required of him by this Act, or making any wilfully false statement, shall for every such wilful default or false statement forfeit a sum not exceeding five pounds nor less than ten shillings.

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XI. The several civil commissioners shall, upon the receipt of the several returns from the enumerators, proceed forthwith to examine them and ascertain that no part of the division has been omitted; and upon finding them complete shall, within fourteen days after the receipt thereof, forward them to the office of the Colonial Secretary.

Duty of civil commissioner on receiving returns.

XII. In the event of any return being found incomplete or defective by any civil commissioner he shall require the enumerator to correct such error or supply such deficiency, unless he shall deem it expedient to employ some other person for that purpose.

Incorrect or deficient returns to be rectified.

XIII. The Governor may nominate and appoint fit and proper persons to collect and arrange all returns forwarded to the Colonial Secretary, under whose supervision an abstract thereof shall be made in such manner and form as shall be approved of by the Governor.

Persons to be appointed to make abstract of returns.

XIV. All fines imposed under this Act may be sued for by the public prosecutor, and shall be recoverable in a summary manner before a resident magistrate, and when recovered shall be paid into the Colonial Treasury.

Fines under this Act how to be recovered and applied.

XV. For the purposes of this Act, Cape Town and the district thereof shall be included in the Cape division.

Cape Town included in Cape division.

XVI. This Act may be cited for all purposes as "The Census Act, 1862."

Short title of Act.

CENSUS.—1863.

## SCHEDULE A.

 Division \_\_\_\_\_  
 or \_\_\_\_\_  
 Town \_\_\_\_\_

 Field-cornetcy \_\_\_\_\_ No. \_\_\_\_\_  
 or \_\_\_\_\_  
 Ward \_\_\_\_\_ No. \_\_\_\_\_

House or Hut.	Names.	Sex.	Relationship.	Age.	Race.	Country or Birth.	Rank or Occupation.	INSTRUCTION.			AT SCHOOL.					Deaf, Dumb, or Blind.	Remarks.
								Can read and write.	Can read only.	Cannot read.	Govt. Schools— Schools aided by Government.		Schools not aided by Government.				
											Mission.	Other.	Mission.	Private.			
														Sunday only.	Day or other.		
House	John Thomson	M	H	...	European	England	Prop. Far.	1	...	...	...	...	...	...	Blind		
	Anne do.	F	W	...	do.	Scotland	...	1	...	...	...	...	...	...	...		
	Henry do.	M	S	...	do.	Colony	Mason ...	...	1	...	...	...	...	...	...		
	Jane do.	F	D	...	do.	do.	...	1	...	...	...	...	1	...	...		
	Emily do.	F	D	...	do.	do.	...	...	...	1	...	...	...	...	...		
	Jan van Wyk	M	V	...	do.	Holland	Artist ...	1	...	...	...	...	...	...	...		
	Dirk Stuurman	M	...	...	Hottentot	Colony	Ser. ....	...	1	...	...	...	...	...	...		
	Mietje .....	F	...	...	Kafir	do.	do.	...	...	1	...	...	...	...	...		

 Abbreviations:—M ... Male  
 F ... Female  
 H ... Husband  
 W ... Wife

 Wid... Widow or Widower  
 S ..... Son  
 D..... Daughter  
 V..... Visitor

 L ..... Lodger  
 Prop.... Proprietor  
 Far. ... Farmer  
 Ser. ... Servant

Ab... Absent on the day of taking Census.

 The following special infirmities are to be noticed ;  
 Blind, Deaf, and Dumb.

CENSUS.—1863.

No. 1—1862.

SCHEDULE B.

Division \_\_\_\_\_ Field-cornetcy \_\_\_\_\_ No. \_\_\_\_\_

Name of Property (if any),

Stock.	Number on	1863.
Horses ... ..		
Mules and asses ... ..		
Cattle—draught oxen ... ..		
" other ... ..		
Sheep—woolled ... ..		
" Cape ... ..		
Goats—Angora ... ..		
" common ... ..		
Pigs ... ..		
	Number of Morgen (where it can be stated) on 31st March, 1863.	No. of bushels sown in the year 1862.
Land under cultivation.		
Total extent of property ... ..		
Number of morgen under cultivation, viz. :		
Wheat ... ..		
Barley ... ..		
Rye ... ..		
Oats ... ..		
Maize ... ..		
Peas, Beans, and Lentils ... ..		
Tobacco... ..		
Potatoes and Gardens ... ..		
Orchards and Orangeries ... ..		
Vines ... ..		
Do., number of stocks ... ..		
	Produce of Property in the year ended 31st March, 1863.	
Produce.		
Wheat, bushels ... ..		
Barley, do. ... ..		
Rye, do. ... ..		
Oats, do. ... ..		
Oat-hay, 100 lb. ... ..		
Maize, bushels... ..		
Peas, Beans, and Lentils, bushels ... ..		
Potatoes, do. ... ..		
Tobacco, 100 lb. ... ..		
Dried Fruit of all kinds, 100 lb. ... ..		
Aloes, lbs. ... ..		
Wine, leaguers... ..		
Brandy or Spirits, do. ... ..		
Wool, lb. ... ..		



No. 2—1862.

No. 2—1862.]

AN ACT

[August 7, 1862.

For Amending in certain respects the Regulations of  
the Post Office and Postage.

Preamble.

**W**HEREAS it is expedient to amend in certain respects the regulations 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 portions  
of Ordinance No. 1  
of 1846 repealed.

I. So much of the Ordinance No. 1 of 1846, entitled "Ordinance for the Regulation of the Post Office and Postage," and so much of any other Ordinances or Acts as may be repugnant to or inconsistent with any of the provisions of this Act shall be and the same are hereby repealed.

Governor may estab-  
lish post offices with-  
in cities and towns  
or in their vicinity,  
and fix the rates of  
postage receivable  
thereat.

II. It shall and may be lawful for the Governor to establish offices for posting and delivering letters within the limits of any city or town or within such a reasonable distance from any city or town as shall for that purpose be fixed by the said Governor, and to fix the rates of postage which shall be charged and paid in regard to any such delivery and the hours at which the delivery officers shall deliver such letters: Provided, however, that the rate of postage to be charged and paid in regard to any such letters shall in no case exceed the rate of postage which would be charged and payable upon the same letters according to the scale of postage in the Ordinance No. 1 of 1846 aforesaid, fixed and determined.

Short title.

III. This Act may be cited for all purposes as "The Town Delivery of Letters Act."

No. 3—1862.]

AN ACT

[August 7, 1862.

To Facilitate the Transmission of Books by means of  
the Post Office.

Preamble.

**W**HEREAS it is expedient to facilitate the transmission of books by means of the post office: Be it enacted by the Governor of the Cape of Good

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

No. 3—1862.

I. So much of the Ordinance No. 1, 1846, entitled “ An Ordinance for the Regulation of the Post Office and Postage,” and so much of the Ordinance No. 23, 1847, entitled “ Ordinance for Reducing the Postage upon Religious Publications of or under a certain weight,” and so much 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,’ ” and so much of any other former Ordinance or Act as may be repugnant to or inconsistent with any of the provisions of this Act shall be and the same is hereby repealed.

Repugnant laws repealed.

II. From and after the taking effect of this Act, books, whether printed in this Colony or elsewhere and whether arriving in this Colony by sea or across the land boundaries, may be forwarded by post in this Colony from or to such places as the Governor shall by proclamation from time to time declare and make known.

Book may be sent by post between such places as shall be declared by proclamation.

III. No such book shall be capable of being forwarded by post if it exceed two feet in length, in breadth, or in thickness, or if it exceed five pounds in weight, but all books not exceeding the dimensions or weight aforesaid may be forwarded by post.

Dimensions and weight of books.

IV. Every book posted for transmission by post shall be either without a cover or with a cover open at the ends or sides.

To be posted without cover or in open cover.

V. Every book forwarded by post shall be prepaid by means of postage stamps at the rate of one penny for every ounce and fraction of an ounce which such book shall weigh.

Postage to be prepaid.

VI. If any book shall be posted without the postage or any part of it being prepaid in manner aforesaid then such book shall be placed in or sent to the dead letter office in the General Post Office in Cape Town, and be there dealt with as by law provided in regard to dead letters.

How if posted unpaid.

VII. In case any book shall be posted prepaid in part, but not entirely, such book shall be forwarded to its destination, but shall be there charged with double the amount of the postage so deficient.

If underpaid.

No. 3—1862.

If posted in closed cover.

VIII. If any book shall be posted in a cover not open at the end or sides such book shall be dealt with in like manner as is provided by the sixth section of this Act in regard to books posted without any of the postage thereof having been prepaid.

Book packets not to contain letters or sealed enclosures.

IX. No book posted for transmission by post, nor the cover if any of any such book, shall contain any letter closed or open, or any enclosure not being a letter which enclosure shall be sealed or otherwise closed against inspection. If any such letter or enclosure shall be found in any such book as aforesaid or in the cover thereof then such book shall be charged with the same postage as if it were a letter, and the person posting the same or causing the same to be posted shall incur and be liable to a fine not exceeding five pounds.

Penalty.

Books prepaid to be delivered free at port of arrival or when conveyed coastwise by sea, but chargeable with postage when sent inland.

X. Books from the United Kingdom or elsewhere arriving by sea at Cape Town free of postage, shall be delivered at Cape Town free of postage, and when forwarded from Cape Town by a coasting ship to any other port in this Colony, shall be delivered at such port free of postage, and books arriving from the United Kingdom or elsewhere at any port of this Colony free of postage shall be delivered at the port of arrival free of postage, but every such book as is in this section mentioned if forwarded inland from the port at which it would have been deliverable free of postage, shall be chargeable with inland postage at the rate aforesaid of one penny for every ounce and fraction of an ounce which such book shall weigh.

Postmaster may delay transmission of books until circumstances shall admit of sending them.

XI. It shall at all times be lawful for the postmaster of any post office to delay the transmission of books from such office until in his judgment the size, weight, and other circumstances of the mails by which such books are to go shall admit of such books being forwarded: Provided always that as often as any number of books more than one shall be delayed at any post office in consequence of the state of the mails, such books shall be forwarded in the order of priority in which they were posted, unless there be something in the size or weight of any of them which would render this impracticable or obviously improper.

To be forwarded in order of priority of posting.

XII. In the construction of this Act the word "book" shall be construed to include "volume," "pamphlet," "magazine," "review," "sheet of letter-press," "sheet of music," "map," "chart," and "plan," as also any "part" or "number" of any literary work published in parts or numbers, and any number of newspapers bound up together so as to form a volume, or stitched up together in a cover in which cover they were issued and so stitched up by the publishers of such newspapers.

No. 3—1862.  
Interpretation of terms.

XIII. This Act may be cited for all purposes as "The Book Post Act, 1862."

Short title.

No. 4—1862.] AN ACT [August 7, 1862.

For Fixing the Contribution towards the Expense of Conveying the Mails to and from the United Kingdom and this Colony.

WHEREAS it is just and proper in consideration of the advantages accruing to this Colony from the regular conveyance of the mails to and from the United Kingdom and this Colony that the Colonial Government contribute a fair and reasonable proportion of the expense incurred for that purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. It shall and may be lawful for the Governor, by and with the advice of the Executive Council, to enter into any arrangements he may deem necessary with the Government of Her Majesty for the monthly conveyance by steam vessels of the mails to and from the United Kingdom and this Colony; provided that any such arrangement shall not extend beyond a period of seven years from the day of its date; And provided further that the time for performing the service shall not exceed thirty-six days.

Governor may, with advice of Executive Council, make arrangements with Her Majesty's Government for monthly conveyance of mails by steam vessels.

II. It shall and may be lawful for the Governor in any such arrangement to undertake on the part of this Colony the payment of a sum not exceeding one

One half of the expense to be borne by the Colony, provided it does not exceed £16,500.

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half the actual expense incurred for that purpose: Provided the said half shall not exceed the sum of sixteen thousand five hundred pounds per annum.

Short title.

III. This Act may be cited for all purposes as "The Colonial Mail Contribution Act."

No. 5—1862.] AN ACT [August 7, 1862.

For Securing Precedence to Public Telegrams.

Preamble.

WHEREAS the public interests demand that messages and communications on Her Majesty's service shall be entitled on all and every line of electric telegraph to precedence of any other message and communication: Be it enacted by the Governor of this Colony, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant laws repealed.

I. So much of the Act No. 20, 1861, entitled "An Act for the Regulation of Electric Telegraphs," and of any other Act or Ordinance in force in this Colony as is repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Messages on Her Majesty's service sent by certain officers to have precedence. List of officers to be published in Gazette.

II. All and every message and communication on Her Majesty's service sent by any officer in Her Majesty's employment of the rank, degree or station to be from time to time specified in a list which shall be published in the Government Gazette and furnished to the various electric telegraph offices in the Colony by the Colonial Secretary shall be entitled to take precedence of any other message or communication on every line of electric telegraph within this Colony.

Penalty for refusing precedence.

III. Any person or persons refusing to grant such precedence as aforesaid to any message or communication on Her Majesty's service when called upon by any such officer to do so, shall for every such act of refusal be liable to the payment of a fine not exceeding one hundred pounds sterling, and in default of payment thereof to imprisonment for a period not exceeding six calendar months.

Attorney-General to prosecute.

IV. It shall be the duty of Her Majesty's Attorney-

General, upon such refusal being noticed to him, to prosecute any such person or persons so refusing, in any competent court within this Colony.

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V. All fines recovered under the provisions of this Act shall be paid into the Colonial Treasury. Application of fines.

VI. This Act may be cited for all purposes as "An Act to secure Precedence to Public Telegrams." Short title.

No. 6—1862.] AN ACT [August 7, 1862.

Amending the Act No. 10 of 1859, entitled "An Act to Provide for the Adjustment of disputed Land Boundaries and for the Erection and Preservation of Land Beacons."

WHEREAS by section sixty-one, sixty-two, and sixty-three of the Act No. 10 of 1859, entitled "An Act to Provide for the Adjustment of disputed Land Boundaries and for the Erection and Preservation of Land Beacons," all beacons are declared as admittedly true and correct unless disputed within a certain period and in the manner in the said sections provided: And whereas it has been found that the notice of such beacons having been erected and the time within which the correctness of such beacons may be disputed are inadequate and insufficient, and that it is expedient to make better provision respecting the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows: Preamble.

I. The sections numbered respectively sixty-one, sixty-two, and sixty-three, of the Act No. 10 of 1859, entitled "An Act to provide for the Adjustment of disputed Land Boundaries and for the Erection and Preservation of Land Beacons," and so much of any other of the sections of the said Act as shall be repugnant to or inconsistent with any of the provisions of this Act are hereby repealed. Sections 61, 62, and 63 of Act 10 of 1859 repealed.

II. All beacons of any farm whether provisional or not shall, unless disputed before the 31st day of Beacons remaining undisputed until 31st

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December, 1865, to be admitted as correct.

Except when they encroach upon Crown, municipal, or other lands.

Provisional beacons not to be admitted as correct, unless three months' notice has been given to divisional council.

Divisional council to give notice in writing to parties concerned.

Notice how to be issued and published.

December, 1865, be deemed and taken to be admitted true and correct, and to denote the true and correct extent and limits of the said farm, anything in the diagram or title-deed of the said farm, or any other farm, to the contrary notwithstanding: Provided that nothing in this section contained shall apply to any Crown, municipal, or other land upon which the beacons of any adjoining farm shall have been put up, which beacons shall, unless the notice in the next succeeding section mentioned be given, be capable of being disputed as erroneous upon any ground and for any length of time upon or for which such beacons could lawfully have been disputed in case this Act had not been passed.

III. No provisional beacon or beacons which shall have been erected in pursuance of any of the provisions of the said Act No. 10 of 1859, or which may be erected under and by virtue of the provisions of this Act, shall be evidence to any extent of the spot or place where such beacon or beacons ought of right to stand, or admitted as true and correct so as not afterwards to be disputed, unless three months' notice in writing shall have been given to the divisional council of the division in which such beacon or beacons is or are situated by the person or persons who erected or caused to be erected such provisional beacon or beacons.

IV. As soon as the divisional council shall have received such notice as in the last preceding section mentioned the said council shall forthwith cause notice in writing to be given to all parties interested that such provisional beacon or beacons has or have been erected and that they are at liberty to object to the same in the manner prescribed by the said Act.

V. The notice in the last preceding section mentioned shall be signed by the secretary of the divisional council giving the same, and shall be served personally, or by leaving the same at his usual or last known place of residence, upon the proprietor or any one of the proprietors of every farm adjoining the one for which the beacon or beacons shall have been erected, and the boundary or boundaries of which may be affected by such

beacon or beacons, and such notice shall also be published once a week during three consecutive weeks in the Government Gazette and in the local newspapers, if any there be, in which notices of such divisional council are usually published. The cost of serving such notice shall be calculated at the rate for the time being chargeable for serving summonses of the resident magistrate's court of the district in which the notice is served, and such costs and the cost of publication in the Gazette and in the local newspapers shall be prepaid by the person who has given notice to the divisional council of the erection of the beacon or beacons; but should such beacon or beacons be disputed and the dispute be referred to a commission constituted under sections nineteen and sixty-eight of the Land Beacons Act, 1859, the said costs shall be included in the costs of the inquiry.

Costs of serving notice.

VI. No beacon shall be deemed or taken to have been disputed unless an objection in writing shall have been lodged with the divisional council of the division in which such beacon or beacons is or are situated, before the expiration of the time in the second section mentioned: Provided that any person whose beacons or any of them are questioned or objected to may at once apply to the council aforesaid, stating the circumstances, and requesting the council to have the correctness of such beacon or beacons investigated and determined under this Act.

No beacon to be deemed disputed unless objection has been lodged within prescribed time.

VII. Nothing in this Act contained shall affect or apply to or be construed to affect or to apply to any beacon or beacons between private properties which shall have been in existence previous to the promulgation of the Land Beacons Act, 1859, or which shall have been subsequently erected in accordance with the said Act, and previous to the promulgation of this Act, in either case with the knowledge of the proprietor or proprietors of any adjoining farm interested in such beacon or beacons; but all such beacons shall be judged of and have effect as if this Act had not been passed.

This Act not to apply to beacons between private properties existing previous to Act of 1859, or erected subsequently with knowledge of proprietor.



No. 7—1862.

No. 7—1862.] AN ACT [August 7, 1862.

For the Construction of a Branch Railway to  
Malmesbury.

Preamble.

WHEREAS it is desirable that a branch railway should be made and constructed to or near to the town of Malmesbury, in communication with the Cape Town and Wellington Railway, and that the Colonial Government should guarantee to any party who may undertake the construction of such railway a certain amount of annual interest on the capital to be expended in the same for a certain term of years: And whereas it is expedient to empower the Governor of the Colony to conclude a contract or contracts for the construction and working of the said railway: And whereas in consideration of the advantages which will directly and immediately accrue to the owners of landed property in the division of Malmesbury it is just and expedient that the immovable property in the said division shall be rated as far as may be necessary to make up one half of any amount which the Colonial Government may be called upon to pay by virtue of the guarantee 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:

Tenders to be called for construction and working of railway.

I. It shall be lawful for the Governor by public advertisement in England and in this Colony to invite tenders for the making, constructing, and working of a railway to or near to the town of Malmesbury, in communication with the railway now in the course of construction from Cape Town to Wellington; such tenders to be accompanied by the necessary surveys, plans, sections, and specifications, made and furnished at the cost of the person or persons so tendering as aforesaid; and any surveyor with his assistants, being duly authorized by the Governor so to do, may enter any lands for the purpose of surveying the same and of probing or boring to ascertain the nature of the soil or of setting out the line of railway, such surveyor making

Surveyors may enter on private lands in surveying and setting out the line, making compensation to occupiers.

full compensation to the occupier of the said lands for any damage thereby occasioned, the same to be recoverable by civil action brought within three months from the damage being done, with costs of suit, in any competent court.

II. It shall be lawful for the Governor from the tenders so received as above mentioned to accept such tender as to him, by and with the advice of the Executive Council, may appear best adapted for the purposes above mentioned, without, however, being bound to accept the lowest tender or any one of the tenders for the execution of the work aforesaid.

Governor, with advice of Executive Council, may accept any tender.

III. It shall be lawful for the Governor, with the advice of the Executive Council, if any tender has been accepted then in terms of such tender, and in case no tender shall have been accepted then upon the best terms which the said Governor shall be able to secure, to conclude a contract or contracts for the making, constructing, and working of the railway in the first section of this Act described; and with the like advice and the contracting party consenting, at any time to alter or amend any one or more of the provisions of the said contract or contracts, or to make any other or supplementary contract or contracts for the purpose of carrying out the object of this Act, should it be found by him during the progress of the works necessary and expedient so to do.

Contract to be concluded in terms of accepted tender, and if no tender be accepted then upon the best terms obtainable.

Contract may with consent of contractor be altered during progress of work.

IV. It shall be lawful for the governor in any such contract or contracts to guarantee out of the colonial revenues the payment of interest at the rate of not more than six per cent. per annum on the amount actually expended, on such terms and conditions as may be stated in such contract or contracts: Provided that the total sum on which interest shall be so guaranteed shall not exceed the sum of two hundred thousand pounds and that the payment of such interest shall not extend beyond the period of fifty years, to be computed from the day of the opening for traffic of any portion of the said railway.

Interest at not more than six per cent. guaranteed out of colonial revenue.

Total sum on which interest shall be guaranteed and for what term of years.

V. When the said line of railway in the first

When guarantee to come into operation.

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section mentioned or any portion thereof shall have been opened for traffic with the consent of the Governor, by and with the advice of the Executive Council, the guarantee shall come into operation to the extent of such sum as may have been expended on so much of the said railway as shall have been so opened: Provided, however, that such sum shall bear the same proportion to the sum of two hundred thousand pounds which the number of miles composing the portion so opened bears to the number of miles composing the entire line of such railway.

How interest to be paid.

And if the receipts in any one year after the opening thereof or a portion thereof shall not after deducting such fair and reasonable sum as may have been expended for working the said railway or a portion thereof leave a surplus equal to interest at the rate stipulated in the contract upon the sum for which the said work shall have been so constructed then the Colonial Government shall make good the difference or deficiency, so that the contracting party shall receive the stipulated rate of interest upon the sum for which the said work or portion thereof shall have been so executed as aforesaid.

What items to constitute the sum actually expended.

VI. The sum to be taken as actually expended shall for the purposes of the last preceding clause include and be composed of the following items, that is to say:

- 1st. The cost of constructing the railway, including the cost of erecting, purchasing, or hiring all necessary buildings in the Colony required for the purposes of the railway, with its stations and appurtenances.
- 2nd. The cost of providing the working stock of engines, carriages, and other plant and machinery fit and proper for the working of the railway.
- 3rd. The cost of laying down the line of telegraph, with its machinery and apparatus.
- 4th. The sum equal to interest paid or supposed to be paid half-yearly at the rate stipulated in the contract upon all sums from time to time paid up or advanced for the construction and working of the said railway, reckoned

from the time or times of paying up or advancing such sums down to the time when interest upon such sums at and after such rate shall after the opening of the line or portion of the line for traffic, become payable out of net profits or by virtue of the Government guarantee.

VII. All interest guaranteed by such contract or contracts as aforesaid is hereby declared to be a charge upon the public revenue of this Colony, and the Governor is hereby authorized to issue warrants to the Treasurer-General of this Colony for the payment of such interest.

Guaranteed interest to be paid out of the public revenue.

VIII. One half of all such sums of money as shall be paid or become 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 upon the immovable property situated in the division of Malmesbury.

One-half thereof to be a charge on the immovable property in the division of Malmesbury.

IX. It shall be the duty of the divisional council of Malmesbury, and it is hereby authorized and required, as often as the Governor shall notify to the said council in writing that any sum or sums of money has or have been paid or is or are payable out of the public revenue of this Colony under or by virtue of the guarantee aforesaid, to value if need be the immovable property in the division aforesaid in terms of and according to the provisions of the Act No. 9 of 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," and the chairman of the said divisional council shall transmit to the Colonial Secretary a statement of the valuation so made; and the sum of money which shall have become payable under and by virtue of the guarantee aforesaid shall be recoverable from the said division; and the said divisional council shall thereupon assess, impose, and levy upon such immovable property, in terms of and according to the provisions of the said Act, such rates as shall produce the sum hereby declared to be recoverable from the said division, together with the expense of collecting the same.

Immovable property to be valued in terms of Act 9 of 1858, and divisional council to levy rate.

X. In case of failure or neglect on the part of the

In case of failure or

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neglect on the part of the divisional council, or if there be no council, Governor to appoint persons to act under preceding section.

said divisional council to assess, impose, levy, and pay any such rate, or in case no divisional council shall have been elected in the said division, or in case from any other cause or causes the provisions of the last preceding section cannot be or are not properly carried into effect, then and in such case it shall be lawful for the Governor to appoint some fit and proper person or persons, to be paid at such rate as to the said Governor shall appear necessary, for the purposes in the preceding section mentioned, who shall be and they are hereby invested for this and no other purpose with all and singular the rights, powers, and authority vested in divisional councils constituted under and by virtue of the Act aforesaid for that purpose, anything in the said or any other Act to the contrary notwithstanding; and the remuneration of such persons shall be and the same is hereby declared to be chargeable against the said division of Malmesbury and shall be recoverable in like manner as the rate due and to be paid by the said division.

Powers of commissioners of roads in acquiring lands, &c., vested in contractor for making railway.

XI. All and singular the powers and authorities which are by the Act aforesaid, No. 9 of 1858, bestowed upon the commissioners of roads in regard to taking or acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act mentioned, are, except in so far as the same may be limited or modified by the terms of the contract bestowed upon whatever party shall have contracted as aforesaid for the making of the railway aforesaid, precisely as if the same were, *mutatis mutandis*, herein again set forth. The costs if any for acquiring such land and materials shall be added to and form part and parcel of the cost of construction; and it shall be lawful for the Governor in the contract above mentioned to guarantee the payment of interest at the rate above stipulated upon such additional sum or sums of money as may be required for that purpose, in like manner as provided for in the fourth section of this Act.

Cost of acquiring land, &c., to form part of cost of construction, and interest to be guaranteed accordingly.

Accounts to be kept and laid before Parliament.

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 afore-

said, and of all moneys, if any, received under and by virtue of the assessments aforesaid, for the purpose of making good to the public revenue one half of all the moneys which shall be paid or become payable thereupon, and a copy of such account made up to the latest date which shall be practicable, together with full information concerning the progress, making and working, costs and revenues of the said railway, shall be laid before each House of Parliament not later than twenty-one days after the opening of each session.

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XIII. When and so soon as the said railway or any part thereof shall be opened for traffic, the previously existing main road between any places to which the said railway shall be so opened for public traffic shall cease to be a main road, anything to the contrary in any Act notwithstanding; and the opening of such railway or any part thereof shall be notified to the public by advertisement in the Government Gazette.

Opening of railway for traffic to be notified in Gazette and thereupon existing main road abolished.

XIV. The provisions of the fifty-sixth and fifty-seventh sections of the Act aforesaid, No. 9 of 1858, relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, shall extend and apply to the 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 commissioners of roads.

Provisions of Act 9, 1858, in regard to injuries to main roads to apply to railway.

XV. This Act may be cited for all purposes as "The Malmesbury Branch Railway Act."

Short title.

No. 8—1862.] AN ACT [August 7, 1862.  
For Constructing a Railway from Wellington to Worcester.

WHEREAS it is desirable that a railway should be made and constructed to or near to the town of Worcester in communication with the railway which is now being made and constructed from Cape Town towards Wellington: And whereas it is expedient that the Colonial Government should guarantee to any party who may undertake the con-

Preamble.

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struction of such railway a certain amount of annual interest on the capital to be expended on the same for and during a certain term of years ; and that the necessary survey be made for ascertaining the most suitable line of such railway, and that the Governor be empowered, after such survey, to conclude a contract or contracts for the construction and working of the said railway : And whereas in consideration of the mutual advantages which will directly and immediately accrue to the owners of landed property in the divisions of the Cape, Stellenbosch, the Paarl, Tulbagh, Worcester, and Robertson, it is just and expedient that the immovable property in the said divisions shall be rated as far as may be necessary to make up one half of any sum which the Colonial Government may be called upon to pay by virtue of the guarantee aforesaid, as well as under and by virtue of the Act No. 20 of 1857, entitled “An Act for the Construction of a Railway from Cape Town to Wellington,” and that the said Act No. 20 of 1857 be in that respect 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 :

Tenders to be called for construction and working of railway.

I. It shall be lawful for the Governor by public advertisement in England and in this Colony to invite tenders for the making, constructing, and working of a railway through the divisions of the Paarl, Tulbagh, and Worcester, to or near to the town of Worcester, in communication with the Cape Town and Wellington railway ; such tenders to be accompanied by the necessary surveys, plans, sections, and specifications, made and furnished at the cost of the person or persons so tendering as aforesaid ; and any surveyor with his assistants, being duly authorized by the Governor so to do, may enter any lands for the purpose of surveying the same, and of probing or boring to ascertain the nature of the soil or of setting out the line of railway, such surveyor making full compensation to the occupier of the said lands for any damage thereby occasioned, the same to be recoverable by civil action brought within three months from the damage being done, with costs of suit, in any competent court.

Surveyors may enter upon private lands in surveying or setting out the line, making compensation to occupier.

II. It shall be lawful for the Governor from the tenders so received as above mentioned to accept such tender as to him, by and with the advice of the Executive Council, may appear best adapted for the purposes above mentioned, without however being bound to accept the lowest tender or any one of the tenders for the execution of the work aforesaid.

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Governor, with advice of Executive Council, may accept any tender.

III. It shall be lawful for the Governor, with the advice of the Executive Council, if any tender has been accepted then in terms of such tender, and in case no tender shall have been accepted then upon the best terms which the said Governor shall be able to secure, to conclude a contract or contracts for the making, constructing, and working of the railway in the first section of this Act described; and, with the like advice and the contracting party consenting, at any time to alter or amend any one or more of the provisions of the said contract or contracts, or to make any other or supplementary contract or contracts for the purpose of carrying out the object of this Act, should it be found by him during the progress of the work necessary and expedient so to do.

Contract to be concluded in terms of accepted tender, or upon the best terms obtainable.

With consent of contractor contract may be altered or supplemented during progress of work.

IV. It shall be lawful for the Governor in any such contract or contracts to guarantee out of the colonial revenues the payment of interest at the rate of not more than six per cent. per annum on the amount actually expended on such terms and conditions as may be stated in such contract or contracts: Provided that the total sum on which interest shall be so guaranteed shall not exceed the sum of four hundred thousand pounds and that the payment of such interest shall not extend beyond the period of fifty years, to be computed from the day of the opening for traffic of any portion of the said railway.

Interest at not more than six per cent. for fifty years to be guaranteed out of colonial revenues on amount actually expended, and not exceeding £400,000.

V. When the line of railway in the first section mentioned or any portion thereof shall have been opened for traffic with the consent of the Governor, by and with the advice of the Executive Council, the guarantee shall come into operation to the extent of such sum as may have been expended on so much of the said railway as shall have been so opened: Provided, however, that such sum shall bear the same proportion to the sum of four hundred thousand

When guarantee to come into operation.



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If the receipts in any one year shall, after deducting working expenses, not realize the interest, Government to make good the difference.

pounds which the number of miles composing the portion so opened bears to the number of miles composing the entire line of such railway. And if the receipts in any one year after the opening thereof or a portion thereof shall not after deducting such fair and reasonable sum as may have been expended for working the said railway or a portion thereof, leave a surplus equal to interest at the rate stipulated in the contract upon the sum for which the said work shall have been so constructed, then the Colonial Government shall make good the difference or deficiency, so that the contracting party shall receive the stipulated rate of interest upon the sum for which the said work or portion thereof shall have been so executed as aforesaid.

What items to constitute the sum actually expended.

VI. The sum to be taken as actually expended shall for the purposes of the last preceding clause include and be composed of the following items, that is to say :

- 1st. The cost of constructing the railway, including the cost of erecting, purchasing, or hiring all necessary buildings in the Colony required for the purposes of the railway, with its stations and appurtenances.
- 2nd. The cost of providing the working stock of engines, carriages, and other plant and machinery fit and proper for the working of the railway.
- 3rd. The cost of laying down the line of telegraph, with its machinery and apparatus.
- 4th. The sum equal to interest paid or supposed to be paid half-yearly at the rate stipulated in the contract upon all sums from time to time paid up or advanced for the construction and working of the said railway, reckoned from the time or times of paying up or advancing such sums down to the time when interest upon such sums at and after such rate shall after the opening of the line or portion of the line for traffic become payable out of the net profits or by virtue of the Government guarantee.

Guaranteed interest

VII. All interest guaranteed by such contract or

contracts as aforesaid is hereby declared to be a charge upon the public revenue of this colony, and the Governor is hereby authorized to issue warrants to the Treasurer-General of this Colony for the payment of such interest.

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to be paid out of the public revenue.

VIII. One half of all such sums of money as shall be paid or become payable by or out of the public revenue of this Colony, upon or by virtue of the guarantee aforesaid and one half of all such sums of money as shall be paid or to become payable by or out of the public revenue of this Colony upon or by virtue of the guarantee given under the Act No. 20 of 1857, entitled "An Act for the Construction of a Railway from Cape Town to Wellington," are hereby declared to be a charge upon the immovable property situated within the divisions of the Cape, including the municipalities of Cape Town and Green Point, Stellenbosch, the Paarl, Tulbagh, Worcester, and Robertson in the same proportion and in the same manner as if the guarantee aforesaid were extended in the Act No. 20 of 1857 aforesaid over the whole line between Cape Town and Worcester, anything in the said Act No. 20 of 1857 or any other Act to the contrary notwithstanding.

One half thereof to be a charge on the immovable property in certain divisions.

IX. It shall be the duty of the divisional councils of the divisions of the Cape. Stellenbosch, the Paarl, Tulbagh, Worcester, and Robertson, and they are hereby authorized and required, as often as the Governor shall notify to them in writing that any sum or sums of money has or have been paid, or is or are payable out of the public revenue of this Colony under or by virtue of the guarantee aforesaid, to value, if need be, the immovable property in their divisions respectively, and in the municipalities of Cape Town and Green Point, in terms of and according to the provisions of the Act No. 9 of 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," and which shall for this purpose be considered as herein embodied; and the chairman of each of the said divisional councils shall transmit to the Colonial Secretary a statement of the valuation so made; and the proportion of the money which shall have become

Divisional councils to value the immovable property in their respective divisions in accordance with Act No. 9, 1858.

Statement of valuation to be sent to Colonial Secretary, and sums recoverable from divisions to be in proportion to their valuation.

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Divisional councils to levy rates.

payable under and by virtue of the guarantee aforesaid shall be recoverable from the said divisions in due proportion to the valuation of the immovable property therein; and the said divisional councils shall thereupon assess, impose, and levy upon such immovable property, in terms of and according to the provisions of the said Act, such rates as shall produce the proportion hereby declared to be recoverable from them respectively, together with the expense of collecting the same.

In case of failure or neglect on the part of the divisional council, or if there be no council, Governor to appoint persons to act for the purposes of the preceding section.

X. In case of failure or neglect on the part of any of the said divisional councils to assess, impose, levy, and pay any such rate in their divisions respectively and in the municipalities of Cape Town and Green Point, or in case no divisional councils shall have been elected in both or either of the said divisions, or in case from any other cause or causes the provisions of the last preceding section cannot be or are not properly carried into effect, then and in such case it shall be lawful for the Governor to appoint some fit and proper person or persons, to be paid at such rate as to the said Governor shall appear necessary, for the purposes in the preceding section mentioned, and he is or they are hereby invested for this and no other purpose with all and singular the rights, powers, and authority vested in divisional councils constituted under and by virtue of the Act aforesaid, anything in the said or any other Act to the contrary notwithstanding; and the remuneration of such person or persons shall be and the same is hereby declared to be chargeable against the division in respect of which such person shall be employed, and shall be recoverable in like manner as the rate due and to be paid by such division.

Council of one division may call upon the council of another to amend its valuation, and on the latter failing to do so, Governor may appoint persons for the purpose.

XI. If it shall appear to the divisional council of any one division that the immovable property in any one or more of the other divisions or in the municipalities of Cape Town and Green Point has not been properly valued such divisional council may give notice thereof to the divisional council of such one or more of the said other divisions, in order that a proper valuation of the immovable property of such one or more of the other divisions or muni-

icipalities may be made, and such one or more of the said other divisional councils shall be and they are hereby authorized and empowered to amend the valuation of the said immovable property, subject to and in terms of the provisions of the Act No. 9 of 1858 in this Act mentioned; but should such one or more of the said other divisional councils refuse upon such notice to amend such valuation or fail to do so to the satisfaction of the divisional council giving such notice, then and in that case it shall be lawful for the Governor, upon notice to him to that effect, to appoint one or more fit and proper persons to make a valuation of the immovable property in one or more of the said divisions, or in the municipalities of Cape Town and Green Point, as the case may be, and the person or persons so appointed shall be and he is or they are hereby invested for that purpose and no other with all and singular the rights, powers, and authority vested in divisional councils by the Act No. 9 of 1858 in this Act mentioned; and the valuation so made shall be binding on all parties concerned; and the cost of making such valuation as approved of by the Governor shall be recoverable from one or more of the said divisions in such proportions as may be deemed just and equitable under the circumstances of the case by three arbitrators to be appointed by the Governor for that purpose, or by the majority of them.

XII. All and singular the powers and authorities which are by the Act aforesaid, No. 9 of 1858, bestowed upon the commissioners of roads in regard to taking or acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act mentioned are, except in so far as the same may be limited or modified by the terms of the contract, bestowed upon whatever party shall have contracted as aforesaid for the making of the railway aforesaid, precisely as if the same were, *mutatis mutandis*, herein again set forth. The cost, if any, for acquiring such land and materials shall be added to and form part and parcel of the cost of construction; and it shall be lawful for the Governor in the contract above mentioned to guarantee the

Powers of commissioners of roads under Act 9 of 1858, in regard to acquiring land, &c., vested in contractor for making the railway.

Cost of acquiring land, &c., to form part of cost of construction, and interest to be guaranteed accordingly.

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payment of interest at the rate above stipulated upon such additional sum or sums of money as may be required for that purpose, in like manner as provided for in the fourth section of this Act.

Accounts to be kept and laid before Parliament.

XIII. 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 the moneys which shall be paid or payable therefrom, and a copy of such account made up to the latest date practicable, together with full information concerning the progress, making and working, costs and revenues of the railway, shall be laid before each House of Parliament not later than twenty-one days after the opening of each session.

Opening of any portion of the railway for traffic to be notified in Gazette, and the corresponding length of existing main road to be abolished.

XIV. When and so soon as the said railway or any part thereof shall be opened for traffic, the previously existing main road between any places to which the said railway shall be so opened for public traffic shall cease to be a main road, anything to the contrary in any Act notwithstanding, and the opening of such railway or any part thereof shall be notified to the public in the Government Gazette.

Provisions of Act 9 of 1858, relative to injuries to main roads, to apply to railway.

XV. The provisions of the fifty-sixth and fifty-seventh sections of the Act aforesaid, No. 9 of 1858, relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, shall extend and apply to the 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 commissioners of roads.

Government may sanction the junction of branch lines, and any questions as to terms to be referred to arbitrators.

XVI. The Colonial Government shall have the right of sanctioning the junction of branch lines communicating with the line of railway to Worcester; and in case of any question or controversy arising between the contracting party of the said railway to Worcester and such other party or parties as may have contracted for any one or more of such branch or communicating lines of railway relative to any matter connected with the junction of one or

more of such branch or communicating lines of railway or the terms and conditions for carrying goods and passengers from such branch or communicating lines of railway upon the railway to Worcester, or touching any other matter or thing in which the railway to Worcester and such branch or communicating line or lines of railway may be interested, such questions shall be referred to three persons, one to be nominated by the Governor, one to be nominated by the contracting party of the railway to Worcester, and one to be nominated by the contracting party of the branch line or lines by whom such question or questions shall be raised, and the decision of any two or more of these three persons shall be final. The cost of every such arbitrations to be in the discretion of the arbitrators.

XVII. This Act may be cited for all purposes as Short title. "The Worcester Railway Extension Act."

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No. 9—1862.]            AN ACT            [August 7, 1862.

For Constructing a Railway from Port Elizabeth to  
Graham's Town.

**W**HEREAS it is desirable that a railway should Preamble. be made and constructed from Port Elizabeth to or near to the city of Graham's Town: And whereas it is expedient that the Colonial Government should guarantee to any party who may undertake the construction of such railway a certain amount of annual interest on the capital to be expended on the same for a certain term of years, and that the necessary survey be made for the purpose of ascertaining the most suitable line of such railway, and that the Governor be empowered, after such survey, to conclude a contract or contracts for the construction and working of such railway: And whereas in consideration of the advantages which will directly and immediately accrue to the owners of landed property in the divisions of Port Elizabeth, Uitenhage, Alexandria, Albany, Bathurst,

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Fort Beaufort, and Peddie, it is just and expedient that the immovable property in the said divisions shall be rated as far as may be necessary to make up one half of any amount which the Colonial Government may be called upon to pay by 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:

Tenders to be called for construction and working of railway.

I. It shall be lawful for the Governor, by public advertisement in England and in this Colony, to invite tenders for the making, constructing, and working of a railway from Port Elizabeth, through the divisions of Port Elizabeth, Uitenhage, Alexandria, and Albany, to or near to the city of Graham's Town; such tenders to be accompanied by the necessary surveys, plans, sections, and specifications, made and furnished at the cost of the person or persons so tendering as aforesaid; and any surveyor with his assistants, being duly authorized by the Governor so to do, may enter any lands for the purpose of surveying the same and of probing or boring to ascertain the nature of the soil or of setting out the line of railway, such surveyor making full compensation to the occupier of the said lands for any damage thereby occasioned, the same to be recoverable by civil action brought within three months from the damage being done, with costs of suit, in any competent court.

Governor, with advice of Executive Council, may accept any tender.

II. It shall be lawful for the Governor from the tenders so received as above mentioned to accept such tender as to him, by and with the advice of the Executive Council, may appear best adapted for the purposes above mentioned, without, however, being bound to accept the lowest tender or any one of the tenders for the execution of the work aforesaid.

Contract to be concluded in terms of accepted tender, or upon the best terms obtainable.

III. It shall be lawful for the Governor, with the advice of the Executive Council, if any tender has been accepted, then in terms of such tender, and in case no tender shall have been accepted, then upon the best terms which the said Governor shall be able to secure, to conclude a contract or contracts for the

making, constructing, and working of the railway in the first section of this Act described; and with the like advice, and the contracting party consenting, at any time to alter or amend any one or more of the provisions of the said contract or contracts or to make any other or supplementary contract or contracts, for the purpose of carrying out the object of this Act, should it be found by him during the progress of the work necessary and expedient so to do.

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 With consent of contractor provisions of contract may be altered during progress of work.

IV. It shall be lawful for the Governor in any such contract or contracts to guarantee out of the colonial revenues the payment of interest at the rate of not more than six per cent. per annum on the amount actually expended, on such terms and conditions as may be stated in such contract or contracts: Provided that the total sum on which interest shall be so guaranteed shall not exceed the sum of seven hundred and fifty thousand pounds, and that the payment of such interest shall not extend beyond the period of fifty years, to be computed from the day of the opening for traffic of any portion of the said railway.

Interest at not more than six per cent. to be guaranteed for fifty years out of colonial revenue on amount actually expended and not exceeding £750,000.

V. When the line of railway from Port Elizabeth to the city of Graham's Town or any portion thereof shall have been opened for traffic with the consent of the Governor, by and with the advice of the Executive Council, the guarantee shall come into operation to the extent of such sum as may have been expended on so much of the said railway as shall have been so opened: Provided, however, that such sum shall bear the same proportion to the sum of seven hundred and fifty thousand pounds which the number of miles composing the portion so opened bears to the number of miles composing the entire line of such railway. And if the receipts in any one year after the opening thereof or a portion thereof shall not, after deducting such fair and reasonable sum as may have been expended for working the said railway or a portion thereof, leave a surplus equal to interest at the rate stipulated in the contract upon the sum for which the said work shall have been so constructed, then the Colonial

When guarantee to come into operation.

If the receipts in any one year shall, after deducting the working expenses, not realize the interest, Government to make good the difference.



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Government shall make good the difference or deficiency, so that the contracting party shall receive the stipulated rate of interest upon the sum for which the said work or portion thereof shall have been so executed as aforesaid.

What items to constitute the sum actually expended.

VI. The sum to be taken as actually expended shall for the purposes of the last preceding clause include and be composed of the following items, that is to say :

- 1st. The cost of constructing the railway, including the cost of erecting, purchasing, or hiring all necessary buildings in the Colony required for the purposes of the railway, with its stations and appurtenances.
- 2nd. The cost of providing the working stock of engines, carriages, and other plant and machinery fit and proper for the working of the railway.
- 3rd. The cost of laying down the line of telegraph, with its machinery and apparatus.
- 4th. The sum equal to interest paid or supposed to be paid half-yearly at the rate stipulated in the contract upon all sums from time to time paid up or advanced for the construction and working of the said railway, reckoned from the time or times of paying up or advancing such sums down to the time when interest upon such sums at and after such rate shall after the opening of the line or portion of the line for traffic become payable out of net profits or by virtue of the Government guarantee.

Guaranteed interest to be paid out of the public revenue.

VII. All interest guaranteed by such contract or contracts as aforesaid is hereby declared to be a charge upon the public revenue of the Colony, and the Governor is hereby authorized to issue warrants to the Treasurer-General of this Colony for the payment of such interest.

One half thereof to be a charge on the immovable property in certain divisions.

VIII. One half of such sum or sums of money as shall be paid or become 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 upon the immovable property situated within

the divisions of Port Elizabeth, Alexandria, Albany (including the city of Graham's Town), Bathurst, Fort Beaufort, Peddie, and the field-cornetcy of Coega, in the division of Uitenhage: Provided, however, that if the railway to be constructed under this Act shall run within three miles of the town of Uitenhage, then the immovable property situated within the whole division of Uitenhage shall be subject to the same charge as is by this section imposed upon the immovable property of the aforesaid divisions.

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IX. It shall be the duty of the divisional councils of Port Elizabeth, Alexandria, Albany, Bathurst, Fort Beaufort, Peddie, and Uitenhage, and they are hereby authorized and required as often as the Governor shall notify to them, in writing, that any sum or sums of money has or have been paid, or is or are payable out of the public revenue of this Colony under or by virtue of the guarantee aforesaid, to value, if need be, the immovable property in their divisions and field-cornetcy aforesaid respectively, in terms of and according to the provisions of the Act No. 9 of 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," and which shall be considered for this purpose is herein embodied; and the chairman of each of the said divisional councils shall transmit to the Colonial Secretary a statement of the valuation so made; and the proportion of the money which shall have become payable under and by virtue of the guarantee aforesaid shall be recoverable from the said divisions and the said field-cornetcy respectively in due proportion to the valuation of the immovable property therein; and the said divisional councils shall thereupon assess, impose, and levy upon such immovable property in terms of and according to the provisions of the said Act such rates as shall produce the proportion hereby declared to be recoverable from them respectively, together with the expense of collecting the same.

Divisional councils to value the immovable property in their respective divisions in accordance with Act No. 9, 1858.

In what proportion guarantee to be recoverable from the several divisions.

Divisional councils to levy rates.

X. In case of failure or neglect on the part of any of the said divisional councils to assess, impose, levy, and pay any such rate in their divisions and the said

In case of failure or neglect on the part of the divisional council, or if there be no council, Governor to

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appoint persons to act for the purposes of the preceding section.

field-cornetcy respectively, or in case no divisional council shall have been elected in any of the said divisions, or in case from any other cause or causes the provisions of the last preceding section cannot be or are not properly carried into effect, then and in such case it shall be lawful for the Governor to appoint some fit proper person or persons, to be paid at such rate as to the said Governor shall appear necessary, for the purpose in the preceding section mentioned; and he is or they are hereby invested for this and no other purpose with all and singular the rights, powers, and authority vested in divisional councils constituted under and by virtue of the Act aforesaid for that purpose, anything in the said or any other Act to the contrary notwithstanding; and the remuneration of such person or persons shall be and the same is hereby declared to be chargeable against the division in respect of which such person or persons shall be employed, and shall be recoverable in like manner as the rate due and to be paid by such division.

Council of one division may call on council of another to amend its valuation, and on the latter failing to do so, Governor may appoint persons for the purpose.

XI. If it shall appear to the divisional council of any one division that the immovable property in any one or more of the other divisions or in the said field-cornetcy has not been properly valued, such divisional council may give notice thereof to the divisional council of such one or more of the said other divisions or that in which such field-cornetcy shall be included, in order that a proper valuation of the immovable property of such one or more of the other divisions or of the said field-cornetcy may be made, and such one or more of the said other divisional councils shall be and they are hereby authorized and empowered to amend the valuation of the said immovable property, subject to and in terms of the provisions of the Act No. 9, 1858, in this Act mentioned; but should such one or more of the said other divisional councils refuse upon such notice to amend such valuation or fail to do so to the satisfaction of the divisional council giving such notice, then and in that case it shall be lawful for the Governor upon notice to him to that effect to appoint one or more fit and proper persons to make a valuation of the

immovable property in one or more of the said divisions as the case may be, and the person or persons so appointed shall be and he is or they are hereby invested for that purpose and no other with all and singular the rights, powers, and authority vested in divisional councils by the Act No. 9 of 1858 in this Act mentioned; and the valuation so made shall be binding on all parties concerned; and the cost of making such valuation as approved of by the Governor shall be recoverable from one or more of the said divisions in such proportion as may be deemed just and equitable under the circumstances of the case by three arbitrators to be appointed by the Governor for that purpose, or by the majority of them.

XII. All and singular the powers and authorities which are by the Act aforesaid, No. 9 of 1858, bestowed upon the commissioners of roads in regard to taking or acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act mentioned are, except in so far as the same may be limited or modified by the terms of the contract, bestowed upon whatever party shall have contracted as aforesaid for the making of the railway aforesaid, precisely as if the same were, *mutatis mutandis*, herein again set forth. The cost, if any, for acquiring such land and materials shall be added to and form part and parcel of the cost of construction, and it shall be lawful for the Governor in the contract above-mentioned to guarantee the payment of interest at the rate above stipulated upon such additional sum or sums of money as may be required for that purpose, in like manner as provided for in the fourth section of this Act.

Power of commissioners of roads under Act 9, 1858, in regard to acquiring land, &c., vested in contractor to make the railway.

XIII. 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 the 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

Account to be kept and laid before Parliament.

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with full information concerning the progress, making and working, costs and revenues of the said railway, shall be laid before each House of Parliament not later than twenty-one days after the opening of each session.

Opening of railway to be notified in Gazette and thereupon the existing main road to be abolished.

XIV. When and so soon as the said railway or any part thereof shall be opened for traffic, the previously existing main road between any places to which the said railway shall be so opened for public traffic shall cease to be a main road, anything to the contrary in any Act notwithstanding; and the opening of such railway or any part thereof shall be notified to the public by advertisement in the Government Gazette.

Provisions of Act 9, 1858, in regard to injuries to main roads to apply to railway.

XV. The provisions of the fifty-sixth and fifty-seventh sections of the Act aforesaid, No. 9 of 1858, relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, shall extend and apply to the 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 commissioners of roads.

Government may sanction the junction of branch lines, and any questions as to terms to be referred to arbitrators.

XVI. The Colonial Government shall have the right of sanctioning the junction of branch lines communicating with the line of railway from Port Elizabeth to Graham's Town; and in case of any question or controversy arising between the contracting party of the said Port Elizabeth and Graham's Town Railway and such other party or parties as may have contracted for any one or more of such branch or communicating lines of railway relative to any matter connected with the junction of one or more of such branch or communicating lines of railway, or the terms and conditions for carrying goods and passengers from such branch or communicating lines of railway upon the Port Elizabeth and Graham's Town Railway, or touching any other matter or thing in which the railway from Port Elizabeth to Graham's Town or such branch or communicating lines of railway may be interested, such questions shall be referred to three persons, one to be nominated by the Governor, one to be nominated by the contracting party of the railway from

Port Elizabeth to Graham's Town, and one to be nominated by the contracting party for and on behalf of the branch line or lines by whom such question or questions shall be raised, and the decision of any two or more of these three persons shall be final. The costs of every such arbitration to be in the discretion of the arbitrators.

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XVII. It shall be lawful for the Governor, with the advice of the Executive Council, to authorize the working of any one or more of the branch or communicating lines of railway by the contracting party of the Port Elizabeth and Graham's Town Railway, upon such terms and conditions as may be agreed upon by the said contracting party and any other contracting party or parties of any one or more of such branch or communicating lines of railway, such terms and conditions to be subject to the approval of the said Governor.

Contractor for Graham's Town and Port Elizabeth Railway may, with sanction of Governor, work any branch line upon terms to be agreed to by contractors of other branch lines.

XVIII. This Act may be cited for all purposes as "The Port Elizabeth and Graham's Town Railway Act."

Short title.

No. 10—1862.] AN ACT [August 7, 1862.

To Amend the Act No. 20, 1857, entitled "An Act for the Construction of a Railway from Cape Town to Wellington."

WHEREAS it is expedient to amend certain of the provisions of the Act No. 20, 1857, entitled "An Act for the Construction of a Railway from Cape Town to Wellington," relating to the assessing, imposing, and levying of the rates due and payable under the provisions of the Act aforesaid under and by virtue of the guarantee in that Act provided, and to make provision for the junction of branch and communicating lines of railway, and for other purposes: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. So much of the Act No. 20, 1857, entitled "An

Repugnant portions

No. 10—1862.  
of Act 20 of 1857  
repealed.

Act for the Construction of a Railway from Cape Town to Wellington," and of any other Act or Ordinance in force in this Colony as may be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Duty of divisional council of Cape, Stellenbosch, and Paarl, when Governor shall notify to them that any sum or sums have become payable under the guarantee.

II. It shall be the duty of the divisional councils of the divisions of the Cape, Stellenbosch, and the Paarl, and they are hereby authorized and required as often as the Governor shall notify to them in writing that any sum or sums of money has or have been or is or are payable out of the public revenue of this Colony under and by virtue of the guarantee in the Act aforesaid provided, to value if need be the immovable property in their divisions respectively in terms of and according to the provisions of the Act No. 9, 1858, entitled "An Act to Provide for the Management of the Public Roads of the Colony," and which shall for this purpose be considered as herein embodied; and the chairman of each of the said divisional councils shall transmit to the Colonial Secretary a statement of the valuation so made; and the proportion of the money which shall have become payable under and by virtue of the guarantee aforesaid shall be recoverable from the said divisions in due proportion to the value of the immovable property therein; and the said divisional councils shall thereupon assess, impose, and levy upon such immovable property, in terms of and according to the said Act, such rates as shall produce the proportion declared to be recoverable from them respectively, together with the expense of collecting the same.

Sums recoverable from each division to be in proportion to the value of the immovable property therein.

How in case of failure or neglect on the part of the divisional council, or if there be no divisional council in any division.

III. In case of failure or neglect on the part of any of the said divisional councils to assess, impose, levy, and pay any such rate in their divisions respectively, or in case no divisional council shall have been elected in any of the said divisions, or in case from any other cause or causes the provisions of the last preceding section cannot be or are not properly carried into effect, then and in such case it shall be lawful for the Governor to appoint some fit and proper person or persons, to be paid at such rate as to the said Governor shall appear necessary, for

the purpose in the preceding section mentioned, who shall be and they are hereby invested for this and no other purpose with all and singular the rights, powers, and authority vested in the divisional councils constituted under and by virtue of the Act last aforesaid, anything in the said Act or in any other Act to the contrary notwithstanding; and the salaries of such persons shall and the same are hereby declared to be chargeable against the division in respect of which such persons shall be employed, and shall be recoverable in like manner as the rate due and to be paid by such division.

IV. If it shall appear to the divisional council of any one division that the immovable property in any one or more of the other divisions has not been properly valued such divisional council may give notice thereof to the divisional council of such one or more of the said other divisions in order that a proper valuation of the immovable property of such one or more of the said other divisions may be made, and such one or more of the said other divisional councils shall be and they are hereby authorized and empowered to amend the valuation of the said immovable property, subject to and in terms of the provisions of the Act No. 9, 1858, in this Act mentioned; but should such one or more of the said other divisional councils refuse upon such notice, to be given within one month, to amend such valuation or fail to do so to the satisfaction of the divisional council giving such notice, then and in that case it shall be lawful for the Governor upon notice to him to that effect to appoint one or more fit and proper persons to make a valuation of the immovable property in one or more of the said divisions, as the case may be, and the persons so appointed shall be and they are hereby invested for that purpose and no other with all and singular the rights, powers, and authority vested in divisional councils by the Act No. 9 of 1858 in this Act mentioned for that purpose; and the valuation so made shall be binding on all parties concerned; and the cost of making such valuation as approved of by the Governor shall be recoverable from one or more of the said divisions

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Council of one division may require council of another to amend its valuation return, and on the latter failing to do so, Governor may appoint persons for the purpose.



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in such proportions as may be deemed just and equitable, under the circumstances of the case, by three arbitrators to be appointed by the Governor for that purpose, or by the majority of them.

One year after opening of railway for traffic main road to be abolished.

V. One year after the said railway or any part thereof shall be opened for traffic the previously existing main road between any places to which the said railway shall be so opened for public traffic shall cease to be a main road, any thing to the contrary in any Act notwithstanding; and the opening of such railway or any part thereof shall be notified to the public by advertisement in the Government Gazette.

Government may sanction junction of branch lines, and any question as to terms to be referred to arbitrators.

VI. The Colonial Government shall have the right of sanctioning the junction of branch lines communicating with the line of railway from Cape Town to Wellington; and in case of any question or controversy arising between the contracting party of the said Cape Town and Wellington Railway and such party or parties as may have contracted for any one or more such branch or communicating railways relative to any matter connected with the junction of one or more of such branch or communicating railways, or the terms and conditions of carrying goods and passengers from such branch or communicating railways, upon the Cape Town and Wellington Railway or the terms and conditions of carrying goods and passengers from the Cape Town and Wellington Railway on such branch or communicating railways, or touching any other matter or thing in which the Cape Town and Wellington Railway and such branch or communicating railways may be interested, such question shall be referred to three persons, one to be nominated by the Governor, one to be nominated by the contracting party for and on behalf of the Cape Town and Wellington Railway, and one to be nominated by the contracting party for and on behalf of such branch line or lines, by or with respect to which such question shall have been raised, and the decision of any two or more of these three persons shall be final; the cost of every such arbitration to be in the discretion of the arbitrators.

VII. It shall be lawful for the Governor, with the advice of the Executive Council, to authorize the working of any one or more of the branch or communicating lines of railway by the contracting party of the Cape Town and Wellington Railway upon such terms and conditions as may be agreed upon by the said contracting party and the contracting party or parties of any one or more of such branch or communicating lines of railway, such terms and conditions to be subject to the approval of the said Governor.

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Contractors of Cape Town and Wellington line may, with sanction of Governor, work any branch line with consent of contractors of other branch lines.

VIII. This Act may be cited for all purposes as "The Cape Town and Wellington Railway Amendment Act."

Short title.

No. 11—1862.] AN ACT [August 7, 1862.

For Facilitating the Borrowing of Money by Grantees upon Security of Land granted to them by the Crown.

**W**HEREAS difficulties exist in the way of grantees in the division of Queen's Town and in certain other divisions of the Colony obtaining money upon the security of the lands granted to them by the Crown under conditions of forfeiture in certain cases specified in the grants, and by reason whereof the improvement of the lands contained in these grants is retarded in consequence of the want of capital: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

I. In every case in which lands so granted as aforesaid shall have become forfeited it shall be lawful for all persons holding a duly registered and *bonâ fide* mortgage upon the same to call upon the Governor at any time within six months from such forfeiture having been declared and published in the Government Gazette, to put up the lands for sale by public auction upon conditions of the same tenor and

Persons holding mortgages on forfeited grants may call upon Governor to sell the lands and pay off the mortgage from the proceeds of sale.

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Sum paid not to exceed one half of the proceeds.

form as those appearing in the original grant thereof, so far as the same may be applicable at the time; and out of the net proceeds of such sale the Governor shall cause to be paid to the said person or persons so applying, and in the order of their priority, the amount of principal, interest, and lawful expenses due under any such mortgage: Provided that the sum to be paid shall not in the whole exceed one half of the net proceeds of such sale.

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No. 12—1862.] AN ACT [August 7, 1862.

For Reviving the Ordinance No. 15, 1844, entitled “Ordinance to Provide for the Enregisterment in the Land Registers of this Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820.”

Preamble.

WHEREAS by the Act No. 7, 1859, provision was made for continuing in force until the 31st December, 1861, certain of the clauses of Ordinance No. 15, 1844, entitled “Ordinance to Provide for the Enregisterment in the Land Registers of this Colony of certain Subdivisions of the Locations and Extensions of the settlers of 1820:” And whereas it is expedient to continue the provisions of the said Ordinance: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Power of Governor to issue proclamations under Ordinance 15, 1844, continued.

I. It shall and may be lawful for the Governor of the colony at any time after the taking effect of this Act to issue any such proclamation as is in the second section of the Ordinance aforesaid, No. 15, 1844, mentioned and described; and thereupon every proclamation so issued shall be deemed and taken to be valid and effectual, and all and singular the provisions of the said Ordinance in reference thereto and to any subdivision of location mentioned therein shall be of full force and effect.

No. 13—1862.] AN ACT [August 7, 1862.

No. 13—1862.

For Continuing the Act No. 26, 1857, entitled “An Act for punishing Emissaries from Kafirland and others delivering in this Colony to Kafirs resident therein Messages dangerous to the Public Peace.”

WHEREAS the Act No. 26, 1857, entitled “An Act for Punishing Emissaries from Kafirland and others delivering in this Colony to Kafirs resident therein Messages dangerous to the Public Peace,” was limited so as to continue in force until the 31st December, 1858, and no longer: And whereas the said Act was by Act No. 24, 1860, continued until the 31st December, 1861: And whereas the said Act was by Act No. 11, 1861, further continued until the 31st December, 1862: And whereas it is expedient that the said Act should be continued in force until the 31st December, 1863: Be it enacted by 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. 26, 1857, shall be and continue in force until the 31st December, 1863, and no longer.

II. This Act shall commence and take effect from and after the expiration of the Act aforesaid, No. 11, 1861, and not sooner.

III. This Act may be cited for any purpose as “The Kafir Emissaries Act, 1862.”

No. 14—1862.] AN ACT [August 7, 1862.

To Regulate till the Expiration of the Year 1863 the Dealing in Gunpowder, Fire-arms, and Lead.

WHEREAS the Act No. 12, 1861, entitled “An Act to regulate till the expiration of the year 1862 the Dealing in Gunpowder, Fire-arms, and Lead,” will expire with the expiration of the last-mentioned

No. 14—1862.

year: And whereas it is expedient that the provisions of the Act No. 14, 1857, which was continued in force by the said Act No. 12, 1861, until the expiration of the year 1862, should be further continued so as to remain in force till the 31st December, 1863: 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:

Act 14, 1857, continued to end of 1863.

I. The Act aforesaid, No. 14, 1857, entitled "An Act to Regulate until the expiration of the year 1858 the Dealing in Gunpowder, Firearms, and Lead," shall continue and be in force and operation from the expiration of the year 1862 till the expiration of the year 1863.

This Act when to commence.

II. This Act shall commence and take operation and effect at and upon the expiration of the Act aforesaid, No. 12, 1861, and not sooner.

Offences against this Act to be treated as contraventions of Ordinance 2, 1853.

III. Every offence against the Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, committed after the commencement and taking effect of this Act, and before the 31st December, 1863, shall in any indictment relative thereto be charged as a contravention of the said Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, and 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. 15—1862.] AN ACT [August 7, 1862.

For Applying a Sum not exceeding Four Hundred and Thirty-eight Thousand and Seventy-two Pounds Two Shillings and Six Pence for the Service of the Year 1862.

Preamble.

WHEREAS, by the Act No. 28 of 1861, entitled "An Act for applying a sum not exceeding Two Hundred and Sixty-two Thousand Nine Hundred and One Pounds for the service of the year

1862," the said sum of two hundred and sixty-two thousand nine hundred and one pounds was charged upon the revenue of this Colony for the service of the Government of the Colony until the 30th of June, 1862 : 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 1862, 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, 1861, and to provide by one Act for the service of the year 1862 : Be it enacted by 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. 28, 1861, is hereby Act 28, 1861, repealed. repealed.

II. The public revenue of the Colony is hereby Expenditure, 1862. charged with a sum not exceeding four hundred and thirty-eight thousand and seventy-two pounds two shillings and six pence for the service of the year 1862, in addition to the sums already by law provided for such service, which sum of four hundred and thirty-eight thousand and seventy-two pounds two shillings and six pence shall be applied in the manner following, that is to say :

For the expenditure of the Civil Establishments, a Civil establishments. sum not exceeding eighty-two thousand four hundred and thirty-five pounds and five shillings.

For the expenditure of the Judicial Establishments, a Judicial establishments. sum not exceeding thirty-six thousand five hundred and forty pounds and five shillings.

For the expenditure of the Educational Establishments, a Educational establishments. sum not exceeding sixteen thousand nine hundred and six pounds.

For the expenditure of the Medical Establishments, a Medical establishments. sum not exceeding eighteen thousand six hundred and twenty-nine pounds and ten shillings.

For the expenditure of the Police and Gaol Establishments, a Police and gaols establishments. sum not exceeding fifty-eight thousand five hundred and seventy-nine pounds twelve shillings and six pence.

No. 15—1862.

Border department  
(Aborigines).

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

Pensions and charitable allowances.

For the expenditure on account of Pensions, Charitable Allowances, and Gratuities, a sum not exceeding two hundred pounds.

Works and buildings.

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

Roads, bridges, and convicts.

For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding one hundred and five thousand six hundred and eighty-three pounds.

Miscellaneous services.

For the expenditure on account of Miscellaneous Services, a sum not exceeding thirty-six thousand six hundred and ninety-two pounds and ten shillings.

Colonial allowances to military officers.

For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding twenty thousand pounds.

Total.

Amounting, in the whole, to four hundred and thirty-eight thousand and seventy-two pounds two shillings and six pence, as detailed in the schedules hereunto annexed.

Application of supplies.

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.

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No. 16—1862.] AN ACT [August 7, 1862.

For Applying a Sum not exceeding Two Hundred and One Thousand Eight Hundred and Seventy Pounds for the Service of the Year 1863.

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 June, 1863 :

Expenditure first half of 1863 authorized.

1. 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 two hundred and one thousand eight hundred and seventy pounds be

charged upon the revenue of the said Colony towards the service of the year 1863, 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. 15 of 1862, passed during the present session for the appropriation of the public revenue, that is to say :

- |                                                                                                                                                                                                         |                                  |        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|--------|
| II. For the expenditure of the Civil Establishments, a sum not exceeding thirty-eight thousand six hundred and fifty-six pounds.                                                                        | Civil establishments.            |        |
| III. For the expenditure of the Judicial Establishment, a sum not exceeding sixteen thousand seven hundred and fifty-three pounds.                                                                      | Judicial establishment.          |        |
| IV. For the expenditure of the Educational Establishment, a sum not exceeding eight thousand two hundred and fifty-five pounds.                                                                         | Educational establishment.       |        |
| V. For the expenditure of the Medical Establishment, a sum not exceeding nine thousand two hundred and ninety-five pounds.                                                                              | Medical establishment.           |        |
| VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding twenty-nine thousand two hundred and fifty-six pounds.                                                               | Police and gaols establishments. |        |
| VII. For the expenditure on account of the Border Department (Aborigines), a sum not exceeding twenty-six thousand and fourteen pounds.                                                                 | Border department (Aborigines).  |        |
| VIII. For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred pounds.                                                                                                  | Charitable allowances.           | allow- |
| IX. For the expenditure on account of Works and Buildings, a sum not exceeding four thousand one hundred and fifty pounds.                                                                              | Works and buildings.             |        |
| X. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding fifty-two thousand seven hundred and eighty-nine pounds.                                  | Roads, bridges, and convicts.    |        |
| XI. For the expenditure on account of Miscellaneous Services, a sum not exceeding sixteen thousand six hundred and two pounds.                                                                          | Miscellaneous services.          |        |
| XII. Amounting in the whole to two hundred and one thousand eight hundred and seventy pounds.                                                                                                           | Total.                           |        |
| XIII. The said aids or supplies shall not be issued or applied for any use, intent, or purpose other than the particular service for which the said amounts have been granted respectively by this Act. | Application of supplies.         |        |



No. 17—1862.

No. 17—1862.] AN ACT [August 7, 1862.

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

Preamble.

WHEREAS by the Act No. 10 of 1858, entitled “An Act for Enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues,” power and authority were granted to the harbour board of Port Elizabeth to effect certain loans, not exceeding twenty thousand five hundred pounds in the whole, with the sanction of the Governor and upon security of the general revenue, for the purpose of constructing such works in or at Algoa Bay as the said board shall judge fit to be constructed: And whereas it is necessary and expedient that the said board should be authorized to effect certain additional loans not exceeding twenty-nine thousand five hundred pounds for the purpose of completing the works now in progress under and by virtue of the provisions of the Act No. 10 of 1858 aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Harbour Board authorized to raise an additional loan of £29,500 subject to the provisions of Act 10, 1858.

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

Short title.

II. This Act may be cited for all purposes as the “Port Elizabeth Harbour Wharfage Amendment Act.

No. 18—1862.] AN ACT [August 7, 1862.

No. 18—1862.

For Amending Act No. 13 of 1859, entitled “An Act to Incorporate the Simon’s Bay Dock or Patent Slip Company.”

**W**HEREAS by the twenty-seventh section of the Preamble. Act No. 13 of 1859 it is enacted that, “When and as soon as from time to time the whole of the capital for the time being of the company shall have been subscribed for and one half of such capital shall have been paid up, it shall be lawful for the company from time to time, by the authority of a special general meeting convened for that purpose in manner provided by the seventeenth section of this Act, to borrow money on mortgage of their undertaking and of the wharfage dues to be received by the company:” And whereas it is expedient that the said section should be repealed and that the said company having a paid-up capital of twenty thousand pounds should have power to borrow and take up money on mortgage of the patent slip and of the wharfage dues to be received by the company to be applied to the uses and purposes of the company: 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, to wit:

I. The twenty-seventh section of the Act No. 13 of 1859 shall be and the same is hereby repealed. Section 27, Act 13, 1859, repealed.

II. The said company shall be and is hereby authorized and empowered, by and with the consent of the majority of shareholders present at a special general meeting called for that purpose in manner provided by the seventeenth section of the said Act, to borrow and take up any sum or sums of money, to be appropriated to such uses and purposes of the company as the said meeting shall resolve, upon mortgage and security of the property, works, and undertaking and of the wharfage dues to be received by the company. Company empowered to raise loans on security of the works and of the wharfage dues.

No. 1—1863.

No. 1—1863.] AN ACT [July 28, 1863.

To Provide for the Construction and Maintenance of  
the Public Roads of the Colony.

Preamble.

WHEREAS the Act No. 9 of the year 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," will expire on the thirty-first day of December next ensuing, and it is therefore necessary to make other provision for the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly, thereof, as follows:

Main roads to be under charge of general Government.

I. The charge of the construction and maintenance of the main roads of the colony shall, as heretofore, remain in the hands of the general Government; and the Governor is hereby authorized to appoint such officers as may be found necessary for the purposes of this Act, who shall be paid such salaries as shall be voted by Parliament.

Governor may appoint officers for the purposes of this Act.

Such officers vested with the powers and liabilities of Chief Commissioner.

II. All powers, authorities, and liabilities which by the Act No. 9, 1858, are vested in or imposed upon the Chief Commissioner of Roads, and his assistants or subordinates, shall, from the taking effect of this Act, be vested in and imposed upon such officer or officers as the Governor shall by proclamation appoint.

Act 9 of 1858, as subsequently altered and amended, to remain in force, and to apply to officers appointed under this Act.

III. The said Act No. 9 of 1858 shall, except in so far as the same may have been altered or amended by this Act, or by the Acts Nos. 23 of 1858, 11 of 1859, 25 of 1859, 5 of 1860, or 10 of 1861, continue in full force until the 31st December, 1864, and no longer; and whenever in any of the aforesaid Acts mention is made of the Chief Commissioner of Roads, or his assistants or subordinates, the same shall be taken and construed to apply to such officer or officers as the Governor shall by proclamation appoint.

Commencement and duration of Act.

IV. This Act shall commence and take effect on and from the first day of January, 1864, and continue in force until the thirty-first December, 1864, and no longer.

No. 2—1863.] AN ACT [July 28, 1863. No. 2—1863.

To Provide for the Imprisonment in this Colony of certain Criminals sentenced in British Kaffraria.

**W**HEREAS by the Act No. 25 of 1857, entitled Preamble.  
 “An Act to provide for the Imprisonment in this Colony of certain Criminals sentenced in British Kaffraria,” provision was made for the reception and imprisonment within this colony of persons convicted of certain offences in British Kaffraria, during a time by the said Act limited; and whereas circumstances render it expedient to make further provision to the like effect: 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. If at any time it shall be shown to the satisfaction of the Governor that it is desirable for the peace and tranquillity of Her Majesty’s possessions in South Africa that any Kafir or other person belonging to any native tribe or people, who may have been sentenced within the next ensuing three years by any court of competent jurisdiction in British Kaffraria to be imprisoned, should be removed into this colony, then and in any such case it shall be lawful for the said Governor, by warrant under his hand, to order such Kafir or other person to be received into any gaol or other place of confinement in this colony; and every such Kafir or other person 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 were a term of imprisonment 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 to imprisonment by courts in British Kaffraria may be removed to and imprisoned in this colony as if sentenced by 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

Certificate of Colonial Secretary to serve as evidence of such sentence.

No. 2—1863.

court 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.

No. 3—1863.] AN ACT [July 28, 1863.

To Amend the Act No. 13 of 1855, entitled "An Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854.'"

Preamble.

WHEREAS the provisions of the Act of the Imperial Parliament, to wit, the "Merchant Shipping Act, 1854," as contained in the two hundred and forty-second section thereof, have, in certain respects, been altered and amended; and whereas it is expedient to amend the Act of the Colonial Parliament, to wit, the Act No. 13, 1855, entitled "An Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant Shipping Act, 1854,'" so that the same shall correspond with the alterations and amendments in the Imperial Act above mentioned: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Powers of cancelling or suspending certificates of masters or mates vested in local courts.

I. The powers of cancelling or suspending the certificate of a master or mate by the two hundred and forty-second section of the Act of the Imperial Parliament, entitled the "Merchant Shipping Act, 1854," conferred on the Board of Trade, shall vest in and be exercised by the court or tribunal duly authorized by the seventeenth section of the Act No. 13, 1855, of the Colonial Parliament, entitled an "Act for the Appointment of Shipping Masters, and for other purposes relating to the 'Merchant

Shipping Act, 1854,'” to make inquiry into the several matters and things recited in the said last-mentioned section of the said Act of the Colonial Parliament.

No. 3—1863.

II. Every such court or tribunal shall, at the conclusion of the case, or as soon after as possible, state, in open court, the decision to which it may have come with respect to cancelling or suspending certificates, and shall, with all convenient dispatch, transmit the proceedings in such inquiry, together with their decision, to the Governor; and no such decision shall take effect unless it be confirmed by the Governor, who may, if he shall think fit, direct such court or tribunal to take further evidence, or to reconsider such decision; and such court or tribunal shall, in all cases, send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if it determine to cancel or suspend any certificate, forward such certificate, or any directions it may have given in reference thereto, to the Board of Trade, with their report, so that the said board may exercise the powers conferred by paragraph four, section twenty-three, of 25th and 26th Victoria, chapter sixty-three.

Sentence of suspension or cancellation of certificate and proceedings thereupon.

Power of Governor to direct reconsideration of decision.

Report to be made to Board of Trade.

III. No certificate shall be cancelled or suspended unless a copy of the report, or statement of the case upon which the investigation is ordered, has been furnished to the owner of the certificate at least twenty-four hours before the commencement of the investigation.

Statement of the case to be furnished to owner of certificate twenty-four hours before commencement of inquiry.

IV. Every master or mate whose certificate is or is to be suspended or cancelled in pursuance of this Act, shall, upon demand, deliver his certificate to such court or tribunal by which the case is investigated or tried, or, if not demanded by such court or tribunal, to the Board of Trade, or as such court or tribunal may direct, in writing, and in default shall, for each offence, incur a penalty not exceeding fifty pounds.

Certificate to be delivered to the court.

Penalty for default.

V. This Act may be cited as the “Local Merchant Seamen’s Amendment Act, 1863,” and shall be construed with and as part of the “Local Merchant Seamen’s Act, 1855.”

Short title of Act.

No. 4—1863.

No. 4—1863.] AN ACT [July 28, 1863.

To Amend Act No. 4 of 1858, constituting the Board of Public Examiners.

Preamble.

WHEREAS it is expedient, for the purpose of further extending the usefulness of the Board of Examiners, to amend in some respects the Act No. 4 of 1858, by which the said Board is constituted: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Twelfth and thirteenth clauses of Act 4, 1858, to expire on first examination for third-class certificate.

I. The twelfth and thirteenth sections of Act No. 4 of 1858 shall continue in force until the examinations in the next ensuing sections of this Act are carried into operation, and no longer.

Third-class certificate in literature and science.

II. In addition to the certificates in literature and science in the ninth section of the said Act No. 4 of 1858, there shall be granted by the board a certificate of the third class in literature and science, the examinations for which shall bear, as far as may be possible, the same relation to the examinations for the higher certificates in literature and science as the matriculation examination of the University of London bears to the examinations for the degrees of bachelor and master of arts of that university.

Rules and by-laws relative to third-class certificate to be confirmed by Governor and published.

III. All by-laws and rules of the board made under the seventh section of the said Act, having reference to the subjects of examination for the certificate in the last section mentioned, and to the degree of proficiency required from the candidates, 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 twelve months after such publication; and the subjects for examination shall be in all cases published for general information at least twelve months before any examination for the said certificate of the third class in literature and science shall take place.

Examinations for the public service.

IV. It shall be the duty of the board, at the annual session, to examine candidates for the public service who may be authorized to appear before them by the Governor, and who are not candidates

for any of the certificates, in such of the subjects of examination for certificates as, in the particular instances, the Governor may think fitting; and the board, without granting any certificates, shall report to the Governor on the proficiency of candidates in such subjects.

No. 4—1863.

V. The board shall have the power, should they deem fit, to cause examinations to be held elsewhere than at Cape Town, in other places besides Port Elizabeth, in like manner as such examinations are directed to be held at Port Elizabeth under Act No. 18 of 1860; and whenever circumstances shall prevent the appointment by the board of one of their number to be a commissioner to preside at the examinations held elsewhere than in Cape Town, or shall prevent such commissioner so appointed from so presiding, it shall be in their power, under such regulations as shall be made by them in that behalf, confirmed by the Governor, to appoint a commissioner, not being a member of the board, to preside at such examination.

Examinations may be held elsewhere than at Cape Town and Port Elizabeth.

And before a commissioner not a member of the board.

No. 5—1863.]            AN ACT            [July 28, 1863.

For Continuing the Act No. 26, 1857, "An Act for Punishing Emissaries from Kafirland and others delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace."

**W**HEREAS the Act No. 26, 1857, entitled "An Act for punishing Emissaries from Kafirland and others delivering in this Colony, to Kafirs resident therein, Messages dangerous to the Public Peace," was limited so as to continue in force until the 31st December, 1858; and whereas the said Act was, by other Acts, further continued until the 31st December, 1863, and no longer; And whereas it is expedient that the said Act should be continued in force until the 31st December, 1864:

Preamble.



No. 5—1863.

Be it enacted by 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 26, 1857, continued.

I. The Act aforesaid, No 26 of 1857, shall be and continue in force until the 31st December, 1864, and no longer.

This Act when to commence.

II. This Act shall commence and take effect from and after the expiration of the Act, No. 13, 1862, and no sooner.

Short title.

III. This Act may be cited for any purpose as “The Kafir Emissaries Act, 1863.”

No. 6—1863.] AN ACT [July 28, 1863.

To Regulate till the Expiration of the Year 1864 the Dealing in Gunpowder, Firearms, and Lead.

Preamble.

WHEREAS the Act No. 14 of 1862, entitled “An Act to regulate till the expiration of the year 1863 the Dealing in Gunpowder, Firearms, and Lead,” will expire with the expiration of the last-mentioned year; and whereas it is expedient that the provisions of the Act No. 14, 1857, which was continued in force by the said Act No. 14 of 1862 until the expiration of the year 1863, should be further continued so as to remain in force till the 31st December, 1864: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

Act 14, 1857, continued.

I. The Act aforesaid, No. 14, 1857, entitled “An Act to regulate until the expiration of the Year 1858 the Dealing in Gunpowder, Firearms, and Lead, shall continue and be in force and operation from the expiration of the year 1863 till the expiration of the year 1864.

Commencement of this Act.

II. This Act shall commence and take operation and effect at and upon the expiration of the Act aforesaid, No. 14, 1862, and not sooner.

Contravention of this Act to be charged as offences against Ordinance 2, 1853.

III. Every offence against the Ordinance No. 2, 1853, as amended by the Act aforesaid, No. 14,

1857, committed after the commencement and taking effect of this Act, and before the 31st December, 1864, shall, in an indictment relative thereto, be charged as a contravention of the said Ordinance, No. 2, 1853, as amended by the Act aforesaid, No. 14, 1857, and 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. 6—1863.

No. 7—1863.] AN ACT [July 28, 1863.

To Amend the Act No. 7, 1862, entitled “An Act for the Construction of a Railway to Malmesbury.”

**W**HEREAS it has been found that the provisions of the Act No. 7, 1862, entitled “An Act for the construction of a Railway to Malmesbury,” are not calculated to secure the most favourable terms for the construction of such a railway to Malmesbury; and whereas it is desirable, before authorizing its construction, that the requisite surveys, plans, sections, and estimates of the probable expense should be obtained: Be it enacted by 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 No. 7 of 1862, entitled “An Act for the Construction of a Branch Railway to Malmesbury,” as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed. Repugnant portions of Act 7, 1862, repealed.

II. It shall be lawful for the Governor to cause the most suitable line of railway from Cape Town to Malmesbury to be ascertained and defined, and to obtain the necessary survey, plans, sections, specifications, and an estimate of the expense for constructing the same. Governor empowered to cause the line to be defined and surveyed.

III. Any person or persons, being duly authorized by the Governor so to do, may enter upon any land Lands may be entered upon for purpose of survey.

No. 7—1863.

Compensation to be made to owner.

for the purpose of such survey as aforesaid, and may probe and bore the same to ascertain the nature of the soil, and may set out the line of railway upon the same, such person or persons making full compensation to the occupier of the said land for any damage by him or them occasioned, the same to be recoverable by action brought in any competent court within three months from the date when such damage is alleged to have been committed.

Compensation for lands and costs of survey to be paid from public treasury.

IV. It shall be lawful for the Governor to advance the amount of such compensation, and the costs, charges, and other expenses of the said survey, plans, sections, specifications, and estimates of the probable expense, from the public treasury, which shall form a part of the cost of the construction of the said railway.

No contract for construction to be concluded.

V. Nothing in this Act, or in the Act No. 7, 1862, entitled "An Act for the Construction of a Railway to Malmesbury," contained shall be so construed as to authorize the Governor to conclude any contract for the construction of the said railway until after the next session of Parliament.

Short title.

VI. This Act may be cited for all purposes as "The Malmesbury Railway Survey Act."

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No. 8—1863.] AN ACT [July 28, 1863.

To Amend the Act No. 8, 1862, entitled "An Act for constructing a Railway from Wellington to Worcester."

Preamble.

WHEREAS it has been found that the provisions of the Act No. 8, 1862, entitled "An Act for constructing a Railway from Wellington to Worcester," are not calculated to secure the most favourable terms for constructing a railway from Cape Town to Worcester; and whereas it is desirable, before authorizing its construction, that the requisite surveys, plans, sections, and estimates of the probable expense should be obtained: Be it enacted by the Governor of the Cape of Good Hope, with the

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

No. 8—1863.

I. So much of the Act No. 8, 1862, entitled “ An Act for constructing a Railway from Wellington to Worcester,” as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Repugnant portions of Act No. 8 of 1862 repealed.

II. It shall be lawful for the Governor to cause the most suitable line of railway from Cape Town to Worcester to be ascertained and defined, and to obtain the necessary survey, plans, sections, specifications, and an estimate of the expense for constructing the same.

Governor empowered to cause the line to be defined and surveyed.

III. Any person or persons, being duly authorized by the Governor so to do, may enter upon any land for the purpose of such survey as aforesaid, and may probe and bore the same to ascertain the nature of the soil, and may set out the line of railway upon the same, such person or persons making full compensation to the occupier of the said land by him or them occasioned, the same to be recoverable by any action brought in any competent court within three months from the date when such damage is alleged to have been committed.

Lands may be entered upon for purpose of survey.

Compensation to be made to owner.

IV. It shall be lawful for the Governor to advance the amount of such compensation, and the cost, charges, and other expenses of the said survey, plans, sections, specifications, and estimates of the probable expense, from the public treasury, which shall form a part of the cost of the construction of the said railway.

Compensation for lands and costs of survey to be paid from public treasury.

V. Nothing in this Act, or in the Act No. 8, 1862, entitled “ An Act for constructing a Railway from Wellington to Worcester,” contained shall be so construed as to authorize the Governor to conclude any contract for the construction of the said railway until after the next session of Parliament.

No contract for construction to be concluded.

VI. This Act may be cited for all purposes as “ The Cape Town and Worcester Railway Survey Act.”

Short title.

No. 9—1863.

No. 9—1863.] AN ACT [July 28, 1863.

To Amend the Act No. 9, 1862, entitled "An Act for constructing a Railway from Port Elizabeth to Graham's Town."

Preamble.

WHEREAS it has been found that the provisions of the Act No. 9, 1862, entitled "An Act for constructing a Railway from Port Elizabeth to Graham's Town," are not calculated to secure the most favourable terms for constructing a railway from Port Elizabeth to Graham's Town; and whereas it is desirable, before authorizing its construction, that the requisite surveys, plans, sections, and estimates of the probable expense should be obtained: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Repugnant portions of Act No. 9 of 1862 repealed.

I. So much of the Act No. 9, 1862, entitled "An Act for constructing a Railway from Port Elizabeth to Graham's Town," as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Governor empowered to cause the line to be defined and surveyed.

II. It shall be lawful for the Governor to cause the most suitable line of railway from Port Elizabeth to Graham's Town to be ascertained and defined, and to obtain the necessary survey, plans, sections, specifications, and an estimate of the expense for constructing the same.

Lands may be entered upon for purpose of survey.

III. Any person or persons, being duly authorized by the Governor so to do, may enter upon any land for the purpose of such survey as aforesaid, and may probe and bore the same to ascertain the nature of the soil, and may set out the line of railway upon the same, such person or persons making full compensation to the occupier of the said land for any damage by him or them occasioned, the same to be recoverable by action brought in any competent court within three months from the date when such damage is alleged to have been committed.

Compensation to be made to owner.

IV. It shall be lawful for the Governor to advance the amount of such compensation, and the costs,

Compensation for lands and costs of survey to be paid from public treasury.

charges, and other expenses of the said survey, plans, sections, specifications, and estimates of the probable expense, from the public treasury, which shall form a part of the cost of the construction of the said railway.

No. 9—1863.

V. Nothing in this Act, or in the Act No. 9, 1862, entitled "An Act for constructing a Railway from Port Elizabeth to Graham's Town," contained shall be so construed as to authorize the Governor to conclude any contract for the construction of the said railway until after the next session of Parliament.

No contract for construction to be concluded.

VI. This Act may be cited for all purposes as "The Port Elizabeth and Graham's Town Railway Survey Act."

Short title.

No. 10—1863.] AN ACT [July 28, 1863.

For Authorizing the Governor to secure by Letters Patent, to the Inventors thereof, the exclusive enjoyment for a limited Period of an Apparatus to scour Wool and of a Plough for the better Cultivation of Vineyards.

WHEREAS, by the Act No. 17, 1860, entitled "An Act to provide for the granting, in this Colony, of Patents for Inventions," it has been declared in what manner grants of letters patent may be obtained for any invention in this Colony; and whereas the undermentioned inventors duly complied with the several provisions of the said Act, but from circumstances over which they had no control, letters patent could not be legally sealed and issued by the Governor to and in favour of William Parrington, of Port Elizabeth, for an invention of an apparatus to scour wool, and to and in favour of Joseph Lawton, of Cape Town, for an invention of a plough for the better and more economical cultivation of vineyards; and whereas it is just and reasonable that the said letters patent should be sealed and issued: Be it enacted by the

Preamble.

No. 10—1863.

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

Issue of letters patent to Wm. Parrington, of Port Elizabeth, for apparatus for scouring wool.

I. It shall be lawful for the Governor to seal and issue letters patent to and in favour of William Parrington, of Port Elizabeth, for his invention of an apparatus to scour wool by steam or hot water, and washing it in cold water before or after it is scoured, according to the specification by him deposited in the office of the Colonial Secretary on or about the 21st day of December, 1861, and for the period therein mentioned of fourteen years; and also to seal and grant letters patent to and in favour of Joseph Lawton, of Cape Town, for his invention of a plough for the better and more economical cultivation of vineyards, according to the specification by him deposited in the office of the Colonial Secretary on or about the first day of July, 1861, and for the period therein mentioned of fourteen years; anything to the contrary in the said Act No. 17, 1860, notwithstanding.

And to Joseph Lawton, of Cape Town, for vineyard plough.

Letters patent subject to provisions of Act No. 17 of 1860.

II. The said letters patent shall be subject, in all and every other respect, to the provisions of the said Act, No. 17, 1860.

No. 11—1863.] AN ACT [July 28, 1863.

To Increase the Rate of Transfer Duty.

Preamble.

WHEREAS it is necessary to raise the rate of transfer duty payable in this colony to four per cent.: 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, that is to say :

Act No. 25 of 1861 repealed.

I. The Act No. 25, 1861, shall be and the same is hereby repealed.

Four per cent. duty on all sales.

II. For and in respect of every sale, whether private or public, made after this Act shall come into effect, of any freehold property, or property held of Government upon quitrent or other leasehold

tenure, or of any opstal of aloan place, there shall be chargeable upon and payable by the purchaser a duty of four per cent. upon the price of purchase money paid or to be paid for the said property.

No. 11—1863.

III. A duty as aforesaid shall be payable upon the value of any such property as aforesaid by every person becoming entitled to the same by way of exchange, donation, legacy, testamentary or other inheritance, or generally in any manner otherwise than through the medium or by the means of purchase and sale.

The same duty on exchanges or other mode of acquiring property.

IV. The additional duties, commonly called fines, to be incurred for neglect to pay in proper time the transfer duties imposed by this Act shall be and the same are hereby fixed at three fourths of the additional duties set forth in the scale or tariff contained in the thirteenth section of the Ordinance No. 18, 1844, entitled "An Ordinance for regulating the Payment of Transfer Duty in this Colony."

Fines<sup>1</sup> for non-payment increased.

V. All and several the provisions of the Ordinance No. 18, 1844, of the Act No. 15, 1855, and of the Act No. 7, 1858, relative to exemptions in certain cases from payment of transfer dues, shall apply to the duty provided by this Act.

Exemptions provided by previous laws to stand.

No. 12—1863.] AN ACT [July 28, 1863.

To Amend in certain respects the Law regulating Stamp Duties and Licences.

WHEREAS it is expedient to alter and amend in certain respects the Tariff of Stamp Duties now in force in this colony, as also the law regarding certain Licences: Be it enacted by 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 proclamation of the 30th April, 1824, issued by the then Governor of this colony, the Right Honourable Lord Charles Henry Somerset, and so much of any former proclamation, ordinance,

All proclamations, &c., repugnant to this Act repealed.



No. 12—1863.

law, or usage heretofore in force in this colony, as may be repugnant to or inconsistent with any of the provisions of this Act, or as would, if kept in force, operate concurrently with any of the said provisions, is hereby repealed.

Obligation to use stamps described in annexed schedule.

II. Stamps according to and in conformity with the provisions in the schedule hereunto annexed contained shall be used and employed for and in respect of all and singular the several instruments in the said schedule mentioned and enumerated, and such stamps shall be respectively of the value or amount set down in figures in the said schedule opposite or against such instruments.

Covering certain instruments with stamps sufficient.

III. In regard to any of the instruments mentioned in the said schedule, not being a bond for bonding goods, or one of the licences in the said schedule mentioned, it shall be sufficient if such instrument shall, when put to use, be covered with or accompanied by stamped paper of the proper value; and it shall not be necessary that the stamp shall be impressed upon any part of the paper or other material upon which the instrument shall be written: Provided that every such bond and every such licence as aforesaid shall be upon paper, parchment, or vellum impressed with the proper stamp.

Bonds for bonding goods and licences to be on stamped papers.

Licences to expire on 31st December in each year.

IV. All and singular the licences in the said schedule mentioned, except special licences authorizing marriages, shall, no matter at what period of the year the same may be taken out, expire on the last day of December then next ensuing, so that all such licences may commence with the first of January in every year, and be capable of continuing for one year, but no longer.

Portion of Ordinance 51, entitled "Ordinance for removing the restrictions upon the exercise of the trade and calling of a butcher," &c., repealed.

V. From and after the 31st December next, so much of the Ordinance No. 51, entitled "Ordinance for removing the Restrictions upon the exercise of the Trade and Calling of a Butcher in this Colony, and upon the Sale of Cattle in Cape Town and the District thereof, and for establishing a Cattle Market within the said Town and District," as renders it lawful to exercise the trade and calling of a butcher without any licence for that purpose, excepting such licence as is by law required for keeping a retail

shop, shall be repealed; and from and after the said date no person shall exercise the said trade without having taken out a butcher's licence: Provided, also, that every person exposing flesh meat for sale shall, whether he shall or shall not have himself slaughtered the same, be deemed to be a butcher for the purpose of requiring to have butcher's licence.

No. 12—1863.

Obligation to take out butcher's licence.  
Vender of meat to be deemed a butcher.

VI. From and after the taking effect of this Act every licence for authorizing the sale of wines and spirituous and fermented liquors by retail, as such licence is described in the Ordinance No. 9, 1851, and in the Act No. 10, 1860, shall be upon stamped paper of the value or amounts following anything in the said Act to the contrary notwithstanding, that is to say:

Licences to sell wines, &c., to be on stamped paper.

1. For a licence commencing upon the 1st of April and ending upon the 31st of March then next... ..	£30	0	0
2. For a licence commencing on the 1st July and ending on the 31st March then next... ..	25	0	0
3. For a licence commencing upon the 1st October and ending upon the 31st March then next ... ..	18	0	0
4. For a licence commencing upon the 1st January and ending on the 31st March then next ... ..	10	0	0

VII. So much of the Ordinance No. 11, 1846, entitled "Ordinance for amending the Law relative to the licensing of Retail Shops as limits to certain Towns, Villages, and Places the necessity of taking out a Licence to keep a Retail Shop," is hereby repealed; and from and after the 31st December next, all and singular the clauses and provisions of the said Ordinance not hereby repealed shall extend and apply to the entire colony, and to all persons keeping retail shops therein.

Portion of Ordinance 11, 1846, repealed.

Obligation to take out retail shop licence to extend to entire colony.

VIII. For the purpose of the stamp tariff contained in the schedule hereunto annexed, the term "wholesale dealer" shall extend to and embrace every person who sells or exposes for sale goods, wares,

Definition of term "wholesale dealer."

No. 12—1863.

or merchandize in the original package, as when imported.

Commencement  
Act.

IX. This Act shall commence and take effect upon and from and after such day as shall be fixed by proclamation of the Governor.

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SCHEDULE.

On Transfers passed before the Registrar of Deeds :

				£	s.	d.
Value not exceeding	£10	...	...	0	1	0
"	20	...	...	0	1	6
"	35	...	...	0	2	0
"	50	...	...	0	3	0
"	100	...	...	0	4	6
"	150	...	...	0	7	6
"	200	...	...	0	10	0
"	300	...	...	0	15	0
"	400	...	...	1	0	0
"	500	...	...	1	5	0
"	700	...	...	1	10	0
"	1000	...	...	2	5	0
"	1500	...	...	3	0	0
"	2000	...	...	3	15	0
"	2500	...	...	4	10	0
"	3000	...	...	5	0	0
"	4000	...	...	5	10	0
"	5000	...	...	6	0	0
And for every additional	£500	...	...	0	10	0

On Notarial Cessions of Mortgage Bonds :

Value not exceeding	£100	...	...	0	1	6
"	200	...	...	0	3	0
"	300	...	...	0	4	0
"	400	...	...	0	5	0
"	500	...	...	0	6	0
"	600	...	...	0	7	0
"	750 and upwards	...	...	0	7	6

On Mortgage Bonds passed before the Registrar of Deeds :

Value not exceeding	£10	...	...	0	1	6
"	15	...	...	0	2	0
"	25	...	...	0	3	0
"	35	...	...	0	4	0
"	50	...	...	0	5	0
"	75	...	...	0	6	0

On Mortgage Bonds passed before the Registrar  
of Deeds—*continued* :

No. 12—1863.

					£	s.	d.
Value not exceeding	£100	...	...	...	0	7	6
"	150	...	...	...	0	10	0
"	200	...	...	...	0	15	0
"	300	...	...	...	1	0	0
"	400	...	...	...	1	5	0
"	500	...	...	...	1	10	0
"	600	...	...	...	1	15	0
"	700	...	...	...	2	0	0
"	800	...	...	...	2	5	0
"	900	...	...	...	2	10	0
"	1000	...	...	...	3	0	0
"	1200	...	...	...	3	10	0
"	1500	...	...	...	4	0	0
And every additional	£100	...	...	...	0	2	6

## On Deeds of "Kinderbewys" and Notarial Bonds :

Value not exceeding	£15	...	...	...	0	1	0
"	50	...	...	...	0	3	0
"	75	...	...	...	0	4	0
"	100	...	...	...	0	5	0
"	150	...	...	...	0	6	0
"	200	...	...	...	0	7	6
"	300	...	...	...	0	9	0
"	400	...	...	...	0	12	0
"	500	...	...	...	0	15	0
"	600	...	...	...	1	0	0
"	750	...	...	...	1	10	0
Every additional	£100	...	...	...	0	2	6
Every notarial act of suretyship		...	...	...	0	2	0

## On Wills :

Value not exceeding	£100	...	...	...	0	2	0
"	150	...	...	...	0	10	0
"	300	...	...	...	1	0	0
"	600	...	...	...	1	10	0
"	1000	...	...	...	2	0	0
"	2000	...	...	...	2	10	0
"	3000	...	...	...	3	0	0
"	4000	...	...	...	3	10	0
"	5000	...	...	...	4	0	0
"	6000	...	...	...	4	10	0
And every additional	£1000	...	...	...	0	10	0

On other Instruments connected with or relating  
to Wills :

On every codicil to a will	...	...	...	...	0	2	0
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No. 12—1863.

On other Instruments connected with or relating  
to Wills—*continued* :

	£	s.	d.
On every deed of repudiation of an inheritance	0	1	6
On every inventory of an estate or any part thereof, without a valuation, first sheet ...	0	1	6
Each subsequent sheet ... ..	0	1	0

On every Inventory of an Estate or any part thereof, with a Valuation, as follows, viz. :

Value not exceeding £50 ... ..	0	1	0
” 100 ... ..	0	2	0
” 200 ... ..	0	3	0
” 300 ... ..	0	4	0
” 400 ... ..	0	5	0
” 500 ... ..	0	6	0
” 750 ... ..	0	7	6
” 1000 ... ..	0	10	0
” 1500 ... ..	0	15	0
And every additional £100 ... ..	0	1	0
Notarial deeds of assumption, substitution, or surrogation under any power contained in a will ... ..	0	5	0

On Liquidation Accounts of Estates (whether solvent or insolvent), filed in the Master's Office :

Where net assets for distribution do not exceed :

£100 ... ..	0	1	6
” 150 ... ..	0	2	6
” 200 ... ..	0	5	0
” 300 ... ..	0	7	6
” 400 ... ..	0	10	0
” 500 ... ..	0	12	6
” 600 ... ..	0	15	0
” 800 ... ..	1	0	0
” 1000 ... ..	1	10	0
” 1250 ... ..	2	0	0
” 1500 ... ..	2	10	0
” 2000 ... ..	3	15	0
” 2500 ... ..	4	10	0
” 3000 ... ..	6	0	0
” 3500 ... ..	7	10	0
” 4000 ... ..	9	0	0
” 4500 ... ..	10	10	0
” 5000 ... ..	12	0	0
” 5500 ... ..	13	10	0
” 6000 ... ..	15	0	0
” 7000 ... ..	16	10	0



No. 13—1863.

No. 13—1863.] AN ACT [July 28, 1863.

## For Establishing certain Tolls.

Preamble.

WHEREAS it is expedient that certain toll-bars be established and declared, in addition to the toll-bars by the Act No. 23 of 1858, entitled "An Act for declaring Main Roads and regulating Tolls," provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Toll-bars established.

I. All and singular the several toll-bars mentioned and set forth in the Schedule to this Act, marked A, are hereby established; and such persons respectively as shall be authorized by the Governor so to do shall be entitled to demand and receive at every such toll-bar the several tolls which in and by the said schedule, marked A, are mentioned and set forth as the tolls to be demanded and received at such toll-bars.

Governor empowered to appoint persons to demand tolls.

## SCHEDULE A.

I. *Toll-bars and Toll-rates payable at "Carlisle Bridge" (Espag's Drift), at Koonap Bridge, and at Berg River Bridge.*

1. Upon each wheel of every four-wheeled vehicle, not provided with a break ... ..	s.	d.
	0	3
2. Upon each wheel of every such vehicle provided with a break, and upon each wheel of any two-wheeled vehicle ... ..	0	2
3. Upon each horse, mule, or ass employed in drawing a vehicle ... ..	0	1
4. Upon each head of horned cattle employed in drawing a vehicle ... ..	0	0½
5. Upon each horse, mule, or ass not employed in drawing a vehicle ... ..	0	2
6. Upon each head of horned cattle not employed in drawing a vehicle ... ..	0	0½
7. Upon every sheep, goat, or swine ... ..	0	0¼

II. *Rates payable at Daggaboer's Neck.*

1. Upon each wheel of every four-wheeled vehicle not provided with a wooden shoe (remschoen)

ADDITIONAL EXPENDITURE ACT FOR 1862. 535

	or an iron shoe not less than eight inches broad, or a break ... ..	s. d.	No. 13—1863
		0 3	
2.	Upon each wheel of any other vehicle ...	0 2	
3.	Upon every animal employed in drawing a vehicle ... ..	0 1	
4.	Upon every animal not employed in drawing a vehicle, excepting sheep, goats, or swine ...	0 2	
5.	Upon every sheep, goat, or swine ... ..	0 0 $\frac{1}{4}$	

No. 14—1863.] AN ACT [July 28, 1863.

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

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

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

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

No. 15—1863.] AN ACT [July 28, 1863.

For Authorizing certain Expenditure not provided for by Parliament in the Year 1862.

**WHEREAS** divers public moneys, amounting in Preamble.  
all to the sum of five thousand three hundred and sixty-three pounds three shillings and four pence sterling, have been necessarily advanced during the year 1862 by the authority of the Governor of this



No. 15—1863.

Colony, but without the previous authority of the Parliament: And whereas these advances have been found to have been duly applied to and expended upon certain necessary expenses of the Civil Government of this Colony, and it is therefore proper and expedient that an Act of Appropriation should be passed to authorize the amount so expended to be charged against the public revenue of the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Additional expenditure for 1862.

The public revenue of the Colony is hereby charged with a further sum of five thousand three hundred and sixty-three pounds three shillings and four pence sterling, in addition to the sums already provided for the service of the year 1862, which shall be applied and accounted for in the manner specified in the schedule hereunto annexed.

SCHEDULE.

For the Expenditure of the

Civil Establishments	...	...	...	£124	15	6
Judicial ditto	...	...	...	174	1	10
Educational ditto	...	...	...	34	0	8
Medical ditto	...	...	...	397	19	3
Police and Gaols	...	...	...	35	8	9
Revenue	...	...	...	24	0	0

SERVICES.

Revenue	...	...	...	206	11	4
Charitable Allowances	...	...	...	111	0	0
Transport	...	...	...	53	5	0
Works and Buildings	...	...	...	2027	6	8
Miscellaneous, Parliamentary	...	...	...	49	11	8
Do., Railways	...	...	...	389	2	2
Do., Other	...	...	...	1736	0	6
				£5363 3 4		

No. 16—1863.] AN ACT [July 28, 1863.

No. 16—1863.

For Applying a Sum not exceeding Four Hundred and Forty-one Thousand One Hundred and Eighty-four Pounds and Three Shillings for the Service of the Year 1863.

**W**HEREAS by the Act No. 16 of 1862, entitled Preamble.  
 “An Act for applying a sum not exceeding two hundred and one thousand eight hundred and seventy pounds for the service of the year 1863,” the said sum of two hundred and one thousand eight hundred and seventy pounds was charged upon the revenue of this Colony for the service of the Government of the Colony until the 30th June, 1863; 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 1863, as well as 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. 16, 1862, and to provide by one Act for the service of the year 1863: Be it enacted by 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. 16, 1862, is hereby Act No. 16, 1862, repealed. repealed.

II. The public revenue of the Colony is hereby Expenditure, 1863. charged with a sum not exceeding four hundred and forty-one thousand one hundred and eighty-four pounds and three shillings for the service of the year 1863, in addition to the sums already by law provided for such service, which sum of four hundred and forty-one thousand one hundred and eighty-four pounds and three shillings shall be applied in the manner following, that is to say:

For the expenditure of the Civil Establishments, Civil establishments.  
 a sum not exceeding seventy-three thousand five hundred and twenty-four pounds and thirteen shillings.

No. 16—1863.	For the expenditure of the Judicial Establishments, a sum not exceeding thirty-three thousand four hundred and eleven pounds and fifteen shillings.
Judicial establishments.	For the expenditure of the Educational Establishments, a sum not exceeding seventeen thousand three hundred and fourteen pounds.
Educational establishments.	For the expenditure of the Medical Establishments, a sum not exceeding twenty-two thousand seven hundred and one pounds seventeen shillings and six pence.
Medical establishments.	For the expenditure of the Police and Gaol Establishments, a sum not exceeding fifty-six thousand five hundred and twenty-nine pounds twelve shillings and six pence.
Police and gaol establishments.	For the expenditure on account of the Border Department (Aborigines), a sum not exceeding fifty-three thousand and twenty-eight pounds.
Border department (aborigines).	For the expenditure on account of Charitable Allowances and Gratuities, a sum not exceeding two hundred pounds.
Charitable allowances.	For the expenditure on account of Works and Buildings, a sum not exceeding twenty-one thousand four hundred and fifty-three pounds.
Works and buildings.	For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding one hundred and twelve thousand three hundred and forty-one pounds.
Roads and bridges.	For the expenditure on account of Miscellaneous Services, a sum not exceeding thirty-six thousand six hundred and eighty pounds and five shillings.
Miscellaneous services.	For the expenditure on account of Interest, a sum not exceeding four thousand pounds.
Interest.	For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding ten thousand pounds.
Colonial allowances to military officers.	Amounting, in the whole, to four hundred and forty-one thousand one hundred and eighty-four pounds and three shillings, as detailed in the schedules 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.
Application of supplies.	

No. 17—1863.] AN ACT [July 28, 1863.

No. 17—1863.

For Applying a Sum not exceeding Two Hundred and One Thousand and Seventeen Pounds and Nineteen Shillings for the Service of the Year 1864.

**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 30th June, 1864 :

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 two hundred and one thousand and seventeen pounds and nineteen shillings be charged upon the revenue of the said Colony, towards the service of the year 1864, 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. 16, passed during the present session for the appropriation of the public revenue, that is to say :

Expenditure, 1864.

II. For the expenditure of the Civil Establishment, a sum not exceeding thirty-three thousand six hundred and forty-four pounds sixteen shillings and six pence.

Civil establishment.

III. For the expenditure of the Judicial Establishment, a sum not exceeding sixteen thousand seven hundred and five pounds seventeen shillings and six pence.

Judicial establishment.

IV. For the expenditure of the Educational Establishment, a sum not exceeding eight thousand six hundred and fifty-seven pounds.

Educational establishment.

V. For the expenditure of the Medical Establishment, a sum not exceeding eleven thousand one hundred and seventy-five pounds eighteen shillings and nine pence.

Medical establishment.

VI. For the expenditure of the Police and Gaol Establishments, a sum not exceeding twenty-eight thousand two hundred and one pounds six shillings and three pence.

Police and gaol establishments.

VII. For the expenditure on account of the Border

Border department (aborigines).

No. 17—1863.	Department (Aborigines), a sum not exceeding twenty-six thousand five hundred and fourteen pounds.
Charitable allowances.	VIII. For the expenditure on account of Charitable Allowances, a sum not exceeding one hundred pounds.
Works and buildings.	IX. For the expenditure on account of Works and Buildings, a sum not exceeding five thousand five hundred and sixty-four pounds.
Roads and bridges.	X. For the expenditure on account of Roads and Bridges, including the Convict Department, a sum not exceeding fifty thousand and sixteen pounds.
Miscellaneous services.	XI. For the expenditure on account of Miscellaneous Services, a sum not exceeding fifteen thousand four hundred and thirty-nine pounds.
Colonial allowances to military officers.	XII. For the expenditure on account of Colonial Allowances to Military Officers, a sum not exceeding five thousand pounds.
Total.	XIII. Amounting, in the whole, to two hundred and one thousand and seventeen pounds and nineteen shillings.
Application of supplies.	XIV. The said aids or 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.

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No. 18—1863.]      AN ACT      [July 28, 1863.

For making further Provision to complete the  
Improvement of the Kowie Harbour.

Preamble.

WHEREAS provision has been made by the Ordinance No. 4, 1852, entitled "Ordinance for improving the Kowie Harbour," for borrowing and taking up a certain sum of money for the improvement of the Kowie Harbour; and whereas it has been found that the sums so borrowed and taken up are not sufficient; and whereas the directors of the Kowie Harbour Improvement Company have incurred liabilities for the prosecution of the work to the amount of about fourteen thou-

sand pounds, and it is desirable that an equal sum should be lent to the said company by the Government to enable the directors to continue the works for a period of not less than twelve months; and that authority should be given to the Governor to raise a loan for this purpose, as well as to provide for replacing in the Treasury the sum of ten thousand pounds, lent to the company by the Government in 1862: 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:

I. So much of the Ordinance No. 4, 1852, entitled “Ordinance for improving the Kowie Harbour,” or of any other Ordinance or Act, as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Repugnant portions of Ordinance No. 4 of 1852, or other Ordinance or Act, repealed.

II. It shall be lawful for the Governor to borrow and take up, upon the security of the public revenue of this Colony, and upon debentures bearing interest at the rate of six per centum per annum, the sum of twenty-four thousand pounds; and of the said sum so raised there shall be paid into the Treasury the sum of ten thousand pounds, to replace the loan made by Government to the directors of the Kowie Harbour Improvement Company in the year 1862; and the balance of fourteen thousand pounds shall be paid over as a loan to the said directors at such times and in such sums as the Governor shall deem proper: Provided that the replacing in the Treasury of the sum of ten thousand pounds shall not be deemed to be a repayment by the company of the said loan; and provided, further, that it shall not be lawful for the said directors to appropriate any part of the aforesaid sum of fourteen thousand pounds to be lent to the said directors under this Act to pay off any of the liabilities of the company existing at the time of the promulgation of this Act, except for interest due to Government on the debentures heretofore issued under the Ordinance No. 4, 1852, and the loan of ten thousand pounds hereinbefore mentioned; but the whole of the said sum of fourteen thousand pounds, excepting the interest as

Loan of £24,000 to be raised.

Loan made by Government in 1862 to be replaced.

Appropriation of balance.

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aforesaid, shall be appropriated by the said directors to the immediate and further prosecution of the works carried on under the provisions of the Ordinance No. 4, 1852.

Loan to be a first charge on revenues of company.

III. The sum of twenty-four thousand pounds to be raised as aforesaid shall be a first charge upon, and payable out of, the dues of wharfage and the proceeds of the sales of land, and the interest thereon shall be paid by the company, in the same manner as is provided in Ordinance No. 4, 1852, for the sum of twenty-five thousand pounds, which the company was therein authorized to borrow on the security of the public revenue.

Accounts of receipts and expenditure to be laid before Parliament.

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

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No. 19—1863.]      AN ACT      [July 28, 1863.

For enabling the Commissioners of the Municipality of George Town to procure a better Supply of Water for the Inhabitants of such Municipality.

Preamble.

**W**HEREAS the inhabitants of the municipality of George Town have for some years past experienced great inconvenience in consequence of a deficient supply of water; and whereas the present supply of water is derived from streams having their rise in a portion of the Outeniqua Mountains, situate within and forming part of the commonage lands of the municipality of George Town, the waters from which streams are collected in a reservoir at the base of the mountain, and thence conducted to and distributed in the town of George by means of open sluits; and whereas the existing reservoir is insufficient for the storage of an adequate supply of water, and the waters conveyed in such sluits are

constantly polluted by decayed vegetable and animal matter continuously accumulating therein ; and whereas it will be very beneficial to the inhabitants that additional reservoir space should be constructed and provided, and that the water should be conveyed to the town in supply pipes in place of open sluits ; and whereas to enable the said commissioners to construct such additional reservoir space and procure and lay such pipes, it is proposed that a special rate should be laid on all immovable property within the municipality of George Town, to be called the water-rate ; and whereas it is proposed that the said commissioners should be empowered to borrow money on the security of the intended water-rate to enable them to construct the intended works, but such objects cannot be obtained without the aid and authority of Parliament : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof :

I. This Act may be cited as the “ George Town Short title. Water Act, 1863,” and shall take effect from and after the promulgation thereof.

II. In the construction of this Act the following Interpretation of terms. words and expressions have the several meanings assigned to them over and above their several ordinary meanings, unless there be something in the context repugnant to such construction, namely : Words importing the singular number include the plural number, and words importing the plural number include the singular number ; words importing the masculine gender include females ; the expression “ commissioners ” shall mean commissioners of the municipality of George Town ; the expression “ inhabitants ” shall mean householders of the municipality of George Town ; the expression “ street or public thoroughfare ” shall mean street or public thoroughfare situate within the municipality of George Town ; and the expression “ ratepayers ” shall mean parties paying the special rate to be laid by this Act.

III. The commissioners are hereby empowered to Commissioners to provide for impounding adequate supply of water. cause to be made, provided, and constructed, in or



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upon any part of the commonage lands all such reservoirs, dams, watercourses, drains, and ditches as may be deemed necessary for the impounding of an adequate supply of water for the said inhabitants, for domestic, irrigating, and other purposes, and also to provide and lay down, in or under any commonage, land, street, or thoroughfare, any pipe or pipes for the conveyance of water from such reservoir to and throughout the township for the supply of the inhabitants, and from time to time to maintain and keep such reservoirs, dams, watercourses, ditches, and pipes in repair, provided that the amount to be expended shall not exceed the sum of four thousand pounds.

Commissioners to erect public fountains with drinking troughs.

IV. The commissioners shall erect within the township public fountains for the gratuitous supply of water, with suitable drinking troughs for the convenient use of horses, cattle, sheep, and other animals, and shall from time to time maintain and keep in repair such fountains and troughs.

Commissioners to determine number of such fountains and troughs.

V. The number and situations of such fountains and troughs shall from time to time be determined by the commissioners.

Rate-payers may have private service pipe.

VI. Every rate-payer shall be entitled at his own expense to have a private service pipe laid on to the main or branch pipe for the supply of water for domestic, irrigating, or other purposes, on payment of such special or extra rate as the commissioners may think fair and reasonable, such special or extra rate to become due and payable in advance.

Commissioners to fix and publish charges for private water-leadings.

VII. The commissioners shall determine and publish the tariff by which the supply of water by private water-leadings shall be regulated, and the payment for all private water-leadings shall be in accordance with such tariff.

Plan, &c., of works to be placed in town-house for inspection previous to commencement of works.

VIII. Before proceeding with the works hereinbefore authorized, the commissioners shall cause a plan, specification, and estimate of such intended works to be placed in the town-house in George Town, for the inspection of the inhabitants, and shall cause a notice in the form number one in the schedule hereto to be given to the inhabitants as hereafter is directed; after the publication of such

notice, the plans, specification, and estimate shall remain open for inspection in the town-house aforesaid for the period of twenty-one days. Any rate-payer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within the said period of twenty-one days leave with the secretary of the said commissioners a statement in writing setting forth clearly and concisely his objections to the same. On the expiration of the said period of twenty-one days, the plan, specification, and estimate, together with a duplicate of the notice given by the commissioners, and all notices of objection lodged with the said secretary, shall be deposited in the office of the Colonial Secretary, for the purpose of being laid before the Governor for the time being, for his approval; and in the event of the Governor not dissenting from such plans within forty-two days from the time of their being so deposited, the commissioners may proceed with the contemplated works.

Objections to be made in writing.

IX. No commissioner shall be allowed either directly or indirectly to become a contractor or to tender for any contract, either in his name or in the name of or jointly with any other person, or in any manner to participate in any profit to be derived from any work to be performed for the said commissioners in pursuance of this Act, on pain of forfeiture of all his interest in such contract for the benefit of the municipality; and shall also be considered to have vacated his office of commissioner *ipso facto*, and be ineligible to be elected at any future period to serve as commissioner: Provided that no commissioner shall be deemed or taken to have vacated his office or to have incurred any forfeiture whatever by reason merely that the commissioners shall have entered into any such contract or any other dealing or transaction with the directors or other managers of any joint-stock company of which such commissioner shall be a shareholder; nor shall any shareholder or person otherwise interested in any joint-stock company with which company the commissioners shall have entered into any executed or still subsisting contract, dealing,

Commissioners not to be interested in contracts.

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or transaction be deemed or taken to be ineligible to be elected or to act as a commissioner by reason merely of such contract, dealing, or transaction.

Water-rate.

X. A special rate of one penny half-penny in the pound, to be called the "water-rate," is hereby imposed on all immovable property, situate within the municipality; the rate to commence and be payable on the first day of January next, and to become due and payable on the first day of January in every successive year up to and including the first day of January which will be in the year one thousand nine hundred and twenty-one.

Power to borrow money on security of water-rate.

XI. The commissioners are hereby empowered, with the consent of the Governor, from time to time, subject to the proviso hereinafter contained, to borrow and take up at interest upon the security of the water-rate any sum of money not exceeding in the aggregate the principal sum of four thousand pounds, and to mortgage the rate for securing the repayment of such moneys: Provided that moneys borrowed for the purpose of paying off then existing mortgages shall not be deemed to form part of such four thousand pounds.

Notice to be given of intention to borrow.

XII. The commissioners, before applying to the Governor for his consent to borrow and take up at interest any such moneys as mentioned in the last section, shall cause a notice in the form number two in the schedule hereto to be given as hereinafter is directed. Any rate-payer objecting to the raising of such money must within the period of fourteen days from the publication of such notice leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections, and the evidence to be adduced in support of such objections. On the expiration of such period of fourteen days the commissioners shall deposit in the office of the Colonial Secretary a duplicate of the notice given by them with a statutory declaration verifying the due publication thereof, and all notices of objection lodged with the secretary of the said commissioners, in order that the validity of such objections may be taken into consideration by the Governor; and in

Mode of objecting.

the event of the Governor not dissenting from the proposed taking up of such moneys within the period of forty-two days from the time of such notice being deposited as aforesaid, the consent of the Governor shall be assumed, and the commissioners shall be empowered to take up such moneys as shall have been specified in their notice.

XIII. All mortgages to be granted in pursuance of this Act shall be in the form number three in the schedule hereto, and shall be signed by the commissioners for the time being or any three of them. Form of mortgage.

XIV. The commissioners shall cause all mortgages granted by them to be registered, and such registry shall be produced at every annual meeting, for the inspection of the inhabitants. Registration of mortgage.

XV. All transfers of mortgages by deed shall be in the form number four in the schedule hereto, and shall be registered with the commissioners, and a fee of two shillings and sixpence in respect of such registry shall be paid to the said commissioners. Transfer of mortgage.

XVI. All moneys received from the water-rate or land sold for the purposes of this Act, and from special or extra water-rates in respect of private supplies or leadings, and to be borrowed and taken up at interest by virtue of this Act, shall be applied for the purposes of this Act, and shall not be spent upon or applied to any other purpose. Appropriation of money.

XVII. The commissioners shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall lay before the rate-payers at every annual meeting an abstract in the form number five in the schedule hereto, showing all moneys received and expended under and by virtue of this Act between the first day of January and thirty-first day of December in the then preceding year, and of all liabilities and assets in respect of this Act on the next preceding thirty-first day of December, and also an estimate of all moneys to be expended and received during the then current year. Annual account to be submitted to rate-payers.

XVIII. An annual meeting of the inhabitants shall be held in the month of March in each year, of the time and place of which meeting twenty-one Annual meeting.

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clear days' notice shall be given by the commissioners.

Annual water rate may be reduced.

XIX. In case it should appear at any such annual meeting that it will not be necessary for the requirements of the current year to levy the full amount of the rate hereby imposed, in every such case the commissioners shall reduce such rate for such current year from the said amount of one penny half-penny in the pound to such an amount as will in the opinion of the commissioners be adequate to meet the estimated expenditure for such current year.

Costs of Act.

XX. All the necessary costs, charges, and expenses attending the procuring of this Act and carrying the provisions thereof into effect shall be paid out of the money authorized to be received by the commissioners under the provisions of this Act.

Erection of public baths and washing-places.

XXI. The commissioners are hereby empowered, with the consent of the resident householders present at any annual or special meeting, to erect and construct public baths and washing-places, and to make such regulations touching the same as the commissioners shall think proper and necessary.

Regulations respecting water supply.

XXII. The commissioners are hereby empowered from time to time to make such regulations touching the water to be supplied to the inhabitants and the time or times at which such supply is to be received as shall be proper and necessary; and also touching the most expedient mode of preventing any waste of water within the said municipality.

Penalties.

XXIII. Every person who shall bathe or wash himself in any reservoir belonging to the commissioners, or in any stream flowing into such reservoir, or who shall wash, throw, or cause to enter therein any dog or other animal, or who shall throw any rubbish, dirt, filth, or other noisome thing into any such reservoir or stream, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing, shall for every such offence, upon being convicted thereof upon the prosecution of the commissioners, forfeit to the use of the commissioners a sum not exceeding five pounds nor less than one pound: in failure of the payment of such fine the party convicted shall be liable to

imprisonment, with or without hard labour, for any period not exceeding fourteen days.

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XXIV. In all cases in which the occupier of immovable property assessed to the water-rate imposed by section twelve shall not be the owner, the owner shall in the first instance be liable to pay to the commissioners the full amount of such rate and to recover from the tenant or occupier for the time being one half of the amount of such rate: Provided that the tenant or occupier may if he think proper pay such rate and deduct and retain from the rent payable to the landlord one half of the amount so paid.

Rates how to be recovered.

XXV. All public notices required by this Act shall be deemed to be sufficiently given by affixing a copy thereof on the town-house and at the office of the resident magistrate for the district of George, and at such other places, if any, as the resident householders present at any annual meeting shall from time to time direct.

How notices under this Act to be promulgated.

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THE SCHEDULE BEFORE REFERRED TO.

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No. 1.

IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Notice is hereby given that the plans, specification, and estimate of the works proposed to be constructed by the commissioners of the municipality under the authority of the above Act have been this day placed in the town-house in George Town for the free inspection of the inhabitants, and that the same may be inspected on any day (Sundays excepted) up to and including — the — day of — (next or instant), between the hours of ten a.m. and four p.m. Any rate-payer objecting to such plans, specification, or estimate, or to any matter of detail therein, may at any time within twenty-one days from this date leave with the secretary of the commissioners a statement in writing, setting forth clearly and concisely his objections to the same, in order that such objections may accompany the plans, specification, and estimate, and be laid with them before the Governor for his consideration.

Dated this — day of — 186—.

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## No. 2.

## IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Notice is hereby given that the commissioners of the municipality of George Town, in pursuance of the above Act, intend to make application to the Governor of the Colony for his consent to their borrowing and taking up at interest under the provisions of the above Act a sum of money not exceeding £—— on the security of the water-rate. Any party liable to such rate objecting to the raising of such money must, within the period of fourteen days from this date, leave with the secretary of the commissioners a notice in writing, setting forth clearly and concisely the nature and grounds of his objections and the evidence to be adduced in support of such objections, in order that such notice may accompany the application to the Governor and be laid before him for his consideration.

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

## No. 3.

## FORM OF MORTGAGE.

We, the undersigned, being commissioners of the municipality of George Town, in consideration of the sum of —— pounds sterling, lent and advanced to us for the purposes of the George Town Water Act, 1863, by —— do hereby, in pursuance of the powers contained in the said Act authorizing us in this behalf, charge the water-rate of one penny half-penny in the pound imposed by the said Act with the repayment to the said ——, his executors, administrators, or assigns, of the said sum of ——, by the instalments and in manner following: the principal sum of £—— on the — day of ——, and the like principal sum of £—— on the —— day of —— in each and every subsequent year until the whole of the said principal sum of £—— shall have been paid and discharged; and also with the payment of interest after the rate of —— pounds per centum per annum on all principal moneys, continuing secured hereon by equal half-yearly payments, on the — day of —— and — day of —— in each year.

As witness our hands this — day of ——, in the year of our Lord one thousand eight hundred and —.

## No. 4.

## FORM OF TRANSFER.

I, the undersigned, —— in consideration of the sum of —— sterling money paid to me by —— do hereby assign

unto — his executors, administrators, and assigns, all principal moneys and interest secured by a certain deed bearing date the — day of — 18—, under the hands of — commissioners of the municipality of George Town, with power for the said —, executors, administrators, and assigns, or his or their substitute or substitutes, in the name or names of the said — executors or administrators, to sue for, receive, and give receipts for the same.

As witness my hand this — day of — 186—.

No. 5.

IN THE MATTER OF THE GEORGE TOWN WATER ACT, 1863.

Account of all moneys received and paid by the commissioners of the municipality of George Town under or by virtue of this Act, between the 1st day of January, 18—, and the 31st day of December, 18—, both inclusive.

*Moneys received.*

To amount received from water-rate	...
„ amount received from water-leadings	...
„ amount received from sale of lands	...
„ amount taken up on loan	... ..
„ amount received from any other source	...

*Moneys expended.*

By amount expended on works	... ..
„ „ „ in salaries	... ..
„ „ „ in repairs	... ..
„ „ „ in interest of debt	...
„ „ „ in repayment of debt	...
„ „ „ on any other account	...

*Summary of Receipts and Expenditure on Capital Account up to the 31st day of December, 18—.*

To amount realized on sale of lands	...
To amount taken up on loan	... ..
To amount received from payment of interest and working expenses as under :	
Water-rate	... ..
Private water-leadings	... ..
By amount expended on works	... ..
By repayment of loans	... ..



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*Statement of Liabilities and Assets on the 31st December, 18—.**Liabilities.*

To amount due on loans	...	...	...	...
„ outstanding accounts	...	...	...	...
„ Cash balance	...	...	...	...

*Assets.*

Arrears of rate	...	...	...	...
Cash balance	...	...	...	...

*Estimate of Income and Expenditure for the current Year.**Income.*

To cash balance	...	...	...	...
„ amount to be received from arrears of rate	...	...	...	...
„ amount to be received from private water-leadings	...	...	...	...
„ amount to be received from water-rate	...	...	...	...

*Expenditure.*

By cash balance	...	...	...	...
„ new works	...	...	...	...
„ interest on advances	...	...	...	...
„ repayment of advances	...	...	...	...
„ salaries	...	...	...	...
„ repairs	...	...	...	...
„ any other account	...	...	...	...

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No. 20—1863.]            AN ACT            [July 28, 1863.

For incorporating the Eastern Province Guardian Loan and Investment Company, and enabling them to sue and be sued in the name of their Secretary.

Preamble.

WHEREAS, by a deed bearing date at Graham's Town, the seventeenth day of December, in the year of our Lord one thousand eight hundred and sixty-one, certain persons did become co-partners together in a certain joint-stock company, called the Eastern Province Guardian Loan and Investment Company, for the purpose of carrying on a business

to consist of and to be confined to the following objects, that is to say :

1. The investment of the capital stock of the said company and all such other stock, capital, or funds as may hereafter be added to the said stock, or belong to the said company, or be under the administration of the said company, upon mortgages of immovable property, of capital stock in any joint-stock company, or of Government debentures, or upon such other security, as by the directors for the time being may be deemed safe and advantageous.
2. The borrowing and taking up upon the security of the capital stock, funds, and assets of the said company of such moneys, in the Colony or elsewhere, as the directors for the time being shall deem it to be for the advantage of the said company to borrow and take up for the purpose of investing the said moneys for the benefit of the said company, in the manner hereinbefore in the last preceding clause mentioned.
3. The administration and management of such estates and other property as the said company shall be duly appointed to administer or manage as executors, tutors, guardians, curators, trustees, assignees, or agents, either under and by virtue of a decree or order of any competent court, or by directions of the Master for the time being of the Supreme Court of this Colony, in his official capacity, or by the last will or testament, or any valid act or deed of any person or persons whomsoever, or by virtue of any marriage settlement, power of attorney, or otherwise; but such administration shall in no case whatsoever be extended to the conduct and management of any mercantile speculation or trade whatsoever, with the capital stock or funds of the said company. And whereas in and by the said deed it was stipulated and agreed that

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the capital of the said company should be two hundred thousand pounds sterling (£200,000) divided into twenty thousand (20,000) shares of ten pounds sterling (£10) each, whereof four thousand (4,000) shares in the said company have been allotted, and upon which the sum of nine pounds has been paid by the holders thereof, as and for part of the capital stock of the said company, and the remaining sixteen thousand (16,000) shares have been reserved for the benefit of the shareholders of the said company. And whereas the directors of the said company, acting for and on behalf of the said shareholders, and being duly authorized by them in that behalf, have applied for an Act to incorporate the said company as constituted under the said deed, and in order the better to enable them to carry into effect the object of the said company :

Style of company.

I. Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said capital sum of two hundred thousand pounds sterling (£200,000), and of all such other sum or sums of money as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of the “ Eastern Province Guardian Loan and Investment Company.”

Trust deed and list of shareholders to be filed with Registrar of Deeds.

II. A copy of the said deed, duly authenticated by the secretary of the said company, together with a return, authenticated as aforesaid, of the names and places of abode of the several persons at the time being shareholders of the said company, and of the name and place of abode of the chairman and of each director thereof and of the secretary, shall, within

one month after the passing of this Act, be filed in the office of the Registrar of Deeds of this colony.

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III. A copy, authenticated as aforesaid, of all alterations in or additions to the said deed which may at any time be made in conformity with the provisions therein contained, shall, within three months thereafter, be filed in the said office.

Alterations in deed to be similarly filed.

IV. Whenever and as often as the transfer of any share or shares in the said company shall be made, a return, authenticated by the secretary of the said company appointed under the provision of the said deed, shall, within three months after such transfer, be filed in the said office, which return shall contain the date of such transfer and the name or names and place or places of abode of the person or persons to whom or in whose behalf the same is made.

Transfer of shares.

V. Whenever and as often as any person shall be appointed chairman, director, or secretary of the said company, in the place of the present or any future chairman, director, or secretary, a return, authenticated as last aforesaid, of such appointment shall within three months thereafter be filed in the said office.

Names of chairman, directors, or secretary.

VI. A copy of or extract from the copy of the said deed, and of any alterations therein or additions thereto which may have been made and filed as aforesaid, and a copy of or extract from any such returns as aforesaid which may have been made and filed as aforesaid, purporting to be certified under the hand of the Registrar of Deeds, shall in all proceedings, civil or criminal, be received in evidence as *prima facie* proof of all the matters contained or recited in such certified copy or extract, and of the authority and appointment of the person or persons named therein, whether as shareholder, director, chairman, secretary, or otherwise, and of the fact of their being such at the date of such certificate; and such certified copy or extract shall be received in evidence without any proof of the handwriting of the said registrar or of his appointment.

Certified copy or extract of deed or return may be used in evidence.

VII. All appointments by any competent court or authority, or under and by virtue of any last will and testament, codicil, marriage settlement, power of

Appointments by company valid.

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attorney, or any other act or deed which shall have been at any time previous to the passing of this Act, or which shall be hereafter duly made and executed of the directors or secretary of the said company, as trustees, assignees, executors, administrators, tutors, curators, guardians, or agents, or as trustee, assignee, executor, administrator, tutor, curator, guardian, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the said company.

Evidence of members admissible.

VIII. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a shareholder of the said company shall be admissible, in like manner as if such person were not a shareholder thereof.

Company to sue and be sued in name of their secretary.

IX. All actions, suits, and proceedings at law to be brought for or on behalf of the company against any person or persons, bodies politic or corporate, or others (whether shareholders of the said company or otherwise), for or on behalf or in respect of any debt, claim, or demand due to the said company, or for or on account or in respect of any other matter or thing relating to the concerns of the said company, shall and may after the passing of this Act be brought and maintained in the name of the secretary of the said company, as the nominal plaintiff, applicant, or petitioner for and on behalf of the said company; and all proceedings of a criminal nature for any fraud, crime, or offence committed against the said company or their property, or with intent to injure or defraud the said company, shall and may be, subject to the provisions of any Act, Law, or Ordinance which may be in force, or which may hereafter be enacted in that behalf, be prosecuted for and on behalf of the said company by and in the name of such secretary as aforesaid, as nominal prosecutor; and in any indictment or information it shall be sufficient to describe the property of the said company as the property of such secretary; and any offence against or with intent to injure or defraud such secretary as aforesaid, and all actions, suits, or proceedings at law by any person or persons, bodies politic or corporate, or others (whether shareholders of the said company or otherwise) against the said

company, shall and may be brought and maintained against such secretary as aforesaid, as the nominal defendant or respondent for and on behalf of the said company, and not against the said company, or the directors or shareholders thereof, or any of them, anything to the contrary thereof in the said deed notwithstanding; and no action, suit, or proceeding as aforesaid shall abate or discontinue, to be rendered ineffectual, by the reason of the death, removal, or resignation of such secretary; but in any such event, and as often as the same may occur, the name of the secretary for the time being shall be substituted in the subsequent proceedings.

X. It shall and may be lawful for the secretary of the said company to bring and maintain any action, suit, or other proceeding at law against any person being an officer or shareholder of the said company, for or on account of any claim or demand which the said company may have against any person, in like manner as if he were not an officer or shareholder thereof.

Officers or members may be sued.

XI. It shall and may be lawful for any person being an officer or shareholder of the said company, to bring and maintain any action, suit, or other proceeding at law against the secretary of the said company for or on account of any claim or demand which he may have against the said company, in like manner as if he were not an officer or shareholder thereof.

And may bring actions against the company.

XII. No claim or demand which any shareholder of the said company may have in respect of his share of the capital stock of the said company, or of any dividends, interest, or profits payable in respect of any such share, shall be capable of being set off, and no claim in reconvention shall be brought on account of any such share, dividends, interest, or profits, against any claim or demand which the said company may have against such shareholder on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interests, or profits payable in respect thereof.

Shares or dividends not to be set off against debts due to company.

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Public Act.

XIII. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, magistrates, and others, with or without being specially pleaded.

No. 21—1863.] AN ACT [July 28, 1863.

For Enabling the Divisional Council of Mossel Bay to borrow Moneys upon the Security of Road-rates and Tolls, for the Opening of Mountain Passes, the Construction of Bridges, and Works of like nature.

Preamble.

WHEREAS it is expedient that the divisional council of Mossel Bay should be empowered to borrow moneys upon the security of the road-rates of the said division, for the purpose of opening any mountain pass, or constructing any bridge, or making or improving any public road, by which the inhabitants would be benefited; and whereas it is highly necessary and expedient that several of the roads in this division should be opened and made available for communication with the fertile back country; and whereas the annual amount of road-rates to be levied under Act No. 9, 1858, is not sufficient to meet the first outlay of those works: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Portions of Act 9, 1858, repugnant to this Act, repealed.

I. So much of the Act No. 9, 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," as is repugnant to or inconsistent with any of the provisions of this Act shall be and the same is hereby repealed.

Purposes for which money may be borrowed and how to be applied.

II. Besides the objects and purposes set forth in the forty-third section of the Act aforesaid, No. 9, 1858, to which objects and purposes the moneys received by said divisional council for the purposes of the said Act shall be applicable, it shall be lawful for said council, if it shall so think fit, to

apply any such moneys to the opening of any mountain pass within the division, or to the construction of any bridge, or to the making of any new road within the division, or for the payment of any loan for the said purposes to be raised as hereinafter determined, and for the interest becoming due upon such loan; it being the true intent and meaning of this section of this Act to confer upon the said divisional council full power and authority to determine, in regard to the objects and purposes in this section and in the forty-third section of the Act aforesaid specified, the order of priority in which they or any of them shall be undertaken and proceeded with; and provided that whenever the funds of the said divisional council shall require to be contributed to the making or improving of any road adjoining this division, the desirableness of such contribution shall be decided by the said divisional council.

III. It shall be lawful for the said divisional council to raise, from time to time, by way of loan on the credit of any tolls to be levied or rates to be assessed under the Act aforesaid, No. 9, 1858, any such sum or sums of money as may at any time be required by the said divisional council, for the purpose of carrying into effect any of the objects or purposes hereinbefore and in the Act aforesaid mentioned: Provided that no such loan as aforesaid shall be capable of being effected, except under and by virtue of a resolution of the divisional council, at a meeting at which there shall be present not fewer than four members exclusive of the chairman; and provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had, for at least twenty-one days next before the day appointed for such meeting, a notice in writing signed by the secretary to such council, stating that the question of such loan will come under consideration of such meeting, which notice the said secretary shall issue at the instance of any member of the said council; and provided, also, that no loan or loans, or debts contracted by said council under this Act shall at any time exceed the sum of three thousand pounds sterling.

Power to raise loan on security of tolls.

No loan to be raised without a resolution of divisional council, after proper notice.

Extent of loan.



No. 21—1863.

Mode of procedure in raising loan.

IV. In every case in which it shall be resolved by the said council to raise any such loan as aforesaid, the said council shall, by a notice in the Government Gazette, or in some newspaper published in or near the said division of Mossel Bay, call for tenders for the sum or sums required; and in case it shall accept any of the tenders sent in, shall accept that which specifies the lowest rate of interest; and the bond, declaration, or obligation pledging the tolls or rates agreed to be pledged for securing the repayment of the sum or sums borrowed by such council shall be signed on behalf of that council by three members thereof, of whom one shall be the civil commissioner of the division.

Execution of bond.

Repayment of loan.

V. Any sum or sums of money borrowed as aforesaid by the said divisional council shall be paid off from or out of the tolls or rates hypothecated with all convenient speed.

Proceedings upon return of *nulla bona* upon writ of execution obtained by any creditor of divisional council.

VI. In case it should at any time appear by the return of the sheriff to any writ of execution sued by any judgment creditor of the said divisional council that the sheriff had not found any goods or chattels of the said council wherewith to satisfy the said judgment or any part thereof, or that he had not found such goods or chattels sufficient to satisfy the said judgment, it shall be lawful for the said creditor to apply by petition to the Supreme Court, annexing copies of the judgment and of the writ and return, and praying for such relief in the premises as the said court shall under this Act be empowered to afford.

Application may be made to Supreme Court for purpose of obtaining list of divisional council's debts.

VII. The creditor who shall have filed any such petition as aforesaid may apply to the Supreme Court, by motion founded upon such petition and its annexures, for an order that it be referred to the Master of the said court, to inquire and report whether any, and if so, what other debts are due by the said council, to the end that all such debts may be liquidated: Provided that notice of such motion shall be given to the said council through their secretary or otherwise, if the court shall so direct.

Supreme Court have power to make an order for obtaining such list.

VIII. Upon the hearing of such motion, then, unless the said council shall satisfy the said court

that the said council will be prepared within a reasonable time, to be approved of by the said court, to satisfy from the rates assessed, or to be assessed, or other assets, the debt of the creditor who shall have petitioned as aforesaid, together with costs and all interests accrued due thereupon, the said court shall make an order referring it to the Master to inquire and report what other debts, if any, are due by the said council.

IX. The Master in acting upon any such order shall, by a notice of not less than twenty-one days in the Government Gazette, and one or more newspapers published in or near the said division, call a meeting of all persons claiming to be creditors of the said council for proof of debts, and such debts if not admitted by the said council, or not evidenced by their books and accounts, shall be proved by affidavit.

Master of Supreme Court to call meeting of creditors.

X. When by the report of the Master, the Supreme Court shall be informed of the whole amount of the debts due and owing by such council, it shall be lawful for the said court, and it is hereby required to assess and impose such a rate, not exceeding one penny per pound of the value of every rateable tenement within the division, as shall appear to be sufficient to satisfy from and out of the net proceeds of such rate all debts due as aforesaid by the said council, together with all costs and interest legally chargeable thereon; provided that if a single rate of one penny per pound as aforesaid shall be insufficient to satisfy the whole of the said debts, then the net proceeds of the first rate shall, after paying to the petitioning creditor his costs of suit, and of his said petition, be divided *pro rata* amongst the creditors, and a second rate, not exceeding one penny per pound shall be assessed; and so on and until the debts of the said council and all interest legally chargeable thereupon shall have been finally discharged: Provided that not less than twelve months shall elapse between the day upon which any preceding rate became due and payable and the day upon which any succeeding rate shall become due and payable, so that the rate-payers may not in any

Supreme Court empowered to assess rate for liquidating council's debts.

When single rate is found to be insufficient a second rate to be imposed.

Twelve months to expire before levy of second rate.

No. 21—1863.

Supreme Court to settle priority of claims.

case be assessed under the provisions of the aforesaid Act No. 9, 1858, or of this Act, in a larger sum than one penny per pound per annum; and provided that it shall be competent for the said Supreme Court to settle, if necessary, the priorities of the several creditors according to their respective rights.

Supreme Court to appoint officer to receive such rate.

XI. As often as the Supreme Court shall assess any rate for the purpose of paying creditors, such court shall appoint a receiver, who shall be charged with the recovery of such rate, and who shall give security for the due performance of his office, and shall be entitled to such percentage or other remuneration as the said court shall fix; and shall conform to all instructions regarding the custody of the moneys received by him, or other matters, as the said court shall from time to time issue for his guidance. Notice shall be given in the Government Gazette and one or more newspapers published as aforesaid, of every rate assessed as aforesaid, and of the day on which such rate will become due and payable, and such notice shall be in substance as follows:

Notice of assessment of rate to be given in Government Gazette.

DIVISION OF MOSSEL BAY.—RATE UPON IMMOVABLE PROPERTY.

Notice is hereby given that the Honourable the Supreme Court has this day assessed, under the provisions of the "Mossel Bay Divisional Council Loan Act, 1863," for payment of debts, a rate of — per pound upon the value of every rateable tenement within the Division of Mossel Bay, which rate will become due and payable on the — day of — 18—, and of which rate A. B., of —, has been appointed the receiver.

Dated, Cape Town, this — day of —, 18—.

X. S. L.,

Registrar of the Supreme Court.

Provided that such notice as aforesaid shall be published for not less than thirty-one days before the day mentioned in such notice as that upon which the rate shall become due and payable.

XII. The receiver of any such rate as aforesaid shall be entitled to recover the amount thereof in any competent court. No. 21—1863.  
Receiver of rate may recover.

XIII. Any surplus of the amount of any such rate as aforesaid which may happen to exist after the discharge of all the debts which it was assessed to liquidate shall be paid to the said divisional council. Surplus to be paid to divisional council.

XIV. Any such order of court as aforesaid, referring it to the Master to report upon the debts of the said council, shall have the effect of making all debentures, securities, and engagement granted by the said council due and payable forthwith, notwithstanding that the same might not, but for such order, have been payable till some future date. Effect of order of court on all debentures, &c.

XV. This Act may be cited for all purposes as "The Mossel Bay Divisional Council Loan Act, 1863." Short title.

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No. 22—1863.]            AN ACT            [July 28, 1863.]

To Extend certain Provisions of the Act No. 7 of 1860, entitled "An Act for enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues."

**W**HEREAS by the Act No. 7 of 1860, entitled "An Act for enabling the Harbour Board of Mossel Bay to levy certain Wharfage Dues," power and authority were granted to the Harbour Board of Mossel Bay to effect certain loans, not exceeding seven thousand pounds in the whole, for constructing works calculated to promote the safe and convenient anchorage and landing and shipping of goods; and whereas it is necessary and expedient that the said board should be authorized to effect certain additional loans, not exceeding the sum of one thousand five hundred pounds, for completing the works now in progress, under and by virtue of the provisions of the Act No. 7 of 1860 aforesaid: Be it enacted by the Governor of the Cape of Good Hope, with the advice Preamble.

No. 22—1863.

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

Power to effect further loan.

I. It shall be lawful for the Harbour Board of Mossel Bay to borrow and take up from time to time, upon interest, such further sum or sums of money, not exceeding one thousand five hundred pounds in the whole, as may be necessary for completing the works now constructing, under, by virtue of, and subject to the provisions of the Act No. 7 of 1860 ; and all the provisions of the said Act, with regard to the money thereby authorized to be borrowed, shall apply to the said additional loans in the same manner as if the whole sum of eight thousand five hundred pounds had been by the said Act authorized to be borrowed.

Provisions of Act No. 7, 1860, to apply to further loan.

Short title.

II. This Act may be cited for all purposes as “The Mossel Bay Wharfage Amendment Act.”

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No. 23—1863.] AN ACT [May 6, 1864.

To Amend Act No. 35 of 1861, entitled an “Act to Incorporate the Wynberg Railway Company.”

Preamble.

WHEREAS, by Act No. 35 of 1861, the Wynberg Railway Company was formed and incorporated for the purpose of constructing, maintaining, and working a line of railway from Cape Town, by way of Mowbray, Rondebosch, and Claremont, to Plumstead, at Wynberg ; and whereas the forty-first section of the said Act provided for a contemplated junction of the said railway with the Cape Town and Wellington Railway ; and whereas the said company have completed or nearly completed the construction of the formation level of the said railway, with the necessary culverts, bridges, and crossings, from Plumstead to the said contemplated point of junction with the said Cape Town and Wellington Railway at Salt River ; and whereas the said company and the Cape Town Railway and Dock Company, the proprietors of the Cape Town and Wellington Railway, have not been able to agree upon the terms

upon which only the said contemplated junction can be effected, by reason whereof it has become necessary for the said Wynberg Railway Company to make other provisions for completing their said railway, so as to extend the same into Cape Town, in terms of the said Act; and whereas a plan and sections of the line of the said extension, certified by the signature of the President of the Legislative Council, have been deposited in the Deeds Registry Office, Cape Town; and whereas the better to enable the said company so to complete the said railway as aforesaid, it is expedient, firstly, to afford the said company greater facility to take up money on loan than is provided for under the thirty-fifth section of said Act, and, secondly, to amend the provisions of the eighteenth section of said Act (relative to the appropriation of lands for the purposes of the said railway), and the extension thereof, which are in divers respects imperfect, inconvenient, and uncertain: 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. The said eighteenth and thirty-fifth sections of the said Act, No. 35 of 1861, and any other provisions therein contained repugnant to this Act, shall be and are hereby repealed.

18th and 35th sections of Act 35, 1861, repealed.

II. All the provisions of the said Act, No. 35 of 1861, save and except so far as they are affected by the provisions herein contained, shall apply to and extend to this Act.

All other clauses to apply to this Act.

III. It shall and may be lawful for the said directors of the said company, and they are hereby authorized to enter upon and take possession of such lands, within the limits of deviation in the said plans and sections mentioned, as may be required for the construction and maintaining of the said railway; provided that no brickfield, garden, vineyard, plantation, avenue, orchard, or ground ornamentally planted, shall be used for the purpose of depositing or excavating soil without the consent of the owner thereof; and provided that the extent of land taken for the said railway shall not exceed the width of thirty feet for the formation line, and

Power of directors to enter upon private lands.

Consent of proprietors to be obtained in certain cases.

Extent of land taken limited.

No. 23—1863.

Provision against unnecessary damage.

Proprietors to be compensated.

sufficient additional width required for the slopes, drainage, fencing, and stations, and approach roads thereto; provided, that in doing so, as little damage as possible shall be done to such lands as aforesaid: And provided, further, that the proprietors of the said lands or materials so used and carried away shall be paid by the directors the just value, by way of recompense, for such land or materials, or for any damage which may be done by reason thereof, including the damage, if any, to be sustained by the owner by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting the property of the owner by the exercise of the powers of this Act; and upon payment or satisfaction of such recompense, the said land and materials shall be held and taken to be vested in the said company, as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed by the respective proprietors or parties interested therein in favour of the said company according to the law and custom of this Colony, or as if all Acts by law required for vesting in the said company a sufficient title thereto had been duly done and performed: And provided, also, that in the event of the directors of the said company and any such proprietor not being able to agree upon the sum to be paid by the said directors and accepted by such proprietor, then the said directors shall cause to be served upon such proprietor a written or printed notice, offering, as recompense or compensation, whatever sum of money they shall deem sufficient; and in case such proprietor shall not within the said period of eight days return an answer in writing he shall be deemed and considered to have accepted the sum of money so offered; and thereupon the said sum of money shall, at the expiration of a further period of three days after the expiration of the said period of eight days, be paid, if not previously claimed, into court for and on account of such landed proprietor, and the said company shall thereupon become entitled to take possession of the land in question. But if such proprietor shall refuse to accept the sum of money

How if directors and proprietors disagree as to amount of compensation.

so offered him as aforesaid, he shall, if so minded, be entitled to have the amount of such recompense or compensation assessed and determined by arbitration, as in manner after provided, upon giving to the said company a written notice, within the aforementioned period of eight days, stating his intention to have such amount of recompense or compensation submitted to arbitration. And such notice to submit to arbitration shall further state the amount of the sum claimed by way of recompense or compensation, and shall contain the name of the person selected by such aforesaid proprietor to be the arbitrator appointed on his behalf; and thereupon, within four days after the service of the said notice on the said company, the said company shall transmit to such proprietor the name of such person selected to be the arbitrator appointed on their behalf; failing which the said company shall pay the sum claimed by such proprietor in his notice for the appropriation and possession of the required land. And upon the nomination of the two arbitrators as aforesaid, the said two arbitrators shall, within four days after the nomination of the arbitrators selected by the said company, jointly select a third person to be the third arbitrator; and such three arbitrators, or the majority, shall assess and determine the amount of such recompense or compensation to be paid to such proprietor as aforesaid; for which purpose the said company shall cause a deed of submission to be prepared, which shall be signed by the chairman of the board of directors on their behalf, and by the proprietor claiming the recompense or compensation aforesaid, and by the said arbitrators, and which deed shall clearly state the matter to be determined by the said arbitrators, who shall have the power to determine all matters of cost incident to or connected with the said arbitration and the payment thereof; and the award of the said arbitrators, or any two of them, shall, if either party shall so desire it, be made a rule or order of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject matter:

No. 23—1863.  
Arbitration.

Arbitrators, how appointed, and how if company fail to appoint its arbitrator.

Arbitrators of the two parties to select a third.

Award of the three final.



No. 23—1863.

Governor may appoint a third arbitrator.

Provided, always, that if the two arbitrators appointed by any proprietor aforesaid and the company respectively shall not agree within the aforesaid period of four days in the selection of a third arbitrator, then and in that case the Colonial Railway Engineer, or such other officer as the Governor may appoint, shall be such third arbitrator. And all the provisions in this section contained shall apply to claims for compensation arising under the said Act No. 35 of 1861, as well as to claims arising under this Act.

This section to apply to claims under Act 35, 1861, as well as those under this Act.

Wynberg line not to approach Wellington line within a certain distance, except for purpose of junction.

IV. Provided that the rail of the main line of the said Wynberg Railway, or any work connected therewith, except for the purposes of making a junction, shall at no point be laid at a less distance from the nearest rail of the Cape Town and Wellington Railway than nine feet. And provided that the rail of the main line of the said Wynberg Railway shall not, without the consent of the commissioners of the Cape Town municipality first had and obtained, and signified to the said company in writing, be laid on the Grand Parade in Cape Town further than as far as the corner of Zieke-street and Darling-street; anything in this Act, or in the plans and sections of the said line or the extension thereof to the contrary notwithstanding.

Consent of municipality as to terminus in Cape Town.

Power of directors to borrow money.

V. So soon as one-half of the capital of the company shall have been subscribed, and not less than one-third thereof shall have been paid up and expended, it shall be lawful for the directors from time to time, when duly authorized thereto by the shareholders at a special meeting convened for the purpose, to borrow money for the purposes of the said railway, on security of the undertaking, and future calls on the shareholders, and of the expected earnings of the line; the interest on such loan to be a first claim on the net profits of the working of the railway, after deducting the expense of working and maintaining the said railway: And in the event of any agreement being made by the Wynberg Railway Company for the lease of the said railway to any other party, or for the working of the said railway by any other party, or for the

Interest on loan how charged.

No. 23—1863.

transfer of the said railway to some other party, then and in any such case such interest shall be a first claim upon the rent or other sums of money to be paid by the party renting or working the same; and the principal of such loan shall be a first charge upon the sum to be paid to the said Wynberg Railway Company by the party to whom it shall be transferred: Provided that the amount which may be borrowed, together with the amount of capital paid up by the shareholders, shall at no time exceed the nominal capital of the company, namely, one hundred thousand pounds. And provided, further, that nothing in this section contained shall be construed to render any shareholder liable to pay any greater amount than such shareholder is liable to pay under the provisions of Act No. 35 of 1861.

Amount of loan.

VI. The Wynberg Railway Company shall be and is hereby required to allow the junction of any other line of railway which may hereafter be constructed to run into Cape Town at any point of the extension which is sanctioned by this Act; and the person or company which shall project or construct or may be the proprietor or proprietors of such line, or the Colonial Government (if the line shall be a line undertaken or owned by the Government), shall have the right to run over and use any part of the Wynberg Railway Company's line from such point of junction into Cape Town, both during and after the construction of such new line of railway into Cape Town; and in case the person, company, or Colonial Government (if it shall be a Government line) projecting, constructing, or owning such line of railway into Cape Town and the Wynberg Railway Company shall be unable to agree upon the terms upon which such junction with and use of the Wynberg Railway shall be allowed, or in case of any other question or controversy arising between them relative to any matter connected with such junction and use of the said line, such question or questions shall be referred to three arbitrators, one to be nominated by the Wynberg Railway Company and one by the person, company, or the Colonial

Company to allow junction with other lines.

Terms how to be decided.

No. 23—1863.

Government (if it be a Government line) who may be projecting or constructing or who may be the proprietor or proprietors of such line; and such two arbitrators shall be appointed, and shall select a third arbitrator, in the manner and form as in the third section of this Act is provided; and if the two arbitrators appointed under this section shall not agree on the selection of a third arbitrator within four days of the appointment of the last of the two arbitrators, then and in that case it shall be competent for the Supreme Court, on application made by either party, to appoint such third arbitrator; and the decision of such arbitrators, or the majority of them, on all questions submitted to them shall be final and conclusive.

In failure of arbitration, Supreme Court may be appealed to.

Obligation of company to sell the line to Government after ten years.

VII. At any time after the expiration of ten years from the date of the opening for traffic of the entire line from Cape Town to Wynberg the Colonial Government shall, if so disposed, have the right to purchase from the Wynberg Railway Company the railway and rolling stock, engines, carriages, plant, machinery, and every matter or thing belonging to or connected with the said railway, together with the telegraph and apparatus; and the said company shall, if required thereto, be bound to sell to the Colonial Government the railway and rolling stock, engines, carriages, plant, machinery, and every matter or thing belonging to or connected with the said railway, with the telegraph or apparatus, upon such terms as may be agreed upon between the said Colonial Government and the Wynberg Railway Company; and if the Colonial Government and the Wynberg Railway Company cannot agree upon the terms upon which such purchase shall be made, all questions in dispute between the Colonial Government and the said company relative thereto shall be submitted to three arbitrators, to be appointed in manner and form as in the immediately foregoing section is provided; and any award made under this or the foregoing section may be made a rule or order of the Supreme Court, and may be pleaded in bar of any action or proceeding at law brought for and on account of the

subject-matter : Provided, however, that the right of the Colonial Government to purchase and the obligation of the Wynberg Railway Company to sell to the Colonial Government, as in this section is provided, shall cease and determine in case the extension of the line from Salt River to Cape Town authorized by this Act is not carried out.

No. 23—1863.

Provided the Cape  
Town extension be  
carried out.

VIII. The directors of the said company shall be bound, and are hereby required, to finish and complete the said extension into Cape Town within two years from and after the taking effect of this Act, failing which, all and singular the powers and authorities conferred by this Act in relation to said extension shall cease and determine.

When Cape Town  
extension to be com-  
pleted.

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