

E.



R.

Statutes  
OF  
The Transvaal,  
1908,

With INDEX, TABLES OF CONTENTS (Alphabetical and  
Chronological), and TABLE OF LAWS, Etc.,  
REPEALED and AMENDED by these  
STATUTES.

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# CONTENTS.

## 1908 Statutes (Alphabetical).

NUMBER OF ACT.	SUBJECT.	PAGE.
11	Additional Appropriation (1907-1908) ... ..	41
33	Admission of Law Agents as Attorneys ... ..	296
24	Angora Export Duty Amendment ... ..	197
1	Appropriation (Part 1908-1909)... ..	1
14	Appropriation (1908-1909) ... ..	83
36	Asiatics Registration Amendment ... ..	435
4	Asylums Board ... ..	6
15	Audit and Exchequer Amendment ... ..	85
17	Co-operative Agricultural Societies ... ..	90
16	Criminal Law Amendment ... ..	86
6	Customs Amendment ... ..	17
10	Diseases of Stock Amendment ... ..	39
28	Education Act Amendment ... ..	276
12	Fencing ... ..	43
23	Field Cornets Amendment ... ..	197
18	Finance ... ..	115
38	Immigrants Restriction Amendment ... ..	452
22	Infectious Diseases Notification Amendment ... ..	196
8	Inter-Colonial Conventions Ratification ... ..	21

NUMBER OF ACT.	SUBJECT.	PAGE.
27	Irrigation ... ..	205
37	Land and Agricultural Bank Amendment ...	445
2	Leprosy Law Further Amendment ... ..	1
3	Lunacy Law Further Amendment ... ..	3
25	Lydenburg Railway ... ..	198
30	Magistrates' Courts Amendment ... ..	285
29	Mining Titles Registration ... ..	277
9	Native Tax ... ..	32
35	Precious and Base Metals ... ..	355
31	Precious Stones Amendment ... ..	288
26	Prescription Amendment ... ..	200
19	Public Service and Pensions ... ..	116
20	Railway Service and Pension ... ..	150
13	Railways Regulation ... ..	54
32	Shop Hours ... ..	290
34	Townships Amendment ... ..	297
5	Transvaal Police ... ..	10
7	Unauthorised Expenditure (1906-'07) ... ..	20
21	Volunteer Corps Amendment ... ..	195

# CONTENTS.

## 1908 Statutes (Chronological).

NUMBER OF ACT.	SUBJECT.	PAGE.
1	Appropriation (Part 1908-1909)...	1
2	Leprosy Law Further Amendment	1
3	Lunacy Law Further Amendment	3
4	Asylums Board	6
5	Transvaal Police	10
6	Customs Amendment	17
7	Unauthorised Expenditure (1906-'07)	20
8	Inter-Colonial Conventions Ratification	21
9	Native Tax	32
10	Diseases of Stock Amendment	39
11	Additional Appropriation (1907-1908)	41
12	Fencing	43
13	Railways Regulation	54
14	Appropriation (1908-1909)	83
15	Audit and Exchequer Amendment	85
16	Criminal Law Amendment	86
17	Co-operative Agricultural Societies	90
18	Finance	115
19	Public Service and Pensions	116



NUMBER OF ACT.	SUBJECT.	PAGE.
20	Railway Service and Pension ... ..	150
21	Volunteer Corps Amendment ... ..	195
22	Infectious Diseases Notification Amendment ...	196
23	Field Cornets Amendment ... ..	197
24	Angora Export Duty Amendment ... ..	197
25	Lydenburg Railway ... ..	198
26	Prescription Amendment ... ..	200
27	Irrigation ... ..	205
28	Education Act Amendment ... ..	276
29	Mining Titles Registration ... ..	277
30	Magistrates' Courts Amendment ... ..	285
31	Precious Stones Amendment ... ..	288
32	Shop Hours ... ..	290
33	Admission of Law Agents as Attorneys ... ..	296
34	Townships Amendment ... ..	297
35	Precious and Base Metals ... ..	355
36	Asiatics Registration Amendment ... ..	435
37	Land and Agricultural Bank Amendment ... ..	445
38	Immigrants Restriction Amendment ... ..	452

Table of Laws, etc., *Repealed* or *Amended*  
by Statutes of 1908.

NO. OF LAW.	REPEALED BY.	EXTENT OF REPEAL.	AMENDED BY.	EXTENT OF AMENDMENT.
Placaat of Emperor Charles the Fifth, dated 4th October, 1540	Act 26, Sect. 1	Operation withdrawn	—	—
Law 2 of 1870	—	—	Act 16, Sect. 10	Sect. 2, by substitution of new section.
Volksraad Resolution, 5th Dec., 1871	Act 16, Sect. 1	Article 441	—	—
Law 17 of 1887	Act 27, Sect. 1	The whole	—	—
Law 11 of 1894	Act 27, Sect. 1	The whole	—	—
Law 11 of 1896	Act 18, Sect. 4	The whole	—	—
Law 18 of 1896	Act 35, Sect. 2	The whole	—	—
Law 28 of 1896	Act 32, Sect. 2	Sect. 4 (a) and (c)	—	—
First Volksraad Resolution, 25th August, 1896	Act 35, Sect. 2	Article 1261	—	—
Law 14 of 1897	Act 35, Sect. 2	The whole, together with the amendment of Article <i>four</i> thereof approved by the Second Volksraad, Article 1749 of 22nd November, 1898, and noted and accepted by the First Volksraad, Article 1975, of the 8th December, 1898	—	—

No. OF LAW.	REPEALED BY.	EXTENT OF REPEAL.	AMENDED BY.	EXTENT OF AMENDMENT.
Law 15 of 1898	Act 35, Sect. 2	The whole	—	—
First Volksraad Resolution, 2nd December, 1898	Act 35, Sect. 2	Article 1911	—	—
Law 4 of 1899	—	—	Act 16, Sect. 3	Sect. 5, by abolition of erf tax in Pretoria.
First Volksraad Resolution, 29th September, 1899	Act 35, Sect. 2	Article 1425	—	—
Proc. 21 of 1900	—	—	Act 22, Sect. 1	By authorising alteration of list of notifiable infectious diseases.
Proc. 24 of 1900	Act 5, Sect. 1	The whole	—	—
Proc. 1 of 1901	Act 5, Sect. 1	The whole	—	—
Proc. 15 of 1901	Act 5, Sect. 1	The whole	—	—
Proc. (Transvaal) 21 of 1902	—	—	Act 30, Sect. 7	Sect. 33, by substitution of new proviso.
Proc. (Transvaal) 21 of 1902	Act 30, Sect. 2	Sects. 53 to 63	—	—
Proc. (Transvaal) 35 of 1902	Act 29, Sect. 1	The whole	—	—
Proc. (Transvaal) 36 of 1902	—	—	Act 3, Sect. 1	Sect. 12, by substitution of certain words.
Proc. (Transvaal) 36 of 1902	—	—	Act 3, Sect. 2	Sect. 28, by addition of certain words.

NO. OF LAW.	REPEALED BY.	EXTENT OF REPEAL.	AMENDED BY.	EXTENT OF AMENDMENT.
Proc. (Transvaal) 36 of 1902	—	—	Act 3, Sect. 5	Sect. 67, by substitution of new section.
Proc. (Transvaal) 36 of 1902	Act 3, Sect. 7	Sects. 69 and 70 (3)	—	—
Ord. 6 of 1902	Act 29, Sect. 1	The whole	—	—
Ord. 17 of 1902	—	—	Act 10, Sect. 1	Sect. 1, by addition of certain words.
Ord. 17 of 1902	—	—	Act 10, Sect. 2	Sect. 2, by addition of certain words
Ord. 17 of 1902	—	—	Act 10, Sect. 8	Sect. 7, by addition of certain words.
Ord. 20 of 1902	Act 9, Sect. 1	The whole	—	—
Ord. 21 of 1902	Act 32, Sect. 2	The whole	—	—
Ord. 6 of 1903	Act 29, Sect. 1	The whole	—	—
Ord. 18 of 1903	Act 13, Sect. 1	The whole	—	—
Ord. 19 of 1903	Act 34, Sect. 43	Sect. 26	—	—
Ord. 42 of 1903	Act 35, Sect. 2	The whole	—	—
Ord. 46 of 1903	—	—	Act 16, Sect. 2	Sect. 4 (d), by deletion of certain words.
Ord. 46 of 1903	—	—	Act 16, Sect. 3	Sect. 19, by substitution of new sub-sections (1) and (2).
Ord. 46 of 1903	—	—	Act 16, Sect. 4	Sect. 20, by substitution of new section.

NO. OF LAW.	REPEALED BY.	EXTENT OF REPEAL.	AMENDED BY.	EXTENT OF AMENDMENT.
Ord. 46 of 1903	—	—	Act 16, Sect. 5	Sect. 21 (1), by substitution of new sub-section.
Ord. 51 of 1903	Act 13, Sect. 1	Sect. 1, 2nd proviso	—	—
Ord. 60 of 1903	Act 13, Sect. 1	The whole	—	—
Ord. 65 of 1903	—	—	Act 34, Sect. 58	Sect. 1, generally.
Ord. 65 of 1903	—	—	Act 34, Sect. 57	Sect. 2, generally.
Ord. 66 of 1903	Act 31, Sect. 1	Sects. 29 to 31	—	—
Ord. 67 of 1903	Act 27, Sect. 1	The whole	—	—
Ord. 7 of 1904	Act 12, Sect. 1	The whole	—	—
Ord. 12 of 1904	—	—	Act 30, Sect. 6	Sect. 6, by addition of new sub-section (10).
Ord. 23 of 1904	—	—	Act 2, Sect. 1	Sect. 9, by substitution of new section.
Ord. 23 of 1904	—	—	Act 2, Sect. 2	Sect. 14, by substitution of new section.
Ord. 23 of 1904	—	—	Act 2, Sect. 3	Sect. 15, by deletion of certain words.
Ord. 23 of 1904	—	—	Act 2, Sect. 4	Sect. 21 (1) (b), by insertion of word "subordinate".
Ord. 23 of 1904	—	—	Act 2, Sect. 5	Sect. 26, by substitution of new paragraph (b).
Ord. 38 of 1904	—	—	Act 10, Sect. 4	Sect. 4, by insertion of words "field cornet".

NO. OF LAW.	REPEALED BY.	EXTENT OF REPEAL.	AMENDED BY.	EXTENT OF AMENDMENT.
Ord. 38 of 1904	—	—	Act 10, Sect. 5	Sect. 7 ( <i>e</i> ), by insertion of certain words.
Ord. 38 of 1904	Act 10, Sect. 9	Sect. 9 and 2nd Schedule	—	—
Ord. 38 of 1904	—	—	Act 10, Sect. 6	Sect. 11, by insertion of certain words.
Ord. 7 of 1905	Act 35, Sect. 2	The whole	—	—
Ord. 31 of 1905	Act 35, Sect. 2	Sect. 4	—	—
Ord. 35 of 1905	Act 35, Sect. 2	The whole	—	—
Ord. II (Pte.) of 1905	Act 34, Sect. 43	Sect. 6	—	—
Ord. 3 of 1906	Act 24, Sect. 1	The whole	—	—
Ord. 4 of 1906	—	—	Act 6, Sect. 1	Sect. 6, by substitution of new paragraphs ( <i>b</i> ) and ( <i>d</i> ) and addition of new paragraph ( <i>e</i> ).
Ord. 4 of 1906	—	—	Act 6, Sect. 2	Sect. 8, by substitution of new section.
Ord. 4 of 1906	—	—	Act 6, Sect. 3	Sect. 9, by deletion of certain words.
Ord. 4 of 1906	—	—	Act 6, Sect. 4	Schedule, by substitution of certain items.
Ord. 10 of 1906	Act 5, Sect. 1	The whole	—	—
Ord. 20 of 1906	Act 9, Sect. 1	The whole	—	—
Ord. 23 of 1906	Act 35, Sect. 2	The whole	—	—
Ord. 25 of 1906	Act 32, Sect. 2	Sect. 4	—	—

NO. OF LAW.	REPEALED BY.	EXTENT OF REPEAL.	AMENDED BY.	EXTENT OF AMENDMENT.
Act 2 of 1907	Act 36, Sect. 14	Sect. 13	—	—
Act 5 of 1907	Act 2, Sect. 6	Sect. 1	—	—
Act 14 of 1907	—	—	Act 15, Sect. 1	Sect. 20, by substitution of new section.
Act 15 of 1907	—	—	Act 38, Sect. 1	Sect. 2, by substitution of new paragraph (h).
Act 15 of 1907	—	—	Act 38, Sect. 2	Sect. 6, by deletion of certain words and addition of certain words.
Act 25 of 1907	—	—	Act 28, Sect. 1	Sect. 38 (2), by substitution of certain words.
Act 25 of 1907	—	—	Act 28, Sect. 2	Sect. 67 (1), by addition of certain words.
Act 25 of 1907	—	—	Act 28, Sect. 2	Sect. 67 (2), by substitution of new sub-section.
Act 25 of 1907	—	—	Act 28, Sect. 3	Sect. 68, by omission of sub-section (2).
Act 25 of 1907	—	—	Act 28, Sect. 3	Sect. 69, by omission of certain words.
<i>Act 26 of 1907</i> Act 26 of 1907	—	—	<i>Act 37</i> Act 37, Sect. 3	Sect. 13, by substitution of word "six" for word "three".
Act 26 of 1907	—	—	Act 27, Sect. 4	Sect. 20, by substitution of new paragraph (c).

NO. OF LAW.	REPEALED BY.	EXTENT OF REPEAL.	AMENDED BY.	EXTENT OF AMENDMENT.
Act 26 of 1907	—	—	Act 37, Sect. 5	Sect. 21, by substitution of new section.
Act 26 of 1907	—	—	Act 37, Sect. 6	Sect. 22, by addition of certain words.
Act 26 of 1907	—	—	Act 37, Sect. 7	Sect. 23, by substitution of the word "farmer" for the word "person".
Act 26 of 1907	Act 37, Sect. 8	Sects. 25, 26, and 27	—	—
Act 26 of 1907	Act 37, Sect. 12	Sects. 29, 30, and 31	—	—
Act 26 of 1907	Act 37, Sect. 15	Sect. 32	—	—
Act 26 of 1907	—	—	Act 37, Sect. 16	Sect. 37, by deletion of certain words.
Act 26 of 1907	—	—	Act 37, Sect. 17	Sect. 39, by substitution of new section.
Act 27 of 1907	—	—	Act 34, Sect. 35	Sect. 5 (1), by substitution of words "fifteen pounds" for words "forty pounds".
Act 33 of 1907	Act 34, Sect. 2	Sect. 14 (1) and 14(2)(c)	—	—
Act 34 of 1907	Act 23, Sect. 1	Sect. 6 (2)	—	—
Act 35 of 1907	Act 35, Sect. 2	The whole	—	—



ACT No. 1 OF 1908.] [Came into operation 1st July, 1908.

AN

Act No. 1  
of 1908.

## ACT

To apply a Sum not exceeding Five Hundred Thousand Pounds Sterling towards the Service of the Year ending the Thirtieth day of June 1909.

(Assented to 1st July, 1908.)

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

1. The general revenue of this Colony shall be and is hereby charged towards the service of the year ending the thirtieth day of June 1909 with a sum not exceeding five hundred thousand pounds sterling, and such sum shall be applied towards the service of that year in conformity with the Estimates of the Expenditure for the year ending the thirtieth day of June 1908.

Public revenue charged with £500,000 towards the service of the year ending 30th June 1909.

2. This Act may be cited for all purposes as The Appropriation (Part 1908-1909) Act 1908 and shall take effect on the first day of July 1908.

Title and date of taking effect.

ACT No. 2 OF 1908.] [Came into operation 1st October, 1908.

AN

Act No. 2  
of 1908.

## ACT

To further amend the Leprosy Law of this Colony.

(Assented to 25th July, 1908.)

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal, as follows:—

### PRELIMINARY.

1. Section *nine* of the Leprosy Ordinance 1904 (hereinafter referred to as the principal law) shall be and is hereby repealed and the following provision substituted therefor:—

Examination of patient after admission and report to Colonial Secretary.

“ 9. Any superintendent who has received  
“ a person into an asylum under an  
“ *interim* reception order shall forth-  
“ with cause a medical examination of

Act No. 2  
of 1908.

“such person to be made by one of the  
“visiting medical officers, or by another  
“medical practitioner appointed for the  
“purpose by the Colonial Secretary, and  
“shall, as soon thereafter as possible,  
“transmit to the Colonial Secretary the  
“report of such examination, together  
“with the *interim* reception order and  
“the reports of the medical practitioners  
“mentioned in section *six*.”

Appointment  
of superin-  
tendents of  
asylums.

\*2. Section *fourteen* of the principal law shall be and is hereby repealed and the following provision substituted therefor:—

“14. The Governor may from time to time  
“appoint superintendents to have the  
“direction and management of any  
“asylum. Every superintendent so  
“appointed shall, in carrying out his  
“powers and duties, be subject to the  
“discretion and control of the Colonial  
“Secretary.”

Amendment  
of section  
*fifteen* of  
Ordinance  
No. 23 of 1904.

3. Section *fifteen* of the principal law shall be and is hereby amended by the deletion of the words “to perform” from the sixth line thereof and the substitution for such words of the words “arrange for the performance.”

Amendment  
of section  
*twenty-one*  
of Ordinance  
No. 23 of 1904.

4. Section *twenty-one* of the principal law shall be and is hereby amended by the insertion in sub-section 1 (*b*) thereof immediately before the word “officers” of the word “subordinate.”

Regulations  
as to duties  
of superin-  
tendents,  
medical and  
other officers  
of asylums.

5. Section *twenty-six* of the principal law shall be and is hereby amended by the deletion of paragraph (*b*) thereof and the substitution of the following new paragraph:—

“(b) as to the duties of superintendents,  
“medical officers, visiting medical officers,  
“and of guards, attendants, and other  
“subordinate officers of asylums.”

Repeal of  
section *one* of  
Act No. 5 of  
1907.

6. Section *one* of the Leprosy Law Amendment Act 1907 shall be and is hereby repealed.

Title and date  
of operation  
of Act.

†7. This Act may be cited for all purposes as the Leprosy Law Further Amendment Act 1908 and shall come into operation on a date to be fixed by the Governor by proclamation in the *Gazette*.

\* For appointment of Superintendent of Pretoria Leper Asylum see Govt. Notice 1004 of 1908 (*Gazette*, 2nd Oct., 1908, p. 11).

† See Proc. No. 79 Admn. 1908 (*Gazette*, 18th Sept., 1908, p. 1001) fixing date as 1st Oct., 1908.

ACT NO. 3 OF 1908.] [Came into operation 1st October, 1908.

AN

# ACT

Act No. 3  
of 1908.

To further amend the Lunacy Proclamation, 1902.

(Assented to 29th July, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal, as follows:—

1. Section *twelve* of the Lunacy Proclamation 1902 (hereinafter referred to as the "principal law") shall be and is hereby amended by the deletion of all words from and including the words "provided that" to and including the words "such asylum" and by the substitution for the words so deleted of the following:—

Amendment  
of section  
*twelve* of  
Proclama-  
tion (Trans-  
vaal)  
No. 36 of 1902.

"If the lunatic shall have been committed  
"by such order to detention in an  
"asylum, the medical superintendent  
"thereof shall, within seven days of the  
"lunatic's admission thereto, transmit  
"to the Attorney-General such medical  
"report as is otherwise for the purposes  
"of this section required to be made  
"by the district surgeon and trans-  
"mitted by the magistrate."

2. Section *twenty-eight* of the principal law shall be and is hereby amended by the addition at the end thereof of the following words:—

Amendment  
of section  
*twenty-eight*  
of Proclama-  
tion (Trans-  
vaal) No. 28  
of 1902.

"If before seven days have elapsed after the  
"date of the admission to an asylum  
"of a criminal lunatic the warrant for  
"his detention therein expires, he may  
"be detained for observation till such  
"seven days have elapsed and, if during  
"such period of seven days he displays  
"symptoms of insanity, the medical  
"superintendent shall transmit a certifi-  
"cate to that effect to the Attorney-  
"General who shall lay the same before  
"a judge in chambers for his considera-  
"tion.

"The judge shall thereupon order the further  
"detention of such lunatic as a case

Act No. 3  
of 1908.

“ under Part I or make such further  
“ order in accordance with section *fifteen*  
“ as he shall deem fit.

“ Pending the receipt of any order of the  
“ judge the warrant aforesaid shall con-  
“ tinue in operation as an authority for  
“ such lunatic’s detention. If within  
“ such period of observation he displays  
“ no symptoms of insanity, he shall,  
“ subject to the provisions of the Lunacy  
“ Law Amendment Act 1907, be dis-  
“ charged as not insane after admission.”

Provisions for  
Governor’s  
pleasure  
lunatic ceas-  
ing to be such  
and steps to  
be taken  
thereupon.

3. (1) The Colonial Secretary may, in his discretion but subject to sub-section (2) of this section, direct that a Governor’s pleasure lunatic cease to be treated as such; but every such direction shall in respect of the safe custody, removal, or discharge of such lunatic be subject to the proviso to section *one* of the Lunacy Law Amendment Act 1907.

(2) As soon as the Colonial Secretary shall have given a direction under sub-section (1) that a Governor’s pleasure lunatic, who is still of unsound mind, shall cease to be treated as a Governor’s pleasure lunatic, the asylum superintendent or other custodian of such lunatic shall transmit to the Attorney-General a copy of the last report made to the Colonial Secretary in respect of such lunatic together with such other documents as may be necessary, and the Attorney-General shall without delay, place the same before a judge in chambers for his consideration.

(3) The judge shall thereupon order the further detention of such lunatic as a case under Part I of the principal law or make such further order in accordance with section *fifteen* of the principal law as he shall deem fit and such order shall take effect from and after the date of the direction of the Colonial Secretary given under sub-section (1).

(4) Pending the receipt of any order of the judge, the order or warrant, authorizing the detention of the Governor’s pleasure lunatic as such, shall continue in operation as an authority for his detention in an asylum.

4. Part III of the principal law shall apply in respect of any lunatic who in terms of the regulations made under section *seventy* thereof has been discharged from an asylum unrecovered to the care of friends, relatives, or approved persons as a lunatic requiring no longer special treatment.

Application of Part III of Proclamation (Transvaal) No. 36 of 1902, to unrecovered discharged lunatics.

**Act No. 3  
of 1908.**

5. Section *sixty-seven* of the principal law shall be and is hereby repealed and the following provision substituted therefor :—

Repeal of section *sixty-seven* of Proclamation (Transvaal) No. 36 of 1902, and substitution of new provisions.

“ When a person is lawfully detained in an  
“ asylum or any other place the cost  
“ of maintaining him thereat shall be  
“ defrayed out of the general revenue  
“ of the Colony ; provided that such  
“ charges as may have been agreed  
“ upon between the Colonial Secretary  
“ and the relatives or curators of such  
“ person may be made in respect of any  
“ special accommodation or attendance  
“ furnished to him. Such a person shall,  
“ so long as such charges are paid, be  
“ deemed a ‘ paying patient,’ but if  
“ and as long as the payment of the  
“ charges are in arrear, the special  
“ accommodation or attendance shall be  
“ discontinued and the person shall be  
“ deemed a ‘ non-paying patient.’ ”

6. Wherever in the principal law the term “ visitor ” or “ official visitor ” is used the term “ member of the Asylums Board ” shall be substituted therefor.

Use of term “ visitor ” in Proclamation (Transvaal) No. 36 of 1902.

7. Section *sixty-nine* and sub-section (3) of section *seventy* of the principal law shall be and are hereby repealed.

Repeal of section *sixty-nine* and section *seventy* (3) of Proclamation (Transvaal) No. 36 of 1902.

\*8. This Act may be cited for all purposes as the Lunacy Law Further Amendment Act 1908 and shall come into operation on a date to be fixed by the Governor by proclamation in the *Gazette*.

Title and date of operation of Act.

\* See Proc. No. 77 Admu. 1908 (*Gazette*, 18th Sept., 1908, p. 1001), fixing date as 1st Oct., 1908.

ACT NO. 4 OF 1908.] [Came into operation 1st October, 1908.]

Act No. 4  
of 1908.

AN  
**ACT**

**To provide for the establishment of a board to deal with the detention, welfare, and treatment of persons afflicted with Lunacy or Leprosy in this Colony.**

(Assented to 25th July, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

Inter-  
pretation of  
terms.

1. In this Act, unless inconsistent with the context ;

“Governor” shall mean the officer for the time being administering the Government of this Colony acting by and with the advice of the Executive Council thereof ;

“institution” shall mean as the context may require either a lunatic asylum or a leper asylum, lunatic asylum being an asylum as defined by the Lunacy Proclamation 1902 or any amendment thereof and leper asylum being an asylum as defined by the Leprosy Ordinance 1904 or any amendment thereof ;

“Minister” shall mean the Colonial Secretary or any other Minister to whom the Governor may from time to time assign the carrying out of this Act ;

“patient” shall mean any person confined or detained under lawful authority in an institution or in any other place pending removal to an institution ;

“superintendent” shall mean as the context may require either the medical superintendent of a lunatic asylum or the superintendent of a leper asylum.

CONSTITUTION OF BOARD.

Establish-  
ment of  
asylums  
board.

\*2. (1) From the date of coming into operation of this Act there shall be established a board to be styled the “Transvaal Asylums Board,” consisting of three members, who shall be appointed by the Governor and hold office for

a period of three years from such date. Of the members so appointed, one shall be a medical practitioner registered as such under the laws of this Colony, one shall be a duly admitted advocate or attorney of the Supreme Court and the other member may be a person not qualified in either such manner. One member of the board shall be named by the Governor as chairman thereof.

(2) On the expiry of the period mentioned in sub-section (1) the Governor shall appoint for a further period of three years a board likewise constituted, and continue to make such appointments after the expiry of each such period of three years.

(3) The Governor may reappoint from time to time as a member of the board any person whose period of office may have expired or is about to expire.

3. (1) A member of the board shall also vacate his office—

Circumstances under which member of board vacates office.

(a) if he become insolvent, or assign his estate for the benefit of or make an arrangement with his creditors ;

(b) if he dies, or become of unsound mind, or be convicted of an offence and sentenced to imprisonment without the option of a fine ;

(c) if he be absent from three consecutive ordinary meetings of the board without the leave of the board ;

(d) if he give one month's notice in writing to the Minister of his intention to resign office and his resignation be accepted by the Governor.

(2) In the event of the death, incapacity, or resignation of any member the vacancy so caused shall be filled by the Governor by a person qualified as the vacating member was qualified and for a period which he would, but for his vacation of office, have continued in office.

4. The members of the board shall receive such remuneration as the Governor may approve from moneys voted by Parliament for the purpose.

Remuneration of board.

**Act No. 4  
of 1908.****DUTIES OF BOARD.**

Visits of  
board and  
investigation  
of complaints.

5. The board shall visit every institution at least once in every two months, and shall at least once in every six months visit every ward in each such institution, give personal observation to every patient on the roll thereof and afford every such patient an opportunity of making in person to the board any representation he may wish to make. Every reasonable complaint or grievance made to the board by a patient shall be investigated by it.

Board to make  
suggestions  
and report to  
Minister.

6. The board shall make to the Minister such suggestions and observations as to it shall seem desirable, regarding the welfare of lunatics or lepers in this Colony, and shall in all cases report to the Minister the result of any visit of inspection made by it either to an institution or to any other place used for the housing or detention of patients.

Meetings of  
the board.

7. The board shall meet for the despatch of business whenever required due notice being given of every meeting by the chairman of the board. At each meeting there shall be presented separate reports in respect of every institution, shewing—

(a) the number of patients admitted since the date of the last meeting of the board ;

(b) the number of patients discharged since such date ;

(c) the number of patients who have died since such date ;

(d) the number of patients who have been transferred to other institutions or to another portion of the same institution since such date ;

and in addition in the respect of a lunatic asylum—

(i) a return of the cases in which mechanical restraint has been imposed since such date ;

(ii) a return of orders made since such date for the seclusion of patients ;

and the superintendent, if he so desires, may bring any matter to the notice of the board affecting the interests of any patient.



**8.** At every meeting of the board the superintendent of the institution concerned in any matter under consideration shall be present as an advisory member.

Attendance of superintendents at meetings. **Act No. 4 of 1908.**

**9.** (1) Two members (exclusive of the advisory member aforesaid) shall be a quorum for meetings of the board.

Minutes of proceedings at meetings of the board.

(2) Minutes of the proceedings of each meeting shall be kept and regularly entered in a book kept for the purpose, and shall be submitted to the next succeeding meeting, and, if passed thereat as correct, shall be confirmed by the signature of the member presiding thereat.

(3) Minutes so signed shall, without further proof, be evidence in all courts and places of the proceedings of the meeting of which they purport to be minutes.

**10.** Notwithstanding anything contained in the Lunacy Proclamation 1902 or any regulations made thereunder, the board may, by resolution duly adopted and recorded after proper enquiry, discharge any patient (not being a criminal lunatic or Governor's pleasure lunatic) detained under lawful authority in a lunatic asylum whether he is a recovered or unrecovered patient, and either conditionally or unconditionally as it may in its discretion determine: provided that when any action taken by the board under this section is in conflict with the written report to the board of the superintendent of the asylum in which the patient is detained, the board shall report to the Minister the reasons for its action.

Discharge of lunacy patients from asylum by board.

**11.** Notwithstanding anything in the Lunacy Proclamation 1902 contained, a criminal lunatic or Governor's pleasure lunatic shall not be discharged either absolutely or conditionally until the Minister has consulted the board as to the mental condition of such lunatic.

Discharge of criminal and Governor's pleasure lunatics.

**12.** The board shall have no authority over the superintendent or any other officer in service at an institution.

Board no authority over officers of institutions.

**\*13.** This Act may be cited for all purposes as the Asylums Board Act 1908 and shall come into operation on a date to be fixed by the Governor by proclamation in the *Gazette*.

Title and date of operation of Act.

\* See Proc. No. 78 Admn. 1908 (*Gazette*, 18th Sept., 1908, p. 1001), fixing date as 1st. Oct., 1908.

ACT NO. 5 OF 1908.] [Came into operation 1st August, 1908.

Act No. 5  
of 1908.

AN

# ACT

**To provide for the establishment, organization, and control  
of the Transvaal Police.**

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

## PRELIMINARY.

Repeal of  
laws.

**1.** The laws mentioned in the Schedule to this Act shall be and are hereby repealed, together with so much of any other law as may be repugnant to or inconsistent with the provisions of this Act.

Interpreta-  
tion of terms.

**2.** In this Act, unless inconsistent with the context ;

“commissioned officer” shall mean the Commissioner, and any deputy commissioner, inspector, or sub-inspector of the Transvaal Police, or any person lawfully acting in such capacity ;

“force” shall mean the officers and men of the Transvaal Police ;

“Governor” shall mean the officer for the time being administering the government of this Colony, acting by and with the advice of the Executive Council thereof ;

“imprisonment” shall mean imprisonment with or without hard labour, as the court having jurisdiction in the offence mentioned in this Act may determine ;

“member of the force” shall mean any commissioned officer, non-commissioned officer, or man serving in the force in terms of this Act or the regulations ;

“Minister” shall mean the Attorney-General or any other Minister to whom the Governor may from time to time assign the carrying out of this Act ;

“regulation” shall mean a regulation made under section *nine* of this Act.

## PART I.

### ORGANIZATION.

Composition  
of force.

**3.** There shall be established, on the date fixed by the Governor in the proclamation mentioned

in section *twenty-eight*, a police force entitled the Transvaal Police and composed of—

(a) those members of the Transvaal Town Police Force established under Proclamation No. 15 of 1901 who are shown upon the strength of that force on the day prior to the date so fixed ;

(b) such persons as may be enrolled as members of the force in terms of this Act on or subsequent to that date.

\* 4. The Governor may from time to time appoint an officer to be styled the Commissioner of Police together with such deputy commissioners, inspectors and sub-inspectors to the Transvaal Police as may be necessary, and may suspend, reduce, discharge, or dismiss any member of the force subject to the provisions of this Act or the regulations. Every such appointment of such an officer shall be notified in the *Gazette*.

Appointment of officers of force.

† 5. The Commissioner shall, subject to the directions of the Governor, have the command, superintendence, and control of the force and, subject to the provisions of section *four* and the regulations prescribing the conditions of service and numerical establishment of the force, shall appoint fit and proper persons to be members of the force and to act in various capacities in accordance with such establishment. Provided that no person shall be appointed superintendent in the force by the Commissioner, otherwise than in an acting capacity, unless and until the appointment shall have been confirmed by the Governor.

Commissioner to have command of force.

6. Every member of the force shall exercise such powers and perform such duties as are or shall be by law conferred or imposed upon any police officer or constable, and shall obey all lawful directions touching the execution of his office which he may from time to time receive from his superiors in the force.

Powers and duties of members of force.

7. The Governor may, in case of war or other emergency, employ the force or any part thereof for the purpose of assisting in the defence of the Colony either within or beyond the borders thereof and may place the force or any part thereof, while so employed, under the orders and directions of such person as he shall appoint in that behalf, and, while so employed, the force or part thereof shall be subject to the law for the time being regulating the discipline, command, and control when on active or military service of the other forces of the Colony ; provided that

Employment of force in times of emergency.

\* For appointment of officers see Govt. Notice No. 708 of 1908 (*Gazette*, 29th July, 1908, p. 466).

† For appointment of superintendents see Govt. Notice No. 709 of 1908 (*Gazette*, 29th July, 1908, p. 466).  
 Digitized by eGangotri Open Access to Digitized Texts Programme, University of Pretoria, 2016  
 1908 (*Gazette*, 23rd October, 1908, p. 147).

**Act No. 5  
of 1908.**

nothing in this section contained shall be construed as excluding a member of the force at any time from the operation of this Act or the regulations; provided further that no member of the force shall be liable to be punished for an offence under this Act as well as under a law regulating the discipline, command, and control of such other forces of the Colony.

No member of force to resign in time of emergency.

**8.** (1) In time of war, disturbance of the public peace, riot, or other emergency, or apprehended emergency, no member of the force shall be at liberty to resign therefrom, notwithstanding that the period of his engagement shall have expired, unless expressly authorized in writing so to do by the Commissioner, and the Commissioner shall at no time be at liberty to resign from the force without the consent of the Governor.

(2) The Commissioner may, notwithstanding that the period of engagement of a member of the force has expired, retain the services of such member for a period not exceeding six months thereafter, if, in the opinion of the Commissioner, the exigencies of the public service require it.

Power of Governor to make regulations.

**\* 9.** The Governor may, from time to time, make, alter, and rescind regulations not inconsistent with this Act for all or any of the matters or things, namely:—

- (1) The enrolment, promotion, posting, suspension, reduction, transfer, discharge, or dismissal of members of the force.
- (2) The numerical establishment of the force, and the various divisions, branches, grades, ranks, and appointments therein.
- (3) The control and discipline of the force.
- (4) The pay and allowances of the force, and the stoppages to be made therefrom.
- (5) The assemblage of courts of enquiry and rules regarding the attendance of witnesses.
- (6) Arms, equipment, ammunition, and saddlery, and the care, safe custody, and maintenance of the same.
- (7) The training of the force.
- (8) The dress and clothing of the force.
- (9) Returns, books, and correspondence relating to the force.
- (10) The provision of animals, draught or other, for use in the force, and the care, safe custody, and maintenance of the same.
- (11) The general government and maintenance of the force.

Every such regulation shall be binding on any member of the force as soon as it is communicated to him by a person having authority to communicate it, and notwithstanding that it has not been published in the *Gazette*. All such regulations and any alteration or rescission thereof shall be published in the *Gazette* and shall be laid upon the Tables of both Houses of Parliament within seven days after the same have come into operation, or, if Parliament be not then in session, within seven days after the commencement of its next ensuing session.

PART II.  
DISCIPLINE.

**10.** Any member of the force contravening any of the provisions of this Act or any regulation shall, upon conviction by a court of resident magistrate or a board of officers constituted in terms of section *twelve*, be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment for a period not exceeding one year or to imprisonment without the option of fine, or to both such fine and imprisonment.

Penalty for contravention of Act by member of force.

**11.** Notwithstanding anything contained in section *ten*, if any member of the force below the rank of superintendent shall contravene any provision of this Act or any regulation, it shall be lawful for any commissioned officer in command of such member, after trial, to fine him a sum not exceeding five pounds, or to sentence him to imprisonment for any period not exceeding fourteen days or to both such fine and imprisonment; provided that any officer who shall try any member of the force under this section shall forthwith after such trial transmit the proceedings in and full particulars of the case to the Commissioner who may quash the conviction or confirm or reduce the sentence; provided further that the Commissioner may, if he thinks fit, restrict, in respect of any officer, the jurisdiction conferred by this section.

Contravention of Act by member of force below the rank of superintendent

**12.** Boards of officers constituted in terms of this Act shall consist of three officers of the force who shall be selected and summoned by the Commissioner or a deputy-commissioner. The senior officer of the board shall be the president thereof, and the decision of the majority of the members shall be deemed to be the decision of the board.

Boards of officers.

**13.** Any board constituted as aforesaid or the president or any member thereof may in writing summon before him any person alleged to be a witness material to the charge and the president or

Summoning of witnesses before board of officers.

**Act No. 5  
of 1908.**

any member of the board may administer oaths to such witness, and generally the board may investigate the charge in such manner as the Governor may by regulation determine, and any person so summoned as a witness who shall fail to attend at the time and place mentioned in such summons or having attended shall refuse to answer all questions that may be lawfully put to him, shall be liable on conviction before a court of resident magistrate to a fine not exceeding twenty-five pounds or in default of payment to imprisonment for a period not exceeding one month.

Confirmation of sentence of board of officers.

**14.** When any board of officers shall convict any member of the force under this Act, the president of such board shall, before promulgating the sentence, transmit the original proceedings in the case to the Commissioner, and no conviction before or sentence of such board shall be valid unless and until the same shall have been confirmed by the Commissioner, who may quash the conviction or confirm or reduce the sentence.

Imprisonment of certain offenders under Act in particular places.

**15.** All persons arrested for any offence under this Act and all persons sentenced to imprisonment by an officer or board of officers as aforesaid may be imprisoned in any place set apart as a guard-room or police prison; provided that, if the sentence exceed fourteen days imprisonment, the person convicted shall be removed to the nearest gaol, there to undergo such sentence, and when so removed he shall be in the same position as if the sentence had been the sentence of one of the ordinary courts of law of this Colony; provided further that so long as any such person shall be imprisoned in any such guard-room or police prison the same shall, so far as such person is concerned, be deemed to be a public gaol and the court of resident magistrate of the district shall have the like jurisdiction and powers as to offences committed by any such person while imprisoned in any such guard-room or prison as it possesses in respect of offences committed in a gaol within its jurisdiction.

Period of imprisonment not to reckon as service in force.

**16.** No period during which any member of the force shall be under arrest or imprisoned for any offence for which he shall be afterwards convicted, or during which he shall be imprisoned on a sentence imposed under this Act or otherwise, shall be reckoned for any purpose as part of such member's period of service, unless the officer, board, or court imposing such sentence shall otherwise direct.

17. A member of the force may be suspended from office pending an enquiry into any charge of misconduct against him, but shall not, by reason of such suspension, cease to be a member of the force. The powers, privileges, and benefits vested in him as such member shall however, during his suspension, be in abeyance, but he shall continue subject to the same responsibilities, discipline, and penalties, and to the same authorities as if he had not been so suspended.

Suspension of members of the force. **Act No. 5 of 1908.**

18. Nothing in this Act contained shall prevent any person from being prosecuted otherwise than under the provisions of this Act in all cases in which he would be liable to such prosecution, but no member of the force, acquitted or convicted of any crime or offence under this Act, shall be liable to be again tried for any crime or offence arising from the same set of facts and circumstances.

Offender under this Act not necessarily to be prosecuted under the provisions thereof.

19. The Commissioner may, upon investigation, where necessary, of which a record shall be duly kept, reduce or dismiss any member of the force (other than a commissioned officer or superintendent) whom he shall deem remiss or negligent in the execution of his duty or otherwise unfit to remain in the force.

Reduction or dismissal of members of the force.

PART III.  
GENERAL.

20. Any member of the force who lends, pledges, sells, or contrary to orders or the regulations, disposes of any Government property shall on conviction be liable to the penalties mentioned in section *twenty-one*.

Penalty for disposing of Government property.

21. If any person shall, in consequence of the sale, pledge, loan, or other disposition of any animal, arms, ammunition, accoutrements, clothing, or equipment by a member of the force, in contravention of this Act or of the regulations, knowingly receive or have any such animal, arms, ammunition, accoutrements, clothing, or equipment, such person shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds in respect of each such animal or article, or in default of payment to imprisonment for a period not exceeding one year.

Penalty for unlawfully receiving or having any property of force.

22. No animal or article mentioned in the last preceding section and forbidden by this Act or the regulations to be sold, pledged, or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution sued out against any member of the force, nor shall

Property of force not to be seized or attached for debt of member of force.

**Act No. 5  
of 1908.**

Salary or allowance not to be assigned or attached.

Rewards for extraordinary diligence or exertion.

Penalty for any person unlawfully holding himself out as a member of the force.

Limitation of actions.

the same pass by or under any order made for the sequestration of the estate of any member of the force.

**23.** It shall not be lawful for any member of the force to assign the whole or any part of any salary or allowance payable under this Act or the regulations, nor shall the whole or any part of any such salary or allowance be capable of being seized or attached by or under any writ of execution sued out against any member entitled to such salary or allowance, nor shall the same pass by or under any order made for the sequestration of the estate of any such member.

**24.** The Commissioner may, with the authority of the Minister, award to any member of the force such sum of money as the Commissioner may deem right, as a reward for extraordinary diligence or exertion, or as compensation for wounds or severe injuries received by such member in the performance of his duty.

**25.** (1) If any person, not being a member of the force, shall put on or assume the dress, name, designation, or description of any member of the force, or shall make any agreement with any member of the force to induce him in any way to forego his duty, or shall supply any member of the force while on duty with intoxicating liquor, or shall connive at any act whereby any lawful order given or any regulation in relation to the force may be evaded, every such person shall, in addition to any other punishment to which he may be liable, be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment for a period not exceeding three months.

(2) If any person shall by a false certificate or any false representation obtain admission to the force, or, if having been dismissed from the force, a person shall by concealing such dismissal receive any pay, allowance, gratuity, or pension, he shall be guilty of an offence and liable to imprisonment for a period not exceeding three months without the option of a fine.

**26.** For the protection of persons acting in the execution of this Act all legal proceedings, civil or criminal, against any person for anything done in pursuance of this Act, shall be commenced within four months after the cause shall have arisen or offence have been committed and not otherwise, and notice in writing of any action and of the cause thereof shall be given to the defendant one month at least before the commencement thereof, and if judgment be given for



the defendant or the defendant be granted absolution from the instance or the plaintiff discontinue any such action or if upon exception or otherwise judgment be given against the plaintiff, the defendant shall recover his full costs as between attorney and client.

Act No. 5  
of 1908.

**27.** The Commissioner may, on the occurrence of any riot, disturbance of the public peace, or public emergency, or whenever he has reasonable grounds for anticipating such occurrence, appoint one or more fit and proper persons to be special constables for a specified time, and such persons shall, while so acting, be vested with the same powers, functions, and responsibilities, and shall be subject to the same discipline and authority as members of the force.

Appointment of special constables.

\* **28.** This Act may be cited for all purposes as the Transvaal Police Act 1908 and shall come into operation, as to section *nine*, on the date of its first publication as an Act in the *Gazette*, and, as to the remainder, on a date to be fixed by the Governor by proclamation in the *Gazette*.

Title and date of operation of Act.

**Schedule.**

Proclamation No. 24 of 1900	...	...	...	...	The whole.
Proclamation No. 1 of 1901	...	...	...	...	The whole.
Proclamation No. 15 of 1901	...	...	...	...	The whole.
Ordinance No. 10 of 1906	...	...	...	...	The whole.

ACT NO. 6 OF 1908.] [†Came into operation 15th August, 1908.

AN

**ACT**

Act No. 6  
of 1908.

**To increase Customs Duties on certain articles and to amend the Customs Tariff and Customs Law of this Colony in other respects.**

(Assented to 3rd August, 1908.)

**BE IT ENACTED** by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

‡ **1.** Section *six* of the Customs Amendment Ordinance, 1906, shall be and is hereby amended—

Amendment to section *six* of Ordinance No. 4 of 1906

(1) by the deletion of paragraph (*b*) and the substitution therefor of the following provision:—

\* The Act was first published in the *Gazette* on the 28th July, 1908, and came into operation 1st Aug., 1908: see Proc. No. 65 Admn. 1908 (*Gazette*, 29th July, 1908, p. 449).

† But see section *five*, paragraph (*a*), for date of operation as regards articles on which Customs duty is, by this Act, increased.

‡ For the grant of a rebate of the duty imposed on certain articles and the suspension of the duty on the importation of certain articles, see Act No. 1908 (*Gazette*, 14th Aug., 1908, p. 551).

Act No. 6  
o. 1908.

“(b) grant a rebate of the whole or part of the duty on methylated spirits or alcohol of Union manufacture intended solely for manufacturing or scientific purposes, or for fuel, or for export beyond the limits of this Colony, or which may have been destroyed by fire or other unavoidable accident, and on soap or other substances imported for and exclusively used in connection with the industry of wool-washing.”

(2) by the deletion of paragraph (d) of the said section and the substitution therefor of the following provision :—

“(d) allow the importation free of duty into this Colony of any goods and articles excepting spirits the growth, produce, or manufacture of the Portuguese Province of Mozambique ; provided that the chief constituent of such goods are the products of the soil of the said Province.”

(3) by the addition to the said section of the following new paragraph (e) :—

“(e) grant a rebate or refund of duty on any raw, semi-manufactured, or manufactured material used in the manufacture of any article in this Colony on its exportation to any place beyond the limits of the Customs Union.”

Definition of value on which *ad valorem* duties are to be paid.

2. Section *eight* of the Customs Amendment Ordinance, 1906, shall be and is hereby repealed and the following provision substituted therefor :—

“8. For the purpose of estimating the amount of Customs duty whenever levied on goods *ad valorem* and the declaration and oaths which may be at any time required by law or regulation in relation to the question of such duty, the current value of such goods shall be taken to be the true current value for home consumption in the open market for similar goods at the place of purchase, bought in the ordinary manner from the manufacturer or supplier in normal quantities, including the cost of packing and packages, but not including agents' commission if it does not exceed five per cent. ; provided that in no case shall the true current value as in this section defined be less than the cost of the goods to the importer at the place of purchase.”

3. Section *nine* of the Customs Amendment Ordinance, 1906, shall be and is hereby amended by the deletion from the said section of all words after the words "persons licensed to deal in spirituous liquors."

Amendment of section *nine* of Ordinance No. 4 of 1906.

4. The Schedule to the Customs Amendment Ordinance, 1906, shall be and is hereby amended in manner set forth in the Schedule to this Act.

Amendment to Schedule of Ordinance No. 4 of 1906.

\* 5. This Act may be cited for all purposes as the Customs Amendment Act, 1908, and shall come into operation—

Title and date of coming into operation of Act.

(a) as regards any articles on which Customs duty is hereby increased, on the twenty-fourth day of June, 1908 ; and

(b) in other respects on a date to be fixed by the Governor by Proclamation in the *Gazette*.

**Schedule.**

CLASS I.

Item 1 shall be deleted.

Item 4 shall be deleted and the following substituted therefor :—

"Item 4. Beads, per lb. ... .. 6½d. ¼d. or 3 per cent. as the case may be.  
(or 25 per cent. *ad valorem* whichever shall be the greater.)"

Item 17 (b) shall be deleted and the following substituted therefor :—

"Item 17 (b), Barley, buckwheat, Kaffir corn, maize, millet, oats, rye, beans and peas.

"(1) In the grain or raw, per 100 lbs.... .. 2s. 2d.

"(2) Ground, malted, or otherwise prepared, including Samp, per 100 lbs. ... .. 2s. 9d. 3d."

Item 37 (b), the word "glucose" shall be inserted immediately after the word "saccharum."

Item 40 shall be deleted and the following substituted therefor :—

"Item 40, vinegar, extracts or essences of vinegar, acid acetic and pyroligneous, per gallon of any strength not exceeding the strength of proof.

"(a) In bottles or other vessels of a capacity of not more than one imperial quart, per imperial gallon ... .. 1s. 1d. 1d.

"(b) In larger vessels or in bulk, per imperial gallon ... .. 7d. 1d.

"and in addition in either case for each degree of strength in excess of the strength of proof, per degree ... .. 4d. 1d."

"NOTE.—Proof will be held to be equal to six per cent. of absolute acid and shall be determined in the manner prescribed by the Customs."

CLASS III.

Item 52, the words "not including riding saddles" shall be deleted.

Item 56 shall be deleted and the following substituted therefor :—

"Item 56, shawls, woollen."

\* The Act came into operation 15th Aug., 1908 : see Proc. No. 67 Admn. 1908 (*Gazette*, 14th Aug., 1908, p. 551).

**Act No. 6  
of 1908.**

## CLASS IV.

- Item 74, the word "glucose" shall be deleted.  
 Item 105, the word "chloride" shall be deleted.  
 Item 117, the words "in bulk" shall be deleted.  
 Item 121, the words "and zinc fume, dust, and shavings" shall be added at the end of the item.  
 Item 126, the words "and fruit tree netting" shall be added at the end of the item.

## CLASS V.

- Item 131, the words "patent medicines and sulphuric acid" shall be inserted immediately after the word "beer."  
 Item 139, the words "boracic acid" shall be inserted immediately after the word "borax" and the words "in bulk" deleted.  
 Item 144, the word "copra" shall be inserted immediately after the word "cotton."  
 Item 147 shall be deleted and the following item substituted therefor :—  
 "147. Cups, medals, and other trophies imported for presentation as prizes at examinations, exhibitions, shows, or other public competitions for skill or sport ; for bravery, good conduct, humanity, for excellence in art, industry, invention, manufactures, learning, science, or for honourable or meritorious public services, or for rifle shooting by Imperial or Colonial forces, or recognised rifle associations, not being for the purpose of advertisement ; provided that such articles shall on importation or delivery free from the Customs bear engraved or otherwise indelibly marked on them the occasion or purpose for which they are presented."  
 Item 159 shall be deleted and the following item substituted therefor :—  
 "159. Oils ; palm, palm kernel, cotton seed and cocoanut, in bulk, for manufacturing purposes, and under such conditions and regulations as the Customs may prescribe."  
 Item 161, the words "and platinum wire" shall be added.  
 Item 172, the word "rennet" shall be inserted immediately after the word "virus."

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ACT NO. 7 OF 1908.] [Came into operation 10th August, 1908.

**Act No. 7  
of 1908.**

AN

**ACT**

**To apply a sum not exceeding One thousand one hundred and ninety pounds two shillings and one penny sterling, for the purpose of meeting and covering certain unauthorised expenditure.**

*(Assented to 3rd August, 1908.)*

**BE IT ENACTED** by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

Revenue charged with £1,190 2s. 1d. unauthorised expenditure of the year which ended 30th June, 1907.

**1.** The public revenue of this Colony is hereby charged with the sum not exceeding One thousand one hundred and ninety pounds two shillings and one penny sterling to meet certain expenditure over and above the amounts voted or appropriated for the service of the financial year which ended the thirtieth day of June 1907. Such expenditure

is described on page xiv of the Report of the Auditor-General of this Colony on the Accounts of the Colony for the financial year 1906-'07, and is further specified in the Schedule to this Act.

**Act No. 7  
of 1908.**

2. This Act may be cited as the Unauthorised Expenditure (1906-'07) Act 1908, and shall come into operation on the date of its first publication as an Act in the *Gazette*.\*

Title and  
date of  
operation of  
Act.

**Schedule.**

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
XXXII	Lands ... ..	Secretary for Lands ...	£ s. d. 501 10 9
XXXVI.	Agriculture and Forests	Director of Agriculture	688 11 4
		TOTAL ...	£1,190 2 1

ACT No. 8 OF 1908.] [Came into operation

AN

# ACT

**Act No. 8  
of 1908.**

**To Ratify certain Conventions entered into by the Government of this Colony with the Government of the Orange River Colony relative to the joint working of the Railways in each such Colony and to make provision for other matters consequent upon the termination of the Inter-Colonial Council.**

(*Assented to 5th August, 1908.*)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

1. The conventions entered into between the Government of this Colony and the Government of the Orange River Colony dated the first day of June, 1908, and set forth respectively in the First and Second Schedules to this Act, are hereby ratified and confirmed.

Ratification of  
Conventions set forth  
in First and  
Second  
Schedules.

2. (1) The Railway Administration known as the Central South African Railways, which will be carried on and worked in terms of the convention set forth in the First Schedule to this Act, shall be in this Colony a body corporate and, under

Incorporation of  
Railway Ad-  
ministration.

\* This date was the 10th Aug., 1908.

Act No. 8  
of 1908.

the name of the Central South African Railways, shall be capable in law of suing and being sued, of acquiring, holding, and alienating movable and immovable property and all rights incidental to or in connection therewith, and of doing and performing all such acts and things as bodies corporate may by law do, subject to any law relating to the regulation and working of the railways administered by it and to the provisions of the said convention.

(2) All agreements, powers of attorney, and other written documents executed or signed during the continuance of the said convention shall be valid and effectual if executed or signed on behalf of such Administration by the chairman of the Railway Board described in the said convention, and on the authority of the said Board, or by any person lawfully acting on its behalf.

Appropriation  
of railway  
revenue to  
railway  
purposes.

3. Anything in the Transvaal Constitution Letters Patent 1906 notwithstanding, all the revenues of the said Railway Administration from whatever source arising within this Colony shall, during the continuance of the convention set forth in the said First Schedule, be appropriated to the purposes, and in the manner, and by the Board, in such convention described.

Indemnifica-  
tion of  
Treasurer and  
other persons  
concerned in  
issue,  
collection and  
expenditure  
of revenues of  
Inter-Colonial  
Council, etc.,  
after 2nd  
June, 1908.

4. (1) Notwithstanding the termination of the Inter-Colonial Council on the second day of June, 1908, the Estimates of Expenditure approved by the said Council in respect of the services of the financial year 1907-8 shall remain of as full force and effect as if the said Council had continued to exist.

(2) The Colonial Treasurer and all other persons concerned

(a) in the issue of any moneys in pursuance of such Estimates ; or

(b) in the collection, custody, and expenditure, up to the date of the coming into operation of this Act, of such revenues and other receipts as were heretofore collected or expended by the said Council ; or

(c) in carrying on the administration of the Central South African Railways in accordance with the convention set forth in the said First Schedule ; or

(d) in the doing of all acts necessary for winding up the affairs of the said Council after the second day of June, 1908 ;

shall be and are hereby indemnified in respect of such acts or matters as fully and effectually as

if all such acts and matters had been in all respects lawful.

**Act No. 8  
of 1908.**

5. This Act may be cited for all purposes as the Inter-Colonial Conventions Ratification Act 1908 and shall not come into operation unless and until the Governor shall, by proclamation in the *Gazette*, declare that it is His Majesty's pleasure not to disallow the Act, and thereafter it shall come into operation on such date as the Governor may by like proclamation declare.

Title and date  
of operation  
of Act.

### First Schedule.

#### CONVENTION PROVIDING FOR THE JOINT WORKING AND ADMINISTRATION OF THE RAILWAYS IN THE TRANSVAAL AND ORANGE RIVER COLONY.

Convention made and entered into by and between William Waldegrave, Earl of Selborne, a Member of His Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, and Governor of The Transvaal, and as such acting for and on behalf of the Government of The Transvaal (hereinafter referred to as "the Transvaal Government") of the one part and Hamilton Goold-Adams, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Most Honourable Order of the Bath, Governor of the Orange River Colony, and as such acting for and on behalf of the Government of the Orange River Colony (hereinafter referred to as "the Orange River Colony Government") of the other part.

Witnesseth: That whereas by a Convention (hereinafter called "the First Convention") made between the parties hereto and bearing even date herewith, provision has been made for the termination of the Inter-Colonial Council (hereinafter referred to as "the Council") and for the apportionment and division between the Governments of The Transvaal and of the Orange River Colony of all the property administered by or on the advice of the Council and all its rights and liabilities in connection therewith in pursuance of the Transvaal Constitution Letters Patent 1906 and of the Orange River Colony Constitution Letters Patent 1907:

And whereas the Governments of the said Colonies have agreed that from and after the termination of the Council the Railways now administered and worked by or on the advice of the Council shall be administered and worked as one system subject to the provisions of this Convention, and shall continue to be known as the Central South African Railways:

Now, therefore, the parties to this Convention do hereby covenant and agree with each other in manner following, that is to say:

1. On the second day of June 1908 each Colony shall bring in and hand over for the purposes of this Convention to the Railway Board hereinafter provided for (and hereinafter referred to as "the Board") all railways, railway equipment, and other railway assets, and all rights and liabilities in connection therewith, which were apportioned to it under the First Convention, and the same shall be recorded in the books and accounts of the Central South African Railways (hereinafter referred to as "the Administration"); and the Board shall carry on the undertaking of the railways now administered and worked by or on the advice of the Council, exercise all financial powers in connection with the Administration which were exercisable by the Treasurer or other officer of the Council prior to its termination in respect of such railways, satisfy all lawful claims subsisting against, and enforce all lawful rights belonging to such railways at such date, and prosecute or defend all legal proceedings in respect of such claims or rights; and all such claims as remain unsatisfied and all such rights as the Board is unable to enforce shall in the books and accounts to be kept in manner hereinafter provided, be adjusted between the two Colonies in the proportions of their several interests in such accounts under this Convention.

2. On and after the second day of June 1908 the railways now administered and worked by or on the advice of the Council shall be administered

Act No. 8  
of 1908.

and controlled as one railway system by a Board consisting of five persons, three of whom shall be nominated by the Transvaal Government and two by the Orange River Colony Government. Of the three nominated by the Transvaal Government two at least shall be Ministers and of the two nominated by the Orange River Colony Government one at least shall be a Minister, and any vacancy on the Board shall from time to time be filled by the Government which appointed the vacating member.

It shall be competent for the Governments of the two Colonies by mutual consent to reduce the number of the members of the Board from five to three, and if the Board is so reduced, one representative of each Colony to be named by the respective Governments shall retire.

3. The Government of either Colony may from time to time revoke any nomination to the Board made by it and, subject to the provisions of article two, nominate another person in place of the person whose nomination is so revoked.

4. The Board shall at its first meeting elect one of its members to be Chairman who shall hold office for one year but may be re-elected. He shall preside at all meetings of the Board; and when the votes are equal he shall have a casting vote in addition to his deliberative vote. In the interval between meetings of the Board the Chairman shall have power to authorise such acts as are necessary for the administration of the railways, but he shall consult by correspondence or otherwise the other members of the Board on all matters of importance.

5. In case any member of the Board shall at any time be incapacitated through illness or otherwise from attending a meeting or meetings of the Board, the Government which nominated such member may nominate another person to act as a member of the Board during such incapacity and the person so temporarily nominated shall be entitled to attend meetings of the Board and to vote thereat until such time as the incapacitated member resumes his duties on the Board. Whenever for like reasons the Chairman is incapacitated from exercising his functions under this Convention the members of the Board for the time being shall elect one of their number to act as Chairman.

6. The quorum of the Board shall be three members if the Board consists of five; and two members if the Board consists of three. The quorum shall always include the Chairman or Acting Chairman.

7. The headquarters of the Administration shall be in Johannesburg. The ordinary meetings of the Board shall be held at the headquarters unless it shall be otherwise decided from time to time by the Board.

8. The Board shall hold an ordinary meeting not less than once every month, and such extraordinary meetings as may be necessary for the proper conduct of its business. The meetings of the Board shall take place on such dates as the Board may determine. Due notice of all meetings shall be given to every member.

9. The Board shall appoint a *domicilium citandi et executandi* in Bloemfontein where all legal process directed against the Administration in the Orange River Colony may be served.

10. Without prejudice to the general powers of administration and control vested in the Board by article two hereof and the other powers herein conferred, it is hereby expressly declared that the Board shall have the following powers, that is to say, power

- (a) to enter into agreements with any Government or any person or body of persons whether corporate or unincorporate, and whether in The Transvaal or the Orange River Colony or elsewhere in connection with matters affecting or incidental to the administering or the working or the control of any railways and other works;
- (b) to acquire or to construct or to negotiate with any Government, or person or body of persons whether corporate or unincorporate, for the acquisition or construction of lines of railway, and to complete arrangements concerning the same subject to ratification by the Parliament or Parliaments of the Colony or Colonies in which the line is situate or to be constructed, or if the line be wholly within one Colony, subject to the ratification only of the Parliament of that



Colony ; but such ratification shall not be necessary with reference to sidings or short branch lines to mines and other works if the cost of such sidings or branch lines does not exceed fifty thousand pounds in any one case ;

- (c) to fix and alter from time to time the rates and fares and other charges on the railways ;
- (d) to acquire by purchase, lease, expropriation or otherwise land, servitudes, water or other rights for railway purposes, and to procure proper registration thereof in the Colony, in which such land, servitudes or rights are situate ;
- (e) to appoint and at their discretion to remove or suspend such officers and servants as may from time to time be necessary and to fix and determine their duties, salaries and emoluments ;
- (f) to appoint attorneys or agents for the conduct of any portion of the Administration's business ;
- (g) to control the finances of the Administration, and to prepare the Railway Budget hereinafter referred to ;
- (h) to enter into all such negotiations and contracts and rescind and vary all such contracts, and generally to execute and do all such acts, deeds and things for and on behalf of the Administration as it may consider expedient for or in relation to any of the matters aforesaid, or for the better carrying out of the objects and purposes of this Convention.

11. Each Government undertakes to introduce and cause to be passed into law by the Parliament of its Colony at a session thereof during the present calendar year a Bill providing that the Administration shall be a body corporate with power to sue and be sued in its corporate name, to hold property and do all such other acts and things as bodies corporate may by law do, and to further provide that all agreements, powers of attorney, and other written documents shall be valid and effectual if made and signed on behalf of the Administration by the Chairman or any person lawfully acting on his behalf.

12. The Railways shall be managed by a General Manager who shall have charge of the whole of the Railways under the directions and instructions from time to time given by the Board or by the Chairman.

13. The General Manager shall submit an annual report to the Board, to be laid before the Parliaments of both Colonies, through their respective Governments, dealing with the state of traffic, with the approximate cost and earnings in respect of goods and passengers respectively carried during the previous year, with the general condition of the lines and accommodation for the traffic, and generally with such other matters as may be deemed expedient.

14. There shall be an Auditor for the Railways who shall be appointed and removable by the Governments of both Colonies and may be suspended on the ground of incompetence or misbehaviour by the Board, subject to confirmation by the Governments of the two Colonies.

15. The Board shall require the Auditor to submit an annual report with regard to the previous financial year and such report shall be laid before the Parliaments of both Colonies through their respective Governments. Such report shall certify that the Auditor has examined the balance-sheet of the Administration and the accounts connected therewith, and that he has satisfied himself that the regulations with regard to the audit of and accounting for and recording of railway revenues have been properly observed, and that in his opinion the balance-sheet and accounts are correct.

He shall also report to the Board from time to time whether in his opinion the checks for the time being observed are sufficient or otherwise ; he shall further report upon such other matters as the Board may from time to time require.

The Board shall have power to prepare regulations not inconsistent with this Convention for more particularly defining the scope of the Auditor's duties. Such regulations shall become operative only when approved by the Governments of both Colonies.

**Act No. 8  
of 1908.**

16. (a) The books and accounts of the Administration shall be kept in such manner as to reflect from time to time the respective interests of The Transvaal and Orange River Colony in the assets and obligations of the Administration, and on the termination of this Convention such interests shall be apportioned between the two Colonies accordingly.

(b) Rolling stock provided from or after the first day of July 1908 shall be apportioned from time to time in the books and accounts of the Administration, as to engines on the average engine mileage in the two Colonies, and as to other rolling stock on the average vehicle mileage for the several descriptions of rolling stock.

17. Each Government agrees that the other Government may instruct its Auditor-General from time to time to investigate the books and accounts of the Administration and to examine its records, in order to ascertain whether an accurate account of the respective interests and obligations of each Colony is kept.

18. (a) The profits of the Administration which shall remain after provision has been made out of the railway earnings for working, administration, maintenance and for interest, redemption and other charges upon railway capital and other necessary expenditure shall, so far as the same extend and subject to any legitimate prior charge be applied to the payment of the interest, sinking fund and management charges of that portion not included in the railway capital account of the loan raised under the Transvaal Guaranteed Loan Ordinance 1903.

(b) If the railway earnings are not sufficient to cover the working and other necessary expenditure referred to in paragraph (a), then the Government of each Colony shall make good the shortfall in proportion to the amount of its interests in the railway capital account as existing during the year of such shortfall.

(c) If the railway earnings are sufficient to cover such working and other necessary expenditure referred to in paragraph (a) but there are no profits or the profits are not sufficient to meet the whole of the interest, sinking fund payments and management charges on the portion above referred to of the said loan the deficiency shall be made good by each Colony in proportion to the share of the Guaranteed Loan for which it is liable under the First Convention.

(d) If the profits after providing for the working and other necessary expenditure are more than sufficient to cover the whole of the interest sinking fund payments, and management charges upon such portion of the loan, the surplus shall be devoted to the purposes of the Administration.

19. The Railway Estimates of Revenue and Expenditure shall be prepared annually by the Board after consultation with the Governments of both Colonies and shall through the Government of each Colony be laid on the tables of both Houses of Parliament of each Colony during its ordinary session. Each Government undertakes to introduce and cause to be passed into law as soon as possible after the date of this Convention a Bill providing that notwithstanding anything in the Constitution Letters Patent of the two Colonies the revenues of the Administration shall during the existence of this Convention be appropriated in accordance with the last preceding article and pending such legislation the Government of each Colony agrees that such revenues shall be so appropriated.

20. The Board shall make adequate provision in the Railway Budget for Renewals and Betterment.

21. (a) Neither Government shall during the existence of this Convention construct or sanction the construction of any line of railway in its territory which in the opinion of the Board is likely to compete with any line or lines of the Administration: the Board shall be the sole judge as to whether any contemplated line is likely so to compete.

(b) If one Government desires to construct or sanction the construction of a line which in the opinion of the Board is not likely to compete with any line or lines of the Administration but which the Board does not wish to construct upon joint account, such Government may construct such line or arrange for its construction either by private enterprise upon terms approved by the Board, or by the Board. In the event of its construction by the Board, the funds necessary therefor shall be found by such Government and the line shall be constructed and worked by the Board at the risk and cost of that

Government. Such Government shall receive the revenue earned by the line after payment of the working expenses and other charges, and shall be liable for interest and redemption on the capital cost of the line. Such Government shall also make good to the Board quarterly any shortfall of working expenses and other charges if the revenue derived from any such line is insufficient to meet the costs of its working and other expenses incidental thereto. Upon the statement of the Chief Accountant of the Administration the payment of such shortfall, whether estimated or actual, shall forthwith be made, subject to any adjustment when the accounts are finally certified by the Auditor for the Railways.

(c) The Board shall have the right at any time to take over and work upon joint account any line or lines constructed by or on behalf of either Government. Every agreement for the construction of any line by private enterprise shall contain a condition reserving the right of expropriation thereof or, in the case of a line constructed or acquired by either Government, a condition for its incorporation in the railways of the Administration.

22. Each Government undertakes to use its utmost endeavours to secure uniformity in all legislation affecting railways in its territory. To secure that object no Bill prejudicially affecting or imposing burdens or restrictions upon railways in their working or management shall be introduced by or receive the support of the Government of one Colony without the consent of the Government of the other Colony, and in the event of the Government of that Colony giving such consent, it shall undertake to introduce into and cause to be passed into law by the Parliament of that Colony a Bill as far as possible simultaneously with the introduction of the Bill in the Parliament of the other Colony and in terms similar to those of such Bill.

23. All Conventions and Agreements made and entered into by or on behalf of the Central South African Railways prior to the date of the First Convention, with any Government, or person or body of persons, corporate or unincorporate, having reference to the railways in both Colonies or either of them shall during the continuance of this Convention be respected, observed, and carried into effect by the Board; and on the termination of this Convention every such Convention or Agreement shall be taken over and respected by the Colony to which it directly applies, and the parties thereto shall do such matters and things as may be reasonably necessary for carrying the provisions of this article into effect.

24. This Convention shall come into force from the second day of June 1908 and shall continue of full force and effect for a period of four years reckoned from such day and shall be continued, subject to at least twelve months' notice (expiring on the thirtieth of June in any year), to be given at any time after the said period of four years by the one party to the other, of its intention to terminate this Convention.

25. If this Convention be terminated and any point of dispute arises which cannot be settled by agreement between the two Governments, it shall be settled by arbitration. Each party shall choose an arbitrator and the Chief Justice of the Cape Colony shall be the umpire on such arbitration or failing him, a person to be nominated by the Secretary of State for the Colonies shall be the umpire.

26. This Convention and the Convention of even date herewith providing for the payment of pensions or gratuities to persons employed in services administered by or on the advice of the Council and for the apportionment and division between The Transvaal and Orange River Colony of liability for such pensions and gratuities shall be deemed to be inter-dependent, and both shall be submitted together to the Parliament of each Colony for ratification.

Thus done under my hand  
under the Public Seal of  
The Transvaal on behalf  
of the Government of The  
Transvaal this first day  
of June, 1908, in the  
presence of

Witnesses :

(1) D. O. MALCOLM,  
*Private Secretary.*

(2) A. E. ERSKINE,  
*Acting Military Secretary.*

SELBORNE,  
*Governor of The Transvaal.*

Act No. 8  
of 1908.

**Act No. 8  
of 1908.**

Thus done under my hand  
under the Public Seal of  
the Orange River Colony  
on behalf of the Govern-  
ment of the Orange River  
Colony, this first day  
of June, 1908, in the  
presence of

HAMILTON GOOLD-ADAMS,  
*Governor of the Orange River Colony.*

*Witnesses :*

- (1) A. FISCHER,  
*Prime Minister of the  
Orange River Colony.*
- (2) COURTENAY SHAW,  
*Private Secretary to the  
Governor of the Orange River Colony.*

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**Second Schedule.**

CONVENTION PROVIDING FOR THE PAYMENT OF PENSIONS OR GRATUITIES TO PERSONS EMPLOYED IN SERVICES ADMINISTERED BY OR ON THE ADVICE OF THE INTER-COLONIAL COUNCIL AND FOR THE APPORTIONMENT AND DIVISION BETWEEN THE TRANSVAAL AND ORANGE RIVER COLONY OF LIABILITY FOR SUCH PENSIONS AND GRATUITIES.

Convention made and entered into between William Waldegrave Earl of Selborne, a Member of His Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, and Governor of The Transvaal, and as such acting for and on behalf of the Government of The Transvaal (hereinafter referred to as the Transvaal Government) of the one part, and Hamilton Goold-Adams, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Companion of the Most Honourable Order of the Bath, Governor of the Orange River Colony, and as such acting for and on behalf of the Government of the Orange River Colony (hereinafter referred to as the Orange River Colony Government) of the other part.

Witnesseth: That whereas by a Convention of even date herewith and made between the parties hereto (and hereinafter referred to as the First Convention) provision is made for the apportionment and division between The Transvaal and the Orange River Colony of all the property administered by or on the advice of the Inter-Colonial Council on the termination of such Council and all its rights and liabilities in connection with such property ;

And whereas by a further Convention of even date herewith and made between the parties hereto (and hereinafter referred to as the Second Convention) provision is made for the joint working and administration for a period therein mentioned of the railways in The Transvaal and Orange River Colony ;

And whereas certain liabilities in respect of pensions or gratuities have become due and payable, or will become due and payable in respect of certain persons who were, or will be up to the second day of June 1908, in employment under such Council and it is desirable to make provision for satisfying such liabilities after the termination of such Council, and to make further provision for the payment of certain other pensions, gratuities, and benefits hereinafter referred to ;

Now therefore the parties to this Convention hereby covenant and agree each with the other in manner following that is to say :—

1. In this Convention and in the Annexure hereto unless inconsistent with the context—

“old Administration” shall mean the Railway Administration of the Central South African Railways as existing prior to the second day of June 1908 and shall include the Imperial Military Railway Administration ;

“new Administration” shall mean the Joint Railway Administration to be constituted in accordance with the Second Convention to work

and manage the railways heretofore known as the Central South African Railways and which will hereafter be known by the same name ;

“employment under the Council” shall mean and include employment in the old Administration or in the South African Constabulary, or in any department or office heretofore or up to the second day of June 1908 administered by or on the advice of the Inter-Colonial Council ;

“Railway Commission’s Report” shall mean the Report presented to His Excellency the High Commissioner and dated the fourteenth day of March 1908 of the Commission described in Government Notice No. 627 of 1907 dated thirty-first day of May 1907.

2. In calculating the liabilities in respect of pensions or gratuities payable to or in respect of any person in terms of this Convention or the Annexure thereto, or to any person previously in employment under the Council, and transferred to employment under either Government, a continuous period of employment of such person by either Government or by the new Administration following upon or preceding without interruption a continuous period of employment under the Council shall be deemed to be one continuous period of employment of such person.

3. (a) The termination of the Council shall not affect the continuance of the payment of any pension which, prior to the date of this Convention, has been granted to or in respect of a person on his retirement from employment under the Council.

(b) The two Governments accept liability to continue the payment of any such pension in the proportions described respectively in article *five* hereof according as the person to whom the pension is payable falls within the terms of paragraph (a) or paragraph (b) of that article :

Provided that any such pension if granted to a member of the South African Constabulary in respect of his service therein prior to the first day of July 1902 shall be charged on the grant-in-aid which was made by the Imperial Government to meet the liability for that class of pension and which by Schedule B to the First Convention is allocated to the Transvaal Government, and if the amount of such grant-in-aid be not sufficient to meet the liability for all pensions of that class, the deficiency shall be charged on the revenues of The Transvaal.

4. (a) In respect of a person who will retire from employment under the Council by reason of a reduction in or reorganization of a department consequent on the termination of the Council such pension or gratuity shall be granted as would have been paid if the Council had continued to exist.

(b) The two Governments accept liability to pay any such pension or gratuity in the proportions described respectively in article *five* hereof according as the person to whom the pension or gratuity is payable falls within the terms of paragraph (a) or paragraph (b) of that article.

5. (a) A pension or gratuity granted after the second day of June 1908 to a person in respect of a period of employment with both the old and the new Administration, or with the new Administration only, shall, (save in the case of pensions and other benefits payable from the Railway Superannuation Fund mentioned in article *six* hereof) be charged during the continuance of the Second Convention on the revenues of the new Administration, and upon the termination of the Second Convention shall be charged on the revenues of each Colony in manner following—

- (i) in respect of a period of employment under the old Administration, in the proportion of the total contributions which were respectively made by each Colony to meet the annual deficits of the Council ;
- (ii) in respect of a period of employment under the new Administration, in the proportion of the respective interests of each Colony in the railway capital account as shewn at such termination.

(b) A pension or gratuity granted after the second day of June to a person other than is described in paragraph (a) of this article shall, in respect of a period of employment under the Council be charged on the revenues of each Colony in the proportions of the total contributions which were respectively made by each Colony to meet the annual deficits of the Council.

6. (a) There shall be formed a Railway Superannuation Fund in accordance with Appendix E of the Railway Commission’s Report or such modification thereof as the two Governments may make before giving effect thereto.

Act No. 8  
of 1908.

(b) A pension or other benefit to a person who will become a member of the Railway Superannuation Fund referred to in this article shall be charged upon that Fund.

(c) A quinquennial valuation of the Fund shall be made by an approved actuary and if such valuation shall disclose a surplus beyond the requirements likely to arise under the regulations of the Fund the benefits shall be increased or the contributions shall be reduced in such manner as each Government and four-fifths of the members of the Fund shall agree; and if such valuation shall disclose a deficiency the same shall be met if necessary in such fair and equitable manner as may appear to the two Governments to be reasonable, but so that no person who has received benefits from the Fund shall be called upon to refund any portion of such benefits.

7. Upon the termination of the Second Convention—

(a) the Railway Superannuation Fund to be formed under article *six* shall be continued as if such Convention had not terminated;

(b) each Government agrees to collect from those members of the Fund who are from time to time in its railway employment the contributions severally due from them under the regulations of the Fund and to pay the same monthly to the Fund together with its own contributions under the regulations of the Fund. Each Government further agrees to be responsible for the liabilities under the Fund of the new Administration in respect of interest, management and other charges in the proportions of the total amount which each Government contributes in respect of members of the Fund who are from time to time in its railway employment;

(c) each Government undertakes that it shall be a condition of its railway employment that membership of the Fund be obligatory except in so far as the Regulations of the Fund shall prohibit such membership, or provide for such membership being optional.

8. Each Government undertakes to introduce into and cause to be passed into law by the Parliament of its Colony at a session thereof during the present calendar year a Bill or Bills giving effect to the undertakings entered into with each other by this Convention and granting to the officers described in the Annexure hereto pensions or gratuities on a scale and under conditions in such Annexure set forth.

9. This Convention and the Second Convention shall be deemed to be inter-dependent, and both shall be submitted together to the Parliament of each Colony for ratification.

Thus done under my Hand  
and the Public Seal of  
The Transvaal on behalf  
of the Government of  
The Transvaal this First  
day of June 1908 in the  
presence of

Witnesses :

(1) D. O. MALCOLM,  
*Private Secretary.*

(2) A. E. ERSKINE,  
*Acting Military Secretary.*

SELBORNE,  
*Governor of The Transvaal.*

Thus done under my Hand  
and the Public Seal of  
the Orange River Colony  
on behalf of the Govern-  
ment of the Orange River  
Colony this First day of  
June 1908 in the pre-  
sence of

Witnesses :

(1) A. FISCHER,  
*Prime Minister of the  
Orange River Colony.*

(2) COURTENAY SHAW,  
*Private Secretary to the  
Governor of the Orange River Colony.*

HAMILTON GOOLD-ADAMS,  
*Governor of the Orange River Colony.*

*Annexure.*

Act No. 8  
of 1908.

SCALE AND CONDITIONS OF PENSIONS OR GRATUITIES TO OFFICERS  
TO BE PROVIDED FOR IN BILLS.

1. "*Transferred Cape Railway Officer*" in which term is included a person who was transferred under competent authority to the old Administration from the Cape Civil Service, or the Cape Government Railways, or the Cape Colony Harbour Boards, or the Orange Free State Government Railways, and who was a contributor to a pension fund while in any such service, board or railway.

Every such person shall receive a pension on the scale and under the conditions contained in Appendix F to the Railway Commission's Report with the following modifications :—

- (a) Adequate provision shall be made for continuing such rights in respect of pensions to widows as were possessed by such person while in the employment of the Cape Civil Service, the Cape Government Railways, the Cape Colony Harbour Boards, or of the Orange Free State Railways, and such provisions shall be made on the lines laid down in sections *fifty-eight to sixty-seven, sixty-nine, seventy-one, seventy-two, seventy-four and seventy-five* of Act No. 32 of 1895 of the Cape Colony ;
- (b) No such reduction in salary as is referred to in paragraph *twelve* of Appendix F of the Railway Commission's Report shall be made so as to diminish the salary of such officer below the amount drawn by him immediately after his transfer to the employment of the old Administration.
- (c) Whenever the salary of such officer is reduced within ten years of the age of retirement prescribed for him in the said Appendix F, it shall be assumed for the purpose of calculating the pension of such officer that his salary has not been reduced, provided he continues to make the same contributions as he would have made if his salary had not been reduced ;
- (d) Whenever such temporary pension as is referred to in paragraph *twelve* of the said Appendix F has been continued for a period of five years, no such officer shall be recalled to duty ;
- (e) Such other minor modifications as may be agreed to by the Governments.

2. "*Transferred Constabulary Officer*" in which term is included member of the South African Constabulary—

- (a) who was transferred thereto under competent authority from pensionable employment in another Government or Administration ;
- (b) who was previously in the pensionable employment of another Government or Administration and who enlisted in or was appointed to the South African Constabulary,

under agreement that the period of such pensionable employment would be reckoned as employment with such Constabulary for the purposes of pension.

Such member shall be entitled to count his employment under the Council as continuous with his previous pensionable employment and shall also be entitled to the benefits provided in the Police Pension Law of the Colony in the police force of which he has been enrolled or pending the enactment of such law or if such law is less favourable than the pension regulations of the South African Constabulary approved by the Inter-Colonial Council on the second day of June 1906 and set forth in Schedule C to the Minutes of the Meeting of the Council in 1906, then to the benefits described in such regulations.

3. "*Other transferred Officer*" in which term is included the Auditor to the Inter-Colonial Council and the Statistician of the old Administration.

These officers shall be deemed to be serving under the same conditions as regards pension as those applicable to them while in the Imperial Service and shall be entitled to count their period of employment in the Imperial Service as portion of their period of employment under the Council subject to an adjustment with the Imperial Government of a proportionate share of contribution towards such pension.

4. "*Non-transferred Railway Officer*" in which term is included a person in the employment of the new Administration other than those described in Items 1 and 3 of this Annexure.

INTER-COLONIAL CONVENTIONS RATIFICATION.  
NATIVE TAX.

32

Act No. 8  
of 1908.

Such person shall have the option of joining the Railway Superannuation Fund, and if he does so join shall receive the benefits provided in the regulations of the Fund.

5. "Non-transferred Constabulary Officer" in which term is included a member of the South African Constabulary other than is described in Item 2 of this Schedule who may in consequence of the abolition of the South African Constabulary become enrolled in any police force in The Transvaal or Orange River Colony.

Such member shall be entitled to the benefits provided in the Police Pension Law of the Colony in the police force of which he has been enrolled or, pending the enactment of such law, to the benefits provided in the pension regulations of the South African Constabulary approved by the Inter-Colonial Council on the 2nd day of June 1906 and set forth in Schedule C to the Minutes of the Meeting of the Council in 1906.

6. "Non-transferred Inter-Colonial Council Officer other than a Railway or Constabulary Officer," in which term is included a person in employment under the Council not referred to in Items 1 to 5 of this Annexure.

(a) Such person if absorbed into the public service of The Transvaal or Orange River Colony shall be subject to the laws or regulations of the Colony into the service of which he has been absorbed and to any benefits arising therefrom ;

(b) if absorbed into the service of the new Administration shall be subject to the laws or regulations of the new Administration and to any benefits arising therefrom.

7. "Persons transferred to Services other than those of The Transvaal or the Orange River Colony or the new Administration." Any person possessing pensionable rights who has entered pensionable employment under a Government or Administration other than the new Administration or the Transvaal Government or the Orange River Colony Government shall be entitled to calculate the period of his employment under the Council subject to any arrangement between the new Administration the Transvaal Government or the Orange River Colony Government (as the case may be) on the one hand and the Government or Administration whose service such person enters on the other hand, as to the respective shares payable of the pension due to such person on his ultimate retirement.

SELBORNE.

As witnesses :—

D. O. MALCOLM,  
Private Secretary.

A. E. ERSKINE,  
Act. Military Secretary.

HAMILTON GOOLD-ADAMS,

Governor.

As witnesses :—

A. FISCHER.  
COURTENAY SHAW.

1st June, 1908.

ACT No. 9 OF 1908.] [See section 11 for date of operation.

Act No. 9  
of 1908.

AN  
ACT

To Amend the Law relating to the Taxation of Natives.

(Assented to 5th August, 1908.)

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—



1. The Native Tax Ordinance 1902 and the Native Tax Amendment Ordinance 1906 shall be and are hereby repealed.

Repeal of laws.

Act No. 9  
of 1908.

2. In this Act, unless inconsistent with the context ;

Interpretation of terms.

“adult” shall mean a male native apparently of the age of eighteen years or upwards ;

“collector” shall mean a person duly authorized to collect the tax ;

“farm” shall mean any area of land registered as such in the Deeds Office, and shall include a portion of a farm ;

“farm labourer” shall mean an adult who resides on a farm and is *bona fide*, but not necessarily continuously, employed by the proprietor thereof in domestic service or farming operations ; provided that—

(a) if he resides on one farm and is employed on another farm of the same proprietor, he shall be deemed to have resided and to have been employed on one and the same farm ;

(b) he shall not be deemed to be *bona fide* employed unless ninety days' service, at least, on the farm occupied by the proprietor or on another and adjoining farm of the proprietor, has been rendered during the twelve months immediately preceding the date upon which demand is made for payment of the tax under this Act, and no rent is paid or valuable consideration of any kind, other than service, given by him to the proprietor in respect of residence on the farm ;

“Governor” shall mean the officer for the time being administering the Government of this Colony, acting by and with the advice of the Executive Council thereof ;

“imprisonment” shall mean imprisonment, with or without hard labour, as the court, which passes sentence, may determine ;

“magistrate” shall mean a resident or assistant resident magistrate ;

“municipal location resident” shall mean an adult who produces upon demand of a collector a certificate signed by the superintendent, inspector, or other officer of a location under the control of a local authority to the effect that he has, during the preceding twelve months,

**Act No. 9  
of 1908.**

occupied as owner or rented a stand in such location and has paid all rent and other charges due to the local authority in respect of, or incidental to, his residence in such location ;

“ native ” shall mean a person both of whose parents belong to an aboriginal race or tribe of Africa South of the Equator ;

“ native commissioner ” shall include a native sub-commissioner ;

“ prescribed form ” shall mean the form prescribed by regulation ;

“ proprietor ” shall mean the registered owner of a farm or any white person who is the lessee or lawful occupant thereof ; and in the case of a farm registered in the name of more persons than one in undivided title, shall include any of such persons ;

“ regulation ” shall mean any regulation in force for the time being and made under section *ten*.

Amount of annual tax payable respectively by particular classes of natives.

**3.** (1) Subject to the provisions of the next succeeding section there shall be paid to the collector for the benefit of the public revenue, in respect of every calendar year, a tax by every person in this section described and at the rate therein mentioned, that is to say—

(a) by every farm labourer—one pound ;

(b) by every municipal location resident—one pound ;

(c) by every adult (other than a farm labourer or municipal location resident) whose domicile is this Colony and by every such adult who is not so domiciled but who has resided therein for a continuous period of twelve months immediately preceding the date upon which the tax becomes due,—two pounds ;

and a further tax by every such person of two pounds if he has more than one wife by native custom.

(2) Every such tax shall become due on the first day of January in every year, and on payment a receipt therefor shall be given by the collector in the prescribed form and any receipt held by the person for any previous payment made by him or on his behalf shall thereupon be given up to the collector.

(3) A collector may grant to any person liable to such tax an extension of time to pay the same, and such extension shall be evidenced by a

document in the prescribed form, and the tax shall thereupon be deemed to be due on a date mentioned in such document.

**Act No. 9  
of 1908.**

4. The following persons shall be exempt from any tax mentioned in this Act :—

Persons  
exempted  
from payment  
of tax.

(a) Any native whose permanent residence is outside the Colony but who, since his entrance therein, has been working continuously under a contract of service, or is residing in this Colony to perform labour therein and produces evidence that he has discharged all liability to pay the current taxes imposed under the law of the colony or territory of his permanent residence ;

(b) any native holding a letter of exemption granted under the Coloured Persons' Exemption (or Relief) Proclamation 1901 or any amendment thereof or a registration certificate granted under Natives Relief Ordinance 1902 or any amendment thereof ;

(c) any native who satisfies the collector that he is indigent and is prevented from working by reason of age, chronic disease, or other good cause ;

(d) any native who produces to the collector a certificate from the head of a recognised Christian denomination that he is—

(i) an evangelist, catechist, or teacher ; and

(ii) is in the regular and continuous service of such denomination ; and

(iii) has been so employed at a fixed rate of remuneration, not exceeding forty-eight pounds per annum, during the whole of the year for which the tax is payable ; and

(iv) has no other source of income.

5. (1) Every person liable under this Act to pay a tax shall, if he fail to pay the same when it is due, be guilty of an offence and liable, on conviction, to a fine not exceeding five pounds, or in default of payment, to imprisonment not exceeding one month.

Penalty for  
non-payment  
of tax and  
method of  
enforcing  
payment.

(2) The burden of proving the payment of the tax, any extension of time for its payment, or any exemption from liability to pay the same shall, in any charge under this section, lie upon the accused person.

(3) The court which tries such offence may upon application of the prosecutor, give judgment in favour of the Colonial Treasurer for the amount

**Act No. 9  
of 1908.**

of tax proved on the trial to be due from the accused, and such judgment shall have the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted before a court of resident magistrate.

(4) No such judgment shall be given in any case in which the tax, the subject of the offence, has been paid before the conviction of the accused.

(5) No such judgment shall be put into execution if the accused, being convicted, and having noted an appeal against the conviction, shall give security, to the satisfaction of the court, to pay the amount of the judgment if the appeal is dismissed.

Production and inspection of tax receipts and documents granting extension of time for or exemption from payment of tax.

**6.** (1) Any collector, police constable, police officer, or other officer appointed to issue passes to natives may demand from any adult the production of—

(a) his tax receipt or any duplicate issued to him in the prescribed form ; or

(b) a document granting him an extension of time for payment of the tax ; or

(c) a document showing his exemption from liability to pay the tax ;

and shall inspect the same if produced, and return it to the person producing it.

(2) If default is made by an adult in complying with the requirements of this section he shall be guilty of an offence and liable on conviction to the penalties mentioned in the last preceding section.

(3) Any person who, having under this section obtained the production of a receipt or document therein mentioned, fails to return it to the person producing it, shall, save as is provided in subsection (2) of section *three*, be guilty of an offence, and liable, on conviction, to a fine not exceeding fifty pounds, or in default of payment, to imprisonment not exceeding three months, or to such imprisonment without the option of a fine.

(4) Any person who, without being authorized under this section to demand such receipt or document, shall obtain it, with intent to deprive an adult of its use, shall be guilty of an offence, and liable, on conviction, to the penalties prescribed by law for fraud.

(5) Any person in possession of any such receipt or document, whether lawfully or unlawfully, who permits the same to come into

the possession of another person, with intent that it shall be used as a receipt or document for extending time of payment, or as a document exempting from payment, and any person who being in possession of such receipt or document belonging to another person, represents the same as his own, shall be guilty of an offence, and liable, on conviction, to the penalties mentioned in sub-section (4).

7. (1) Every proprietor shall, whenever required, give to the collector a certificate of the names and number of farm labourers working for him on his farm, and upon the application of any such labourer give to him a certificate that he is a farm labourer working on such proprietor's farm.

Certification of number of farm labourers by proprietor.

(2) Every superintendent, inspector, or officer in charge of a location under the control of a local authority shall, whenever required, give to the collector a certificate of the names and number of municipal location residents in such location, and shall, upon the application of any such resident, give to him a certificate that he is such municipal location resident.

(3) All such certificates shall be given in the prescribed form, and if the collector be dissatisfied with any certificate he shall report the facts to the Minister, who may amend the same after hearing the proprietor or officer in charge of the location (as the case may be) and instituting any enquiries that appear necessary. Any certificate amended by the Minister shall be deemed the certificate required by this section and shall be accepted as conclusive by the collector and the proprietor or officer in charge of the location (as the case may be).

(4) Any person who fails when required to give such certificate or gives a certificate under this section which is false in any material particular knowing the same to be false, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

8. Every magistrate and native commissioner shall have jurisdiction to try offences against this Act or the regulations.

Jurisdiction of magistrates and native commissioners under this Act.

9. If a person reasonably suspected of liability to pay a tax under this Act—

Arrest without warrant.

**Act No. 9  
of 1908.**

- (a) fails to pay within the time required ; or  
(b) fails to produce any such receipt or document as is described in sub-section (1) of section *six* upon such demand as therein mentioned,

he may be arrested, without warrant, and shall thereupon be brought before a court having jurisdiction, to be dealt with as in this Act is provided.

Regulations.

**10.** (1) The Governor may from time to time make, alter, or rescind regulations not inconsistent with the provisions of this Act—

(a) providing for the manner of collecting the tax payable under this Act ;

(b) defining the duties and responsibilities of proprietors of farms, chiefs of tribes, and headmen of kraals, in relation to the collection of the tax ;

(c) defining the powers and duties of collectors ;

(d) prescribing forms to be used for the purposes of this Act ;

(e) generally for the better carrying out of the objects and purposes of this Act.

(2) The regulations may provide penalties for any contravention thereof, not exceeding, in the case of a fine, twenty-five pounds, or in case of imprisonment in default of payment or without the option of a fine, a period of three months.

(3) All regulations shall be published in the *Gazette* and shall thereupon have force and effect. They shall further be laid upon the tables of both Houses of Parliament within seven days after such publication, if Parliament be then in session, and if it be not then in session, within seven days after the commencement of the next ensuing session.

(4) Any regulation made under the laws hereby repealed, which was in force on the date of the coming into operation of this Act, shall be deemed to have been made under the powers of this section.

Title and date  
of operation  
of Act.

**11.** This Act may be cited for all purposes as the Native Tax Act 1908 and shall not come into operation unless and until the Governor shall, by proclamation in the *Gazette*, have declared that it is His Majesty's pleasure not to disallow it, and thereafter it shall come into operation on such date (not before the 1st day of January 1909) as the Governor may, by like proclamation, declare.

ACT No. 10 OF 1908.] [Came into operation 14th August, 1908.

AN

# ACT

Act No. 10  
of 1908.

To amend the Laws for the prevention of the spread of Disease amongst Stock.

(Assented to 11th August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

1. Section *one* of Ordinance No. 17 of 1902 shall be and is hereby amended by the addition immediately after the words "assistant resident magistrate" of the words "or field cornet or resident justice of the peace." Amendment of section *one* of Ordinance No. 17 of 1902.

2. Section *two* of the said Ordinance shall be and is hereby amended by the addition immediately after the words "resident magistrate" of the words "assistant resident magistrate or field cornet or resident justice of the peace" and by the substitution for the words "Colonial Secretary" of the words "Minister of Agriculture." Amendment of section *two* of Ordinance No. 17 of 1902.

3. For a second or subsequent contravention of section *three* of the said Ordinance, or of any regulations made under section *five* thereof, imprisonment, with or without hard labour, without the option of a fine for a period not exceeding six months may be imposed as a punishment. Amendment as to penalties for contravention of Ordinance No. 17 of 1902 or regulations thereunder.

4. Section *four* of Ordinance No. 38 of 1904 shall be and is hereby amended by the insertion immediately after the words "resident justice of the peace" of the words "field cornet." Amendment of section *four* of Ordinance No. 38 of 1904.

5. Section *seven* of Ordinance No. 38 of 1904 shall be and is hereby amended by the insertion in paragraph (*e*) thereof immediately after the words "or land" of the words "or any cattle kraals." Amendment of section *seven* of Ordinance No. 38 of 1904.

6. Section *eleven* of Ordinance No. 38 of 1904 shall be and is hereby amended by the insertion immediately after the words "not exceeding six months" of the words "or in the case of a second or subsequent conviction." Amendment of section *eleven* of Ordinance No. 38 of 1904.

7. (1) The Minister of Agriculture may order any stock from an area adjoining an area declared an infected area under Ordinance No. 17 of 1902, or an area declared an infected or suspected area under Ordinance No. 38 of 1904, to be removed. Power to order removal of stock from infected or suspected areas or areas adjoining such areas.

**Act No. 10  
of 1908.**

(2) Any person failing to comply with an order of the Minister made under this section or resisting or obstructing any person lawfully carrying out such order, shall be guilty of an offence and liable on conviction to the penalties prescribed by section *three* of the first-mentioned Ordinance as amended by section *three* of this Act

Amendment of section *seven* of Ordinance No. 17 of 1902.

**8.** Section *seven* of Ordinance No. 17 of 1902 shall be and is hereby amended by the addition at the end of the said section of the words "or any other animal liable to a disease to which this Ordinance or any amendment thereof has been so applied."

Payment of compensation in respect of cattle slaughtered etc., under Ordinance No. 38 of 1904.

**9.** (1) Section *nine* and the Second Schedule to Ordinance No. 38 of 1904 shall be and are hereby repealed.

(2) Compensation shall be paid by the Minister of Agriculture

(a) to the owner of cattle destroyed under section *three* (b) of the said Ordinance;

(b) to the owner of cattle injured or dying in consequence of any dipping, spraying, or branding of cattle under section *seven* of the said Ordinance.

(3) The amount of such compensation shall be as determined by a board consisting of the resident or assistant resident magistrate or one of the field cornets of the district in which the cattle were kept and two other persons to be nominated by the said Minister, and shall be paid within one month from the date of destruction, injury, or death (as the case may be).

(4) Save as in this section mentioned, no compensation shall be payable in respect of any loss or damage caused by the exercise of the powers of the said Ordinance.

Permit necessary to purchase or acquire cattle in areas where East Coast Fever is prevalent.

**\* 10.** (1) No person shall, without the written permit of the Minister of Agriculture or of a person appointed by him to issue such permits, purchase, exchange, or in any other manner acquire any cattle or skins or meat which are within an area declared by notice in the *Gazette* to be an area in which East Coast Fever is prevalent.

(2) Any such permit may be refused by the said Minister, or, subject to an appeal to the said Minister, by the person appointed to issue such permits.

(3) Any person who contravenes the provisions of this section shall be liable on conviction to a fine not exceeding one hundred pounds or, in

\* For declaration of prevalency of East Coast Fever in certain areas see Govt. Notice No. 845 of 1908 (*Gazette*, 28th Aug., 1908, p. 725); and Govt. Notice No. 1037 of 1908 (*Gazette*, 25th Oct., 1908, p. 145). Digitised by the Open Scholarship & Digitisation Programme, University of Pretoria, 2016



default of payment, to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

**Act No. 10  
of 1908**

11. (1) Any person who shall in any area declared under Ordinance No. 17 of 1902 to be an infected area or in an area declared under Ordinance No. 38 of 1904 to be an infected or a suspected area, be found collecting cattle ticks with intent to spread any disease amongst cattle, shall be guilty of an offence and liable on conviction to imprisonment with hard labour for a period not exceeding five years.

Penalty for collecting or being in possession of cattle ticks with intent to spread disease.

(2) Any person who shall in any part of this Colony be in possession of cattle ticks with the intent aforesaid shall be liable on conviction to the penalties aforesaid.

(3) The burden of disproving any such intent shall in any prosecution under this section lie upon the accused person.

12. This Act may be cited for all purposes as the Diseases of Stock Amendment Act, 1908, shall be read as one with Ordinance No. 17 of 1902 and Ordinance No. 38 of 1904 and shall come into operation on the date of its first publication as an Act in the *Gazette*.\*

Title and date of operation of Act.

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ACT NO. 11 OF 1908.] [Came into operation 14th August, 1908.

AN

**Act No. 11  
of 1908.**

## ACT

**To apply a further sum not exceeding One hundred and forty-five thousand six hundred and eighteen pounds Sterling for the Service of the Year ended the thirtieth day of June 1908.**

(Assented to 11th August, 1908.)

**W**HEREAS it is necessary to provide for certain expenditure necessarily incurred during the year ended the thirtieth day of June 1908 in addition to the sums provided by the Appropriation (Part 1907-1908) Act 1907 and the Appropriation Act (No. 3) 1907:—

**BE IT ENACTED** by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

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\* This date was the 14th Aug., 1908.

**Act No. 11  
of 1908.**

Public Revenue charged with £145,618 for the year ended 30th June 1908.

Not to be applied otherwise than as granted.

Appropriation for Extraordinary Expenditure not to lapse until services completed.

The Treasurer to make payments under warrant of the Governor.

Title and date of operation of Act.

1. The public revenue of this Colony is hereby charged towards the service of the year ended on the thirtieth day of June 1908 with a further sum of One hundred and forty-five thousand six hundred and eighteen pounds sterling in addition to the several sums provided for by the Appropriation (Part 1907-1908) Act 1907 and the Appropriation Act (No. 3) 1907.

2. The money granted by this Act shall not be applied to any use, intent, or purpose, other than the particular services specified in the Schedule to this Act.

3. No appropriation granted by this Act for the services described as Extraordinary Expenditure in the Schedule to this Act, shall lapse until the service in respect of which such appropriation was made has been completed.

4. The issue and payment from time to time by the Colonial Treasurer by warrant under the hand of the Governor of such sums of money as were or may be required for the purposes hereinbefore mentioned (not exceeding in the whole the sums respectively in that behalf specified) shall be deemed to have been or to be proper issues, and the Colonial Treasurer shall in his accounts be allowed credit for all sums paid by him in pursuance of any such warrant; and the receipts of the persons, to whom such sums shall have been so paid, shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

5. This Act may be cited for all purposes as the Additional Appropriation (1907-1908) Act 1908 and shall come into operation on the date of its first publication as an Act in the *Gazette*.\*

**Schedule.**

## ORDINARY EXPENDITURE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
5	Joint Parliamentary Expenses	Clerk of the Legislative Assembly	£1,560
8	Colonial Secretary...	Assistant Colonial Secretary ...	7,000
13	Education ... ..	Director of Education ... ..	8,000
20	Mines ... ..	Secretary for Mines ... ..	1,137
26	Agent-General in London	Secretary to the Treasury ...	2,325
27	Pensions ... ..	Secretary to the Treasury ...	49,921
31	Lands ... ..	Secretary for Lands ... ..	16,748
Total Ordinary Expenditure ...			£86,691

\* This date was the 14th Aug., 1908.

EXTRAORDINARY EXPENDITURE.

Act No. 11  
of 1908.

Letter of Vote.	Nature of Expenditure.	Accounting Officer.	Amount.
B.	Extirpation of Cattle Disease	Director of Agriculture...	£10,000
E.	Purchase of Hypothecated Properties bought in by the Investment Board and by the Repatriation Department (Resettlement Loans)	Secretary for Lands ...	48,000
F.	Expropriation of Wonderfontein Concession	Secretary to the Treasury	581
G.	Irrigation Works, Warmbaths.	Secretary for Lands ...	346
Total Extraordinary Expenditure ...			£58,927

Summary.

Ordinary Expenditure ...	...	...	£86,691
Extraordinary Expenditure ...	...	...	58,927
Total ...	...	...	£145,618

ACT NO. 12 OF 1908.] [Came into operation 21st August, 1908.

AN

ACT

Act No. 12  
of 1908.

To amend the Law relating to the fencing of farms and other holdings.

(Assented to 15th August, 1908.)

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal, as follows :—

PRELIMINARY.

1. The Fencing Ordinance 1904 (Ordinance No. 7 of 1904) shall be and is hereby repealed. Repeal of Ordinance No. 7 of 1904.

2. In this Act, unless inconsistent with the context ; Interpretation of terms.

“bank” shall mean the Land and Agricultural Bank established under Act No. 26 of 1907 ;

Act No. 12  
of 1908.

“Bank Act” shall mean Act No. 26 of 1907, or any amendment thereof, or regulations made thereunder;

“department” shall mean the Department of Agriculture of this Colony;

“dividing fence” shall mean a fence as in this section defined—

(a) which separates adjoining holdings; and

(b) the specifications of which are approved by the department, or, in the case of a dividing fence not erected under Chapter I, are agreed upon between the owners of such holdings, or, in the absence of agreement, are determined by the magistrate; and

(c) which is situate either along or close to the surveyed line of the common boundary of the holdings;

“fence” shall mean a substantial stock-proof fence with gates at places where it crosses a public or private road and with suitable appliances where it crosses any obstacles; and shall include a fence erected prior to this Act under any law then in force, or otherwise, provided it is of a nature herein described;

“holding” shall mean—

(a) an area of land (not being an erf or stand) held by a white person under separate grant, deed of transfer, certificate of title, or lease; or

(b) an area of land held under a lease or license by any person under the Settlers Ordinance, 1902, the Crown Land Disposal Ordinance, 1903, the Land Settlement Act, 1907, or any amendment of such laws; or

(c) an area of land reserved under section *twelve* of the Crown Land Disposal Ordinance 1903 for stock, forestry, or agricultural purposes; or

(d) any area of land used as a native location or mission station or held by a native under separate grant, deed of transfer, certificate of title, or lease;

“imprisonment” shall mean imprisonment with or without hard labour, as the court which passes sentence may determine ;

“magistrate” shall mean, in relation to any holding, the resident or assistant resident magistrate of the district in which the holding is situate, and in the case of a holding situate in a detached sub-district, shall mean the detached assistant resident magistrate thereof ;

“Minister” shall mean the Minister of Agriculture ;

“owner” shall mean—

(a) in the case of paragraph (a) of the definition of “holding,” the person registered as the owner in the Deeds Office of this Colony ; and

(b) in the case of paragraph (b) of such definition, the person by whom the land is held under lease or license as in such paragraph described ; and

(c) in the case of paragraph (c) of such definition, the Minister of Lands ; and

(d) in the case of a native location under paragraph (d) of such definition and registered in the name of the Minister for Native Affairs, such Minister ;

“repair” shall, in relation to a fence or ditch or part thereof, include trimming, cutting, and maintaining in good order.

## CHAPTER I.

### FENCING ERECTED OUT OF LAND BANK ADVANCES.

3. (1) Notwithstanding anything in the Bank Act contained, the owner of the freehold of any holding which is occupied by one or more white persons in a manner beneficial to the land and which is not already enclosed with a fence, shall, upon written application to the department and after approval by the bank, be entitled to obtain as an advance from the bank out of its funds sufficient to cover the cost of such materials mentioned in section five (including the transport thereof to the holding) as are necessary to

Advances from Land Bank funds towards cost of materials for fencing a holding.

**Act No. 12  
of 1908.**

enclose his holding with a fence. The department shall be the sole judge whether a holding has been beneficially occupied for the purposes of this section and shall transmit the application to the bank with its recommendation thereon.

(2) Any advance made under this section to an owner shall, with interest thereon at three and a half per cent. per annum, be repaid to the bank by equal half-yearly instalments, so calculated that the whole advance and interest be repaid within a period of ten years from the date when the first instalment became due. The first instalment shall become due two years after the advance is made, but, during that period of two years, interest only at the rate aforesaid shall be payable by the owner to the bank.

(3) Notwithstanding anything in sub-section (1) contained the Minister may, in any special case in which he deems fit, sanction in writing an advance to cover the cost of erecting the fence, and if such sanction be obtained the provisions of sub-sections (1) and (2) shall in all respects apply to such advance.

Security for  
advances  
made under  
section *three*.

**4.** (1) Every advance made under the last preceding section shall be secured in the following manner:—Upon receiving from the department information in writing of—

- (a) the date and amount of the advance ;
- (b) the person to whom the same has been made ;
- (c) the holding in respect of which the advance has been made ;

the bank shall transmit such information to the Registrar of Deeds who shall, upon receipt of such information, cause a note thereof to be made in the land register against the entries therein in respect of such holding, and shall forthwith transmit to the said manager a certified copy of such note.

(2) The making of such note shall have the effect of creating in favour of the bank a charge upon the holding, which shall, subject to the decision of the bank after consultation with the holder of any existing mortgage, have priority over any other charge existing or thereafter created, until the amount of the advance and

the interest thereon have been repaid in accordance with the last preceding section.

(3) The Registrar of Deeds shall delete from the land register any such note as soon as he shall have received from the manager of the bank written information that the amount and interest, in respect of which the note was made, have been repaid to the bank. The Registrar of Deeds shall forthwith give written information of the deletion of any such note to the bank and to the department.

(4) Upon transfer of a holding in respect of which any such note has been made, the charge noted may be transferred with the holding if the written consents of the transferor the transferee and the bank be lodged with the Registrar of Deeds.

5. (1) The bank shall from time to time supply the department with funds for the purpose of enabling the department to purchase the material required for the fencing mentioned in this section.

Power of department to enter upon holding and inspect fencing and take steps that advances are properly applied to purposes thereof.

(2) The materials required for fencing shall be supplied to the applicant at cost price by the department and the specifications of any fence to be erected under this Chapter shall be approved by it.

(3) The department may, by its officers, enter upon any holding to inspect the progress of any fencing to be carried out thereon or in connection therewith by means of the materials for the cost of which an advance has been made under this Chapter.

(4) If the department shall be of opinion that undue delay has occurred in carrying out such fencing, or that the materials being or to be used therefor are being misapplied, or that any fence or a portion thereof erected with the materials is in need of repair, it may cause written notice to be served upon the owner to complete the fencing or execute the same to its satisfaction within a time to be specified in the notice, and in default of compliance with the terms thereof within the time so specified, the department may, by its officers or other persons appointed thereto, proceed to complete the fencing or execute the repairs, and notice shall be sent

**Act No. 12  
of 1908.**

Part III of  
Bank Act not  
to apply to  
advances  
under this  
Chapter.

Persons using  
another's  
fence to pay  
interest on  
half its cost.

to the bank of the costs thereof which shall be added and be deemed to be a portion of the advance. The provisions of the last preceding section shall apply in all respects to the additional liability so incurred by the owner.

6. The provisions of Part III of the Bank Act shall not apply in respect of advances to be made under the provisions of this Chapter.

7. (1) If any owner has, either heretofore or under this Chapter, erected a fence on the boundary of his holding, and the owner of an adjoining holding adopts means by which such fence is rendered of beneficial use to himself, the last-mentioned owner shall be liable to pay to the first-mentioned owner interest at the rate of eight per cent. per annum on one-half of the then value of that portion of the fence of which he has the beneficial use and for such period as he continues such use, and shall be further liable during such period to pay one-half the cost of repairing such portion. The department shall determine what is the value of the fence when beneficial use is made thereof as well as any question as to what is beneficial use for the purposes of this section or as to the time at which such use was made.

(2) In lieu of the payment of such interest either owner may apply to the department for an equal apportionment of the then value of the fence as between them, and thereafter the Registrar of Deeds shall, upon the written information of the department as to the apportionment, note the necessary charges in respect of each holding.

(3) Any owner who, in manner described by sub-section (1) of this section, obtains the beneficial use of a fence, shall, in addition to his liability under such sub-section, be further liable to pay the other owner one-half the cost of labour expended in erecting such fence, such cost being determined by the department.

## CHAPTER II.

### PROVISIONS INCIDENTAL TO FENCING.

Bush may be  
cleared for  
fencing.

8. Any person, whether under this Act or otherwise, erecting a fence on land covered with bush, may clear the bush for a distance not



exceeding five feet on each side of such fence, and may remove any tree standing in the immediate line of such fence; and the cost of such clearing shall be deemed to be part of the cost of erecting the fence.

9. In making any ditch and bank fence dividing one holding from another, the ditch may be made on either holding and the soil taken therefrom may be used towards making the bank on the other holding.

Ditch and bank fence.

10. If any dividing fence be made of posts and rails, or wire, or palings, the posts shall, as nearly as possible, be placed on the boundary line of the holdings.

Manner of placing dividing fence.

11. (1) If, between two or more holdings, a dividing line is formed by a dry water-course or river (not being of such a nature as to form a natural barrier for stock), or range of hills, outcrops of solid rock, or kopjes, along which it is impracticable or inexpedient to erect a fence, the owners concerned may agree upon a fair give-and-take line as a dividing line to be fenced in accordance with this Act, and in default of such agreement any such owner may apply to the magistrate who shall cause a fair give-and-take line to be surveyed at the cost of the owners concerned.

Give-and-take line.

(2) Any fair give-and-take line so agreed upon or surveyed shall be deemed to be the boundary line for the purposes of this Act, but shall not otherwise affect the titles to any of such holdings.

12. (1) If any fence erected under Chapter I. or otherwise than under Ordinance No. 38 of 1904 has become a dividing fence and is out of repair the owner on either side thereof shall be liable, in equal proportion, for the cost of repairs; and either owner may serve upon the other a notice requiring him to assist in repairing such fence; and if such other owner shall fail for the space of one week after service of such notice to assist in repairing such fence the first-mentioned owner may himself repair it and recover from the other owner the proportion of the cost due from him.

Repairs of fences erected under Chapter I or otherwise than under Ordinance No. 38 of 1904.

(2) Notwithstanding anything in sub-section (1) contained, if any such dividing fence, or a portion thereof, be destroyed by accident, either owner

Act No. 12  
of 1908.

may immediately repair the same without notice and may recover from the other owner the proportion of the cost aforesaid, provided that if such destruction be due to the act or default of one of such owners he shall be liable for the whole cost of repair.

(3) If any fence mentioned in this section is in the opinion of the Minister not a stock proof fence he may order the owner to make such alterations in such fence as would make it a substantial stock proof fence; and in default of compliance by the owner with the terms of such order, the Minister may cause such alterations to be made and the cost thereof shall be recoverable from the owner.

Repair of  
fence erected  
under  
Ordinance  
No. 38 of 1904.

13. If any fence erected under Ordinance No. 38 of 1904 or any gate connected therewith, be out of repair, the Minister may cause written notice to be served upon the person liable under the said Ordinance to pay for the cost of the erection of the fence, to put the same in repair to the satisfaction of any person named by the Minister, and within a time to be fixed by such notice and if such fence or gate be not put into satisfactory repair within the time so fixed any person nominated by the Minister in writing may execute the repairs and the cost thereof shall be added to and be deemed part of the cost of erection, and the provisions of the said Ordinance as amended by Act No. 17 of 1907 shall in all respects apply to the repayment and mode of securing repayment of such cost. In any case in which the service of such notice cannot be effected without great loss of time, the Minister may execute the repairs without such notice, and the costs shall be recoverable from the owner in manner aforesaid.

Access to  
persons  
erecting  
fences.

14. Any person erecting or repairing a fence, whether under this Act or otherwise, along the dividing line of two holdings, shall, for himself, his servants, implements, materials, animals, and vehicles, have at all times access to any property for the purpose of carrying out the work reasonably required for the erection or repairs; provided that nothing in this section contained shall be construed as authorizing the entry, without

the consent of the occupant, upon land under cultivation, or on a garden, plantation, or pleasure ground, or to cut down, lop, or injure any fruit trees, ornamental trees or shrubs.

15. For the purpose of any inspection, valuation, or survey, or of carrying out any of the provisions of this Act, the magistrate, or any person authorized in writing by him, or by the Minister, may enter upon any land and value, measure, survey, take grades and levels, fell trees, cut fences, and do all other acts necessary for such purposes; provided that all damage caused by the exercise of the powers of this section shall, as far as possible, be repaired and so far as the repair of damage is not possible, the amount thereof shall be paid to the owner, and such amount shall, failing agreement, be finally determined by the magistrate.

Access to  
magistrate  
officials  
surveyors  
inspectors  
etc.

### CHAPTER III.

#### OFFENCES.

16. Any person who shall—

- (a) open and leave open or unfastened; or
- (b) finding open, shall on passing through, neglect to shut and fasten

Leaving gates  
open.

a gate in any fence, shall be liable on conviction, in the case of a first offence, to a fine not exceeding ten pounds, or, in default of payment, to imprisonment for a period not exceeding fourteen days, and in the case of a second or subsequent conviction to a fine not exceeding twenty pounds, or, in default of payment, to imprisonment for a period not exceeding one month, or to such period of imprisonment without the option of a fine.

17. Any person who, having injured a fence or gate, fails on request by the owner or lessee of the land on which it is situate or by some person authorized thereto by such owner or lessee, to give his correct name and address, shall be liable on conviction to the penalties prescribed for a second or subsequent contravention of the last preceding section.

Persons  
injuring  
fences and  
failing to give  
correct name  
and address.

18. Any person who wilfully injures or removes any fence, gate, or other appliance or contrivance forming part or serving the purpose thereof, shall be liable on conviction to a fine not

Malicious  
injury to  
fences.

**Act No. 12  
of 1908.**

exceeding seventy-five pounds or, in default of payment, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine; and the court before which he is convicted may proceed without any pleadings, but in his presence, to assess the amount of damage caused by him and may give judgment for the amount with costs in favour of the owner of such fence, gate, appliance, or contrivance and against the accused, and such judgment may be executed in all respects as a judgment of a court of resident magistrate in a civil action is executed.

Accidentally  
damaging  
fencing.

**19.** (1) Any person who inadvertently or accidentally injures any fence situate upon a holding or on a public road within a holding shall forthwith repair the same, and in the event of his being unable to do so, he shall forthwith report the injury and inability to repair to the owner of the holding and deposit or give security for such sum as may be reasonably sufficient to cover the cost of the repair, and the owner shall thereupon on request give such person an acknowledgment of the deposit or security.

(2) If any person fail to comply with the requirements of this section he shall be liable to a fine not exceeding ten pounds or, in default of payment, to imprisonment for a period not exceeding fourteen days and in addition the court before which he is convicted may order him to pay by way of damages such sum as will cover the cost of such repairs, the provisions of the last preceding section being applied *mutatis mutandis* to the making and enforcement of such order.

Misappropriation of money  
and material  
advanced for  
fencing.

**20.** Any person who shall misappropriate or divert any money advanced under this Act to or for any purpose other than that for which it was advanced, or shall sell or otherwise wrongfully dispose of any material obtained from such advance, or intended for the erection or repair of a fence or gate, shall be liable on conviction to imprisonment for a period not exceeding two years, and any sums owing for such money or materials shall be recoverable from him with interest at the rate of six per cent. per annum.

## CHAPTER IV.

Act No. 12  
of 1908

## MISCELLANEOUS.

**21.** Nothing in this Act contained shall be construed as affecting any contract, covenant, or agreement heretofore made, or hereafter to be made between any lessor or lessee or between the owners of adjoining holdings relative to dividing fences; provided that any such agreement hereafter made shall, in so far as it was made to frustrate any purpose of this Act, shall *ab initio* be null and void.

Act not to affect agreements as to dividing fences unless made to frustrate the purposes of Act.

**22.** The provisions of sub-sections (1) and (3) of section *seven* shall *mutatis mutandis* apply to a fence which has been erected otherwise than under this Act.

Fences erected otherwise than under this Act.

**23.** The court of resident magistrate of the district in which the defendant in any civil proceedings under this Act resides shall have jurisdiction to entertain such proceedings and give judgment for the amount claimed notwithstanding that the proceedings or amount claimed is under the law relating to courts of resident magistrate, beyond the ordinary jurisdiction of such court.

Special civil jurisdiction to courts of resident magistrate.

**24.** If any civil proceedings be taken under this Act against a lessee for which the lessor would ultimately incur any liability, the lessor may intervene and defend such proceedings and any defence which the lessee has or may set up shall be available to the lessor in addition to any other defence he may set up.

Lessor may intervene in and defend proceedings against his lessee.

**25.** A fence as in this Act defined shall be deemed to be a sufficient fence for the purposes of the Stock Theft Ordinance, 1904, or any amendment thereof.

Fence to be a sufficient fence for purposes of Ordinance No. 6 of 1904.

**26.** Any obligation or duty imposed by sections *seven*, and *nine* to *twelve* inclusive on an owner or lessee shall, if the Crown be the owner or lessee of a holding, be binding upon it.

Certain sections of Act to be binding on Crown as owner or lessee.

**27.** This Act may be cited for all purposes as the Fencing Act, 1908, and shall come into operation on the date of its first publication as an Act in the *Gazette*.\*

Title and date of operation of Act.

\* This date was 21st Aug., 1908.

ACT NO. 13 OF 1908.] [Came into operation 19th Sept., 1908.

Act No. 13  
of 1908.

AN

# ACT

To Amend the Railway Regulation Ordinance 1903.

(Assented to 15th August, 1908.)

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

Repeal of  
Ordinance No.  
60 of 1903.

1. The Railway Regulation Ordinance 1903 (Ordinance No. 60 of 1903) the second proviso to section *one* of the Crown Liabilities Ordinance 1903 and the Railway Police Ordinance 1903 (Ordinance No. 18 of 1903) shall be and are hereby repealed.

Interpreta-  
tion of terms.

2. In this Act, unless inconsistent with the context ;

“ Administration ” shall mean the person or persons appointed to administer and control the railways, whether the appointment be under any convention to which the Governor is a party, or be made by the Governor ;

“ fare ” shall include all sums received or receivable, charged or chargeable for conveyance of passengers upon or along any railway ;

“ free pass ” shall mean an authority in writing given by the Administration or by an officer thereto appointed for the person to whom it is given to travel as a passenger on a railway without the payment of any fare ;

“ freight ” shall include all sums received or receivable, charged or chargeable for the transport of goods upon or along any railway ;

“ goods ” shall mean goods, luggage, or other movable property of any description and shall include animals and birds whether live or dead ;

“ Governor ” shall mean the officer for the time being administering the Government of this Colony acting by and with the advice of the Executive Council thereof ;

“ imprisonment ” shall mean imprisonment with or without hard labour as the court

which passes sentence for an offence may determine, except where imprisonment with hard labour is expressly provided by this Act as a punishment for an offence.

- “luggage” shall mean such articles of necessity or personal use and convenience as, being enveloped in some kind of package, are usually carried by passengers for their personal use but shall not include merchandise or other valuables, which, though carried in the trunks of passengers, are not designed for any such use, but are for sale or other like purposes ;
- “perishable goods” shall include fish, fruit, vegetables, plants, bread, meat, game, butter, eggs, milk, dogs, small animals, birds, poultry and any other thing which may hereafter be declared by the Governor by proclamation in the *Gazette* to be perishable goods ;
- “railway” shall mean the whole or any portion of the railways ;
- “railways” shall mean and include all lines of railway within this Colony over which the Governor or the Administration has control or rights, and all lands, stations, sidings, buildings, plant, machinery, rolling stock and all other movable and immovable property and servitudes used in connection therewith ;
- “railway servant” shall mean any person employed by the Administration in the service of the railways ;
- “regulation” shall mean any regulation made and in force in accordance with section *four* of this Act ;
- “rolling stock” shall mean locomotive engines, tenders, motors, carriages, wagons, trucks, and trollies of all kinds ;
- “traffic” shall include not only passengers and their luggage and goods conveyed by the Administration, but also rolling stock ;
- “through traffic” shall mean traffic which is carried over any railway, whether administered and controlled by the Administration or not ;
- “train” shall mean a locomotive engine or motor by itself, or any rolling stock that is drawn or propelled along a railway or is in course of being drawn or propelled along a railway by a locomotive engine or motor ;

**Act No. 13  
of 1908.**

“ticket” shall include a single ticket, a return ticket, a season ticket, a trip bearer ticket, and a mile coupon and any other written authority (not being a free pass) for a person to travel as a passenger on its railways ;

“warehouse ” shall mean any building or place provided or used by the Administration, or by any railway servant in charge of a station, for the purpose of storing or depositing goods. Where it is more convenient to the Administration that the goods to be warehoused shall remain in trucks, those trucks when placed in a siding, shall for the purposes of this Act, be deemed a warehouse.

Locomotives may be used on the railways.

**3.** The Administration may use upon the railways locomotive or other engines propelled by steam or other motive power and rolling stock to be drawn or propelled thereby, and may transport and convey upon the railways all such traffic as may be offered to it for transport and conveyance, and may make such charges in respect thereof as it may from time to time determine, subject to this Act or the regulations.

Regulations.

**4.** (1) The Administration may from time to time make, alter, or rescind regulations, not inconsistent with this Act or with the regulations made under sub-section (2) of this section, with respect to any of the following matters, that is to say with respect to—

(a) the mode in which and the speed at which trains are to be propelled or moved ;

(b) the times of arrival and departure of any trains ;

(c) the loading or unloading of rolling stock and the weights or dimensions to be carried on any rolling stock ;

(d) the collection, receipt, cartage and delivery of goods transported or to be transported upon trains ;

(e) the accommodation and convenience of passengers, the manner in which they shall travel, and the manner of conveying their luggage, and the amounts of fares and the charges which may be fixed for the conveyance of luggage ;

(f) fares, freight or other charges, the amount thereof, and the time when and the place where they shall be paid ;



(g) permission or prohibition to smoke in stations, buildings, or on rolling stock ;

(h) the conduct of all persons while upon or in any station or building or while employed at, on, or near the same ;

(i) the duties and conduct of railway servants ;

(j) the admission of the public to any of the railways and the charges (if any) to be made for such admission ;

(k) the use of stamps as prepayment upon parcels ;

(l) the charges to be made for warehousing goods and in respect of parcels and luggage for transit or for their care or custody, and the terms and conditions upon which they respectively shall be received ;

(m) the disposal of unclaimed goods ;

(n) the issue of free passes and concession tickets and the prevention of abuse thereof ;

(o) the use of railways or railway land for coal stands, forwarding sites, pipe lines, power lines and the like, and whether the same shall be overhead or underground ;

(p) advertising on the railways ;

(q) the insurance of persons travelling on the railways ;

(r) generally with respect to the travelling or traffic upon or the use or working of the railways, and for the good government thereof and the maintenance of order thereon.

(2) The Governor may from time to time make, alter, or rescind regulations, not inconsistent with this Act, with respect to any of the following matters, that is to say with respect to—

(a) the definition for the purposes of this Act of dangerous or offensive goods and the conditions under which and the times when such goods shall be transported, or prohibiting the transport of such goods ;

(b) the reservation of railway premises, or of any railway carriage, or of any portion thereof, for the exclusive use of males or females, white or coloured persons, Asiatics or natives, and the restriction of any such person to the use of the premises, carriage, or portion thereof so reserved ;

(c) the prevention of the commission of any nuisance in or upon the railways ;

Act No. 13  
of 1908.

(*d*) the duties and conduct of cabmen, carmen, draymen, carriers and porters, who are not in the employment of the Administration but who ply for hire to or from any station or building which is under the control of the Administration ;

(*e*) the prevention of damage or injury to any railway station or buildings, premises, rolling stock, gates, fences or any property whatever ;

(*f*) the construction, use, and maintenance of private sidings and branch lines connected with the railways.

(3) No regulation or alteration or rescission thereof, whether made by the Administration or the Governor, shall take effect until it has been published in the *Gazette*, save that a regulation made under paragraph (*i*) of sub-section (1) shall be binding on a railway servant as soon as it is communicated to him by any person having authority to do so and without publication in the *Gazette*.

(4) The regulations, whether made by the Administration or the Governor, may provide penalties for any breach thereof and may also impose different penalties in case of successive breaches, provided that no such penalty shall exceed a fine of fifty pounds or, in default of payment, imprisonment for a period not exceeding six months, or both such fine and imprisonment.

(5) A regulation made under paragraph (*i*) of sub-section (1) may provide that the railway servant shall forfeit a sum not exceeding one month's pay to be deducted therefrom by the Administration.

(6) The Administration shall keep at each station on the railways a copy of all regulations for the time being in force and shall allow any person to inspect them free of charge.

(7) All bye-laws and regulations in force at the coming into operation of this Act having reference to the railways and not inconsistent with the provisions of or altered or rescinded under this Act shall be deemed to be regulations made under this section and shall be construed as if so made and shall remain of full force and effect until so altered or rescinded.

#### CONVEYANCE OF PASSENGERS.

Fares to be  
posted up.

5. A table of fares and a copy of the time-table for the time being in force relating to the conveyance of passengers shall be posted up in the

English and Dutch languages in a conspicuous place at each station and so as to be visible and accessible.

6. (1) Fares shall be deemed to be accepted and tickets to be issued subject to the condition of there being room available in the train and in a carriage of the class for which the tickets are issued.

Conditions upon which tickets are issued.

(2) A person, to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued, shall, upon returning the ticket at the earliest opportunity, be entitled to have his fare refunded.

(3) A person, for whom there is not room available in the class of carriage for which he has purchased a ticket and who elects to travel in a carriage of a lower class shall, on delivering up his ticket and receiving the certificate hereinafter in this section referred to, be entitled to a refund of the difference of the fare paid by him and the fare payable for the class of carriage in which he travelled; provided that a refund shall only be made if at the first opportunity the passenger so travelling shall have called the attention of the railway servant in charge of the train to the fact that he is obliged to travel in a class of carriage inferior to that mentioned on his ticket and received from such servant a certificate showing that he is entitled to the refund.

(4) Subject to the provisions of this and the next succeeding section and of any regulation, the Administration shall not refuse to carry a passenger who has tendered the proper fare for the journey which he desires to make and the class in which he desires to travel.

(5) The provisions of sub-sections (2) and (3) shall not apply to season tickets.

7. The Administration may refuse to carry, except in accordance with the regulations, a person who appears to be a lunatic or suffering from any contagious or infectious disease.

Conveyance of lunatics or infectious persons

8. (1) The Administration shall only be liable for loss of life of or personal injury to any passenger when such loss of life or personal injury is caused by the want of ordinary care, diligence, or skill on the part of its servants, and the Administration shall in no case be liable for loss of life of or personal injury to a passenger who is travelling by special permission whether verbal or written on a train to which no passenger coach is attached.

Liability in respect of loss of life or personal injury to passenger.

**Act No. 13  
of 1908.**

(2) For the purposes of this section the term "passenger" shall include every person travelling upon a train not being a railway servant in respect of whom a claim for compensation under the Workmen's Compensation Act 1907 can be made for loss of life or personal injury caused by an accident to the train on which he is travelling.

Travelling without a free pass or ticket prohibited.

9. No person shall enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a free pass or ticket.

Travelling without free pass or ticket or with insufficient pass or ticket or beyond authorised distance.

10. (1) If a passenger travels in a train without having a free pass or ticket with him, or being in or having alighted from a train fails or refuses to present for examination or to deliver up his free pass or ticket immediately on requisition being made therefor he shall be liable to pay on demand of any railway servant in uniform, or wearing, in a visible manner, a badge of his office the excess charge hereinafter in this section mentioned in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he originally started, the single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined, or, in case of their having been examined more than once, the place where they were last examined.

(2) If a passenger travels or attempts to travel in a carriage of a higher class than that for which he has obtained a free pass or ticket, or travels in or on a carriage beyond the place authorized by his free pass or ticket, he shall be liable to pay on the demand of any railway servant in uniform, or wearing, in a visible manner, a badge of his office the excess charge mentioned in sub-section (3) in addition to any difference between any fare paid by him and the fare in respect of such journey as he has made.

(3) The excess charge referred to in sub-sections (1) and (2) shall be—

(a) where the passenger has, immediately after incurring the charge and before being detected by a railway servant, notified to a railway servant on duty with the train or at a station the fact of the charge having been incurred, one shilling, sixpence, or three-pence according as the passenger is travelling

or has travelled or has attempted to travel in a carriage of the first class, or in a carriage of the second class or in a carriage or vehicle of any other kind or class ; and

(b) in any other case, ten shillings, five shillings, or two shillings and sixpence according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the first class or in a carriage of the second class or in a carriage or vehicle of any other class or kind ; provided that such excess charge shall in no case exceed—

- (i) if the liability to pay it arises under sub-section (1), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section ; or
- (ii) if such liability arises under sub-section (2), the amount of the differences between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

If any person refuse to pay the amounts due by him under this section to any railway servant demanding the same, it shall be lawful for any police officer or constable or for any railway servant in uniform or wearing, in a visible manner, any badge of office to arrest without warrant and detain in custody such person and bring him before a court having jurisdiction to be dealt with according to law ; and such person on conviction shall be liable to a fine not exceeding five pounds or, in default of payment, to imprisonment for a period not exceeding one month, or to both such fine and imprisonment.

**11.** (1) If a passenger wilfully alters, obliterated, or defaces his free pass or ticket so as to render the date, number, or any material portion thereof illegible, he shall be liable to a fine not exceeding twenty-five pounds or, in default of payment, to imprisonment for a period not exceeding three months, and shall in addition be liable to a further fine equal to the amount of a single ticket for the journey performed by the class in which he was travelling ; and any such altered, obliterated, or defaced free pass or ticket shall be confiscated.

Altering or defacing free pass or ticket.

(2) Any person who obtains by false pretences or other fraudulent means or who counterfeits, forges, or alters any ticket, order, receipt for fare or free pass issued by the Administration designed to entitle the holder to travel in the carriages of

**Act No. 13  
of 1908.**

the Administration, or who utters, publishes, or puts into circulation any counterfeit or altered ticket, order, receipt for fare or free pass, with intent to defraud the Administration or any other person, shall be liable on conviction to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.

Transferring  
season ticket  
or any half of  
return ticket.

**12.** If a person sells, or attempts to sell, or parts or attempts to part with the possession of a season ticket or any half of a return ticket in order to enable any other person to travel therewith, or purchases or receives such season ticket or half of a return ticket he shall be liable to a fine not exceeding five pounds or, in default of payment, to imprisonment for a period not exceeding fourteen days, and if the purchaser or receiver of such season ticket or half of a return ticket travels or attempts to travel therewith, he shall be liable to a further fine not exceeding the amount of the single fare for the journey authorized by the ticket, or in default of payment to imprisonment for a further period not exceeding one month.

Fraudulently  
travelling or  
attempting to  
travel.

**13.** If a person with intent to defraud the Administration ;

(a) enters any carriage or other rolling stock on a railway ; or

(b) uses or attempts to use a single free pass or single ticket which has already been used on a previous journey, or in the case of a return ticket or pass a half thereof which has already been so used ;

he shall be liable to a fine not exceeding ten pounds or, in default of payment, to imprisonment for a period not exceeding one month in addition to the amount of the single fare for any distance he may have travelled, together with the prescribed booking fee (if any).

Recovery of  
fares, etc.

**14.** It shall be the duty of any magistrate passing any sentence under section *nine* or *twelve*, to impose in addition to such sentence a further fine equal to the amount payable to the Administration for the fare and booking fee (if any) payable or due by the accused in respect of the journey performed by him in the class in which he was travelling, and to order that if, on the payment of such fine or at the expiration of such sentence, such further fine shall not have been paid the person convicted shall be imprisoned for a further period not exceeding one month.

Any further fine recovered under this section or under section *ten* or *eleven* shall be paid in to the revenues of the Administration.

**Act No. 13  
of 1908.**

#### PASSENGERS' LUGGAGE.

**15.** The Administration shall convey without charge such amount of luggage as may be prescribed by regulation or by public notice for each class of passenger.

Conveyance  
of passengers'  
luggage.

**16.** (1) When passengers' luggage is handed to a railway servant for conveyance in the luggage van he shall affix to every package a registered number and shall give to the passenger a duplicate of such number; provided that the Administration shall not be liable for luggage left with a railway servant or otherwise disposed of at any station unless registered as in this sub-section provided or deposited in a cloak-room.

Registration  
of luggage.

(2) Whenever a passenger fails to have his luggage so registered and carried in the luggage van, it is carried at his own risk.

(3) Cloak-rooms provided by the Administration shall be and be considered to be warehouses established for the sole convenience of passengers and the public.

(4) The Administration shall not be liable for the loss, misdelivery, or detention of; or damage to any article or package deposited in a cloakroom which exceeds in value the sum of five pounds unless at the time of deposit the value of such article is declared and an additional charge paid for excess value in accordance with the regulations.

**17.** The Administration shall have a lien upon the luggage of a passenger for the payment of any fare or other charge to which it is entitled from him.

Lien on  
luggage.

#### GOODS.

**18.** (1) Unless the owner or consignor or his representative accompanies the property and retains control thereof, the Administration carrying goods is liable for loss of or injury to such goods from any cause whatsoever from the time it accepts such goods in accordance with the regulations until it releases itself from liability by delivery of the goods to the consignee or his representative or by placing the same in a warehouse pursuant to this Act, except in the case of—

Liability of  
Administration  
for goods  
carried.

(a) an inherent defect, vice or weakness, or some action of the property itself;

(b) the act of God;

**Act No. 13  
of 1908.**

(c) inevitable accident ;

(d) the act of the King's enemies or other inevitable superior force ;

(e) the act of the law.

(2) The Administration is liable even in the cases excepted by sub-section (1) if its negligence exposes the property to the cause of the loss.

(3) The Administration is liable for delay only when it is caused by want of ordinary care and diligence on its part.

Effect of  
accepting  
receipt.

**19.** (1) A consignor or consignee by accepting a receipt or written contract for the transport of goods assents to the rate, time, place, and manner of transport and delivery and to the conditions therein stated.

(2) Subject to sub-section (1) the liabilities and obligations of the Administration cannot be limited by general notice but may be limited by special contract.

Administra-  
tion may  
impose  
conditions.

**20.** (1) The Administration may impose conditions, not inconsistent with this Act or with any regulation, with respect to the receiving, forwarding, or delivering of any goods and with regard to the interchange of traffic with other carriers or railway administrations.

(2) The Administration shall keep at each station on the railways a copy of the said conditions, and shall allow any person to inspect it free of charge at all reasonable times.

(3) The Administration shall not be bound to carry any animal suffering from any infectious or contagious disease or any wild animal.

Consignor  
liable for  
freight unless  
there is a  
contract that  
consignee  
will pay.

**21.** (1) The consignor of goods shall be liable for the freight thereon but if the contract between him and the Administration provides that the consignee shall pay it, and the Administration allows the consignee to take the goods, it cannot afterwards recover the freight from the consignor.

(2) The consignee of goods is liable for the freight thereon if he accepts the goods with notice that the same is unpaid.

Lien for  
freight.

**22.** (1) If a person fail, on demand made by or on behalf of the Administration, to pay any freight in respect of any goods, the Administration may detain the whole or any part of the goods, or, if they have been removed from the railway, any other of the goods of such person then being in or thereafter coming into its possession.

(2) When any goods have been detained under sub-section (1), the Administration may, in the



case of perishable goods at once, and, in the case of other goods, by public auction on the expiry of at least ten days' notice of the intended auction published in one or more newspapers circulating in the district where the goods were detained, sell sufficient of such goods to produce a sum equal to the freight and all expenses of such detention, notice, and sale, including in the case of animals the expense of feeding, watering, and tending the same. Every such notice shall state the name of the consignor and of the consignee, if known.

(3) Out of the proceeds of the sale the Administration may retain a sum equal to the freight and expenses aforesaid, including any balance due in respect of any former freight and expenses, rendering to the person entitled thereto the surplus (if any) of the proceeds and such of the goods (if any) as remain unsold.

(4) If a person, on whom a demand for any freight due from him has been made, fails to remove from the railway within seven days and goods which have been detained under sub-section (1), or any goods which have remained unsold after a sale under sub-section (2), the Administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be in accordance with the provisions of sub-section (3).

(5) Notwithstanding anything in this section contained, the Administration may recover by action in any competent court any such freight or expenses.

**23.** (1) When any goods have come into the possession of the Administration for transport or otherwise and are not claimed by the owner or other person appearing to the Administration to be entitled thereto, the Administration shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the goods. Disposal of unclaimed goods.

(2) If such owner or person is not known or the notice cannot be served upon him, or if he does not comply with the requisition in the notice, the Administration may sell the goods in accordance with the provisions of the last preceding section (so far as such provisions are applicable), rendering the surplus (if any) of the proceeds of the sale to any person entitled thereto; in the meantime the Administration may place the goods in a warehouse and thus relieve itself from any further liability.

(3) Notwithstanding anything in this section contained if perishable goods accepted by the

**Act No. 13  
of 1908.**

Administration for transportation are, on arrival at their destination, in such a condition that in the opinion of the Administration they will become worthless, the Administration may, if the owner or person entitled to the goods has not claimed them, proceed at once to carry out the sale in accordance with this section, or if the goods have in fact become worthless, may proceed to destroy them.

Where consignee fails to take or remove goods.

**24.** (1) If, after the Administration has fulfilled its obligations to deliver or duly offered to fulfil the same, the consignee does not accept and remove the goods within the time specified in any regulations or in any consignment note, the Administration may relieve itself from further liability by placing the goods in a warehouse on account of the consignee and giving notice thereof to him, and any such warehousing shall be considered as being for the sole benefit of the consignee or consignor as the case may be.

(2) If the place of residence or business of the consignee be unknown to the Administration, it may give the notice by posting a letter to the consignee to the address given on the goods or papers relating thereto. Where goods are consigned to a consignee through or to the care of a third party, delivery shall be effective if made to the consignee direct or to such third party.

Upon delivery to holder of consignment note, etc., Administration released from liability.

**25.** (1) The Administration shall be released from liability for goods by delivery thereof in good faith to any holder of a duplicate consignment note or advice note given therefor by or on behalf of the Administration and specially endorsed, or to the holder of an order for the delivery of goods or receipt for luggage or parcels by or in the name of the consignor or consignee.

(2) When the Administration has given a receipt or other document substantially equivalent thereto, it may require its surrender or a reasonable indemnity against claims thereon before delivering the goods.

(3) When any goods or sale proceeds in the possession of the Administration are claimed by two or more persons or the documents described in sub-sections (1) and (2) are not forthcoming, the Administration may withhold delivery of the goods or sale proceeds until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the Administration against the claims of any other person with

respect to the goods or sale proceeds ; in the meantime the Administration may place the goods in a warehouse.

**Act No. 13  
of 1908.**

**26.** (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being transported and the consignee of any goods which have been transported on a railway, shall, on the request of any railway servant, deliver to such servant a declaration in writing signed by such owner or person or by such consignee (as the case may be) and containing the true weight and such a description of the goods as may be sufficient to determine the rate and amount which the Administration is entitled to charge in respect thereof.

Administra-  
tion may  
require  
written  
description  
and weight  
of goods.

(2) If such owner, person, or consignee fails to deliver such declaration or on being required to do so fails to open the parcel or package containing the goods in order that their description may be ascertained, the Administration may—

(a) in respect of goods which have been brought for the purpose of being transported on the railways, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railways for any class of goods, and, when there are no facilities for weighing, upon the weight as estimated by any railway servant ; or

(b) in respect of goods which have been transported on the railways, charge a rate not exceeding such highest rate, and, when there are no facilities for weighing, upon the weight as estimated by any railway servant.

(3) If the weight of goods is materially understated the Administration shall be entitled to charge on double the difference between the weight as stated and the actual weight.

(4) (a) If any person wilfully makes a false statement as to the nature, quantity, weight, or measurement of any goods delivered upon a railway in any consignment note, waybill, or other document which under this Act he is required to deliver in respect of such goods, that person shall be liable to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(b) If in any such document there is any understatement of the quantity, weight, or measurement of the goods, or any misdescription of their nature, the effect whereof if undetected might

**Act No. 13  
of 1908.**

lead to their being charged for at less than the proper rate, then in lieu of freight at the ordinary rate and irrespective of any person's liability under sub-section (3) and whether the understatement or misdescription is wilful or not, freight at a special rate to be fixed by the Administration, not exceeding double the ordinary rate, shall be payable in respect of the goods.

(5) If any difference respecting the description or weight of goods of which a declaration as aforesaid has been delivered arises between a railway servant and the owner or person having charge or the consignee of any goods which have been brought to be transported or have been transported on the railways, the railway servant may detain and examine the goods.

(6) If it appears from the examination or weighing that the description or weight of the goods is different from that stated in the declaration delivered under sub-section (1), the person who delivered the declaration or, if that person is not the owner of the goods, then that person and the owner shall be liable jointly and severally to pay to the Administration the cost of the detention and examination of the goods, and the Administration shall be exonerated from all responsibility for any loss which may have been caused by such detention or examination.

Relief from liability in case of goods improperly described.

**27.** Notwithstanding anything in this Act contained, the Administration shall not be responsible for the loss, destruction, or deterioration of any goods with respect to the description of which a declaration materially false has been delivered under sub-section (1) of section *twenty-six*, or in respect of which a wrong or improper or insufficient address for delivery has been given, if the loss, destruction or deterioration is in any way brought about by the false declaration or by giving a wrong or improper or insufficient address, nor in any case for an amount exceeding the value of the goods, if such value were calculated in accordance with the description contained in the false account.

Dangerous goods.

**28.** (1) No person shall take with him or require the Administration to transport loaded firearms or any dangerous goods upon a railway.

(2) No person shall send any such goods upon a railway without making a written declaration as to the nature and description of such goods and distinctly marking their nature on the outside of the package containing them, and such

declaration countersigned by the officer in charge of the sending station shall accompany the goods throughout.

(3) Any railway servant may refuse to receive such goods for transport or conveyance and when such goods have been received without such declaration as is mentioned in sub-section (2) may refuse to carry them or may stop their transit.

(4) If any railway servant has reason to believe that any such goods are contained in a package with respect to the contents whereof such declaration as is mentioned in sub-section (2) has not been given, he may cause the package to be opened for the purpose of ascertaining its contents and if the goods are dangerous, he may stop the further transport thereof.

(5) Nothing in this section shall be construed as derogating from any law for the time being in force relating to explosives or as applying to any goods tendered or delivered for carriage by order or on behalf of the Imperial Government or the Government of this Colony, or as applying to any property which an officer, soldier, or member of a police force or a person duly enrolled as a volunteer may take with him upon a railway in the course of his employment or duty as such.

(6) Any person contravening this section shall be liable to a fine not exceeding two hundred and fifty pounds or, in default of payment, to imprisonment for a period not exceeding two years, or to both such fine and imprisonment and further to confiscation of the goods, and in addition such person shall be liable for any loss, injury, or damage which may be caused by reason of such goods having been so brought upon the railway.

**29.** (1) The liability of the Administration under section *eighteen* for the loss, destruction or deterioration of live animals, or birds delivered to it to be transported on a railway shall not in any case exceed the amounts mentioned in the First Schedule to this Act, unless the person sending or delivering them to the Administration caused them to be declared or declared them at the time of their delivery for transport, to be respectively of higher value than the amounts set out in the said Schedule.

Limitation of liability in respect of animals transported.

(2) Where such higher value has been declared, the Administration may, in respect of the increased risk, charge over the sums respectively chargeable according to such Schedule a percentage on the excess of value so declared.

**Act No. 13  
of 1908.**

Limitation of liability in respect of articles of special value.

(3) In every legal proceeding against the Administration for the recovery of compensation for the loss, destruction, or deterioration of any live animal or bird the burden of proving the value thereof and the extent of the injury shall lie upon the person claiming the compensation.

**30.** (1) When any of the articles mentioned in the Second Schedule hereto are contained in any parcel or package delivered to the Administration for transport on the railways, and the value of the articles in the parcel or package is ten pounds or more, the Administration shall not be responsible for the loss, destruction, or deterioration of the parcel or package, unless the person sending or delivering the same to the Administration caused its value and contents to be declared or declared them at the time of its delivery for transport and paid, by way of compensation for the increased risk, over the sum aforesaid a percentage upon the excess of the value so declared.

(2) When loss, destruction, or deterioration has occurred in respect of any package or parcel for which the value has been declared and the percentage on excess value has been paid under sub-section (1), the compensation recoverable in respect of such loss, destruction, or deterioration shall not exceed the value so declared, and the burden of proving such value to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

(3) The Administration may make it a condition of transporting a parcel declared to contain any article mentioned in the Second Schedule to this Act that a railway servant has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

Administration not responsible for goods not lost on its lines.

**31.** When goods are transported over any line of the Administration which is only part of the journey for which they are despatched and are lost, destroyed, or have deteriorated, the Administration shall be exonerated from liability for the loss, destruction, or deterioration if it gives satisfactory proof that the same did not occur whilst the goods were on the railways of the Administration.

Claims for refunds and compensation must be made within four months.

**32.** No person shall be entitled to a refund of an overcharge in respect of goods transported on a railway or to compensation for the loss, destruction or deterioration of goods delivered for transport, unless within four months after the

date of the delivery, a written claim to the refund or compensation has been made by him or on his behalf containing full and detailed information as to the goods and supported by such documentary evidence as may be reasonably required.

**33.** In any legal proceedings against the Administration for compensation for loss, destruction or deterioration of goods (other than live animals and birds) delivered to it for transport by railway it shall not be necessary for the claimant to prove how the loss, destruction, or deterioration was caused.

Owner of goods suing for loss need not prove how loss caused.

**34.** No goods whatsoever upon which customs duty is payable shall be sold under this Act without the authority of the principal customs officer of the Colony and nothing in this Act contained shall affect or diminish the rights and powers conferred upon customs officers by any law for the time being in force for the management of or relating to customs.

No goods on which customs duty payable to be sold without authority of principal customs officer.

#### RAILWAY SERVANTS.

**35.** (1) Any person who is intoxicated while in charge of a locomotive engine or while acting as engine-driver or fireman, conductor, ticket examiner, or guard upon any train or while acting as officer in charge of a station, train foreman, pointsman, gatekeeper, or signalman, or as telegraph operator receiving or transmitting messages in relation to the movement of trains, shall on conviction be liable to imprisonment with hard labour for a period not exceeding two years.

Drunkenness of railway servants.

(2) Any railway servant other than is mentioned in sub-section (1) who is in a state of intoxication while on duty and shall, if the improper performance of the duty would be likely to endanger the safety of any person travelling or being on a railway, be liable on conviction to imprisonment with hard labour for a period not exceeding one year or to a fine not exceeding fifty pounds or, in default of payment, to such period of imprisonment or to both such fine and imprisonment.

**36.** Any railway servant who when on duty endangers the safety of any person—

Endangering the safety of persons by railway servants.

- (a) by disobeying any regulation ; or
- (b) by disobeying any rule or order which is not inconsistent with a regulation and which such servant was bound by the terms of his employment to obey and of which he had notice ; or
- (c) by any rash or negligent act or by any omission ;

**Act No. 13  
of 1908.**

shall be liable on conviction to imprisonment for a period not exceeding two years or to a fine not exceeding one hundred pounds or, in default of payment, to such period of imprisonment or to both such fine and imprisonment.

Penalty on railway servant for demanding more than is due.

**37.** Any railway servant who with intent to defraud asks or receives a greater sum than is allowed by law and is provided by the tariff then in force for the conveyance of passengers or transport of goods shall be liable on conviction to imprisonment for a period not exceeding two years, or to a fine not exceeding one hundred pounds or, in default of payment, to such period of imprisonment or to both such fine and imprisonment.

Desertion by railway servant or refusal to serve.

**38.** Any railway servant who during the period which he shall have engaged to serve and not being duly discharged from the same, shall desert, or refuse to serve, or absent himself from duty without lawful cause or reasonable excuse, the proof of which shall lie upon him, shall be liable upon conviction to a fine not exceeding fifty pounds, or, in default of payment, to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Resignation of railway servant without notice.

**39.** Any railway servant who shall resign his office or withdraw himself from the duties thereof without previous permission or the notice required by any regulation or contract shall be liable upon conviction to a fine not exceeding fifty pounds sterling, or, in default of payment, to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Disputes between Administration and railway servants.

**40.** (1) Whenever a dispute shall arise between the Administration and a considerable number of railway servants, or class of railway servants, as to any conditions proposed in the terms of their employment, and such dispute cannot be amicably settled and is in the opinion of the Administration causing or likely to cause serious disorganisation in the working of the railways, the Administration shall report its opinion to the Government.

(2) The Government, acting jointly if necessary with any other Government represented on the Administration, shall unless the dispute is otherwise previously settled appoint a Commission of impartial persons to investigate the cause of dispute and to make recommendations in reference thereto.

(3) The Commission shall consist of not less than three nor more than five persons (not being members or employees of the Administration),



and one of the members of the Commission, who shall be Chairman, shall be either a person holding a judicial or magisterial office or an advocate or attorney.

(4) The report and recommendations of the Commission, and any report or recommendations made by a minority of the members, shall be published in the *Gazette*.

**41.** (1) Whenever any railway servant is suspended, dismissed or resigns his office or dies the servant so suspended, removed or resigning and his family, and in case of the death of the servant, his family shall give up possession of the house or apartments in which he or they have previously resided by virtue of such office when required in writing by any person authorised in that behalf by the Administration, and if he or they fail to give up such possession within seven days after such notice has been given the resident or assistant resident magistrate of the district upon proof of service of the notice and of failure to comply therewith, may by warrant under his hand direct any police officer or constable or other person named in the warrant to enter (by force if necessary) such house or apartments and to remove therefrom any such servant or any other person wrongfully retaining possession, together with any goods or articles there found not belonging to the Administration. Any property or equipment found therein and belonging to the Administration shall be handed over to the Administration.

Railway servant on leaving service to quit official dwelling and deliver up articles of official dress.

(2) When any railway servant has been suspended, dismissed from the service of the Administration or has resigned his office he shall forthwith deliver up every article of dress and of equipment and any book or document which shall have been supplied to him for use in the discharge of his duties or shall have come into his possession by virtue of his office. If any such article be not delivered up or when delivered up shall have been improperly used or damaged the Administration may deduct from any moneys due to such servant a sum sufficient to make good the damage or if necessary to supply another such article.

#### GENERAL OFFENCES.

**42.** If any person does or causes or procures to be done any of the following acts—

Penalties for certain classes of offences.

(a) trespasses upon a railway and refuses to leave after being warned to leave by any railway servant ;

**Act No. 13  
of 1908.**

- (*b*) is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of others on the railways ;
- (*c*) does anything which may cause injury to persons employed on or travelling on the railways ;
- (*d*) commits any nuisance or act of indecency or uses profane, obscene, indecent, or abusive language on the railways ;
- (*e*) writes, draws or affixes any profane, obscene, indecent, or abusive word, matter, representation, or character upon the railways ;
- (*f*) wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp or light on a train or railway station ;
- (*g*) defaces the writing on any board or any notice authorised to be maintained on any railway, railway station, or train ;
- (*h*) damages any railway rolling stock or any material used upon or belonging to any railway ;
- (*i*) being a passenger enters a compartment which is reserved by the Administration for the use of another passenger or which already contains the maximum number of passengers authorised to be carried therein, and refuses to leave it when required to do so by any railway servant ;
- (*j*) being a passenger resists the lawful entry of another passenger into a compartment not reserved by the Administration for the use of the passenger resisting, or not already containing the maximum number of passengers to be carried therein or thereon ;
- (*k*) smokes in any compartment on a train when smoking is not permitted in such compartment ;
- (*l*) enters or leaves any railway carriage on a train while it is in motion, or elsewhere than at the side of the carriage adjoining the platform or other places appointed by the Administration for passengers to enter or leave the carriage, or opens any outer door of any railway carriage on a train while it is in motion ;
- (*m*) travels or attempts to travel on or in any part of a train not intended for the use of passengers ;
- (*n*) drives any vehicle or animal across a level crossing or elsewhere on a railway

when a train is approaching and within half a mile from such crossing ;

(*o*) in the absence of a gatekeeper omits to shut and fasten any gate on the railway so soon as such person and the animal vehicle or other things (if any) under his charge has passed through the gate ;

(*p*) being a driver or conductor of a tramcar, omnibus, carriage or other vehicle disobeys, while upon the premises of the railways, the reasonable directions of any railway servant or police officer or constable ;

(*q*) attempts or counsels the doing of or assists or aids in doing any of the acts mentioned in this section ;

such person shall be liable on conviction to a fine not exceeding ten pounds, or, in default of payment, to imprisonment for a period not exceeding one month, or to both such fine and imprisonment.

**43.** If any person does or causes or procures to be done any of the following acts—

(*a*) being a passenger without reasonable and sufficient cause, makes use of or interferes with any means provided by the Administration for communication between passengers and any railway servant in charge of or concerned in the running of a train ;

(*b*) knowing or being in a position to know that a railway carriage, compartment, or other place is reserved by the Administration for the exclusive use of males or females, white or coloured persons, Asiatics or natives, enters such carriage, compartment, or other place in contravention of a regulation and without lawful excuse, or having so entered it remains therein after having been desired by any railway servant to leave it ;

(*c*) pulls down or wilfully injures any board or document set up or posted by order of the Administration on a railway or on any rolling stock ;

(*d*) gives or offers to a railway servant any money or anything of value for the purpose of evading payment of any sum due from him under this Act ;

(*e*) being a passenger who is suffering from an infectious or contagious disease enters or travels upon a railway in contravention of the regulations ;

(*f*) being a railway servant and knowing that a person is a lunatic or suffering from

Penalties for certain other classes of offences.

**Act No. 13  
of 1908.**

an infectious or contagious disease wilfully permits such person to travel upon a railway without arranging for his separation from other passengers ;

(*g*) fails to deliver at the earliest possible opportunity to a railway servant any property found on any railway or in any railway carriage or removes any such property from a railway or railway carriage ;

(*h*) wilfully obstructs or impedes any railway servant in the discharge of his duty ;

(*i*) shoots any gun or throws stones, gravel, timber or any rubbish on a railway or at a train ;

(*j*) removes from a railway or any railway premises any rolling stock, tarpaulins, tools, appliances or property of any kind, or permits any such rolling stock, tarpaulins, tools, appliances or property to be unlawfully in his possession or on his premises ;

(*k*) permits or allows any animal to stray on a railway provided with fences ;

(*l*) drives or knowingly permits any animal to be on any railway otherwise than for the purpose of lawfully crossing the railway, whether such person be the owner of such animal or only in charge thereof ;

(*m*) attempts or counsels the doing of or assists or aids in doing any of the acts mentioned in this section ;

such person shall be liable on conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Penalties for  
grave  
offences.

**44.** If any person does or causes or procures to be done any of the following acts—

(*a*) steals any property belonging to or in the custody of the Administration, or receives any such property knowing it to have been stolen ;

(*b*) does any act which obstructs or might obstruct the working of a railway or endangers or might endanger the lives of persons travelling thereon ;

(*c*) without lawful authority moves any part of the rolling stock on a railway or leaves the same on any part of a railway ;

(*d*) without lawful authority moves any signals, points, wires, sleepers, rails, stop blocks, or machinery on a railway, or shows any signal likely to mislead ;

(e) without lawful authority cuts down, breaks, removes, destroys or injures any fence, building or bridge or other property in or upon any railway ;

(f) attempts or counsels the doing of or assists or aids in doing any of the acts mentioned in this section ;

such person shall be liable on conviction to imprisonment with hard labour for a period not exceeding five years and in addition to a fine not exceeding five hundred pounds or, in default of payment, to a further period of imprisonment not exceeding two years.

#### INJURIES TO STOCK.

45. (1) The Administration shall make compensation to the owner of any stock killed or injured by any train running on any railway, provided that no compensation shall be payable in respect of any stock killed or injured where such killing or injury is due to the want of ordinary care or diligence of the owner or his servant.

Compensation  
for injuries to  
stock.

(2) No person shall be entitled to recover any sum of money under this section for the killing or injury of any stock who, within seventy-two hours after such stock has been killed or injured, shall fail to give notice to the nearest officer in charge of a station or platelayer in charge of a section of the killing or injury and of the number and kind of the stock so killed or injured in respect of which compensation is claimed.

(3) The carcases or remains of all stock killed and all injured stock in respect of which any claim is made under this section shall be diligently and to the best of his ability kept and preserved by the owner making such claim for a period of not less than three full days from the time when such killing or injury took place or until such time as such carcases or remains have been inspected by a person appointed to ascertain the value of such stock.

(4) A person who fails diligently and to the best of his ability to keep and preserve such carcase and remains of killed stock or such injured stock as aforesaid or a person who makes under this section any claim for compensation determined by a court of competent jurisdiction to be fraudulent or grossly excessive shall not be entitled to any of the benefits of this section. A person who makes any such claim with intent to defraud shall be liable to the penalties prescribed by law for the crime of fraud.

Act No 13  
of 1908.

(5) Compensation under this section to the owner of any stock killed or injured shall in no case be payable at a higher rate than as follows:—

For any horse ... Twenty-five pounds.  
For any mule ... Twenty pounds.  
For any donkey ... Eight pounds.  
For any cattle, per head Twelve pounds.  
For any ostrich ... Twelve pounds.  
For any sheep, goat or pig One pound.

(6) "Stock" shall, for the purposes of this section, include a horse, gelding, mare, colt, mule, ass, bull, ox, cow, calf, sheep, goat, and ostrich.

#### LEGAL PROCEEDINGS.

Limitation  
of actions.

**46.** (1) No action, shall be brought against the Administration unless the same be commenced within twelve months after the cause of action arose.

(2) No action shall be commenced against the Administration until one month at least after written notice of intention to commence the same shall have been served upon the Administration by the plaintiff or by his attorney or agent. In such notice the cause of action and details of claim shall be clearly and explicitly stated.

Legal  
proceedings  
to be  
brought by  
and against  
the Adminis-  
tration in  
corporate  
name.

**47.** (1) All legal proceedings to which the Administration is a party shall so long as it is a body corporate be brought by or against the Administration in its corporate name.

(2) No writ of execution or attachment or process in the nature thereof shall be issued against the Administration in respect of any legal proceedings brought or judgment or order given or made against it, nor shall any such writ or process be issued against any railway, rolling stock, or other railway property of the Administration, but it shall be lawful for the Administration to pay out of railway funds such sum of money as shall be awarded by the judgment or order of any competent court to the plaintiff, applicant, or petitioner.

Examination  
by medical  
practitioner.

**48.** Whenever any person claims damages or compensation from the Administration in respect of an alleged personal injury, any judge of the Supreme Court or any court, having by law or consent of the parties jurisdiction to determine the claim, may, at any time before or after the proceedings to recover such damages or compensation have been commenced, order that the person injured be examined on behalf of the Administration by one or more duly qualified

medical practitioners named in the order, and may make such order with respect to the manner, time, and place of conducting the examination, and the costs of the application for such order and of such examination, as he or it may think fit.

**Act No. 13  
of 1908.**

#### ACCIDENTS.

**49.** When any of the following accidents occur in the course of working a railway namely:—

Report of  
railway  
accidents.

(a) any accident attended with loss of human life or with grievous bodily harm or with serious injury to property ; or

(b) any collision of trains of which one is a train carrying passengers ; or

(c) the derailment of any train carrying passengers or of any part of such train ; or

(d) any other accident that has caused or was likely to cause loss of human life or grievous bodily harm or serious injury to property ;

the Administration shall without unnecessary delay send notice of the accident to the Attorney-General. The Governor may appoint an officer to make enquiry into the causes of such accident and report to him thereon ; provided that the holding of such enquiry shall not exempt any magistrate or justice of the peace having jurisdiction from holding such inquest or enquiry as is prescribed by the Inquests Proclamation 1901 or any amendment thereof.

**50.** The Administration shall send to the Governor, in such form and manner and at such intervals as he may direct, a return of accidents, whether attended with personal injury or not, occurring upon its railways.

Submission of  
return of  
accidents.

#### TELEGRAPHS AND TELEPHONES AND ARRANGEMENTS WITH POST OFFICE.

**51.** The Administration may from time to time construct and maintain telegraphic or telephonic communication with or without wires along or adjacent to any of the railways, and for such purposes may enter upon any lands, roads, or streets and make therein all needful excavations for the erecting of posts and for the laying down of lines of subterranean communication, and may erect and set up any necessary posts, cords, and wires. Every cord or wire of any such line, if above the surface crossing any road or street, shall be placed at least eighteen feet from the ground and so as not to hinder or obstruct the

Power to  
erect  
telegraphs.

**Act No. 13  
of 1908.**

Wires to be affixed to existing posts if required.

free use or enjoyment of such road or street further than is absolutely necessary for the proper construction, establishment, and maintenance of any such communication.

**52.** The Administration shall, if required by the Postmaster-General, affix wires to any of the posts of the Administration (if such posts can bear such wires), and the Postmaster-General shall if required by the Administration affix wires to the posts of the Postmaster-General (if such posts can bear such wires), and the cost of maintenance shall be divided between the Administration and the Postmaster-General in proportion to the number of wires on such posts belonging to each, or in such other proportion as may appear equitable.

Working of the telegraphs vested in the Administration.

**53.** (1) The telegraphic or telephonic communication belonging to the Administration or which are worked under the direction or on behalf of the Administration may be used by the Administration for the transmission of messages in relation to the working of the railways, and, so far as is consistent with the due and efficient working of the railways, may be made available for the transmission of messages by the public. All such last-mentioned messages shall be transmitted by railway servants as agents of the Postmaster-General; and there shall be demanded and received in respect of such last-mentioned messages such fees, rates, and dues as may for the time being be lawfully demanded or received by the Postmaster-General in respect of telegraphic or telephonic communication under his control; save as aforesaid the Administration shall not transmit or permit the transmission of messages on behalf of the public through its telegraphic or telephonic communications.

(2) The remuneration to be paid by the Postmaster-General to the Administration for the transmission of messages as aforesaid may be either a fixed sum or a percentage on the gross sum received by the Postmaster-General from the Administration in respect of such transmission, or may be determined in such other way as may from time to time be agreed upon between the Postmaster-General and the Administration.

Power for the Administration and Postmaster-General to make contracts.

**54.** The Administration and the Postmaster-General may from time to time enter into, alter and rescind contracts and agreements with each other with respect to the receipt and transport of letters, newspapers, and parcels, or to any other matter or thing in relation to the postal service,



and with respect to the working of any of the telegraphic or telephonic communication of the Postmaster-General by the Administration and generally with respect to telegraphs and telephones and the transmission of telegraphic or telephonic messages.

**Act No. 13  
of 1908.**

MISCELLANEOUS.

**55.** All station masters and station officials, inspectors, permanent way inspectors, conductors, ticket inspectors, and collectors, and any other railway servant in uniform or wearing, in a visible manner, a badge of his office, and acting under the authority of any such officer may arrest and remove from any railway carriage or railway premises any person found trespassing on the railways or contravening any of the provisions of this Act or any regulation.

Powers of railway officials to arrest.

The person so arresting shall, with all convenient speed, deliver the person arrested or cause him to be delivered to a police officer or constable to be dealt with according to law.

**56.** (1) Any resident magistrate may, on the application of the Administration, appoint any person recommended for the purpose to act as a constable on and in connection with the railways within the district of such magistrate; and every person so appointed shall take an oath or make a solemn declaration in the form prescribed by law for police constables.

Appointment of railway constables by magistrate.

(2) Every person so appointed may be dismissed by such magistrate or by the Administration, and if dismissed all powers and privileges which appertained to him by reason of his appointment as constable shall cease.

(3) No person so dismissed shall again be appointed to act as a constable under this section without the consent of the magistrate of the district or of the Administration.

**57.** (1) Whenever an appointment has been made under the last preceding section by a magistrate he shall forthwith transmit to the Administration notice of the name and designation of the person appointed and the date of the appointment; and the Administration on receipt of the notice shall forthwith transmit to the resident magistrate of every district through which the railway passes, the particulars received.

List of appointments and dismissals of railway constables to be sent to magistrate.

(2) The like procedure shall be observed *mutatis mutandis* whenever a person appointed to act as constable is dismissed under the last preceding section.

Act No. 13  
of 1908.

(3) Every notice under this section shall be transmitted within one week after the date of appointment or dismissal as the case may be.

(4) The magistrate shall record all such appointments and dismissals in such form as the Attorney-General may direct.

Powers and area of jurisdiction of constables and penalty for breach of duty.

**58.** (1) Every person appointed as aforesaid to act as constable shall, after taking the oath or making the solemn declaration aforesaid and until dismissed, have all the powers conferred by law upon police constables on and in connection with the railways in whatever district of the Colony situate and in all places not more than one-quarter of a mile distant from the railways.

(2) Every such person who is guilty of a neglect or breach of duty in his office of constable shall be liable on conviction to a fine not exceeding twenty-five pounds or, in default of payment, to imprisonment for a period not exceeding two months.

Title and date of operation of Act.

\* **59.** This Act may be cited for all purposes as The Railways Regulation Act 1908 and shall not come into operation unless and until the Governor shall have declared by proclamation in the *Gazette* that it is His Majesty's pleasure not to disallow the same, and thereafter it shall come in operation on such date as the Governor may by like proclamation declare.

### First Schedule.

Horses	...	...	...	£25.....	per head.
Mules	...	...	...	£20.....	"
Cattle	...	...	...	£12 .....	"
Donkeys	...	...	...	£8.....	"
Sheep, Goats and Pigs	...	...	...	£1 .....	"
Ostriches	...	...	...	£12.....	"
Dogs	...	...	...	£2 .....	"
Turkeys and Geese	...	...	...	15 Shillings.....	"
Fowls and other Poultry, Hares, Cats, and Birds not otherwise specified	...	...	...	5 Shillings.....	"
Pigeons, Guinea Pigs and Rabbits	...	...	...	2s. 6d. ....	"

### Second Schedule.

#### ARTICLES TO BE DECLARED AND INSURED.

- (a) Gold and silver, coined or uncoined, manufactured or unmanufactured  
 (b) Plated articles.  
 (c) Cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police officer or constable or person enrolled as a volunteer under any Volunteer Corps Statute, or of any public officer, British or foreign, entitled to wear uniform.  
 (d) Pearls, precious stones, jewellery.  
 (e) Watches, clocks and timepieces of every description.  
 (f) Government securities.  
 (g) Government stamps.  
 (h) Bills of exchange, promissory notes, bank notes, and orders or other securities for payment of money.

\* See Proc. No. 82 Admn. 1908 (*Gazette*, 18th Sept., 1908, p. 1002), notifying His Majesty's agent to the Queen's Printer, and to the printer of the Act, to print the Act, 1908, Sept., 1908.

- (i) Maps, plans, writings and title deeds.
- (j) Paintings, engravings, lithographs, photographs, carvings and other works of art.
- (k) Art pottery and all articles made of glass, china or marble.
- (l) Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
- (m) Shawls.
- (n) Lace, furs and feathers.
- (o) Ivory, ebony and sandalwood.
- (p) Musk, sandalwood oil and other essential oils used in the preparation of perfumes.
- (q) Musical and scientific instruments.
- (r) Any article of special value which the Governor may by notice in the *Gazette* add to this Schedule.

Act No. 13  
 of 1908.

ACT NO. 14 OF 1908.] [Came into operation 28th August, 1908.

AN  
**ACT**

Act No. 14  
 of 1908.

To apply a sum of money for the service of the year ending  
 the Thirtieth day of June, 1909.

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

1. The Public Revenue of this Colony is hereby charged towards the service of the year ending the thirtieth day of June, 1909, with a sum of Four million three hundred and twenty thousand and sixty-two pounds in addition to the sum of Five hundred thousand pounds sterling provided for by the Appropriation (Part 1908-1909) Act 1908.

Public Revenue to be charged with £4,320,062.

2. The money granted by this Act shall not be applied to any use, intent, or purpose other than the particular services specified in the Schedule to this Act.

Not to be applied otherwise than as granted.

3. No appropriation granted by this Act for any particular service set forth in the Schedule to this Act under the head of Extraordinary Expenditure shall lapse until such service has been completed.

Appropriation for Extraordinary Expenditure not to lapse until particular service completed.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified, and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be

The Treasurer to make payments under warrant of the Governor.

Act No. 14  
of 1908.

to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

Title.

5. This Act may be cited for all purposes as the Appropriation (1908-1909) Act 1908.

## Schedule.

## ORDINARY EXPENDITURE.

NUMBER OF VOTE.	TITLE OF VOTE.	ACCOUNTING OFFICER.	AMOUNT OF VOTE.
			£
1	His Excellency the Governor	Secretary to the Prime Minister	8,911
2	Ministers' Salaries ...	" " "	19,000
3	Legislative Council...	Clerk of the Legislative Council	8,820
4	Legislative Assembly ...	Clerk of the Legislative Assembly	27,890
5	Joint Parliamentary Expenses	" " "	5,575
6	Prime Minister ...	Secretary to the Prime Minister	3,495
7	Agriculture and Forests ...	Director of Agriculture	194,913
8	Colonial Secretary ...	Assistant Colonial Secretary	65,648
9	Public Health ...	" " "	93,177
10	Grants-in-Aid to Local Authorities	" " "	95,400
11	Volunteers ...	" " "	72,793
12	Education ...	Director of Education ...	602,808
13	Attorney-General ...	Secretary to the Law Department	43,538
14	Superior Courts ...	" " "	43,390
15	Magistrates ...	" " "	138,329
16	Police ...	Commissioner of Police ...	576,939
17	Prisons ...	Director of Prisons ...	240,349
18	Foreign Labour ...	Superintendent of Foreign Labour	18,618
19	Mines ...	Secretary for Mines ...	145,228
20	Treasury ...	Secretary to the Treasury	16,993
21	Internal Revenue ...	" " "	19,313
22	Auditor-General ...	Auditor-General ...	12,872
23	Customs and Telegraphs ...	Director of Customs ...	76,546
24	Posts and Telegraphs ...	Postmaster-General ...	406,453
25	Printing and Stationery ...	Government Printer ...	90,664
26	Agent-General in London...	Secretary to the Treasury	10,183
27	Pensions, Allowances and Gratuities	" " "	27,400
28	Public Debt...	" " "	572,532
29	Miscellaneous ...	" " "	20,000
30	Lands and Irrigation ...	Secretary for Lands ...	103,165
31	Surveys ...	Surveyor-General ...	34,908
32	Native Affairs ...	Secretary for Native Affairs	101,087
33	Public Works ...	Secretary for Public Works	401,938
34	Works and Bridges...	" " "	204,319
			4,503,194
	Less Amount provided for by the Appropriation (Part 1908-09) Act 1908		500,000
	Total Ordinary Expenditure ...		£4,003,194

EXTRAORDINARY EXPENDITURE.

Act No. 14  
of 1908.

LETTER OF VOTE.	TITLE OF VOTE.	ACCOUNTING OFFICER.	AMOUNT OF VOTE.
A	Extirpation of Cattle Disease	Director of Agriculture ...	£ 35,000
B	General Telephone Extension	Postmaster-General ...	40,168
C	Purchase of Cullinan Diamond	Secretary to the Treasury	15,000
D	Works and Bridges ...	Secretary for Public Works	226,700
		Total ...	£316,868

SUMMARY.

Ordinary Expenditure ...	...	...	£4,003,194
Extraordinary Expenditure	...	...	316,868
Gross Total	...	...	<u>£4,320,062</u>

ACT NO. 15 OF 1908.] [Came into operation 28th August, 1908.

AN  
**ACT**

Act No. 15  
of 1908.

To amend the Audit and Exchequer Act 1907

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

1. Section *twenty* of the Audit and Exchequer Act 1907 shall be and is hereby repealed and the following provision substituted therefor:—

Repeal of section *twenty* of Act No. 14 of 1907 and substitution of new provision.

“If at any time when Parliament is not in session it shall appear to the Governor to be necessary in the public interest that an issue of public moneys should be made for a purpose not authorized by law or to meet an anticipated excess on an amount appropriated by law for any particular purpose when the excess cannot be met under the regulations made under subsection (4) of section *thirty-five* of this Act, the Governor may, by special warrant under his hand, authorize such issues as may be required from time to time for such purposes; provided that the total sum outstanding at any time of the issues made under the powers of this section

**Act No. 16  
of 1908.**

Conspiring to procure and inciting to the commission of offences.

**7. Any person who—**

(1) shall conspire with any other person to aid or procure the commission of any crime or offence ; or

(2) shall incite, instigate, command, counsel, or procure any other person to commit any crime or offence ;

shall be guilty of an offence and liable on conviction to the punishment prescribed by law for an attempt to commit such crime or offence.

Arson.

**8.** Any person who shall unlawfully and maliciously set fire to any building or structure shall be guilty of an offence and liable on conviction to imprisonment with hard labour for a period not exceeding ten years.

Framing of charges under Crimes Ordinance 1904.

**9.** In any charge or indictment for a contravention of section *four, five, six, or eight* of the Crimes Ordinance 1904 it shall not be necessary to allege the particular offence with intent to commit which any act or acts are alleged to have been done by the person charged or indicted, and any such person who is proved to have committed an act or acts falling within the terms of the section under which he is charged or indicted shall be deemed to have contravened such section, unless he can prove to the satisfaction of the court before which he is tried that he did such act or acts without the intention of committing any offence.

Malicious or negligent grass burning.

**10.** Article *two* of Law No. 2 of 1870 shall be and is hereby repealed, and the following provision substituted therefor

If any person (not being the owner or a person lawfully in occupation of land or acting under the authority of such owner or person) shall maliciously or negligently set fire to grass upon such land he shall be liable to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one year or to both such fine and imprisonment.

Custody of child under sixteen charged with crime.

**11.** Whenever any child under the age of sixteen years shall be charged with any crime or offence and either during his trial or within six months thereafter it shall appear to the court before which he is or has been tried or to a judge of the Supreme Court that the interests of such child would be best served by depriving his parents or guardians of his custody, the court or judge may order him to be removed from the

custody of his parents or guardians and placed under the custody of such other person and subject to such conditions as such court or judge may think fit, and the court or judge may at any time set aside or vary such order, or revive the same, after it has been set aside until such child shall have attained the age of twenty-one years.

12. Whenever any person shall be charged with any crime or offence and either during his trial or within one year thereafter it shall appear to the court before which he is or has been tried or to any judge of the Supreme Court that the interests of any child under the age of eighteen years, whose parent or guardian he is, would be best served by the removal of such child from the custody or control of such person, such court or judge may order that such child be removed from the custody and control of such person and be placed in the custody or under the control of such other person and subject to such conditions as such court or judge may think fit, and the same court or any judge of the Supreme Court may at any time set aside or vary such order, or revive the same, after it has been set aside, until such child shall have attained the age of twenty-one years.

Custody of child under the age of eighteen years whose parent or guardian has been charged with crime.

An order may be made under this section in respect of a child of a person convicted at any time before the coming into operation of this Act and still serving at the date of application for such order a sentence of imprisonment passed on such conviction.

\* 13. The Court by which any such order as is in section *nine* or *ten* of this Act mentioned is made may order the parent or guardian of the child the subject of such order to pay during the currency thereof either weekly or monthly to such person as the Court may direct such contribution towards the child's maintenance as may after enquiry appear reasonable, and may at any time set aside or vary such order or revive the same after it has been set aside. Any order made under this section shall have the effect of an ordinary judgment of the Court by which it is made.

Parent or guardian may be ordered to contribute towards child's maintenance.

14. The term "guardian" in sections *nine*, *ten*, and *eleven* shall include any person who has in law or in fact the custody or control of a child.

Guardian defined.

\* The references to sections *nine* and *ten* in this section should obviously be to sections *eleven* and *twelve*.

**Act No. 16  
of 1908.**

Title and  
date of  
operation  
of Act.

**15.** This Act may be cited for all purposes as the Criminal Law Amendment Act 1908 and shall not come into operation unless and until the Governor shall, by proclamation in the *Gazette*, have declared that it is His Majesty's pleasure not to disallow it, and thereafter it shall come into operation on such date as the Governor may, by like proclamation, declare.

ACT NO. 17 OF 1908.] [Came into operation 1st October, 1908.

**Act No. 17  
of 1908.**

AN  
**ACT**

**To provide for the Formation, Registration and Management of Co-operative Agricultural Societies.**

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

PRELIMINARY.

Interpreta-  
tion of terms.

**1.** In this Act, unless inconsistent with the context ;

“ board ” shall mean the board of directors of a co-operative agricultural society ;

“ co-operative agricultural society ” or “ society ” shall mean a society formed for all or any of the objects set forth in section *four* ;

“ model regulations ” shall mean the regulations set forth in the Schedule to this Act or such regulations as altered or added to under section *six* ;

“ Minister ” shall mean the Minister of Agriculture ;

“ registrar ” shall mean the officer to whom for the time being under section *two* of this Act, have been assigned by the Minister the powers and duties thereby conferred or imposed in relation to the registration of co-operative agricultural societies ;

“ regulations ” shall mean, in relation to a co-operative agricultural society, the regulations or any alterations thereof or additions thereto registered in accordance with this Act.



## CHAPTER I.

Act No. 17  
of 1908.

## FORMATION OF CO-OPERATIVE AGRICULTURAL SOCIETIES.

\*2. The Minister may from time to time assign to any officer in his department powers and duties in relation to the registration in accordance with this Act or any amendment thereof of co-operative agricultural societies, and such officer shall keep, in the form from time to time prescribed by the Minister, a register of co-operative agricultural societies and carry out such other powers and duties as the Minister may, subject to this Act or any amendment thereof, confer or impose upon him.

Appointment, powers, and duties of registrar of co-operative agricultural societies.

3. (1) Any number of persons (not being less than seven) may, if qualified under this Act for membership of a co-operative agricultural society, form such society on complying with the provisions hereinafter contained and subject to the right of veto hereinafter conferred upon the Minister.

Formation of co-operative agricultural societies and qualification for membership.

(2) Any person carrying on farming operations in this Colony shall be qualified to be a member of a co-operative agricultural society.

4. A co-operative agricultural society may, subject to the provisions of this Act, be formed for all or any of the following objects, namely, of—

Objects for which co-operative agricultural societies may be formed.

- (a) disposing of the agricultural produce and live stock of any of its members in the manner most profitable to the society; or
- (b) manufacturing or treating on joint account the agricultural produce of its members and of disposing, in the manner most profitable to the society, of the produce so manufactured or partly manufactured; or
- (c) initiating schemes of irrigation or water boring or of furthering and developing existing irrigation and water boring schemes; or
- (d) purchasing, hiring, or otherwise acquiring, and working on behalf of its members, agricultural implements or machinery; or
- (e) purchasing, hiring, or otherwise acquiring, and using and controlling on behalf of its members, breeding stock; or

\* For assignment of powers and duties see Govt. Notice 988 of 1908 (*Gazette*, 2nd Oct., 1908, p. 5).

**Act No. 17  
of 1908.**

- (*f*) purchasing or otherwise acquiring on behalf of and supplying to its members agricultural implements and machinery, stock, feeding stuffs, seeds, fruit trees, manure, and other farming requisites; or
- (*g*) commencing, acquiring, and carrying on supply stores under a co-operative system for disposing of and supplying agricultural produce or
- (*h*) commencing and carrying on insurance societies for its members under a co-operative system; or
- (*i*) acquiring and distributing information as to the best manner of carrying on farming operations profitably; or
- (*j*) acquiring by lease, purchase, or donation, and holding, any immovable property in the Colony for the better carrying on of any of the objects of the society; or
- (*k*) raising money on loan for any of the lawful objects of the society; or
- (*l*) any other lawful object which the Minister may from time to time permit for furthering the interests and development of agriculture in this Colony.

Application for registration of co-operative agricultural societies.

5. (1) Within one month after the formation of any co-operative agricultural society, or, in the case of a society formed before the date of the operation of this Act, within six weeks after such date, application shall be made to the registrar, in the form from time to time prescribed by the Minister, for the registration of such society under this Act.\*

(2) With such application there shall be transmitted the regulations of the society which has been formed, or, if no such regulations have been adopted, a copy of the model regulations.

(3) In the event of non-compliance with the provisions of sub-section (1) by any person or body of persons formed into a co-operative agricultural society, every such person and every member of such body shall be liable on conviction, for every day on which such non-compliance has continued, to a fine not exceeding five pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding three months.

\* For form of application see Govt. Notice 989 of 1908 (*Gazette*, 2nd Oct., 1908, p. 5).

(4) For the purposes of this section a society shall be deemed to have been formed if it carries on operations as a co-operative agricultural society, or uses as part of its name the word "co-operative" in conjunction with the term "agricultural society" or other term importing a similar meaning, or holds itself out in any manner as a co-operative agricultural society.

6. (1) Any society which it is proposed to register under this Act may adopt as its regulations all or any of the model regulations set forth in the Schedule to this Act.

Model regulations of Schedule may be adopted.

(2) Upon any registration under this Act of a society, in so far as any regulations tendered for registration are not inconsistent with or do not exclude or modify the model regulations, the model regulations shall form part of the regulations of that society in the same manner and to the same extent as if they were contained in the regulations tendered, and shall be registered as part of such regulations.

(3) The Minister may from time to time alter, add to, or rescind any of the model regulations and any such alteration or addition shall on publication in the *Gazette* have the same force and effect as if they had been in such Schedule contained; provided that no alteration of, addition to, or rescission of the model regulations shall apply to any society which has adopted the model regulations or registered regulations of which any of the model regulations form part, unless the alteration, addition, or rescission be adopted by the society in general meeting in accordance with the provisions of sections *nine* and *nineteen*.

(4) Every alteration of, addition to, or rescission of any of the model regulations shall be laid by the Minister on the Tables of both Houses of Parliament within seven days after the publication thereof in the *Gazette* if Parliament be then in session or, if it be not then in session, within seven days after the commencement of its next ensuing session.

7. (1) No society formed after the date of the operation of this Act shall be registered unless the members shall have first held a meeting at which there has been presented a written report stating—

Preliminary procedure prior to obtaining registration.

**Act No. 17  
of 1908.**

- (a) the objects of the society ;
- (b) a list of the promoters;
- (c) the business prospects of the society, and facts and statistics calculated to show that, when registered, it will be able to carry out its objects successfully ;
- (d) a copy of the regulations which it is proposed to tender for registration.

(2) If, after consideration of such report and the documents comprised or referred to therein, a majority of the meeting shall approve the same, the meeting shall proceed to select the directors of the society and a person qualified as prescribed in section *twenty-one* as its first auditor in accordance with the provisions of section *twelve* and the regulations of the society.

(3) A copy of any such report together with a list containing the names, addresses, and occupations of the existing members, shall be transmitted to the registrar when the application for registration is made.

Contents of regulations and registration of societies by registration of regulations.

**8.** (1) The registrar shall not register any society unless the regulations tendered with the application comply with and are in no way repugnant to or inconsistent with the provisions of this Act, nor until all other provisions of this Act in respect of registration have been complied with.

(2) The regulations shall be divided into paragraphs numbered consecutively and shall set forth (*inter alia*)—

- (a) the proposed name of the society with the word "co-operative" as part of its name ;
- (b) a correct and full description of the locality and premises where the office of the society is to be situate ;
- (c) the objects of the society ;
- (d) the period for which the society is to be established ;
- (e) the manner in which the capital of the society is to be raised or procured ;
- (f) the mode and conditions of admission to membership of the society and the circumstances permitting of resignation or justifying exclusion or expulsion therefrom and the rights and liabilities of members, resigned

members, expelled members, whether as between the society and themselves or between each other ;

(g) the number of directors of the society, and the powers and duties of directors and other officers ;

(h) the intervals between the holding of general meetings of the society (not exceeding in any case an interval of six months), the requisite notices of and procedure at meetings (including the particular rights of members in voting thereat and the manner of voting and the majority necessary for carrying any particular class of resolution) ;

(i) the mode of managing the funds of the society, of keeping and auditing its accounts, of the keeping of registers of members ;

and may provide for the settlement by arbitration of disputes arising between members or between the society and any member, resigned member, or expelled member.

(3) The regulations which it is proposed to register shall be tendered in duplicate to the registrar who shall submit the same to the Minister. The Minister may in his discretion veto the registration of any society, but if within a period of one month he shall not exercise his right of veto and if the provisions of this Act have been complied with, the registrar shall register the regulations, file one duplicate in his office and return the other with the date of registration endorsed thereon to the society.

(4) The regulations so tendered for registration shall be signed by not less than seven persons each of whose signatures shall be attested by at least one witness.

(5) A fee of one pound denoted by means of revenue stamps shall be payable to the registrar upon registration, and such stamps shall as soon as registration is approved by him, be affixed to the application for registration and defaced by the registrar.

(6) As soon as registration of a society has been so effected, the registrar shall transmit to the office of the society a certificate of registration, in the form prescribed by the Minister, which shall in all courts and places be conclusive evidence

**Act No. 17  
of 1908.**

of the facts stated therein. Upon receipt of such certificate such society shall be deemed for all purposes to be a co-operative agricultural society under this Act, and to have all the rights, powers, privileges, and duties by this Act or any amendment thereof, or the Land and Agricultural Bank Act 1907 or any amendment thereof, or by any other law conferred or imposed on co-operative agricultural societies and shall be thereupon entitled to commence or, if formed before the date of the operation of this Act, to continue operations, as a co-operative agricultural society.

Alteration of regulations.

**9.** (1) Any part of the regulations of a society may be altered from time to time by the members thereof in general meeting subject to the provisions of section *nineteen*.

(2) Every alteration of regulations so made shall, within one month thereafter, be tendered to the registrar for registration who shall, subject to a power which is hereby conferred upon the Minister of refusing to allow the alteration, register the same and thereupon the regulations of the society as originally registered shall be read subject to the alteration.

(3) The provisions of sub-sections (3), (4) and (5) of the last preceding section shall apply in respect of the registration of regulations so altered.

Liability of members.

**10.** It shall be a condition of membership of every society that all its members shall be jointly and severally liable for payment of the obligations of the society provided that the liability of the estate of any person who has died or any person who has resigned his membership or has been expelled from the society shall cease—

(a) in respect of any of its obligations incurred after his decease or after he has ceased to be a member ; and in all respects

(b) as soon as the financial statements of the society signed by its auditor as hereinafter provided discloses a credit balance in favour of the society.

Funds of the society.

**11.** (1) No society shall be required to have any fixed capital.

(2) The funds necessary for carrying on the operations of the society shall consist of—

(a) capital funds—including any loans raised by the society—any stock in trade of the society and any securities for loans advanced by the society to members ;

(b) revenue funds—including entrance fees of members, the reserve fund (if any) of the society and undistributed profits (if any) of the society.

(3) No part of the funds of any society shall be divided amongst its members by way of profit, bonus, dividend, or in any other manner than is authorized by its regulations in respect of credit balances due to members.

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## CHAPTER II.

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### MANAGEMENT OF CO-OPERATIVE AGRICULTURAL SOCIETIES.

12. (1) The operations of every society shall be managed and controlled by a board of directors consisting of not less than five nor more than seven of the members of the society who shall be elected at the annual general meeting thereof. Directors of societies.

(2) Subject to the provisions of this section the directors shall be elected in manner prescribed by the regulations of the society and subject to the next succeeding section shall hold office and retire as so prescribed.

(3) The directors shall hold meetings as often as may be necessary for properly conducting the business and operations of the society, but in no case at intervals exceeding one month, unless it has been impossible to obtain a quorum, in which case a meeting shall be held as soon as it is so possible.

(4) Three directors shall be the quorum of any meeting of directors.

(5) The directors shall, at the first meeting of the board held after the annual general meeting elect one of their number to be chairman until the next annual general meeting and if any vacancy occur during the year in the office of chairman it shall be filled as soon as a meeting of the board can be convened.

**Act No. 17** Vacation of  
**of 1908.** office by  
 Directors.

**13.** (1) A director shall vacate his office—

(a) if he become insolvent or assigns his estate for the benefit of or compounds with his creditors; or

(b) if he die or become of unsound mind, or is convicted of an offence and sentenced to any period of imprisonment without the option of a fine; or

(c) if he absents himself from four consecutive ordinary meetings of the board without its leave (and such leave shall not be granted for a period covering more than six consecutive ordinary meetings, unless the absence be on the business of the society); or

(d) he resigns his membership of the society or is lawfully expelled therefrom; or

(e) if he give one month's notice in writing to the board of his intention to resign office and his resignation be accepted by the board.

(2) Any vacancy so occurring shall be filled as prescribed by the regulations of the society.

Powers of  
 board of  
 directors.

**14.** (1) Subject to the provisions of sub-section (2) of this section, to the regulations of the society, and to any restrictions thereby imposed on the powers of the board or of the directors, the board shall have the same powers and be subject to the same obligations in respect of the society as if they had been conferred or imposed by a general meeting of the society, and every director acting upon a resolution of the board shall be deemed to be the agent of the society for all purposes within the scope of its objects.

(2) No loan shall be raised by the board involving a liability of the society exceeding the amount of one hundred pounds unless the same has been sanctioned by a general meeting of the society specially convened for the purpose of considering the proposal to raise such loan.

(3) Subject to his compliance with the provisions of this Act, no director shall be held liable to the society for any loss it may sustain unless the loss was due to his wilful misconduct or gross negligence.



15. Unless it is otherwise provided in the regulations of the society, the financial year shall be from the first day of July to the thirtieth day of June next ensuing, both days inclusive.

Financial  
year.

**Act No. 17  
of 1908.**

16. (1) A general meeting of every society shall be held within six weeks after the close of the society's financial year for the purpose of considering and dealing with the financial position and the balance sheet and statement of accounts of the society and for the election of directors and auditor and for general business. Such meeting shall be called the annual general meeting and shall be held at such convenient place and time as shall be prescribed by the board.

General  
meetings of  
societies.

(2) In addition to the annual general meeting the board, or any two directors jointly signing the notice, may by written notice convene a special general meeting of the society when the holding of such meeting appears necessary in the interests of the society, and the board shall convene such meeting if a requisition in writing signed by one-fifth of the members of the society be transmitted to the board.

(3) If within fourteen days after the transmission of such requisition a special meeting be not convened by the board, it may be convened by the requisitionists.

(4) The periods and forms of notice of annual and special general meetings of the society shall be as prescribed by the regulations of the society.

17. (1) The chairman of the directors, if present, shall, unless the meeting otherwise determine by resolution, be the chairman of any general meeting.

Procedure at  
general  
meetings of  
society.

(2) No item of business shall be transacted at any general meeting unless a quorum of members is present during the time when the meeting proceeds to consider that item.

(3) One-fifth of the members of the society shall be a quorum thereof; provided that a quorum shall in no case consist of less than five members.

(4) If within one hour from the time appointed for the meeting a quorum is not present, the

**Act No 17  
of 1908.**

Voting at  
meetings.

meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present within one hour from such time, the members present shall constitute a quorum.

**18.** (1) Save as is otherwise provided in this Act or the regulations of the society every question for decision by a general meeting shall be determined by the majority of members present thereat, and on a show of hands unless a poll be demanded by at least five members.

(2) The declaration by the chairman that a question to be so decided has been carried, or carried unanimously, or by a particular majority, or lost and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(3) A poll, if demanded, shall be taken forthwith but in the manner prescribed by the regulations of the society.

(4) The chairman of the meeting shall, in addition to his deliberative vote, have also a casting vote in the case of an equality of votes, whether on a show of hands or on a poll, unless it is otherwise provided by the regulations of the society.

Special provision as to alteration of regulations, etc.

**19.** Notwithstanding anything in section *seventeen* or *eighteen* or in the regulations of a society contained—

(a) no loan involving a liability of the society exceeding one hundred pounds shall be raised and no alteration of its regulations shall be made unless the loan or alteration (as the case may be) has been approved by two-thirds of members of the society; and

(b) no alteration of the regulations affecting the reserve fund of the society shall be made, unless approved by five-sixths of the members;

and in every such case the question of such loan or alteration shall not be considered except at a special meeting convened for that purpose and at which all votes are recorded in person. If

an insufficient number of members be present or, a sufficient number being present, an insufficient number vote at the meeting, it shall be adjourned to a date and place to be fixed by two-thirds of the members present, and the meeting shall be constituted in the manner hereinbefore in this section stated.

20. (1) Minutes of the proceedings at all general meetings and of every meeting of the board shall be regularly entered in separate books kept for the purpose and containing proper tabulated details of the business conducted at the meeting.

Minutes of general meetings of society and meetings of directors to be kept.

(2) The minutes and proceedings of each meeting shall be submitted at the next ensuing meeting and, if passed thereat as correct, shall be confirmed by the chairman thereof and shall thereupon without further proof be *prima facie* evidence in all courts and places of the proceedings of the meeting of which they purport to be minutes.

(3) Every such minute book shall be kept at the office of the society and shall be open to inspection of any person authorized thereto in writing by the Minister.

21. (1) Every society shall at each annual general meeting appoint a person who publicly carries on the business of an accountant as the auditor of its accounts for the current financial year. The retiring auditor shall be eligible for re-election.

Auditor of society.

(2) If an appointment of such person as auditor be not made at that meeting, the Minister on the application of any member of the society may appoint an auditor qualified as aforesaid to hold office till he has audited the accounts of that year.

(3) The Minister may at any time appoint an auditor or auditors to investigate and report upon the books, accounts and affairs of any society.

(4) A director or officer of the society shall not be capable of being appointed its auditor.

(5) A casual vacancy in the office of auditor may be filled by the directors by appointing a person qualified as aforesaid to hold office till the audit of the accounts of that year is completed.

**Act No. 17  
of 1908.**

(6) The remuneration of the auditor shall be fixed by the society in general meeting; provided that—

(a) the Minister may fix the remuneration of an auditor appointed under sub-section (2), and

(b) the directors may fix the remuneration of an auditor appointed under sub-section (5).

All such remuneration shall be payable out of the revenues of the society.

(7) Every auditor appointed under this section shall have a right of access to the books, accounts, and vouchers of the society and may require from its directors and other officers such information as may be necessary for the performance of his duties as auditor.

(8) In making any report to the members of the society or in signing the statements mentioned in the next succeeding section the auditor shall state—

(a) whether he has obtained the information and explanation required by him; and

(b) whether in his opinion the statements are properly drawn up so as to exhibit a true and correct view of the financial position of the society according to the information at his disposal and explanations given to him and as shown by the books of the society.

Preparation and publication periodically of financial statements of the position of the society.

**22.** (1) Not less than three weeks before the date fixed for the annual general meeting the board shall prepare the balance sheet and profit and loss account and a financial statement made up to the close of the previous financial year of the Society in such form as shall be prescribed by the Minister.

(2) Such balance sheet profit and loss account and financial statement signed by a majority of directors and by the auditor of the society, if approved by him after examination of the accounts of the society, shall be transmitted to each member of the society with the notice of such general meeting or in the alternative if it be so provided by the regulations of the society, such statements shall be open to inspection of members at its offices for a period to be fixed by those regulations.

(3) Such balance sheet account and statement aforesaid signed as aforesaid shall further be published in a newspaper circulating in the district in which the society's office is situate.

(4) Such balance sheet account and statement aforesaid signed as aforesaid shall further be transmitted to the Minister who may in any case he deems advisable submit the same for report to any auditor nominated by him.

**23.** (1) Every society shall keep at its office and open to inspection at all reasonable hours—

(a) a complete list of its members showing the name, address, and occupation of each member; and

(b) a correct copy of its regulations with any alterations therein made and registered under this Act; and

(c) a list of the directors showing the name, address and occupation of each director.

~~(2) A copy of each such list made up to the last days of the months of March, June, September and December showing which members have during the previous three months been admitted as members and a list of persons who have resigned their membership or been expelled therefrom during the same period shall be transmitted by the board to the registrar within fourteen days after the expiry of each such period.~~

Keeping of lists of members, etc., and transmission of same to registrar periodically.

### CHAPTER III.

#### DISSOLUTION OF CO-OPERATIVE AGRICULTURAL SOCIETIES.

**24.** (1) A society may be dissolved—

(a) by resolution of a special general meeting called for the purpose passed by two-thirds of the members of the society such members being personally present; and in such event any person or persons may at such meeting be appointed to wind up the affairs of the society, or if no such persons are appointed, the directors shall wind up the affairs of the society;

(b) on the order of the Supreme Court or a judge thereof or of any circuit court having

Circumstances under which societies may be dissolved.

**Act No. 17  
of 1908.**

jurisdiction in the district where the society's office is situate, provided application be made for dissolution by a person who would if such society were a company registered in this Colony under the law for the time being regulating the registration and winding up of registered companies have been entitled to obtain an order for the compulsory winding up of companies.

(2) If the society is dissolved under paragraph (a) of sub-section (1) after all the liabilities and obligations present or contingent of the society have been discharged the surplus (if any) including the reserve fund (if any) shall be distributed among existing members in proportion to the aggregate of the sale moneys on account of each member by the society during the last preceding three years or, if the society has not existed for such period, during the existence of the society.

(3) If the society is dissolved under paragraph (b) of sub-section (1) the court exercising jurisdiction to dissolve may in its discretion apply any provision of the law for the time being in force regulating the winding up of registered companies as if the society were a registered company, and if any assets remain over after satisfying the liabilities and obligations of the society, and the costs of the dissolution the same shall be distributed in accordance with the provisions of sub-section (2) of this section.

(4) A society shall be dissolved without any such resolution thereof or order of court when the number of its qualified members is reduced below seven or when the period (if any) fixed for the duration of the society by its regulation expires, or whenever any event occurs upon the occurrence of which the regulations provide that the society is to be dissolved.

Upon such dissolution the provisions of paragraph (a) of sub-section (1) of this section shall apply without prejudice however to any application to court that may be made under paragraph (b) of such sub-section and if such application be made the provisions of sub-section (3) shall apply.

**25.** Whenever a society has been dissolved under the last preceding section the directors thereof shall if the dissolution be by resolution or under sub-section (4) or if the dissolution be by the court the officer registering orders of such court shall within fourteen days of the dissolution give notice thereof to the registrar who shall thereupon remove the name of the society from his register of societies.

Removal of dissolved societies from register.

**Act No. 17 of 1908.**

## CHAPTER IV.

### MISCELLANEOUS.

**26.** Notwithstanding anything in the Revenue Licenses Ordinance 1905 or any bye-law or regulation in force within a local authority's jurisdiction, it shall not be obligatory upon any society to obtain a license to trade or carry on business in so far as the trade or business carried on is exclusively with the members of the society or in so far as the goods sold by it are the agricultural produce of this Colony or to deposit with the Colonial Treasurer the securities required by Law No. 8 of 1898.

Exemption of societies from obligation to obtain trading licenses in certain respects.

**27.** If a society continues to carry on its operations when the number of its members (qualified to be members in accordance with section *three*) is reduced below seven, for a period of one month after the number is so reduced, every person who is a member of the society during the time that it continues to carry on its operations after such period, and is cognisant of the fact that it is so carrying on its operations with less than seven qualified members shall be liable to a fine of five pounds for every day during which the operations are so carried on and shall further be severally liable to satisfy all the obligations of the society incurred during such time, and may be sued for the same without any other member being joined in the action.

Penalty if society continues operations after number reduced below seven.

**28.** If any person shall wilfully make in any return, report, financial statement or balance sheet or other document required for the purposes of this Act, a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and liable on conviction to a fine

Penalties for wilful false statements in documents required by this Act.

**Act No. 17  
of 1908.**

not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one year, or to such period of imprisonment without the option of a fine.

Penalty on director or officer accepting commissions, etc.

**29.** Any director or officer of a society who shall accept any commission, fee or reward, whether pecuniary or otherwise, from any person for or in connection with a transaction of such person with the society shall be guilty of an offence and liable on conviction to the penalties mentioned in the last preceding section, and shall further be liable to make good to the society double the value or amount of such commission fee, or reward.

Penalty for contravention for which no penalty expressly provided.

**30.** Any person who shall, where no penalty is expressly provided, fail to comply with any requirement of this Act within the time or in the manner thereby prescribed or commit any other contravention thereof, shall be liable on conviction to a fine not exceeding twenty-five pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding three months.

Legal proceedings by or against society.

**31.** (1) All legal proceedings by or against any society shall be instituted or taken in the name of the society.

(2) If judgment has been obtained against the society and such judgment is not within three months thereafter satisfied the plaintiff may proceed against all members or any member of such society in respect of such liability.

(3) Save as aforesaid no legal proceedings shall lie against a member of a society individually in respect of an obligation of the society.

Registration and vesting of property of societies.

**32.** (1) Any immovable property acquired and held by a society under this Act or its regulations may be registered in the name of the society without reference to the names of the members thereof.

(2) All movable property acquired and held by the society shall be deemed in all legal proceedings, civil or criminal, to be vested in the society.



33. This Act may be cited for all purposes as the Co-operative Agricultural Societies Act 1908, and shall come into operation on a date to be fixed by proclamation of the Governor in the *Gazette*.\* Title and date of operation of Act. **Act No. 17 of 1908.**

**Schedule.**

A.

MODEL REGULATIONS FOR CO-OPERATIVE AGRICULTURAL SOCIETIES.

NAME.

1. The name of the Society is.....

OFFICE.

2. The office of the Society will be situate at.....

OBJECTS.

3. The objects of the Society are  
(a) to dispose of the produce of the members in the most profitable manner; and  
(b) to supply the members with the necessary implements, seeds, artificial manures, etc., and generally to promote the interests of the members.

TIME OF ESTABLISHMENT.

4. The Society shall be established for a period of.....years which period may be extended from time to time.

CAPITAL.

5. The capital of the Society shall consist of  
(1) entrance fees paid by members, reserve funds and credit balances due to members;  
(2) loans on the following security:—  
(a) The members to jointly and severally guarantee the Society's obligations.  
(b) Any stock in trade of the Society.

FINANCIAL YEAR.

6. The financial year of the Society shall be reckoned from the.....  
.....to the.....

MEMBERSHIP.

*Entrance.*

7. *Bona fide* farmers of European descent may become members by application to the board of directors.

8. The board of directors has the right to accept applicants for membership on the basis of these regulations or to reject such applicants without assigning any reasons for doing so.

9. Every member must at time of entrance sign his name in the members' book, and by his signature bind himself to the existing regulations, and to any additional regulations or alterations to regulations which may be lawfully made from time to time without any notice whatever from the Society being required.

10. The entrance fee for members will be fixed at the ordinary general meeting to be held in.....This entrance fee will be added to the reserve fund.

11. The widow of a deceased member may, subject to the approval of the directors, become a member in place of the deceased and take over his rights and obligations, or the heirs shall be entitled to receive.....per cent. of the deceased's interest in the Society, the balance to be added to the reserve fund.

\* See Proc. 84 Admn. 1908 (*Gazette*, 25th Sept., 1908, p. 1114), fixing date of coming into operation of Act as the 1st Oct., 1908.

**Act No. 17  
of 1908.****RESIGNATION.**

12. A member may resign at the end of a financial year, provided he has given the secretary three months' prior notice in writing. The acknowledgment of such notice of resignation must be made in writing by the secretary, with as little delay as possible.

13. A member can be expelled from the Society by a majority of two-thirds of the members present and voting at a special general meeting called for the purpose.

14. Resigned or expelled members have no claim on the reserve fund or other property of the Society.

**DIRECTORS.**

15. The board of directors shall consist of.....members to be elected for a period of..... At each annual general meeting .....directors, whose names shall be determined by ballot, shall retire. Retiring directors may be re-elected. Any vacancies shall be filled by the remaining directors until a general meeting can be called for the purpose.

16. The directors shall act in the name of the Society and they shall exercise, within the limits of these regulations, the same power as if they had been determined at a general meeting. The directors shall report and account for all their transactions at each general meeting and special general meeting when called upon so to do.

17. The directors shall meet as often as is necessary, at least once a month, and their positions shall be honorary, but travelling and out-of-pocket expenses shall be refunded when they are travelling on duty.

18. The directors may engage a sufficient staff to carry on the work of the Society, and by contracts fix their salaries and determine the work to be carried out by the employees. They also have the right of suspension and dismissal.

19. The directors shall see that proper books are used and kept up to date, and also look after the property of the Society.

20. The directors shall open a banking account, into which all money received shall be deposited as soon as feasible after receipt. All cheques must be signed by the chairman, or in his absence by the....., and countersigned by the secretary.

**GENERAL MEETINGS.**

21. An annual general meeting of members shall be held within six weeks after the close of the Society's financial year to transact the business mentioned in sections *sixteen* and *twenty-two* of the Act.

22. All questions submitted to a meeting shall be decided by a majority of votes except where otherwise provided by these regulations.

23. In addition to the business prescribed by law the agenda of the annual meeting shall include —

- (a) a general report by the directors ;
- (b) the discussion of complaints that may arise from members ;
- (c) the discussion of any proposal that may be made ;
- (d) the payment of members' credit balances.

24. No alteration of the present regulations shall be made except at a meeting specially called for the purpose. If a quorum be not present at such meeting the provisions of section *seventeen* of the Act shall apply.

25. All meetings shall be convened by notice posted to members at their addresses fourteen days at least before the day appointed for the meeting.

**SPECIAL GENERAL MEETINGS.**

26. A special general meeting can be called at any time on a requisition being sent to the directors, signed by one-fifth of the members of the Society.

27. The board of directors or any two of them can also call a special general meeting at any time they think fit.

28. In each case the same notice should be given as in the case of an ordinary general meeting.

REGULATIONS REGARDING SUPPLY OF PRODUCE.

29. Every member shall bind himself to sell the whole of his produce, viz.,.....through the Society, with the exception of what he requires for his own consumption.

30. The members must inform the directors of the Society, in writing, of the kind, quality and quantity of their harvest immediately after reaping. The directors will then, with as little delay as possible, inform the members where and within which time their produce must be supplied.

31. All produce will be received according to regulation 30, and graded, provided it is of good order and condition.

32. All products shall, whenever possible, be sold according to weight.

33. If a crop of a member be damaged or destroyed, through circumstances beyond his control, so that he cannot fulfil his engagements towards the Society, he will be relieved of his obligations in respect of such crop if he instantly advises the directors to that effect. If, however, he omits to supply without such reason, he shall be responsible for any loss and damage the Society might sustain through his omission.

REGULATIONS REGARDING SUPPLY OF FARMING IMPLEMENTS,  
SEEDS, ARTIFICIAL MANURES, ETC.

34. Every member shall bind himself to buy all his requirements of the above articles through the Society, when the Society is in a position to supply.

35. The Society shall supply the above articles at cost price, plus a certain percentage to cover expenses.

36. Any surplus will be divided according to regulation....., but buying and selling accounts will be kept separately.

REGULATIONS OF PAYMENT TO MEMBERS.

37. Members may receive an advance up to.....per cent. on their produce other than perishables at the time of delivery.

38. The credit balance of each member will be paid, less..... per cent. on the whole amount, to cover expenses at the end of the financial year on the basis of an average price, provided the goods are sold.

*Or* (alternative clause)

The credit balance of each member will be paid, less.....per cent. on the whole amount, to cover expenses as soon as the goods are sold.

39. After having deducted all the expenses of the Society, and after having got a sufficient working capital, the amount of which is to be fixed by the general meeting, the surplus will be divided amongst the members according to the turnover of each member during the financial year.

GENERAL REGULATIONS.

40. Any person who has charge of any money, or other property, of the Society shall give such security as the directors require.

41. All communications to the Society should be addressed to the secretary.

42. Only members can supply and receive goods through the Society.

43. All business transactions of the Society must be cash or against proper security.

44. The Society shall insure itself against damages which may be due to members for loss sustained by members' goods being left on the Society's premises, and also keep its own property insured against fire at their full value.

45.....per cent. depreciation must be written off on all property of the Society every year.

46. Should any dispute arise with regard to the regulations of the Society which cannot be amicably adjusted a special general meeting will be called, and three members elected as arbitrators. The decision of the arbitrators is final and cannot be appealed against.

DISSOLUTION OF THE SOCIETY.

47. The Society may be dissolved by a resolution of a special general meeting called for the purpose passed by two-thirds of the members of the Society such members being personally present.

48. In case of dissolution, the debts of the Society will be paid off and other engagements fulfilled. The surplus, including the reserve fund, will then be distributed amongst the members according to the turnover of each member during the last three years. In case of any deficiency such must be borne equally by the members.

Act No. 17  
of 1908.

*B.*  
MODEL REGULATIONS FOR CO-OPERATIVE CREAMERIES.

NAME.

1. The name of the Society is .....  
Co-operative Creamery.

OFFICE.

2. The office of the Society will be situate at.....

OBJECTS.

3. The objects of the Society are
- (1) to establish a creamery to work, on joint account, the milk and cream supplied by the members ;
  - (2) to collect eggs from members ;
  - (3) to sell the manufactured or unmanufactured product in the most profitable manner ;
  - (4) to establish a piggery, if deemed desirable.

TIME OF ESTABLISHMENT.

4. The creamery shall be established for.....years.

CAPITAL.

5. The capital of the Society shall consist of
- (1) members' entrance fees, reserve fund, and credit balances not distributed
  - (2) loans raised either from the Land Bank on members' joint and several guarantee and a mortgage on the property of the Society or through the issue of debentures at a fixed interest.

FINANCIAL YEAR.

6. The financial year of the Society shall be reckoned from the..... to the.....

MEMBERSHIP.

7. Membership is personal, and only *bona fide* farmers of European descent may become members.

8. Any new member wishing to join must send a written application to the board of directors stating the number of milk cows in his possession. The board of directors will, at their next meeting, decide whether membership may be granted.

9. Every member must, at time of entrance, sign his name in the members' book, and, by his signature, be bound by the existing regulations, and any additional regulations and alterations to the regulations which may be lawfully made from time to time without any notice whatever from the Society.

10. The entrance fee for a member will be.....for each cow. The conditions on which new members will be admitted will, however, be decided upon in each year at the ordinary general meetings in.....

11. A widow of a deceased member may, subject to the approval of the directors, become a member in the place of the deceased, and take over his rights and obligations.

RESIGNATION.

12. A member may resign at the end of the financial year provided he has given the secretary three months' notice in writing. The acknowledgment of such notice of resignation must be made in writing by the secretary with as little delay as possible.

13. A member can be expelled from the Society by a majority of two-thirds of the members present and voting at a special general meeting called for the purpose.

14. Resigned or expelled members have no claim on the reserved fund or other property of the Society.

DIRECTORS.

15. The board of directors shall consist of.....members, to be elected for a period of..... At each annual general meeting..... directors, whose names shall be determined by ballot, shall retire. Retiring directors may be re-elected.

16. In case of resignation of directors, the vacancy or vacancies shall be filled by the directors until a general meeting can be called for the purpose.

17. The board of directors will act in the name of the Society, and their transactions, within the limit of these regulations, shall have the same power as if they had been resolved at a general meeting. The directors will, however, have to report and account for their transactions before each general meeting or special general meeting called for the purpose.

18. The directors shall meet as often as is necessary at least once a month, and their positions shall be honorary, but travelling and out-of-pocket expenses shall be refunded when travelling on duty.

19. The directors may engage a sufficient staff to carry on the work of the Society, and, by contracts, fix their salaries and determine the work to be carried out by the employees. They also have the right of suspension and dismissal.

20. The directors shall see that proper books are used and kept up to date, and also look after the property of the Society.

21. The directors shall open a banking account into which all moneys received shall be deposited as soon as feasible after receipt. All cheques must be signed by the chairman, or, in his absence, by ....., and countersigned by the secretary.

22. The board of directors have the right to investigate and check, and if required, correct the statement of members required according to ....., and also, if an offence be repeated, to fine the member with a sum not exceeding 5s. per cow. Such fines will be added to the reserve fund.

GENERAL MEETINGS.

23. An annual general meeting of members shall be held within six weeks after the close of the Society's financial year to transact the business mentioned in sections *sixteen* and *twenty-two* of the Act.

24. All questions submitted to a meeting shall be decided by a majority of votes except where otherwise provided by these regulations.

25. In addition to the business prescribed by law the agenda of the annual meeting shall include—

- (a) a general report by the directors ;
- (b) the discussion of complaints that may arise from members ;
- (c) the discussion of any proposal that may be made ;
- (d) the payment of members' credit balances.

26. No alteration of the present regulations shall be made except at a meeting specially called for the purpose. If a quorum be not present at such meeting the provisions of section *seventeen* of the Act shall apply.

27. All meetings shall be convened by notice posted to members at their addresses fourteen days at least before the day appointed for the meeting.

SPECIAL GENERAL MEETING.

28. A special general meeting must be called at any time on requisition being sent to the directors, signed by one-fifth of the members of the Society.

29. The board of directors or any two of them can also call a special general meeting at any time they think fit.

30. In each case the same notice must be given as in the case of an ordinary general meeting.

REGULATIONS REGARDING THE SUPPLY OF MILK, EGGS, ETC.

31. Each member shall bind himself to supply the whole of his production of eggs and milk or cream as may be arranged, with the exception of what he requires for his own consumption.

32. Every member must, every year, state to the board of directors, before the....., the number of milk cows he possesses. If this number exceeds the number for which he has paid an entrance fee, an additional fee, which has to be fixed at the general meeting, will be charged per additional cow.

33. The milk supplied by the members must, as far as possible, be treated as described in the leaflet on "Milk Treatment," to be obtained from the Government Printer, P.O. Box 373, Pretoria.

**Act No. 17  
of 1908.**

34. An officer of the Society under the supervision of the board of directors shall carry out the checking and testing of milk supplied to the Society. Such tests shall be introduced as may be deemed desirable by the board of directors.

35. Milk will be paid for according to weight and fat percentage, on the basis of the Gerber test.

36. Eggs will be paid for by weight, and only fresh eggs will be accepted.

**REGULATIONS OF PAYMENT TO MEMBERS.**

37. The members may receive at the beginning of every month an advance up to.....per cent. of the probable value of the milk supplied to the creamery during the previous month.

38. The balance, after the *pro rata* expenses have been deducted, will be paid to members at the end of the financial year.

39. In case of anybody resigning after the expiration of ten years or dying or removing outside the district within this time, .....per cent. of his interest in the dairy will be repaid, the rest going to the reserve fund of the Society.

**GENERAL REGULATIONS.**

40. Any person who has charge of any money, or other property of the Society, shall give such security as the directors may require.

41. All communications to the Society must be addressed to the secretary.

42. Only members can supply to the creamery, and same are understood to be owners according to the number of cows they may possess and have paid entrance fee for.

43. All business transactions of the Society shall be cash or against proper security.

44. All goods the property of the Society must always be kept insured against fire at their full value.

45. ....per cent. depreciation must be written off on all machinery and plant every year.

46. ....per cent. amortisation must be written off on any loan every year.

47. Should any dispute arise with regard to the regulations of the Society which cannot be amicably adjusted, a special general meeting will be called and three members elected as arbitrators. The decision of the arbitrators is final and cannot be appealed against.

**DISSOLUTION OF THE SOCIETY.**

48. The Society may be dissolved by a resolution of a special general meeting called for the purpose passed by two-thirds of the members of the Society, such members being personally present.

49. In case of dissolution, the debts of the Society will be paid off and other engagements fulfilled. The surplus, including the reserve fund, will then be distributed amongst the members according to the turnover during the last three years. In case of any deficiency such must be borne equally by the members.

**C.**

**MODEL REGULATIONS FOR FRUIT GROWERS' CO-OPERATIVE ASSOCIATIONS.**

**NAME.**

1. The name of the Association is .....

**OFFICE.**

2. The office of the Association will be situate at.....

**OBJECTS.**

3. The objects of the Association are

- (a) to dispose of the products of the members in the most profitable manner, and
- (b) to supply the members with the necessary implements, seeds, artificial manures, etc., and generally to promote the interests of the members.

TIME OF ESTABLISHMENT.

4. The Association will be established for a period of.....years.

CAPITAL.

5. The capital of the Association shall consist of

(1) Entrance Fees paid by members, reserve funds, and credit balances not distributed.

(2) Loans on the following security :—

(a) The members to jointly and severally guarantee the Association's obligations.

(b) Any stock-in-trade of the Association.

FINANCIAL YEAR.

6. The financial year of the Association shall be reckoned from the .....to the.....

MEMBERSHIP.

*Entrance.*

7. *Bona fide* farmers of European descent may become members by application to the board of directors.

8. The board of directors has the right to accept or reject applicants for membership on the basis of these regulations.

9. Every member must at time of entrance sign his name in the members' book, and by his signature bind himself to the existing regulations, and to any additional regulations or alterations to regulations which may be lawfully made from time to time without any notice whatever from the Association being required.

10. The entrance fee for members will be fixed at the ordinary general meeting to be held in..... This entrance fee will be added to the reserve fund.

11. The widow of a deceased member may, subject to the approval of the directors, become a member in place of the deceased, and take over his rights and obligations, or the heirs be entitled to receive.....per cent. of the deceased's interest in the Association, the balance to be added to the reserve fund.

RESIGNATION.

12. A member may resign at the end of a financial year, provided he has given the secretary three months' prior notice in writing. The acknowledgment of such notice of resignation must be made in writing by the secretary, with as little delay as possible.

13. A member can be expelled from the Association by a majority of two-thirds of the members present and voting at a special general meeting called for the purpose.

14. Resigned or expelled members have no claim on the reserve fund or other property of the Association.

DIRECTORS.

15. The board of directors shall consist of.....members to be elected for a period of..... At each annual general meeting.....directors, whose names shall be determined by ballot, shall retire. Retiring directors may be re-elected. Any vacancies shall be filled by the remaining directors until a general meeting can be called for the purpose.

16. The directors shall act in the name of the Society and they shall exercise, within the limits of these regulations, the same power as if they had been determined at a general meeting. The directors shall report and account for all their transactions at each general meeting and special general meeting when called upon so to do.

17. The directors shall meet as often as is necessary at least once a month, and their positions shall be honorary, but travelling and out-of-pocket expenses shall be refunded when travelling on duty.

18. The directors may engage a sufficient staff to carry on the work of the Association, and by contracts fix their salaries and determine the work to be carried out by the employees. They also have the right of suspension and dismissal.

**Act No. 17  
of 1908.**

19. The directors shall see that proper books are kept up to date and also look after the property of the Association.

20. The directors shall open a banking account, into which all money received shall be deposited as soon as feasible after receipt. All cheques must be signed by the chairman, or in his absence by....., and countersigned by the secretary.

**GENERAL MEETINGS.**

21. An annual general meeting of members shall be held within six weeks after the close of the Society's financial year to transact the business mentioned in sections *sixteen* and *twenty-two* of the Act.

22. All questions submitted to a meeting shall be decided by a majority of votes except where otherwise provided by these regulations.

23. In addition to the business prescribed by law the agenda of the annual meeting shall include—

- (a) a general report by the directors;
- (b) the discussion of complaints that may arise from members;
- (c) the discussion of any proposal that may be made;
- (d) the payment of members' credit balances.

24. No alteration of the present regulations shall be made except at a meeting specially called for the purpose. If a quorum be not present at such meeting the provisions of section *seventeen* of the Act shall apply.

25. All meetings shall be convened by notice posted to members at their addresses fourteen days at least before the day appointed for the meeting.

**SPECIAL GENERAL MEETINGS.**

26. A special general meeting can be called at any time on a requisition being sent to the directors signed by one-fifth of the members of the Association.

27. The board of directors can also call a special general meeting at any time they think fit.

28. In each case the same notice should be given as in the case of an ordinary general meeting.

**REGULATIONS REGARDING SUPPLY OF PRODUCTS.**

29. Every member shall bind himself to sell the whole of his citrus fruit crop, viz., oranges, naartjes, etc., through the Association, with the exception of what he requires for his own consumption.

30. The members must every year before the.....of....., state in writing to the board of directors the approximate size and kind of their forthcoming crop. The directors will then, with as little delay as possible, inform the members where and within which time the products must be supplied and also in which quantities.

31. All produce will be received according to regulation 29 and graded, provided it is of good order and condition.

32. If a crop of a member be damaged or destroyed, through circumstances beyond his control so that he cannot fulfil his engagements towards the Association, he will be relieved of his obligations in respect of such crop if he instantly advises the directors to that effect. If, however, he omits to supply without such reason, he shall be responsible for any loss and damage the Association might sustain through his omission.

**REGULATIONS REGARDING SUPPLY OF IMPLEMENTS, SEEDS, ARTIFICIAL MANURES, ETC.**

33. Every member shall bind himself to buy all his requirements of the above articles through the Association, when the Association is in a position to supply.

34. The Association shall supply the above articles at cost price, plus a certain percentage to cover expenses.

35. Any surplus will be divided according to regulation....., but buying and selling accounts will be kept separately.

**REGULATIONS OF PAYMENTS TO MEMBERS.**

36. A member may receive an advance of.....per cent. at time of delivery, and later on, when the crop has been sold, the directors shall be at liberty to grant a further advance, not exceeding a total of.....per cent.



37. The credit balance of each member will be paid less.....per cent. on the whole amount to cover expenses, as soon as the whole crop is sold, on the basis of an average price. **Act No. 17 of 1908.**

38. After having deducted all expenses of the Association, and after having got a sufficient working capital, the amount of which is to be fixed by the general meeting, the surplus will be divided amongst the members according to the turnover of each member during the financial year.

GENERAL REGULATIONS.

39. Any person who has charge of any money, or other property, of the Association shall give such security as the directors require.

40. All communications to the Association should be addressed to the secretary.

41. Only members can supply and receive goods through the Association.

42. All business transactions of the Association must be cash or against proper security.

43. The Association shall insure itself against damages which may be due to members for loss sustained by members' goods being left on the Association's premises, and also keep its own property insured against fire at their full value.

44. ....per cent. depreciation must be written off on all property of the Society every year.

45. Should any dispute arise with regard to the regulations of the Association, which cannot be amicably adjusted, a special general meeting will be called and three members elected as arbitrators. The decision of the arbitrators is final and cannot be appealed against.

DISSOLUTION OF THE ASSOCIATION.

46. The Society may be dissolved by resolution of a special general meeting called for the purpose passed by two-thirds of the members of the Society such members being personally present.

47. In case of dissolution, the debts of the Association will be paid off and other engagements fulfilled. The surplus, including the reserve fund, will then be distributed amongst the members according to the turnover of each member during the last three years. In case of any deficiency such must be borne equally by the members.

ACT NO. 18 OF 1908.] [Came into operation 28th August, 1908.

AN  
**ACT**

**Act No. 18  
of 1908.**

**To provide for the application of surplus Public Revenues to the redemption of Debentures of the Franco-Belgian Northern Railway Company of the South African Republic (otherwise known as the Sefati Railway Company) and for other purposes relating to the Public Revenues of the Colony.**

*(Assented to 22nd August, 1908.)*

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

**1.** In this Act the terms "financial year", Interpretation "public revenues" and "Governor" shall have of terms. the same meanings respectively as are assigned to them in and for the purposes of the Audit and Exchequer Act, 1907.

**Act No. 18  
of 1908.**

Application of  
surplus public  
revenues to  
purchase or  
redemption of  
Selati  
Railway  
Debentures.

2. In addition to the powers conferred by the Selati Railway Debentures Redemption Ordinance 1905 of purchasing and redeeming the debentures therein mentioned out of moneys accruing to the Crown under the Precious Stones Ordinance 1903, the Governor shall be and is hereby authorized to apply from time to time, towards the purchase or redemption of any such debentures, any public revenues, other than public revenues appropriated by Parliament and required for the services of any financial year; provided that the purchase or redemption price of such debentures shall not exceed ninety-six pounds for each debenture of one hundred pounds.

Abolition of  
erf tax in  
Pretoria.

3. The tax payable under article *five* of Law No. 4 of 1899 in respect of erven or portions thereof situate within the Municipality of Pretoria shall be abolished as from the first day of January 1909.

Repeal of  
Law No. 11  
of 1896.

4. Law No. 11 of 1896 shall be and is hereby repealed and after the coming into operation of this Act land taxes payable under the laws of this Colony shall be a debt due to the Crown and recoverable by action in any competent court. The said taxes shall be due and payable on or before the first day of July in each year.

Title and  
date of  
operation of  
Act.

5. This Act may be cited for all purposes as the Finance Act 1908 and shall come into operation on the date of its first publication as an Act in the *Gazette*.\*

~~Act~~ No. 19 OF 1908.] [See section 69 as to date of operation.

AN  
**ACT**

**To provide for the Organization of and Discipline in the Public Service of this Colony and to regulate the Retiring Pensions of Officers therein (other than Officers described in the Pensions Ordinance 1906) and for other purposes.**

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

\* This date was the 28th Aug., 1908.

## PRELIMINARY.

Act No. 19  
of 1908.

1. In this Act unless inconsistent with the context ; Interpretation of terms.

“appointment” shall mean an appointment to an office or post in the Public Service ;

“commencement of this Act” shall mean the date on which this Act came into operation ;

“general revenue” shall mean the consolidated revenue fund described in the Transvaal Constitution Letters Patent 1906, or, if the context so requires, the public revenue of the Colonial Government in existence prior to the taking effect of such Letters Patent ;

“Governor” shall mean the officer for the time being administering the Government of this Colony acting by and with the advice of the Executive Council thereof ;

“incremental pay” shall mean salary rising by fixed amounts in accordance with grades and scales prescribed by regulation ;

“Minister” or “Minister concerned” shall mean, in relation to any officer, or in relation to a person claiming a pension under this Act, the Minister responsible for the department in which the officer is employed, or (as the case may be) in which such person holds or has held an appointment ;

“officer” shall mean a person employed in the Public Service other than—

(a) a Minister ;

(b) the Agent-General ;

(c) a Judge of the Supreme Court or a clerk to such Judge ;

(d) a private secretary or aide-de-camp to His Excellency the Governor ;

(e) an officer of Parliament.

“pension” shall include an annuity or a gratuity and shall mean a pension payable under Chapters III, IV, or VII of this Act ;

“Public Service” shall mean the system of employment of persons of European descent by the Government of this Colony in the discharge of public duties in a department or office of such Government ;

“regulation” shall mean a regulation made under Chapter VIII of this Act ;

“salary” shall, except in Chapter IV, include—

(i) an officer’s annual pay, and any special (but not local) allowance attached to a particular office if such allowance

**Act No. 19  
of 1908.**

when authorised is specially declared to be entitled to count for pension purposes ; and

- (ii) any personal allowance granted to an officer in consideration of his pay being reduced otherwise than as a penalty ; and
- (iii) ration allowances or the value of free rations ; and
- (iv) the estimated value of free quarters ;

but shall not include

- (a) any local allowance for the cost of living or a marriage allowance ; or
- (b) any extra allowance which an officer may draw while acting in an office, whether permanently or temporarily vacant ; or
- (c) any transport or subsistence allowance ; or
- (d) fees, honoraria, or bonuses of any kind ; or
- (e) overtime payments ; or
- (f) any other allowance not herein specified ; and

“average salary” shall, except in Chapter IV, mean the average of the salary of an officer during the three years immediately preceding the termination of his employment in the Public Service or during the whole of his period of employment if that be less than three years ;

“scheduled grade” shall mean any grade of officers described in the Second Schedule to this Act ;

“Treasurer” shall mean the Colonial Treasurer or any person lawfully acting in such capacity.

Division of  
Act.

2. This Act is divided into eight Chapters relating to the following subject matters :—

Chapter I—The organization of the Public Service ;

Chapter II—Discipline in the Public Service ;

Chapter III—Pension Fund and pensions on termination of employment in the Administrative and Clerical Service ;

Chapter IV—Special pension provisions relating to Police, Prisons, and Asylums ;

Chapter V—General Service Provident Fund ;

Chapter VI—Teachers Provident Fund ;

Chapter VII—Pensions to officials of the late South African Republic ;

Chapter VIII—General and Miscellaneous.

## CHAPTER I.

Act No. 19  
of 1908.

## ORGANIZATION OF THE PUBLIC SERVICE.

3. (1) The Public Service shall consist of—
- (a) the Administrative and Clerical Service;
  - (b) the General Service.

Division of  
the Public  
Service.

(2) The officers described in the First Schedule to this Act shall belong to the Administrative and Clerical Service, provided that the Governor may, from time to time by proclamation in the *Gazette*, add to, alter, or amend such Schedule.

(3) Every officer who does not belong to the Administrative and Clerical Service shall be deemed to belong to the General Service.

(4) Every officer in the Public Service may, whenever the public interests so require, be transferred from a department or office in which he is serving or from an appointment which he holds to any other department, office, or appointment in the Public Service, provided that except for proved inability to perform his duties or as a penalty imposed under section *fourteen* or *fifteen* no transfer involving a reduction in salary shall be made without the consent of the officer concerned.

4. The Governor shall from time to time and for such periods as he may deem fit appoint a Board, consisting of three members, to be styled "the Public Service Board" which shall exercise such functions as may be assigned to it by this Act or any other law, or by regulation, or by the Governor.

Appointment  
of Public  
Service  
Board.

5. The Public Service Board shall—

(a) keep in accordance with regulation a register of applicants for appointments to offices or posts in the scheduled grades in the Administrative and Clerical Service, and of applicants for such other appointments therein as the Governor may from time to time prescribe;

(b) as often as it becomes necessary to make any new appointment to any such office or post, submit to the Minister concerned the names and qualifications of persons who appear to be suitable for appointment together with its recommendation thereon;

(c) keep in accordance with regulation a record of officers in the Administrative and Clerical Service and, whenever and so far as the Governor may prescribe, a record of officers in the General Service;

Duties of  
Public Service  
Board.

Act No. 19  
of 1908.

(*d*) advise the Minister concerned as to the promotion, transfer, and removal from the Public Service of officers in any scheduled grade and as to the control or any proposed reorganization of departments and offices ;

(*e*) bring to the notice of the Minister concerned the name of every officer in respect of whom the Board has a record, and who is approaching the prescribed age for retirement ;

(*f*) enquire into such cases of breach of discipline in the Public Service as may be referred to it by the Minister concerned ;

(*g*) advise as to the preparation and interpretation of all regulations framed under this Act and as to the grant to officers under special circumstances of privileges not authorized by regulation ;

(*h*) prepare annually for publication a list of the persons employed in the Public Service, and cause the same to be published in manner or subject to such instructions as the Governor may give in relation thereto.

Qualifications  
for entrance  
into the Pub-  
lic Service.

6. (1) The Governor may from time to time—

(*a*) determine the number of applicants whose names may be entered in the register kept by the Public Service Board under paragraph (*a*) of the last preceding section ;

(*b*) require that all such applicants shall have passed the lower certificate examination held by the Education Department, or an examination declared equivalent thereto ;

(*c*) take all steps necessary for ensuring that persons be not so entered as applicants, unless they are of good character and free from any mental and physical defect which would interfere with the discharge of their duties if they held an appointment in the Public Service.

(2) Whenever there is a vacancy in any office or post in any scheduled grade and if the same cannot be filled by the transfer or promotion of an officer, the vacancy may be filled by the appointment on probation of any person—

(*a*) under the age of forty-five who, having been employed for not less than twelve months continuously in the civil service of the South African Republic, or in the Public Service of this Colony since the first day of September 1900, retired from such service

for other reasons than voluntary resignation or his own default, subject to his fulfilment of the conditions described in paragraph (c) of sub-section (1) ;

(b) of the age of seventeen but under the age of twenty-five who has been domiciled in this Colony for at least two years, is a British subject, and whose name has been registered as aforesaid by the Public Service Board, subject to his fulfilment of the conditions described in paragraphs (b) and (c) of sub-section (1).

7. (1) An appointment on probation to an office or post in any scheduled grade may be terminated by the Minister on one month's notice, if he is of opinion that the holder is unsuited therefor, or that he lacks diligence, or without notice, if the Minister is of opinion that the holder's conduct is unsatisfactory and in every such case the Minister shall notify his action to the Public Service Board.

Appointments to clerkships on probation.

(2) No such appointment on probation shall be confirmed until—

(a) the holder has served therein for at least twelve months ; and

(b) the head of his office has certified that the holder has been diligent and his conduct uniformly satisfactory for the period of twelve months immediately preceding, and that in all respects he is suitable for employment in the Public Service ; and

(c) the Public Service Board is satisfied, by production to it of an examination certificate or otherwise, that the holder possesses a knowledge of the English and Dutch languages adequate for carrying out the duties of the appointment.

8. (1) Every appointment made (otherwise than on probation) to an office in the Administrative and Clerical Service and every removal from such office of a person so appointed shall be by the Governor.

Appointments and removals to be made by the Governor except probationary appointments

(2) An officer in the Administrative and Clerical Service though he has been confirmed in his appointment may be removed from his office—

(a) if convicted of a criminal offence and sentenced to imprisonment therefor without the option of a fine, unless he shall have obtained a free pardon for such offence ; or

(b) for misconduct or any such breach of discipline as is described in Chapter II ; or

subject to the provisions of Chapter III—

(c) owing to continued ill-health ; or

**Act No. 19  
of 1908.**

Special qualifications in respect of magistrates and public prosecutors.

(d) to a reduction in or a reorganization of his department.

**9.** After the commencement of this Act no person except a person who at the commencement of this Act occupies the position of Resident Magistrate or Assistant Resident Magistrate shall be appointed (otherwise than in an acting capacity) to the office of resident magistrate, assistant resident magistrate, or public prosecutor, unless—

(a) he is an advocate or attorney of the Supreme Court or has passed the Civil Service Lower Law Examination or an examination declared by the Governor equivalent thereto; and

(b) he possesses such knowledge of the English and Dutch languages as the Minister deems requisite.

Appointments to and removal from offices in the General Service.

**10.** (1) The conditions of appointment to and the grounds of removal from an office in the General Service and the grading and promotion of officers therein shall be as prescribed by regulation.

(2) Regulations relating to such matters may be made so as to suit the particular requirements of departments and the classes of employment in such Service.

(3) Every appointment to or removal from the General Service shall be subject to confirmation by the Minister concerned.

Temporary employment in Administrative and Clerical Service.

**11.** (1) Subject to the exceptions hereinafter contained it shall not be lawful to employ any person temporarily for more than one year in any permanent department or office in the Administrative and Clerical Service, and no person may be temporarily employed therein unless he fulfils the conditions prescribed in section *six*, nor unless his name has been submitted by the Public Service Board for the Minister's consideration.

(2) Nothing contained in subsection (1) shall be deemed to apply to the employment either temporarily for more than a year or under contract for limited periods of persons whose services may be required for the purpose of some public work or undertaking in connection with which a staff is not ordinarily maintained in the Public Service on a permanent basis, or in connection with which it is necessary to increase temporarily any permanent department of the Public Service.

Temporary employment in the General Service.

**12.** The conditions governing temporary employment in the General Service shall be as prescribed by regulation.



## CHAPTER II.

Act No. 19  
of 1908

## DISCIPLINE IN THE PUBLIC SERVICE.

**13.** Any officer who contravenes any provision of this Act or a regulation or who—

Offences by officers contrary to discipline.

(a) disobeys, disregards or makes wilful default in carrying out a lawful order given to him by a person having authority to give the same ; or

(b) is negligent or careless in the discharge of his duties ; or

(c) becomes inefficient or incompetent in the discharge of his duties from causes within his own control ; or

(d) conducts himself in a disgraceful, improper, or unbecoming manner either in the discharge of his duties or in public ; or

(e) uses to excess any intoxicant or drug ; or  
(f) becomes insolvent or assigns his estate for the benefit of his creditors, or has a decree of civil imprisonment made against him by any court,

shall be guilty of an offence, and may be dealt with as in this Chapter is provided.

**14.** (1) When an officer in the Administrative or Clerical Service is charged with an offence he may—

Penalties for offences committed by officers in Administrative and Clerical Service.

(a) if it is of a minor nature, and, after an opportunity has been afforded to him of being heard and after any admission, denial, or explanation has been properly considered, be cautioned or reprimanded by the head of his office ;

(b) if it is not of a minor nature, be suspended temporarily from duty by the Minister, or, in cases of emergency by the head of his office, who shall immediately report all the facts to the Minister.

(2) Any order of suspension under this section shall be reduced forthwith to writing, and a copy thereof signed by the person making the order together with a copy of the charge on which the order is made, shall be transmitted or delivered to the officer suspended, who shall be required to state in writing whether he admits or denies the charge and any explanation he may desire to make.

(3) The Minister, on consideration of the statement, may—

(a) discharge the order of suspension ;

Act No. 19  
of 1908.

(b) refer the matter to the Public Service Board for investigation and recommendation ;

(c) impose the following penalties, namely a fine recoverable by deduction from salary, stoppage of leave, stoppage of increments of pay, or reduction of salary or suspension of increments of pay for a period not exceeding twelve months ;

(d) submit the case to the Governor, who may remove the suspended officer from the Public Service, or call upon him to retire therefrom, or degrade him permanently, or suspend him from duty, or degrade him for a period not exceeding one year.

Penalties for offences by officers in the General Service.

15. When an officer in the General Service is charged with an offence, and after an opportunity has been afforded to him of being heard and after any admission, denial, or explanation has been properly considered, the Minister (or the head of his office if delegated thereto) may remove him from the Public Service or impose any lesser penalty described in the preceding section.

### CHAPTER III.

#### PENSION FUND AND PENSIONS ON TERMINATION OF EMPLOYMENT IN ADMINISTRATIVE AND CLERICAL SERVICE.

Provisions of this Chapter not to affect Ordinance No. 30 of 1906.

16. Nothing in this Chapter contained shall apply to any person who is a pensionable officer as defined in section *one* of the Pensions Ordinance 1906 or affect any provision of or abridge any power conferred by that Ordinance, which shall for all the purposes thereof remain in full force and effect.

Pension Fund.

17. (1) There shall be established as from a date to be fixed by proclamation of the Governor in the *Gazette* a fund to be known as the Administrative and Clerical Service Pension Fund which shall consist of—

(a) contributions made under section *eighteen* by officers in the Administrative and Clerical Service ;

(b) sums and interest paid out of general revenue under this section and sections *twenty* and *twenty-one* ;

(c) any other sums which by this or any other section of this Act are to be credited to the Pension Fund.

(2) All amounts contributed or paid to the Pension Fund shall be lodged in the Treasury to

the credit of a separate deposit account to be called the "Pension Fund Deposit Account".

**Act No. 19  
of 1908.**

(3) The Treasurer shall from time to time invest any portion of the balance of the Pension Fund in Transvaal Government stock or stock guaranteed by the Transvaal Government, in stock guaranteed by the Imperial Government or by any South African Government, in Treasury Bills of the Government of this Colony, on first mortgage of immovable property in this Colony, in the stock of any local authority in this Colony which is authorized by law to issue stock, or on fixed deposit with a bank as defined by Law No. 2 of 1893 or any amendment thereof.

(4) After the date so fixed the general revenue shall be charged with interest at the rate of four per cent. on all moneys so invested; provided that whenever an investment of such balances produces interest at a less rate than four per cent. the difference between the rate of interest produced and four per cent. shall be made good out of general revenue.

**18.** (1) From the date fixed by the proclamation mentioned in section *seventeen* and subject to the provisions of section *twenty-two* every officer in the Administrative and Clerical Service on such date (not being an officer on probation) shall make contribution to the Pension Fund at the rate of four pounds per cent. of his salary; provided that, if for any reason the salary of an officer who is a contributor to the Fund is at any time reduced except as a penalty under Chapter II, such officer shall be entitled on such reduction to have refunded to him without interest so much of the contributions at the rate aforesaid as were paid by him on that amount of his salary which was in excess of his reduced salary.

Contributions  
by officers to  
Pension  
Fund.

(2) Every such officer shall be called upon by the head of his department to intimate in writing within three months of such date what period of his past continuous employment, if any, between the first day of September, 1900, and such date he desires to have reckoned for purposes of pension. Upon receipt of the officer's intimation the Treasurer shall decide whether or not such period is entitled to count as continuous employment in the Administrative and Clerical Service for pension purposes; and if it be decided that the officer is so entitled, he shall become liable for the payment

**Act No. 19  
of 1908.**

of contributions at the rate of four per cent. of his salary during each month of such period but no contribution shall be made in respect of any portion of his salary which may have been in excess of the rate of salary drawn by him at the date fixed as aforesaid.

(3) In the case of an officer appointed after the date so fixed such contribution shall commence from the appointment.

(4) Contributions due from an officer in respect of a period of authorized leave of absence shall be calculated on his salary, notwithstanding that any portion of such leave has been granted on half-pay.

(5) Save as is otherwise specially provided in this Act no contribution made by an officer to the Pension Fund shall be repaid to him.

Contributions  
of officers to  
Pension  
Fund to be  
deducted from  
salaries.

**19.** (1) Every contribution of an officer to the Pension Fund shall be made by monthly deduction from his salary; and, in the case of contributions payable in respect of any period between the first day of September, 1900, and the date fixed by the said proclamation, the first complete instalment shall be deemed to have commenced as from the day next before such date, and each further complete instalment to have been paid on the last day of each month immediately preceding the last such instalment, and to continue in regular order until the last instalment has been paid; provided if any such officer retires from the Public Service on pension before the total instalments have been paid, the amount of any instalments still due shall be deducted from his pension, which shall be calculated on the whole period of his continuous employment.

(2) In the payment of the arrear instalments of four per cent. the deductions to be made from an officer's salary shall not be greater than an amount which added to the amount of his current contributions would equal a total of six per cent. of his salary; but nothing herein contained shall be deemed to limit the right of any officer who so desires from making payment at a higher rate than six per cent. of his salary until the arrear contributions have been paid off.

(3) Nothing in this section contained shall apply to a commissioned officer of the Transvaal Police in respect of the period of his employment (if any) in the Transvaal Town Police Force, in the South African Constabulary, or in the Railway Police. So much of any pension as

is due to any such commissioned officer in respect of the period of such employment shall be paid out of general revenue.

**Act No. 19  
of 1908.**

**20.** From and after the date fixed as aforesaid there shall be paid out of the general revenue into the Pension Fund—

Contributions  
out of  
general  
revenue to  
Pension  
Fund.

(a) a sum monthly equal to the aggregate of the contributions made by officers under this Chapter ;

(b) compound interest at the rate of eight per cent. per annum on the amount of the contributions mentioned in sub-section (2) of section *eighteen* as ascertained at each quinquennial valuation.

(c) interest at the rate of four per cent. per annum on the daily average uninvested balance of the Pension Fund.

**21.** (1) The Governor shall cause a quinquennial valuation of the Pension Fund to be made by an approved actuary and notwithstanding anything in section *eighteen* contained, the Governor may, upon the actuary's report, prescribe that contributions at a higher or lower rate than four per cent. be made on salaries thereafter drawn by officers.

Quinquennial  
valuation.

(2) The contributions from general revenue shall be at the same rate as the contributions prescribed for the time being for officers ; provided that, if an actuarial deficiency is disclosed after the first quinquennial valuation, such deficiency shall be made good out of general revenue.

**22.** (1) No pension shall be paid under this Chapter—

Persons in  
respect of  
whose  
pensions the  
fund shall  
not be  
charged.

(a) to a person under the age of seventeen or in respect of employment under that age ; or

(b) to a person appointed to the Public Service after the commencement of this Act whose age on appointment is forty-five years or over ; or

(c) to a person whose salary is paid at a daily or weekly rate ; or

(d) to a person remunerated solely by fees or allowances ; or

(e) to a person not ordinarily employed in the Public Service who is engaged for the completion or performance of specific Government work ; or

(f) to a person employed temporarily or for a fixed number of months or years, unless,

Act No. 19  
of 1908.

under the terms of his contract of employment, he is permitted to contribute to the Pension Fund and to count his period of employment for pension purposes ; or

(g) to a person whose whole time is not at the disposal of the Government for the Public Service ; or

(h) to a person employed in the General Service ; and no such person shall be liable to contribute to the Pension Fund ; provided that nothing in this or any other section contained shall prevent an officer who has been employed on probation or temporarily in the Administrative and Clerical Service from contributing between the ages of seventeen and forty-five to the Pension Fund or deprive any person who has so contributed of any benefits accruing under this Act on the termination of his employment ; provided further that such person shall within one month after the expiry of his probationary or temporary period of employment signify whether he desires to contribute to the Fund and the arrear contributions shall be paid in such instalments and in such manner as the Treasurer shall prescribe.

(2) Any pension granted under sections *twenty-seven*, *twenty-eight*, or *twenty-nine* shall be paid out of general revenue, and the Treasurer shall pay over from the Pension Fund to general revenue any contributions made to the Fund by and in respect of the officer to or concerning whom such pension has been granted, together with any interest that has accrued upon such contribution.

(3) Save as is in this section, in sub-section (3) of section *nineteen*, in sub-section (3) of section *twenty-four* and in section *thirty-two* provided, all pensions payable under this Chapter shall be charged upon the Pension Fund.

Prescribed  
age of  
retirement.

**23.** (1) The prescribed age of retirement from the Administrative and Clerical Service shall be fifty-five, and any officer therein may, subject to compliance with the regulations as to notice of retirement, retire at such age, save that, in the case of officers described in and fulfilling the conditions of section *twenty-four*, the prescribed age for retirement shall be fifty.

(2) The Minister concerned may require an officer in the Administrative and Clerical Service to retire at the prescribed age and shall require his retirement at the age of sixty unless it is desirable in the public interest to retain him in

such Service over such last-mentioned age ; in such case the Governor may from time to time retain such officer for further periods (not exceeding one year at a time) up to the age of sixty-five, after which age an officer shall not remain in such service except in accordance with resolutions of both Houses of Parliament ; provided always that a return of officers retained after the age of sixty shall be laid on the tables of both Houses of Parliament during the month of July if Parliament be then in session, or, if it be not then in session, within fourteen days after its next ensuing session ; provided further that any officer appointed to the Administrative and Clerical Service before the commencement of this Act who was over the age of forty-five when so appointed shall be entitled, so long as in the opinion of the Minister he is fit and capable of properly discharging the duties of his office, to continue in the Public Service until he has completed ten years' service.

**24.** (1) If an officer in the Administrative and Clerical Service has been employed continuously as medical superintendent, medical officer, or lay superintendent for a period of ten years or more in a lunatic or leper asylum, or as such officer or superintendent in any Government institution used for the treatment of infectious or contagious diseases, provided his duties bring him into regular daily contact with patients suffering from such diseases, there may in the discretion of the Governor be added to such officer's period of employment for the purpose of calculating his pension upon his retirement, a period not exceeding five years in respect of the first ten years of continuous employment in such asylum or institution, and a proportionate amount for any further period of such employment.

Special provisions applicable to officers employed in lunatic asylums, leper asylums etc.

(2) Any such officer may retire, or, in the discretion of the Governor, may be required to retire when he has attained the age of fifty years with a pension calculated as in section *twenty-six* is provided, but with the privilege of the added service allowed under sub-section (1) hereof.

(3) So much of the pension as is attributable to the added service shall be paid out of general revenue.

**25.** (1) The period of employment in respect of which a pension may be reckoned shall be continuous.

Period over which a pension may be calculated.

**Act No. 19  
of 1908.**

(2) A continuous period of employment shall include the time spent by an officer—

- (a) on actual duty ;
- (b) on authorised leave of absence, otherwise than without pay ;
- (c) under suspension followed by reinstatement in the same or another office ;
- (d) in transit from one appointment to another in the Administrative and Clerical Service, or to or from such service when transferred under competent authority to or from the service of another Government.

(3) A continuous period of employment shall not be regarded as interrupted by authorized leave of absence without pay, or by temporary retirement under section *twenty-seven* followed by resumption of duty, but the time spent on such leave or in such retirement shall not be reckoned for purposes of pension.

(4) In calculating the period of employment of a commissioned officer of the Transvaal Police, the period (if any) during which he was previously employed in the Transvaal Town Police, the Transvaal Prisons Department, the South African Constabulary, or the Railway Police shall be reckoned, provided that the employment was continuous and that he was regularly transferred to the Transvaal Police without interruption of employment, and has not already received any pension or compensation allowance in respect of the previous employment.

Scale of pensions payable under this Chapter.

**26.** Subject to the provisions of this Act, there shall on the termination of his employment at or after the prescribed age be paid to every officer of the Administrative and Clerical Service who has contributed to the Pension Fund in accordance with this Chapter, a pension on the following scales (according to the circumstances herein severally described) that is to say :—

- (a) to an officer whose period of employment has been less than one year, a gratuity equal to any contributions made by him to the Pension Fund ;
- (b) to an officer whose period of employment has been not less than one year but less than ten years, a gratuity not exceeding an amount determined by allowing one month's salary in respect of and calculated on the average of his salary for each year of such employment ; provided that notwithstanding anything contained in the proviso to sub-section (1) of section *nineteen* in the case of any officer



whose services are terminated by reason of the abolition of his own or another office, or by reason of a reduction of or a re-organization in his department, and who has not completed the payment of contributions to the Pension Fund due in respect of any period of employment between the first day of September 1900 and the date fixed for the establishment of the said Fund, no contributions still due shall be payable, but so much of the gratuity as is in respect of employment for which contributions have not been paid shall be paid out of general revenue;

(c) to an officer whose period of employment has been ten years or over, an annuity for each year of such employment at the rate of one-sixtieth of and calculated upon his average salary.

For the purposes of this section the period of employment shall be calculated by the year and month, and fractions of a month shall be disregarded.

27. (1) If an officer in the Administrative and Clerical Service who has not yet reached the prescribed age of retirement is found on medical grounds to be unfit to discharge efficiently the duties of his office, the Governor may, if such officer's period of employment is less than ten years, direct that he shall temporarily retire from the Public Service with a gratuity calculated in accordance with paragraph (a) or (b) of the last preceding section (as either such paragraph is applicable), or if such officer's period of employment is ten years or more, direct that he shall temporarily retire from the Public Service with an annuity at the rate mentioned in paragraph (c) of such section.

Pensions payable to medically unfit officers.

(2) If any such officer to whom an annuity under sub-section (1) has been granted shall, within two years of his temporary retirement, be medically certified as fit for duty and be still under the prescribed age, he may be required to resume duty in his former or any other office, provided that

(a) the salary offered to such officer shall be not less than the salary drawn by him immediately prior to his temporary retirement;

(b) the office at which he is required to resume duty is not of a lower grade than that from which he temporarily retired;

**Act No. 19  
of 1908.**

(c) any pension which he was drawing at the time of resuming duty shall determine;

(d) on his final retirement he shall be entitled for the purposes of pension to add together the periods of employment prior to and subsequent to his temporary retirement, but any such period, in respect of which a gratuity has been paid and not refunded, shall not be reckoned for purposes of such pension.

(3) If on the expiry of two years from the date of his temporary retirement such officer has not been required to resume duty or is still medically unfit for duty he shall be deemed to have finally retired from the Public Service.

(4) If an officer in the Administrative and Clerical Service who has not reached the prescribed age for retirement ceases to be required therein by reason of the abolition of his own or another office or by reason of a reduction of or a re-organization in his department the Governor may direct that he shall retire from the Public Service with a pension calculated according to his period of employment at the rates prescribed in section *twenty-six*.

Pensions to officers retiring in consequence of injury or permanent ill-health occasioned in course of duties.

**28.** If an officer in the Administrative and Clerical Service would at his retirement therefrom at the prescribed age have been entitled to an annuity, but is compelled to retire under such age by reason of severe bodily injury or permanent ill-health occasioned without his own default in the discharge of and specifically attributable to his official duties, the Governor may grant him a pension at the following rate, that is to say:—

(a) If his capacity to contribute to the support of himself and his dependents be materially impaired, an annuity, for each year of employment, at the rate of one-sixtieth of and calculated upon his average salary;

(b) if his capacity to contribute to the support of himself and his dependents be totally destroyed, an annuity of not less than one-half of his average salary.

Gratuity to widows of officers dying while in the service.

**29.** If an officer in the Administrative and Clerical Service would at his retirement therefrom at the prescribed age have been entitled to a pension, but dies before retirement at such age, or has already retired from the service and died within one year after retirement, the Governor shall grant to or for the benefit of the widow or any minor child of such officer or, failing a

widow or minor child, to any relative actually dependent on such officer for maintenance, either—

(a) a gratuity equal to one month's salary in respect of each year of employment but not exceeding twelve months' salary; or

(b) a refund of the total amount of the contributions without interest made to the Fund by such officer under section *eighteen* of this Act,

whichever amount be the greater, and, if there be more than one claimant to the benefit of such gratuity, the distribution thereof among the claimants shall be made as the Governor may determine.

**30.** No pension shall be paid to an officer in the Administrative and Clerical Service, who—

Persons to whom pensions may not be paid.

(a) is removed therefrom under the provisions of paragraphs (a) or (b) of subsection (2) of section *eight*; or

(b) voluntarily retires therefrom before the prescribed age, unless reported by a medical board in accordance with regulation as unfit for duty by reason of infirmity of body or mind, which is permanent or likely to be permanent and is not due to excess or misconduct on his part, provided that if the retirement is due to inevitable necessity involving no element of blame to such officer the Governor may grant him a gratuity not exceeding the amount of his contributions, without interest, to the Pension Fund.

**31.** Whenever a female officer—

Gratuity to female officers on marriage.

(a) has been in the Administrative and Clerical Service for a period of not less than five years and has contributed to the Pension Fund in accordance with this Chapter for such time; and

(b) leaves such service owing to her marriage, the Governor may grant to her out of the Pension Fund a gratuity equal to one month's salary for each year of her employment, but not exceeding one hundred pounds.

**32.** Any person who prior to the commencement of this Act held an office which, if held under this Act, would have been deemed an office in the Administrative and Clerical Service, and who was prior to such commencement transferred from such office with the assent of the Governor to a pensionable office under another Government, shall be entitled to

Rights of person holding office in Colony prior to commencement of Act on transfer to pensionable office under another Government.

Act No. 19  
of 1908.

calculate the period of his employment in such first mentioned office, subject to any arrangement made between the Governor and such Government as to the respective shares payable by them of the pension ultimately due to such officer ; provided that

(a) such person shall, within three years from the commencement of this Act, have paid to the Treasurer a sum equal to four per cent. of his average salary for every year or portion of a year of his employment in such first mentioned office, together with interest on such sum at the rate of four and a half per cent. per annum ;

(b) such sum and interest shall be credited to general revenue and the share of such person's pension which may be eventually payable in respect of such first mentioned office shall be paid out of general revenue.

#### CHAPTER IV.

##### SPECIAL PENSION PROVISIONS RELATING TO POLICE, PRISONS, AND ASYLUMS.

Interpretation of terms used in this Chapter.

**33.** In this Chapter—

“policeman” shall mean a European enrolled member of the Transvaal Police Force (other than a commissioned officer) established under the Transvaal Police Act 1908 or any amendment thereof ;

“force” shall mean the Transvaal Police Force established under that Act ;

“subordinate officer” shall mean a European subordinate officer as defined by section *three* of the Prisons and Reformatories Ordinance 1906 ;

“nurse” shall mean any European member (male or female) of the subordinate staff of a Government lunatic or leper asylum in this Colony or of any other Government institution therein used for the treatment of infectious or contagious diseases whose duties bring him into regular daily contact with the patients therein.

Pensions payable to policemen.

**34.** (1) A policeman may be permitted to retire from the force with a pension calculated in accordance with this section on his attaining the age of fifty, provided that the Governor may in his discretion retain him in the force above such age but not after the age of sixty.

(2) A policeman may be retired from the force on an invalid pension calculated in accordance with this section before he has attained the age of fifty, whenever the Governor directs the retirement upon a certificate in the form prescribed by regulation, signed by two medical practitioners and approved by the Commissioner of Police.

(3) Such pension shall be calculated in the following manner :—If the policeman's period of employment is less than ten years, he shall receive a gratuity equal to one month's average salary for each year of employment. If the policeman's period of employment is ten years or more, he shall receive, at his option, either such gratuity, or an annuity equal to one-fiftieth of his average salary for each year of employment, but not exceeding three-fifths of such average salary.

(4) Nothing in this section shall apply to a policeman who is dismissed from the force or retires therefrom by voluntary resignation.

**35.** A policeman who, having attained the age of forty, has served with diligence and fidelity in the force for not less than twenty years, shall be entitled to retire therefrom upon a gratuity of one month's average salary for every year of employment.

Retirement on pension of policeman at forty if he has served twenty years.

**36.** If a policeman is disabled for further employment in the force by an injury received by him without his own default in the execution of his duty and as a direct result of performing such duty, the Governor may retire him from the force upon a gratuity not exceeding one month's average salary for each year of employment, or upon an annuity not exceeding one-fiftieth of his average salary for each year of employment, but in no case less than one-fifth or more than three-fifths of such average salary; provided that, if he is so severely injured in the circumstances aforesaid as to be incapable of earning a livelihood, the annuity granted under this section shall not be less than one-half such average salary.

Pension in case of policeman injured in execution of duty.

**37.** (1) If a policeman lose his life from an injury in the circumstances described in the last preceding section, whether death occurs immediately or within one year after the injury, there may be paid to or for the benefit of his widow and minor children (if any) either a gratuity not exceeding one month's average salary for each year of employment of the deceased, or an annuity not exceeding one-fiftieth of his average salary for each such year, but in no case more than three-fifths of such average salary.

Pension to widow of policeman killed in the execution of duty.

**Act No. 19  
of 1908.**

(2) For the purposes of this section the period of the deceased's employment shall be the actual period of employment enhanced by a number of years to be determined by the Governor not exceeding the number by which the deceased's age at death falls short of fifty.

(3) If a gratuity under the last preceding section has been received by the deceased, the amount thereof shall be deducted in convenient instalments from any payments made under this section.

(4) An annuity granted under this section shall cease in the case of a widow on her remarriage, in the case of a son on his attaining the age of twenty-one, and in the case of a daughter on her attaining such age or marrying under such age.

Circumstances under which a policeman's pension may be withdrawn or forfeited.

**38.** (1) A pension granted to a policeman under this Chapter shall be upon the condition that it is liable to be forfeited and may be withdrawn by the Governor—

(a) if the policeman be convicted of any crime or offence; or

(b) if he knowingly associates with criminals or suspected criminals or persons of bad character; or

(c) if he refuse, when required by the Governor in the circumstances prescribed by regulation, to resume duty in the rank at which he retired; or

(d) if he makes use of the fact of his former employment in the force in a manner which the Governor deems improper.

(2) No pension shall be granted to a policeman dismissed from the force for misconduct.

Application of preceding sections of this Chapter to subordinate officers in prisons and to members of nursing staff in asylums etc.

**39.** (1) The provisions of the preceding sections of this Chapter shall apply *mutatis mutandis* to subordinate officers, and, whenever by such provisions any act is required to be performed by the Commissioner of Police, such act shall in the application of such provisions to subordinate officers be performed by the Director of Prisons.

(2) The provisions of the preceding sections of this Chapter (other than sections *thirty-six* and *thirty-eight*) shall further apply *mutatis mutandis* to any nurse; provided that any act required by such provisions to be performed by the Commissioner of Police shall, in the application thereof to any nurse, be performed by the head of the department.

(3) A nurse who has served with diligence and fidelity for not less than ten years shall be

entitled to retire with a gratuity of one month's average salary for each year of employment.

(4) If a nurse is disabled for further employment by an injury received without his own default in the execution of his duty and as a direct result of performing such duty, or if he is compelled to retire by reason of permanent ill-health occasioned without his own default in the discharge of and specifically attributable to his official duties, the Governor may grant him a gratuity or annuity at the rates prescribed in section *thirty-six*.

**40.** (1) In calculating a pension under this Chapter—

Mode of calculating and paying pension under this Chapter.

“salary” shall include pay, ration allowances, and allowances for quarters or the value of free quarters but no other emoluments;

“average salary” shall mean the average of the salary drawn by the policeman, subordinate officer or nurse during the last three years of his period of employment or during the whole of such period whichever may be the less;

and, in the case of a policeman or subordinate officer only—

“period of employment” shall include the period (if any) in which he was previously employed in the Transvaal Town Police, the Transvaal Prisons Department, the South African Constabulary, or the Railway Police, provided he served continuously and was regularly transferred to the force or department (as the case may be) without interruption of such employment and has not already received any annuity, gratuity, or compensation allowance in respect of the previous employment.

(2) All pensions granted under this Chapter shall be paid from general revenue.

## CHAPTER V.

### GENERAL SERVICE PROVIDENT FUND.

**41.** (1) The Governor shall as from the date fixed as aforesaid for the establishment of the Pension Fund under Chapter III establish a fund to be styled “The General Service Provident Fund” (in this Chapter referred to as the “Fund”) to which every officer permanently in the General Service (other than an officer of such Service whose pension is regulated by the Pensions

Establishment of General Service Provident Fund.

**Act No.19  
of 1908.**

Ordinance 1906 or by Chapter IV) shall contribute at the rate of two per cent. of his salary.

(2) A contribution required by this section shall be by a deduction from the salary of the officer made at the time when his salary is ordinarily paid.

(3) The Treasurer shall contribute to the Fund from general revenue an amount equal to two per cent. of the salary of each contributing officer.

Management  
of Provident  
Fund.

**42.** (1) All contributions to the Fund and any interest accruing thereon shall be lodged to the credit of a separate deposit account called "The General Service Provident Fund Account."

(2) The balances standing to the credit of such account shall from time to time be invested by the Treasurer in manner described in sub-section (3) of section *seventeen*, provided that, whenever an investment of such balances produces interest at a less rate than four per cent. per annum, the difference between the rate of interest produced and four per cent. per annum shall be made good out of general revenue; provided further that interest at the rate of four per cent. per annum shall be paid from general revenue to the Provident Fund Account on the average monthly uninvested balance of the Fund.

(3) The Governor shall cause a quinquennial valuation of the Fund to be made by an approved actuary.

Retiring age  
and payments  
on retirement  
to contribu-  
tors to the  
Provident  
Fund.

**43.** (1) On attaining the age of fifty-five, every officer who has contributed in accordance with this Chapter to the Fund may retire from the General Service and receive from the Fund the following amounts :—

(a) The aggregate amount contributed by him to the Fund, together with the aggregate amount contributed in respect of him by the Treasurer under section *forty-one*; and

(b) a proportionate share, calculated according to his contributions, of any income (as disclosed by the last quinquennial valuation) which has accrued to the Fund; and

(c) a sum represented by the compound interest at four per cent. on the total amount standing to his credit in the books of the Fund, from the date of the last quinquennial valuation or the date of his joining the Fund (whichever is the later) up to the date of his retirement.



(2) Nothing in this section contained shall be construed as preventing the retention in the General Service of an officer thereof over the age of fifty-five and up to the age of sixty-five, and the provisions of this section shall apply in all respects to an officer retained in the General Service beyond the age of fifty-five.

44. (1) If such officer is compelled to retire from the General Service under the age of fifty-five on grounds of ill-health, or if such officer's employment is terminated on the ground of a reduction in or a reorganization of his department he shall be entitled to receive the amounts described in the last preceding section.

Payments to contributors to Provident Fund who retire voluntarily or on grounds of ill-health or reorganization under the age of fifty-five.

(2) If an officer contributing to the Fund voluntarily retires from the General Service under the age of fifty-five (otherwise than on the ground of ill-health), he shall be entitled to a repayment without interest of the contributions made by him to the Fund, but to no other payment.

45. If an officer contributing to the Fund dies while he is in the General Service, the Minister concerned may recommend the payment to any relative who was actually dependent for maintenance on such officer, of any sum standing to his credit in the books of the Fund, and in any case not less than the amount of such officer's contribution to the Fund, and, if there be several claimants to such sum, the distribution thereof shall be as the Governor may determine.

Payment to relatives in case of death of contributing officer while in the Service.

46. If an officer contributing to the Fund is dismissed from the General Service for incompetence or misconduct, all contributions made by or in respect of him to the Fund, together with the share of the income or interest that would accrue to him under section *forty-three*, shall be forfeited by him for the benefit of the Fund; provided that the Minister concerned may, in his discretion, authorize the payment to such officer of such sum as would have been payable to him in the circumstances described in sub-section (2) of section *forty-four*.

Persons dismissed from general service to forfeit contributions to Provident Fund.

47. (1) For the purpose of calculating the period of employment in respect of which any benefits under this Chapter may be received the provisions of section *twenty-five* shall *mutatis mutandis* apply.

Periods in respect of which benefits under this Chapter may be calculated.

(2) If any officer in the General Service desires to contribute to the Fund in respect of any period of continuous employment in such service between the first day of September 1900 and the

**Act No. 19  
of 1908.**

date of the establishment of the Fund, the provisions of sub-section (2) of section *eighteen*, and sub-sections (1) and (2) of section *nineteen* shall so far as they are applicable apply *mutatis mutandis*.

CHAPTER VI.

TEACHERS' PROVIDENT FUND.

Establishment of Teachers' Provident Fund.

**48.** (1) The Governor may establish a Fund to be known as the Teachers' Provident Fund and, notwithstanding anything contained in the Education Act 1907 or any regulations in force thereunder, every teacher who has been admitted or who may hereafter be admitted to the regular teaching staff of the Education Department shall from the commencement of this Act or thereafter from the date of his being so admitted contribute to the Teachers' Provident Fund at the rate of three per cent. of the salary payable to such teacher; provided that any male teacher so admitted before the commencement of this Act and any female teacher so admitted before or after the commencement of this Act shall have the option, instead of contributing to such Fund, of taking the benefit of a grant from general revenue of a gratuity of one month's pay for each year of service; provided further that no such gratuity shall exceed one year's pay.

(2) A contribution required by this section shall be by a deduction from the salary of the teacher made at the time when his salary is ordinarily paid.

(3) The Treasurer shall contribute to such Fund from general revenue an amount equal to three per cent. of the salary of each contributing officer.

(4) All the provisions of Chapter V shall *mutatis mutandis* be incorporated in this Chapter for the purposes of establishing, administering, managing, and determining the benefits receivable from the Teachers' Provident Fund.

Cancellation of so much of existing contracts of teachers as provides for payment of gratuities on retirement out of general revenue.

**49.** Save as is otherwise provided in sub-section (1) of section *forty-eight* so much of the contract of employment subsisting at the commencement of this Act of a teacher on the regular teaching staff aforesaid as provides for a grant from general revenue of a retiring gratuity of one month's pay for each year of service shall be cancelled from such commencement; provided that nothing in this

section contained shall affect or abridge the right of a party to such contract to receive at his final retirement any gratuity due in respect of a period of employment prior to the commencement of this Act, in addition to any payment from the Teachers' Provident Fund under this Chapter.

**50.** Any teacher employed in a school, class, or institution to which a grant-in-aid is made under the Education Act 1907 (other than an aided-farm-school as therein defined) may participate in the benefits of the Teachers' Provident Fund on the same terms and conditions as are by this Chapter prescribed for teachers of the regular teaching staff.

Participation in benefits and obligations attaching to Teachers' Provident Fund by teachers in public schools etc. not on regular teaching staff.

## CHAPTER VII.

### PENSIONS TO OFFICIALS OF THE LATE SOUTH AFRICAN REPUBLIC.

**51.** (1) Within two years after the commencement of this Act the Governor may consider the claim of any person who alleges—

Power to pay pensions out of general revenue to officials of late South African Republic in respect of employment prior to date of annexation.

(a) that prior to or on the eleventh day of October 1899 he was for a period of at least one year an official of the South African Republic; and

(b) that he lost his employment in such service on account of the annexation of the territories of the South African Republic to His Majesty's dominions; and

(c) that he was such an official as is described in Article *two* of Law No. 16 of 1899, and would if such law had remained in operation have been entitled to a pension thereunder,

and, if satisfied that such claim is well founded may grant to the claimant out of general revenue a gratuity or annuity as from the commencement of this Act (according to the period of his continuous employment up to the first day of September 1900) at three-fourths of the rates prescribed in section *twenty-six* of this Act, the period of such continuous employment being calculated as described in Chapter III.

(2) In lieu of paying such gratuity or annuity in cash to the claimant, the Governor may in his discretion cause the moneys representing the same to be applied in such manner as will in the opinion of the Treasurer secure the greatest benefit to the person to whom it has been granted.

(3) The amount of any annuity or gratuity which may be granted under sub-section (1) shall,

Act No. 19  
of 1908.

if the person to whom it is granted is already receiving or has already received a pension or compassionate allowance from general revenue, be reduced by the amount of such pension or compassionate allowance, or if circumstances require, the annual value thereof calculated actuarially.

Provisions in case of officials of South African Republic who are in the Public Service.

**52.** (1) When a person who is eligible for an annuity or gratuity under the last preceding section is employed in the Public Service, he may be granted such annuity or gratuity, provided that the amount of the annuity or the annual value calculated actuarially of the gratuity (as the case may be) when added to his salary in the Public Service does not exceed the undiminished salary in his last appointment as an official of the South African Republic.

(2) If such amount when added to the salary in the Public Service exceeds his undiminished salary as an official of the South African Republic the amount of annuity or gratuity paid to him shall be proportionately abated.

(3) On the final retirement of such person from the Public Service he shall be entitled to receive any annuity or gratuity granted under section *fifty-one* in addition to any pension or other payment that may become due to him under any other section of this Act.

Power to grant gratuity to widow or minor child of official of South African Republic.

**53.** The Governor, may at any time within two years after the commencement of this Act, consider a claim in respect of a widow who has not remarried or minor child of an official of the South African Republic described in section *fifty-one* who died before the commencement of this Act, and grant out of general revenue to or for the benefit of such widow or minor child a gratuity, not exceeding one year's salary of such official, provided that if the late husband of such widow shall during his life have received a pension or gratuity from general revenue the same shall be taken into account in fixing the amount of gratuity payable to such widow, and if there be several claimants to the benefit of the gratuity, the distribution thereof shall be as the Governor may determine.

## CHAPTER VIII.

## GENERAL AND MISCELLANEOUS.

Power to make regulations.

**54.** (1) The Governor may from time to time make, alter, or rescind regulations (not inconsistent

with this Act) for all or any of the following purposes, namely,—

**Act No. 19  
of 1908.**

(a) for the grading, classification, promotion, transfer, discipline, conduct, powers and duties, hours of attendance, and leave of absence of officers, and as to the conditions of their employment in the several departments of the Public Service ;

(b) prescribing the rates of overtime payments, and of travelling, climatic, and local allowances of officers ;

(c) prescribing the form and manner of keeping and publishing the accounts of the Administrative and Clerical Service Pension Fund, and of the Provident Funds mentioned in Chapters V and VI ;

(d) prescribing the basis of calculating the value of free quarters for the purpose of determining the amount of an officer's salary in relation to a pension ;

(e) prescribing the forms and periods of notice to be given by an officer who is retiring from the Public Service and claiming on retirement a pension under this Act, and the conditions governing the grant of leave of absence to any such officer immediately prior to his retirement ;

(f) prescribing the basis of calculating the proportion of pension payable to any officer who, having been employed in the Public Service or the Inter-Colonial Council or continuously in the Public Service and the Inter-Colonial Council, has been transferred under proper authority to the civil service of the United Kingdom or of a British Possession ; or to any officer who having been employed in any such civil service has been transferred after the commencement of this Act under proper authority to the Public Service ;

(g) prescribing the method of calculating the proportion of pension payable from general revenue, or from the Pension Fund, or from the General Service Provident Fund, or from the Teachers' Provident Fund (as the case may be), on the retirement of an officer who has been partly employed in the Administrative and Clerical Service, in the General Service, as a teacher in the Education Department, in the Transvaal Police, in the Prisons Department, in an asylum or other

Act No. 19  
of 1908.

institution described in Chapter IV, or in any or all such classes of employment ;

(*h*) for the establishment of a medical board to examine and report upon any application for a pension on medical grounds, or upon any other matter relating to the physical or mental fitness of an officer or other person for employment in the Public Service, and prescribing the form and conditions of medical certificates to be furnished with any application for such employment or for a pension, and the procedure to be observed in furnishing such certificates ;

(*i*) prescribing the manner of verifying the period of employment of an officer in calculating the amount of his pension ;

(*j*) prescribing the amount of security to be given by any person in the Public Service who holds an appointment involving the receipt, custody, or payment of public moneys, the receipt, custody, or issue of stamps, and regulating all matters relating to the administration and investment of amounts received as such security ;

(*k*) generally for the better carrying out of the objects and purposes of this Act.

(2) Every such regulation shall be of force and effect when it has been published in the *Gazette*. A copy of every such regulation, or of any alteration or rescission thereof, shall be laid upon the Tables of both Houses of Parliament within seven days after the same has taken effect if Parliament be then in session, or if it be not then in session within seven days after the commencement of its next ensuing session.

Powers as to general reduction of salary or suspension of increments of pay in certain circumstances.

~~55. Nothing in this Act contained shall be construed as preventing the Governor, when authorized thereto by Resolution of the Legislative Assembly, from making at any time a general reduction of officers' salaries throughout the Public Service or any portion thereof—~~

~~(a) if the reduction appears expedient on grounds of public policy ; or~~

~~(b) if he is satisfied that the position of the public finances requires the reduction ;~~

~~nor under like circumstances from suspending or reducing all or any portion of increments of pay in the Public Service or any portion of the Public Service for such period as he may determine.~~

**56.** The leave of absence which may be granted to an officer under the regulations may not be claimed as of right but shall be granted subject to the exigencies of the Public Service.

Leave of absence.

**57.** (1) No officer in receipt of incremental pay, unless he is engaged to perform duty or work on a special contract entitling him to regular increments, may claim as of right incremental pay.

Incremental pay.

(2) Increments shall not be granted to an officer in receipt of incremental pay, unless the head of his office gives a certificate, countersigned by the head of the department or by such other person as the Minister may designate for the purpose, that the officer's work and conduct have during the year immediately preceding been satisfactory.

**58.** Unless it is otherwise provided in the conditions of his appointment—

Whole time of officer to be at disposal of Government.

(1) every officer shall place the whole of his time at the disposal of the Government ;

(2) no officer shall engage himself to perform remunerative work outside the Public Service without the permission of the Minister concerned ;

(3) no officer may claim as of right additional remuneration in respect of any duty in the Public Service which he is required by competent authority to perform.

**59.** (1) Any officer who before the commencement of this Act was transferred under competent authority from employment under the Inter-Colonial Council to employment in the Public Service shall, provided his employment under the Inter-Colonial Council was continuous, be entitled to have the whole period thereof reckoned for purposes of pension.

Service under Inter-Colonial Council to count for Pension, and officers transferred from Cape Service to Governor's Office to fall under Ordinance No. 30 of 1906.

(2) Any member of the South African Constabulary who—

(a) was transferred thereto under competent authority from pensionable employment under another Government or Administration ; or

(b) was previously in the pensionable employment of another Government or Administration and who enlisted in or was appointed to such Constabulary

under agreement that the period of such pensionable employment would be reckoned as employment in such Constabulary for the purposes of pension, shall be entitled to reckon, for purposes

**Act No. 19  
of 1908.**

of pension under this Act, such previous pensionable employment and shall be entitled to pension under this Act in respect thereof or, if this Act is less favourable to him than the pension regulations of the South African Constabulary approved by the Inter-Colonial Council on the second day of June 1906, then to the benefits provided by those regulations.

(3) Any officer who—

(a) at the commencement of this Act was on the regular clerical staff of the Governor's office ; and

(b) was prior to such commencement transferred, under competent authority with pensionable rights and continuity of service to such office from the civil service of the Colony of the Cape of Good Hope

shall be deemed to be a pensionable officer as defined by section *one* of Ordinance No. 30 of 1906 and shall have the rights and be subject to the obligations imposed by that Ordinance.

Suspension or forfeiture of pension in certain cases on order of Governor.

**60.** If any person becoming entitled to or actually in receipt of a pension be found after enquiry to have been guilty of an act or omission which would, if such act or omission had been discovered prior to his so becoming entitled, have rendered him liable to dismissal from the Public Service, or if any person be found to have wilfully made a false statement for the purpose of obtaining a pension knowing the same to be false, or if a person in receipt of a pension fails to comply with any reasonable request, made by the Minister concerned, to afford all assistance and information in his power relating to any appointment formerly held by him, then the Governor may order that the right to any pension to which such person has become entitled or of which he is in receipt shall be suspended or forfeited.

Power to reduce pensions where officer has not rendered satisfactory service.

**61.** Whenever the Governor is satisfied after enquiry that a pensionable officer has not rendered satisfactory service he may order that a pension less than is ordinarily payable in accordance with this Act be paid to such officer ; provided that such officer shall not receive owing to the exercise of the powers of this section, in the case of an annuity, less than the annual value calculated actuarially of any sum contributed by him, or in the case of a gratuity, less than any actual sum contributed by him in accordance with this Act.

Commutation of small pensions.

**62.** If an annuity not exceeding twenty-five pounds is granted under this Act the Governor



may, at the request of the recipient and before the first payment thereof has been made, commute such annuity by a single cash payment calculated actuarially according to the period for which the recipient may be expected to draw the annuity.

**63.** No pension shall be assignable, or transferable, or be capable of being hypothecated, nor shall it be liable to be attached or subjected to any form of execution under a judgment or order of any court of law.

Pensions not to be assigned or executable.

**64.** If any person in receipt of a pension be convicted before any court in His Majesty's dominions of any crime or offence and be sentenced therefor to death, or to any term of imprisonment with hard labour exceeding twelve months, and shall not within two months thereafter receive His Majesty's free pardon, such pension shall forthwith determine; provided that the Governor may, if he think fit, order that such pension shall revive if such person at any time after such conviction or sentence receive His Majesty's free pardon; provided further that the Governor may, if he think fit, authorize the payment to or for the benefit of such person's wife or minor children, or, failing a wife and minor children, to any children or relatives dependent on him, of such portion of the pension as may be considered necessary for her or their maintenance.

Pensions to cease on conviction.

**65.** (1) If any person in receipt of a pension becomes insolvent such pension shall forthwith determine; provided that in any such case the Governor may order that all or any part of the annuity payable to such insolvent under this Act be paid to or for the benefit of all or any of the following persons:—namely, to or for the benefit of such insolvent, his wife or any minor children, or, failing a wife and minor children, to any children or relatives dependent on him for maintenance.

Pensions to cease on insolvency but may be restored on rehabilitation.

(2) Whenever a pension has determined under this section, the Governor may order that it shall revive on rehabilitation of the insolvent, and that he shall receive an annuity at the same rate, and under the same conditions as before insolvency.

**66.** No payment made or to be made to a person—

- (a) out of the General Service Provident Fund; or
- (b) out of the Teachers' Provident Fund,

Payments out of Provident Funds not to be assignable or executable.

**Act No. 19  
of 1908.**

Saving as to  
Auditor-  
General.

shall be assignable, or transferable, or capable of being hypothecated, or liable to be attached or subjected to any form of execution under a judgment or order of a court of law.

**67.** Nothing in this Act or the First Schedule hereto contained shall be deemed to affect anything contained in the Audit and Exchequer Act 1907 relating to the appointment of the Auditor-General and the Assistant Auditor-General, or to the tenure of office, or removal from office, or the powers and duties of the Auditor-General. The provisions of the Pensions Ordinance 1906 or Chapter III of this Act (whichever may be applicable) shall apply in respect of the age of retirement and the retiring pension of the Auditor-General, and any regulations made under the provisions of section *fifty-four* of this Act in so far as they are not in conflict with the provisions of the Audit and Exchequer Act 1907 shall be deemed to apply to the Auditor-General and the Assistant Auditor-General, unless otherwise provided by the conditions of their appointments.

Power to  
apply certain  
portions of  
this Act to  
teachers  
police and  
subordinate  
prisons  
officers and  
Land Bank  
officials.

**68.** The Governor may, at any time and from time to time, by proclamation in the *Gazette*—

(a) apply any provision of Chapters I and II, and this Chapter to members of the teaching staff of the Education Department; and

(b) apply to members of the Transvaal Police and to subordinate officers of the Prisons Department, any provisions of the same Chapters which are not already in terms of this Act specifically applicable to them;

(c) apply to the manager and staff of the bank established under Act No. 26 of 1907 any of the provisions of Chapter III and any provisions of any other Chapter which are incidental thereto.

Title and  
date of  
operation of  
Act.

**69.** This Act may be cited for all purposes as the Public Service and Pensions Act 1908, and shall not come into operation unless and until the Governor shall have declared by proclamation in the *Gazette* that it is His Majesty's pleasure not to disallow the Act, and thereafter it shall come into operation on such date as the Governor may by like proclamation declare.

### **First Schedule.**

CLASSES OF OFFICERS INCLUDED IN THE ADMINISTRATIVE AND CLERICAL SERVICE.

*His Excellency the Governor's Office—*

All whole time officers on the regular clerical staff.

*Auditor-General's Office—*

All whole time officers on the regular staff except caretakers and messengers.

**Act No. 19  
of 1908.**

*Prime Minister's Division—*

All whole time officers employed on the regular staff of the Division, except caretakers and messengers.

*Minister of Agriculture's Division—*

All whole time officers employed on the regular staff of the Division, except—

- (a) stock inspectors and stockmen ;
- (b) foresters and nursery assistants ;
- (c) farm overseers ;
- (d) inspectors of plants ;
- (e) locust officers ;
- (f) assistant horticulturists ;
- (g) assistant to poultry expert ;
- (h) caretakers and messengers and similar officers,

*Colonial Secretary's Division—*

All whole time officers employed on the regular staff of the Division except—

- (a) members of the subordinate permanent staff of the Transvaal Volunteers ;
- (b) the teaching staff of the Education Department (other than the Head Master of the Normal College) ;
- (c) rangers in the Government Game Reserves ;
- (d) attendant and nursing staffs, dispensers, storekeepers, storemen, overseers, farm bailiffs, farm hands, porters, cooks, servants and other similar officers at Government hospitals, asylums and similar institutions ;
- (e) all workmen at the Government Printing Works engaged at a weekly wage ;
- (f) messengers and caretakers and similar officers.

*Attorney-General's Division—*

All whole time officers employed on the regular staff of the Division except—

- (a) officers of the Foreign Labour Department ;
- (b) issuers of process ;
- (c) interpreters of the inferior courts ;
- (d) messengers of magistrates' courts ;
- (e) ushers and criers ;
- (f) executioners ;
- (g) library attendants ;
- (h) subordinate officers of the Prisons Department ;
- (i) members of the Transvaal Police (other than commissioned officers thereof) ;
- (j) messengers, caretakers, servants and similar officers.

*Minister of Mines' Division—*

All whole time officers employed on the regular staff of the Division except—

- mechanics, messengers, caretakers and similar officers.

*Colonial Treasurer's Division—*

All whole time officers employed on the regular staff of the Division except—

- (a) embossing machine operators ;
- (b) outdoor customs officers ;
- (c) telephone operators ;
- (d) storemen ;
- (e) postmen and telegraph messengers ;
- (f) liftmen, workmen and similar employees of the postal and telegraph departments ;
- (g) messengers, caretakers and similar officers.

**Act No. 19  
of 1908.***Minister of Lands' Division—*

All whole time officers employed on the regular staff of the Division except—

- (a) persons engaged at the settlements of Potchefstroom and Heidelberg and any similar settlement ;
- (b) water bailiffs and storekeepers of the Irrigation Department ;
- (c) messengers, caretakers and similar officers.

*Minister for Native Affairs' Division—*

All whole time officers employed on the regular staff of the Division except—

- (a) hospital orderlies ;
- (b) interpreters ;
- (c) compound attendants ;
- (d) impression takers ;
- (e) messengers, caretakers and similar officers.

*Minister for Public Works' Division—*

All whole time officers employed on the regular staff of the Division except—

- (a) gardeners ;
- (b) doorkeepers, caretakers, night watchmen ;
- (c) messengers, drivers, workmen and other similar officers.

**Second Schedule.**

Junior clerks and similar officers in the grades £100 rising by £10 per annum to £160.

Third class clerks and similar officers in the grades £180 rising by £15 per annum to £240.

Second class clerks and similar officers in the grades £260 rising by £20 per annum to £340.

First class clerks and similar officers in the grades £360 rising by £20 per annum to £440.

Non-professional officers in the Administrative grades in receipt of salaries of less than £600 per annum.

(~~ACT NO. 20 OF 1908~~) [See section 87 as to date of operation.]

**Act No. 20  
of 1908.**AN  
**ACT**

**To provide for the organization and discipline of, and the payment on retirement of pension allowances, and other benefits to persons in the employment of the Railway Administration.**

(Assented to 22nd August, 1908.)

**BE IT ENACTED** by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

**PRELIMINARY.**

Interpretation of terms. **1.** In this Act, unless inconsistent with the context;

- “actuary” shall mean a Fellow of the Institute of Actuaries of London or of the Faculty of Actuaries in Scotland;
- “Board” shall mean the Railway Board nominated by the Governments of The Transvaal and Orange River Colony under a Convention dated the second day of June 1908 providing for the joint working and administration of the Central South African Railways in each such Colony (the terms of which Convention are set forth in the First Schedule to the Inter-Colonial Conventions Ratification Act 1908) and shall include any person or body of persons in whom the administration and control of so much of such railways as are in this Colony may after the termination of such Convention be lawfully vested;
- “employee” shall mean any person of European descent in the employment of the Administration who is remunerated by wages (with or without local, climatic, or other allowance) calculated at a daily rate or in any other manner than annually;
- “fixed date” shall mean the date fixed by the Board under section *twelve* as the date of the establishment of the Railway Superannuation Fund therein referred to;
- “General Manager” shall mean the officer mentioned in article *twelve* of the Convention set forth in the First Schedule to the Inter-Colonial Conventions Ratification Act 1908, or any person lawfully acting in such capacity;
- “interest” shall mean, in contradistinction to compound interest, simple interest;
- “Joint Service” shall mean the common service of the Administration and one or more other railway administrations of South Africa;
- “medical practitioner” shall mean a medical practitioner duly registered as such under the laws of The Transvaal or of The Orange River Colony;
- “member” shall mean any railway servant who is for the time being a contributor to

**Act No. 20  
of 1908.**

the superannuation fund established under Chapter III in accordance with the provisions of that Chapter ;

“ officer ” shall mean any person of European descent in the employment of the Administration who is remunerated by salary calculated at an annual in contradistinction to a daily or other rate or to any form of remuneration other than an annual salary ;

“ pension ” shall mean an annuity, or gratuity, (as the context may require), payable under Chapter III, IV, V or VI ;

“ pensionable emoluments ” shall, when used in Chapter III, mean the emoluments described in section *twenty-three* as the emoluments on which contributions to the Fund shall be paid ; and, when used in Chapters IV and V, shall mean the emoluments on which by section *sixty-four* pensions to transferred servants shall be computed ;

“ prescribed ” shall mean as prescribed by this Act or by regulation, or by the Board or any officer authorized under this Act or the regulations ;

“ railway servant ” shall include both an officer and an employee ;

“ regulation ” shall mean a regulation made and in force under section *eleven, fourteen* or *seventy-six* of this Act ;

“ revenue ” shall mean the revenues of the Administration referred to in section *three* of the Inter-Colonial Conventions Ratification Act 1908 ;

“ salary ” shall mean the annual pay of an officer and shall include any special or personal allowance attached to a particular office if such allowance when granted be specially declared to be part of pensionable emoluments ;

“ temporary railway servant ” shall mean a railway servant holding an office or post prescribed by the Board as temporary ;

“ transferred servant ” shall mean any such railway servant as is described in section *forty-nine* ;

“ the Administration ” shall mean the Railway Administration of the Central South African Railways as existing subsequent to the second day of June 1908 and incorporated under the Inter-Colonial Conventions Ratification Act 1908 and shall include any person or body of persons in whom the administration and control of so much of such railways as are in this Colony may be vested after the termination of the convention set forth in the First Schedule to the said Act ;

“ the old Administration ” shall mean the Railway Administration of the Central South African Railways as existing prior to the second day of June 1908 and shall include the Imperial Military Railways Administration and any military administration of such railways in The Transvaal or the Orange River Colony ;

“ the Fund ” shall mean the superannuation fund established under Chapter III, and shall include all moneys which, under this Act or any amendment thereof or the regulations, form part of or are due to such fund ;

“ the Service ” shall mean the system of employment of persons of European descent by the Administration in the discharge of duties in a department or office thereof ;

“ wages ” shall mean the pay of an employee calculated at a daily rate or in any other manner than annually.

## CHAPTER I.

### ORGANIZATION OF THE RAILWAY SERVICE.

**2.** The Service shall be divided into officers and employees.

Division of  
the Railway  
Service.

**3.** (1) The Board may from time to time appoint so many railway servants as the Administration may require, may increase or, without prejudice to the rights which a transferred servant may have under Chapter IV, diminish the number of railway servants and their emoluments in such manner as from time to time may be prescribed, and, subject to the

Appointment  
of railway  
servants.

Act No. 20  
of 1908.

provisions of this Act and without prejudice to the same rights, may discharge any railway servant.

(2) The Board may from time to time delegate—  
(a) in the case of officers, to the General Manager; and

(b) in the case of employees, to any officer; the powers of appointment or discharge vested in it under sub-section (1); provided that if a railway servant be appointed or promoted to an office or post in the Service, the emoluments of which exceed four hundred pounds per annum, the appointment or promotion shall be approved by the Board.

(3) All appointments to permanent employment in the Service shall be made as in this Act is specially provided.

(4) Every railway servant who is employed by the Administration at the commencement of this Act shall, for the purposes thereof, be deemed to have been appointed under sub-section (1), and, unless he is a temporary railway servant, to be in permanent employment.

Period for  
which  
appointments  
to be made.

4. (1) Subject to the provisions of sub-section (4) of this section, every appointment of a railway servant shall be made on probation for such period as may be prescribed for each particular class of employment.

(2) Every railway servant who—

(a) has served the prescribed period of probation; and

(b) has attained the age of eighteen years; and

(c) has passed a medical examination of fitness; and

(d) possesses such educational qualifications as may be prescribed; and

(e) has received a certificate of efficiency and good character signed by the head of his office,

shall be appointed to permanent employment, unless—

(i) he is a temporary railway servant; or

(ii) he is employed under a special contract between himself and the Administration.

(3) The Board shall from time to time prescribe what classes of employment shall be temporary.



(4) The Board may whenever it is necessary in the interests of the Administration, appoint for a short period without probation persons to employment not prescribed as temporary; provided that every person so appointed shall, after twelve continuous months of such employment, either be discharged or, if his services are further required, be appointed to permanent employment subject to the provisions of sub-section (2).

(5) The Board may prescribe that the appointment to permanent employment of any railway servant or class of railway servants shall not be made until the expiry of such additional period of probationary employment over and above the ordinary period as in each case may be determined.

5. (1) Whenever a vacancy occurs in any branch of the Service, regard shall be had in filling the vacancy to the relative efficiency of two or more railway servants eligible to fill it, or, if their claims as regards efficiency are equal, then to their relative seniority. Promotion.

(2) Any railway servant who alleges that a vacancy has been filled without regard to the provisions of this section, may appeal to the General Manager whose decision in the matter shall be final.

6. (1) Before any railway servant is, on the ground of inefficiency, dismissed from the Service, or reduced in rank or emoluments, a definite written charge shall be prepared and transmitted or delivered to him and an enquiry into the same shall be held at which he shall be afforded an opportunity of showing cause against the dismissal or reduction. He shall further be required to state in writing whether he admits or denies the charge and to give any explanation which he may desire to make. Dismissal or reduction on grounds of inefficiency.

(2) If such enquiry shall disclose that the railway servant is inefficient and that his inefficiency is solely due to causes within his own control, he shall be deemed to have been guilty of misconduct and shall be dealt with as provided in section *ten*.

(3) If such enquiry shall disclose that the railway servant is inefficient but that his inefficiency is not solely due to causes within his own control,

Act No. 20  
of 1908.

he shall be dealt with as the merits of the case may require ; provided that if he is removed from the Service and is a member of the Fund he shall receive from revenue an amount not less than his contributions to the Fund.

(4) If such enquiry shall disclose that the railway servant is in no way inefficient, he shall be reinstated or be appointed to another office or post, and in either case without reduction of emoluments.

(5) Pending the result of the enquiry the railway servant shall be suspended from the duties but not from the emoluments of his office or post.

(6) No railway servant shall, on the ground of inefficiency, be dismissed from the Service or reduced in rank or emoluments, except—

(a) in the case of an officer, upon the authority of the General Manager ; and

(b) in the case of an employee, upon the authority of the head of his department.

(7) Nothing in this section shall apply to a transferred servant.

Retrenchment.

7. If the Administration dispenses with the services of a railway servant in permanent employment (other than a transferred servant or the officers mentioned in Chapter VI) prior to his superannuation owing to a reduction in or reorganization of staff and not for reasons of ill-health, fraud, dishonesty, misconduct, or inefficiency, the following provisions shall apply—

(1) An officer who does not elect under section *sixteen* to become a member of the Fund shall, in respect of a period of continuous employment in the Service before the fixed date receive from revenue a gratuity in respect of and calculated on the basis of his salary at the time of his leaving the Service, as described in section *twenty-three*, for each year of employment on the following scale :—

<i>Length of Employment.</i>	<i>Gratuity.</i>
Under one year ...	Nil
One year ...	One-half month's salary
Two years ...	One month's salary
Three " ...	Two " "
Four " ...	Three " "
Five " ...	Four " "
Six " ...	Five " "

<i>Length of Employment.</i>	<i>Gratuity.</i>
Seven years ... ..	Six months' salary
Eight " ... ..	Seven and a half "
Nine " ... ..	Nine months' salary
For any period over {	One month's salary for each completed year of employment ;
ten years ... ..	

In calculating a gratuity employment before the age of eighteen shall not be reckoned.

(2) An officer, who under section *sixteen* elects to become a member of the Fund, shall receive from revenue a gratuity calculated in accordance with the scale set forth in subsection (1) in respect of his whole period of continuous employment in the Service, both before and after the fixed date; provided that if any such officer has paid arrear contributions in accordance with section *twenty-one* in respect of his employment before the fixed date, such arrear contributions shall, in addition, be refunded to him; and provided further that if the officer's continuous period of employment both before and after the fixed date shall, in the aggregate, have been fifteen years or more, or, in the case of an officer whose age is forty-five years or more, shall, in the aggregate, have been ten years or more, he shall receive from revenue, at his option, either an annuity equivalent in amount to the annuity he would receive from the Fund on retirement owing to ill-health, or a gratuity calculated as aforesaid.

(3) If on or after the fixed date an officer does not elect under section *sixteen* to join the Fund no period of employment after such date shall for the purposes of this section be reckoned as employment.

(4) An employee shall receive such gratuity from revenue as the Board may from time to time prescribe; provided that if he is a member of the Fund and his continuous period of employment shall have been twenty-five years or more and he shall have attained the age of fifty, he shall receive from revenue, at his option, either an annuity equivalent in amount to the annuity which he would receive from the Fund on retirement owing to ill-health, or a gratuity of not less than six months' wages exclusive of allowances.

Act No. 20  
of 1908.

(5) In the case both of an officer and an employee the amount paid from revenue shall in no case be less than the amount which such officer or employee (as the case may be) has contributed to the Fund.

(6) A gratuity in this section shall be calculated by the year and by the month, but fractions of a month shall be disregarded.

(7) Nothing in this section shall apply to a temporary railway servant or any such railway servant as is described in sub-section (4) of section *four*, until he is taken into permanent employment. Thereupon such period of employment as is reckoned in the period of membership under sub-section (3) of section *sixteen* shall be reckoned for the purposes of calculating the gratuity.

(8) No payment shall be made in respect of any period of accumulated leave of absence.

## CHAPTER II.

### DISCIPLINE IN THE RAILWAY SERVICE.

Misconduct  
by railway  
servants—  
what is.

#### 8. Any railway servant who—

(a) absents himself from duty without leave; or

(b) is negligent in the execution of his duty; or

(c) wilfully disobeys or disregards any lawful order given by competent authority; or

(d) habitually uses to excess any intoxicant or drug; or

(e) becomes insolvent or assigns his estate for the benefit of or makes an arrangement with his creditors, or has a decree of civil imprisonment made against him by any court of law; or

(f) trades or carries on a business or occupation on his own account and without the sanction of the General Manager; or

(g) discloses information acquired in the course of his duties otherwise than in the discharge thereof; or

(h) conducts himself in a disgraceful, improper, or unbecoming manner, either in the discharge of his duties or in public; or

- (i) accepts or demands any commission, fee, or reward, pecuniary or otherwise, except from the Administration, for the performance of his duties, or fails to report to the head of his office, or, if he is the head of an office, to the head of his department, the offer of any such commission, fee, or reward; or
- (j) dishonestly abuses any travelling privileges or facilities granted to him by the Administration as a railway servant; or
- (k) misappropriates any railway property under circumstances which do not constitute a criminal offence; or
- (l) is convicted of any criminal offence and sentenced to imprisonment without the option of a fine, unless he shall have obtained a free pardon for the offence;

shall be deemed to have been guilty of misconduct and may be dealt with as in this Chapter is provided.

9. (1) A railway servant who is charged with misconduct of a minor nature shall be afforded an opportunity of being heard and any admission or denial he may make or explanation he may give shall be considered by the head of his department or other officer delegated thereto by the head of his department.

Procedure to be followed on charges of misconduct.

(2) A railway servant who is charged with misconduct not of a minor nature may be suspended temporarily from duty and from the emoluments of his office by the head of his office who shall, in the case of an officer, report all the facts to the General Manager. The order of suspension shall as soon as possible be reduced to writing and a copy thereof signed by the person making the order, together with a copy of the charge on which the order was made, shall forthwith be transmitted or delivered to the servant suspended. The railway servant suspended shall be required to state in writing whether he admits or denies the charge and to give any explanation he may desire to make. The matter shall be considered, in the case of an officer, by the General Manager, and, in the case of an employee, by the head of the department.

(3) If the railway servant be found not guilty of the misconduct charged the order of suspension shall be removed and the emoluments withheld during the period of suspension paid to him.

**Act No. 20  
of 1908.**

How proved  
misconduct  
may be dealt  
with.

**10.** (1) When an officer is found guilty of misconduct—

(a) if the misconduct is of a minor nature, a fine may be imposed on him recoverable by deductions from salary or he may be cautioned or censured, by the head of his department or by another officer delegated thereto by the head of his department; or

(b) if the misconduct is not of a minor nature, the General Manager may impose all or any of the following penalties, that is to say, a fine recoverable by deductions from salary, stoppage of leave, stoppage of increments of pay, reduction in salary, reduction in rank, order to resign office, or dismissal.

(2) When an employee is found guilty of misconduct the provisions of sub-section (1) shall apply according to the nature of the misconduct, save that the head of the department or, if delegated thereto by the head of department, any other officer may exercise any of the powers of the said sub-section without reference to the General Manager.

Power to  
make regula-  
tions as to  
procedure  
and appeals  
in cases of  
misconduct.

**11.** The Board may from time to time make, alter, or rescind regulations not inconsistent with this Act more particularly providing for the procedure in investigating and dealing with charges of misconduct, the officers by whom the prescribed penalties may be imposed, and the circumstances in which and the authority to whom an appeal shall lie against the finding and penalty imposed and the procedure on the hearing and determination of appeals; provided that nothing in this Chapter or the regulations thereunder shall deprive any railway servant of a right of appeal against any finding or penalty to the General Manager, and from the General Manager to the Board.

### CHAPTER III.

#### SUPERANNUATION FUND FOR NON-TRANSFERRED RAILWAY SERVANTS.

##### *Constitution of Fund.*

Establish-  
ment of  
superannua-  
tion fund.

**12.** (1) A Fund to be known as "The Railway Superannuation Fund" shall be established and

exist for the payment, subject to the provisions of this Act, of pensions—

(a) to officers and employees other than transferred servants and officers described in Chapter VI, already in or hereafter admitted to the Service or already in or hereafter entering Joint Service, who may under this Chapter become and continue contributors to the Fund; or

(b) to their representatives at death.

(2) The Fund shall be established as from a date to be notified by the Board in the *Gazette* and in the *Government Gazette* of the Orange River Colony.

(3) The Fund shall be formed and maintained by means of contributions by the members thereof and by the Administration in accordance with the provisions hereinafter contained.

13. (1) There shall be two divisions of the Fund according to the class of railway servants who are members thereof, namely,—

Division I.—For officers.

Division II.—For employees.

Division of Fund according to classes of contributors.

(2) Any member transferred from one division to the other shall rank for pension as if he had originally entered the division to which he is transferred.

14. The Board may from time to time determine the manner in which the Fund shall be administered and, if it thinks fit, constitute by regulation a Committee of Management consisting of representatives of the Administration and of the members, and may confer upon such committee such powers with regard to the investment of the balances of the Fund under the authority of the Board, claims made upon the Fund, and such other powers by this Chapter vested in the General Manager as it may think fit.

Management of the Fund.

15. If the Administration shall agree with one or more of the British South African Railway Administrations that the Fund be amalgamated with the superannuation funds of such other Administration or converted into a joint fund for the staff of such administration or administrations as well as for the railway servants

Amalgamation of Fund with other funds.

Act No 20  
of 1908.

the Board may make arrangements with the governing body of any such other administration or administrations with regard to the control and management of the Fund, the apportionment of the liabilities of the governing bodies in any such joint fund in respect of interest, management, and other charges, and any other questions which may arise out of the amalgamation or conversion of the fund into a joint fund ; provided that no such amalgamation or conversion shall be deemed to affect the provisions of this Chapter in respect of contributions to or pensions from the Fund.

*Membership of Fund.*

Membership  
of the Fund.

16. (1) Membership of the Fund shall be optional in the case of railway servants in the employment of the Administration on the fixed date and shall, save as is provided in sub-sections (4) and (5) of this section, be obligatory in the case of those admitted to permanent employment after that date ; provided that—

(a) unskilled labourers and such other railway servants (not being persons in permanent employment of the Administration) whom the Board shall decide not to admit as members ;

(b) temporary railway servants or railway servants described in sub-section (4) of section *four* or engaged for a fixed period of employment, unless subsequently taken into permanent employment ;

(c) female railway servants subject to the provisions of section *forty-five* ;

shall not be eligible for membership of the Fund.

(2) Any railway servant whose membership of the Fund is under this section optional and who desires to become a member, shall give written notice to the General Manager of his intention within six months after the fixed date and shall thereupon become liable for the payment of contributions as provided in this Act. Unless he shall give such notice within such period he shall thereafter be ineligible for membership of the Fund.

(3) If a temporary railway servant or a railway servant described in sub-section (4) of section



*four* be appointed to permanent employment he shall become a member of the Fund and shall be entitled to antedate his membership to the date of his first temporary appointment, which immediately precedes his appointment to permanent employment; provided that he pays contributions for the period of his temporary employment with compound interest thereon at the rate of four per cent. per annum, calculated quarterly.

(4) Any railway servant appointed to permanent employment after the fixed date, if his age on appointment to such employment was forty years or over, shall have the option of becoming a member of the Fund, but it shall not be obligatory upon him to do so.

(5) No railway servant in permanent employment at the fixed date or thereafter appointed to permanent employment, shall, if his age be fifty years or over, be permitted to become a member without the special sanction of the General Manager.

17. In the case of members who are transferred with the approval of the Board to or from the Joint Service the following provisions shall apply:—

Special provision for membership in case of persons transferred to or from Joint Service.

(a) If the transfer be from the Service to Joint Service, the member transferred may remain a member subject to the provisions of sub-section (2) of section *nineteen*.

(b) If the transfer be from Joint Service to the Service, and a person transferred is a member of the Fund and is not a contributor to any other superannuation fund he shall, on such transfer, be treated as if he had been in the Service during the whole period of his membership.

(c) If a person in Joint Service is a contributor to a pension fund of another administration he shall, if he is transferred to the Service, be required to contribute to the Fund in accordance with this Chapter as and from the date of the transfer.

18. Subject to the provisions of section *forty-four* a member who, with the consent of the Board, is transferred to any railway or other service, whether British or foreign, shall not be allowed to continue his contributions to the Fund.

Special provision as to persons transferred to other services.

**Act No. 20  
of 1908.**

*Contributions.*

Rate of  
contributions  
by members.

**19.** (1) Every member shall contribute to the Fund, so long as he remains in the Service, at the rate of three per cent. per annum on his pensionable emoluments.

(2) In addition to the contribution at the rate provided in sub-section (1) a member transferred to the Joint Service shall be required as a condition of remaining a member of the Fund to make good thereto the contributions and interest (if any) which would otherwise be paid by the Administration to the Fund, on such proportion of his pensionable emoluments as may be chargeable against any other South African Railway Administration or any portion of such proportion which the other Administration shall not agree to contribute to the Fund.

(3) A member whose age on entering permanent employment was thirty years or over may, within six months after the date of his first contribution to the Fund, elect to make additional contributions at the rate of one-half per cent. or any multiple thereof of his pensionable emoluments; provided that the additional contributions shall not exceed two per cent. of such emoluments.

When  
contributions  
commence.

**20.** (1) In the case of all railway servants becoming members after the fixed date contributions to the Fund shall commence from the date of appointment to permanent employment; provided that employment on probation may be reckoned in the period of membership if contributions are paid in respect thereof together with compound interest at four per cent. per annum calculated quarterly upon such contributions as are in arrear.

(2) A railway servant who, being in the Service at the fixed date, elects to become a member of the Fund, shall have the option of dating his contributions other than additional contributions from any date from and after his first appointment in the old Administration or the Service, up to and including the fixed date.

(3) Any person desiring to antedate his membership shall notify his intention to the General Manager within six months after the fixed date and indicate what period of his past continuous

period of employment he desires to have reckoned for purposes of pension. The General Manager shall decide whether or not such period may be reckoned as continuous employment for pension purposes.

(4) Notwithstanding anything in this Act contained, if any railway servant (other than a transferred servant and an officer described in Chapter VI) who has before entering the Service relinquished employment with any other Administration or Government in South Africa, shall allege to the Board that owing to the circumstances of his case hardship would be caused if he were not allowed to treat such employment as continuous for pension purposes with his employment under the Administration and to contribute to the Fund in respect of it, the Board shall examine his claim, and shall decide whether to admit it, and if so, upon what terms.

**21.** (1) Whenever, under the last preceding section, membership of the Fund is antedated the member shall be required to pay arrear contributions at the rate of three per cent. on the pensionable emoluments drawn by him during the period to be covered, and the Administration shall pay on his behalf, in respect of the period before the fixed date, compound interest on such arrears at the rate of five per cent. per annum as from the date to which membership of the Fund has been antedated up to the fixed date. In respect of the period from the fixed date up to the date or dates when the payments on account of such arrears are actually made compound interest at the rate of four per cent. per annum calculated quarterly shall be paid by the member.

Arrears of contributions and interest thereon.

(2) Whenever under the last preceding section membership of the Fund is antedated the member, if he has elected to make additional contributions under sub-section (3) of section *nineteen*, shall be entitled to make such contributions in respect of his antedated membership for such period of his continuous pensionable employment after he was thirty years of age or more, as he may desire and as the General Manager may approve, but compound interest on such arrears as aforesaid, whether before or after

Act No. 20  
of 1908

the fixed date, shall be paid by the member and not by the Administration.

(3) Arrears of contributions and interest may be paid by such instalments as the Administration shall determine, but so that a member's total contributions other than additional contributions do not exceed six per cent. of a member's pensionable emoluments unless he so desires; and any instalments paid by a member shall be regarded as applying to the period immediately preceding the period for which contributions have been made by him to the Fund (as the case may be). Upon completing the payment of arrear instalments, as aforesaid, in respect of the pensionable emoluments of the respective years and months preceding his admission to membership, the member shall have a corresponding number of years and months added to his membership, but no such addition shall be made in respect of any period of less than one month; nor shall any person be entitled to any benefits from the Fund in respect of any period for which there has been no specific contribution by him or on his behalf. The cost of any additional benefits granted shall be met out of revenue.

(4) If the Board shall admit any such case as is referred to in sub-section (4) of section *twenty*, there shall be paid to the Fund by the railway servant arrear contributions at the rate of six per cent. per annum of his pensionable emoluments and by the Administration compound interest at the rate of five per cent. per annum in so far as the other Government or Administration previously employing him shall not agree to pay the whole or any part of such contributions and interest.

Contributions to be deducted from salaries or wages.

**22.** All contributions to the Fund (including arrear contributions and any additional contributions made under sub-section (3) of section *nineteen*) shall be made by deductions from the salary or wages (as the case may be) of the member or in such other manner as may be prescribed by the General Manager.

Pensionable emoluments on which contributions

**23.** (1) The pensionable emoluments on which contributions to the Fund shall be paid shall be as follows :—

(a) Salary or wages.

(b) The estimated value of quarters, whether belonging to the Administration or not, whenever the member is allowed to occupy them free of rent, as a portion of his emoluments.

shall be made and shall not be made. **Act No. 20 of 1908.**

(c) Any allowance granted in lieu of the provision of free quarters.

(d) The assessed value of rations which form a portion of a member's emoluments.

Provided that in the case of an artisan or other member who by reason of the conditions of his employment draws consolidated wages, the Board may prescribe that for the purpose of calculating his pensionable emoluments such deduction shall be made from his consolidated wages (including remuneration for piece-work) as may be necessary to secure uniformity of treatment with other classes of employees.

(2) Contributions to the Fund shall not be payable on the following emoluments, nor shall such emoluments be taken into account in determining the pension payable to any member :—

(1) Payments for overtime (except overtime payments to drivers, firemen and guards who are employed on the trip system).

(2) Allowances of whatever character other than those specified in paragraphs (c) and (d) of sub-section (1).

(3) Fees, honoraria and bonuses of any kind.

**24.** (1) A member shall continue to contribute to the Fund while on leave with full pay, and, if he is on half-pay leave, his contributions shall be payable on his full pensionable emoluments and not on the half-pay actually drawn. In respect of a period of leave without pay no contribution shall be made, and such period shall be excluded from his period of pensionable employment.

Contributions of members on leave.

(2) A member shall continue to contribute to the Fund in the ordinary manner whilst absent on sick leave. If sick leave is granted with half or one-third ordinary pay (whether paid by the Administration or out of a sick or other fund to which the Administration contributes) contributions shall be payable on the full pensionable

**Act No. 20  
of 1908.**

emoluments which would have been drawn if the member had not been on sick leave. The provisions of sub-section (1) shall apply *mutatis mutandis* in respect of contributions while on sick leave without pay.

Contributions  
by Adminis-  
tration.

**25.** The Administration as from the fixed date shall on the thirty-first day of March, thirtieth day of June, thirtieth day of September, and the thirty-first day of December of each year contribute and pay into the Fund a sum equal to the aggregate of the amounts, whether of principal or interest, which shall during the preceding quarter have been paid into the Fund by members or by the Administration under sub-section (1) of section *twenty-one* on behalf of members.

Investment of  
balance of  
Fund and  
payment of  
interest  
thereon.

**26.** (1) The Board may from time to time invest the moneys of the Fund in the public stock of The Transvaal or Orange River Colony, or stock guaranteed by The Transvaal or Orange River Colony or Imperial or any South African Government in Treasury Bills of the Government of The Transvaal or Orange River Colony, on first mortgage of immovable property not exceeding half the value of the property, in either such Colony or in the stock of any local authority therein which is authorized by law to issue stock or on a fixed deposit with any bank carrying on business in either Colony under the laws thereof and approved by the Governments of both Colonies.

(2) After the fixed date the revenue shall be charged with interest at four per cent. per annum on all moneys so invested; such interest shall be credited monthly to the Fund, and the income accruing from the investments shall be credited to revenue in so far as it does not exceed four per cent. per annum, calculated monthly, but so much of that income as exceeds that rate shall be credited to the Fund.

*Annuities.*

Annuities  
payable  
according to  
age.

**27.** Any annuity payable by the Fund under this Chapter shall be based on the average pensionable emoluments of each member for the whole period of his contributions, and shall vary according to the member's age, calculated as from his birthday nearest to the date from which he

shall have made contributions. The tables set forth in the First Schedule to this Act and marked I and II shall be deemed to show in the case of officers and employees respectively the percentage of such average pensionable emoluments which shall be payable as an annuity in respect of each completed year of contribution; provided that no annuity shall be granted out of the Fund to any person unless contributions have been made by him or on his behalf in respect of a period of ten years or more, and provided further that the member is in other respects qualified for an annuity under this Chapter.

28. A supplementary annuity from the Fund may be obtained by a member making the additional contributions mentioned in sub-section (3) of section *nineteen*. The tables set forth in the First Schedule to this Act and marked III and IV shall be deemed to show in the case of officers and employees respectively the supplementary annuity which may be secured by payment of contributions of an additional one per cent. on a member's pensionable emoluments, provided that no such supplementary annuity shall be granted out of the Fund to any person unless additional contributions have been made by him or on his behalf in respect of a period of ten years or more.

Additional annuity in respect of additional contribution.

29. (1) A member who has attained the age of sixty years and who shall have contributed to the Fund in respect of a period of at least ten years, shall have the right to retire on pension, or may be required by the Administration to retire on pension.

Ages and circumstances giving rise to retirement on pension.

(2) A member who for at least five years immediately preceding his retirement shall have continuously occupied the position of telegraphist, engine-driver, or fireman shall, on attaining the age of fifty years, and provided that he has contributed to the Fund in respect of a period of at least ten years, be entitled to retire on pension, or may be required by the Administration to retire on pension; but in calculating an annuity in any such case, a member's age at the date in respect of which his first contribution to the Fund has been paid shall be deemed to be increased by as many years beyond his actual age at

Act No. 20  
of 1908.

that date as his age on retirement falls short of sixty years.

(3) A member who having contributed to the Fund in respect of a period of ten years or more, is compelled to retire from the Service by reason of severe bodily injury occasioned without his own default or permanent ill-health shall be entitled to receive, in respect of his completed years of membership, an annuity calculated as is provided in section *twenty-seven*, provided that in the case of permanent ill-health he produce a satisfactory certificate signed or countersigned by a railway medical officer or such medical practitioner or board as may be prescribed, that it has been occasioned without his own default; provided further that the General Manager or other authority acting on his behalf be satisfied on enquiry that the disablement is permanent, and is of such a nature as permanently to incapacitate the contributing member from performing duty.

*Benefits other than Annuities.*

(1) ON LEAVING THE SERVICE.

Voluntary  
retirement.

**30.** If a member retires from the Service voluntarily before superannuation and not in order to avoid dismissal for fraud, dishonesty or misconduct, he shall be entitled to a return of the whole of his contributions, but without interest, and he shall have no further claim upon the Fund.

Retirement  
on ill-health  
etc., before  
expiry of ten  
years from  
joining the  
Fund.

**31.** If a member is compelled, before having contributed to the Fund in respect of a period of ten years, to retire by reason of severe bodily injury occasioned without his own default or permanent ill-health, he shall be entitled to a return of all his contributions with compound interest at the rate of four per cent. per annum, provided that in the case of permanent ill-health he produces a satisfactory certificate signed or countersigned by a railway medical officer or such medical practitioner or board as may be prescribed certifying that it has been occasioned without his own default; provided further that the General Manager be satisfied on enquiry that the disablement is permanent and of such a nature as permanently to incapacitate the



member from performing his duty.. Such member shall have no further claim upon the Fund but the Board may grant him out of revenue such sum by way of gratuity as it may think fit.

**32.** If a member is shown after enquiry, as provided in section *six*, to be inefficient from causes not solely within his own control, and on that ground is removed from the Service, there shall be paid over to the Administration from the Fund a sum equal to twice such member's contributions without interest, and thereafter such member shall have no further claim upon the Fund, and the Administration shall deal with him as provided in sub-section (3) of the said section.

Retirement  
due to  
inefficiency.

**33.** (1) If a member is dismissed from the Service for misconduct or retires in order to avoid dismissal, or is ordered to resign, under the powers of section *ten* he shall forfeit the whole of his contributions and lose all benefits from the Fund; but the General Manager or other authority acting on his behalf may, in cases where the misconduct is not of a grave nature, authorize the payment to such member of the whole or any portion of his contributions to the Fund, and in cases of grave misconduct may authorize such grant as may be made under sub-section (2) of this section.

Dismissal  
from Service.

(2) If a member is dismissed from the Service for fraud or dishonesty, or retires in order to avoid dismissal or is ordered to retire under the powers of section *ten*, he shall forfeit the whole of his contributions and lose all benefits from the Fund; but the General Manager or other authority acting on his behalf may make to him or to his wife or children out of the Fund such grant as the General Manager or other authority thinks fit, not exceeding the one-half of his contributions without interest if he shall have been a member of the Fund for less than ten years or not exceeding the whole of his contributions without interest if he shall have been a member of the Fund for ten years or more.

**34.** If a member leaves the Service before superannuation in consequence of his services being discontinued by the Administration owing to a reduction in or reorganisation of staff

Retirement  
for other  
causes.

**Act No. 20  
of 1908.**

and not for reasons of inefficiency, ill-health, misconduct, fraud, or dishonesty there shall be paid over to the Administration from the Fund a sum equal to twice the amount of the member's contributions without interest, and thereafter such member shall have no further claim on the Fund, and the Administration shall deal with him as provided in section *seven*.

Retirement of servants entering the Service when over fifty.

**35.** A railway servant who under sub-section (5) of section *sixteen* has been permitted to become a member of the Fund, shall, if his employment is terminated on superannuation before he has been a member for ten years, be entitled to be refunded his contributions without interest.

(2) ON DEATH.

Death before superannuation.

**36.** (1) If a member dies before superannuation from the effects of severe bodily injury, occasioned without his own default whilst in the discharge of his duties there shall be returned to his legal representative (subject to the conditions in section *thirty-eight* contained) a sum equal to twice the amount of his contributions with interest at the rate of four per cent. per annum.

(2) If a member dies before superannuation from any other cause there shall be returned to his legal representative (subject to the conditions in section *thirty-eight* contained) a sum equal to twice the amount of his contributions without interest.

Death after superannuation.

**37.** If a member dies after superannuation, there shall be returned to his legal representative (subject to the conditions in section *thirty-eight* contained) a sum equal to any difference that may remain between twice the amount of his contributions (exclusive of additional contributions) together with the actual amount of his additional contributions without interest and the aggregate of amounts which he has received by way of annuity.

Circumstances under which contributions payable to deceased's representatives.

**38.** Notwithstanding anything in sections *thirty-six* and *thirty-seven* contained, twice the amount of the contributions of the deceased member shall be returned to his legal representative only when such member leaves—

(a) a widow or children (or step-children) or

(b) a father, mother, brothers or sisters dependent upon him, and not any collateral or more distant relative,

and in the following order of preference, namely—

- (i) the widow, or failing a widow,
- (ii) the children or step-children; or failing children or step-children,
- (iii) the father, mother, brothers or sisters.

In all other cases the deceased member's contributions only shall be paid to the legal representative.

(3) *General.*

39. (1) The period of employment in respect of which a pension may be reckoned shall be continuous.

Continuity of employment for pension purposes.

(2) A continuous period of employment shall include the time spent by a railway servant:—

- (a) on actual duty;
- (b) on authorized leave of absence otherwise than without pay;
- (c) under suspension followed by re-instatement in the same or another office or post;
- (d) in transit from one appointment to another in the Service or to or from the Service when transferred under competent authority to or from the service of another administration or Government, or when seconded to the service of such other administration or Government for a period not exceeding one year.

(3) A continuous period of employment shall not be regarded as interrupted by authorized leave of absence without pay or by retirement followed by resumption of duty under section *eighty-five*, but the time spent on such leave or on such retirement shall not be reckoned for purposes of pension.

40. No pension shall be granted to any member so long as he holds any office or post in the Service.

Pension not to be paid so long as office or post held.

41. If any member to whom an annuity is granted under this Chapter, either before or after superannuation, is thereafter employed in the Public Service of The Transvaal or of the

Provision in case pensioned member is re-employed.

Act No. 20  
of 1908.

Orange River Colony, or in the Service or Joint Service, such annuity shall cease to be paid for any period subsequent to such appointment if the amount of the emoluments thereby received by such member is equal to the pensionable emoluments of his former office or post at the time of his retirement from the Service, or if not, then the annuity shall be reduced until the amount thereof, *plus* the emoluments so received, shall become equivalent, to the pensionable emoluments of his former office or post. On the termination of such appointment the annuity granted prior thereto shall again become payable. If the appointment be with the Service or Joint Service the member shall be entitled to contribute to the Fund on the pensionable emoluments (including for the purpose the reduced annuity aforesaid) drawn by him during his second period of employment, and on his ultimate retirement shall be entitled to a further annuity in respect of such further period of employment, calculated in the same manner as if he had first entered the Service at the date of that appointment.

Method of  
calculating  
pensions.

**42.** Pensions under this Chapter shall be calculated by the year and by the month, but fractional parts of a month shall be disregarded.

Provision in  
case of persons  
transferred  
from other  
Services after  
fixed date.

**43. (a)** Any railway servant who shall after the fixed date have been transferred to the Service from the Service of any South African Government or of the Imperial Government or of any British Colony or possession, and who becomes a member of the Fund under this Chapter shall be entitled on his ultimate retirement to have his annuity calculated upon the whole period of his continuous employment under the Imperial or other Government and that under the Administration; provided that the Imperial or other Government is prepared to contribute to the annuity thus calculated an amount based on his period of employment under such Government in accordance with any regulation which may be in force in the transferring Service at the time of the transfer. Any liability thereby imposed on the Fund over and above the liability in respect of the member's actual period of membership shall be met out of revenue.

(b) If the Imperial or other Government is prepared so to contribute but on a period shorter than the whole period of the person's employment under that Government, such shorter period shall in that case be taken to be for pension purposes the member's period of employment under that Government.

(c) If the Imperial or other Government is not prepared to make any contribution to the pension of a servant transferred as aforesaid, any pension which may under this Chapter be granted to such member shall be based solely on his period of employment under the Administration.

44. When, after the fixed date, a member is, with the consent of the Administration, transferred to the service of any South African Government, or Administration, or the Imperial Government, or any British Colony or possession the following provisions shall apply :—

Provision in case of persons transferred to service of another Government after fixed date.

(a) If the member's period of membership is less than ten years, his contributions shall be returned to him without interest and he shall have no further claim upon the Fund.

(b) If the member's period of membership is ten years or more and if the Government to whose service he is transferred agrees to include his period of pensionable employment with the Administration in calculating his pension on his ultimate retirement, his contributions (exclusive of any additional contributions which shall be refunded to him without interest) may be retained in the Fund and, on his reaching the age of superannuation applicable to him if he had remained in the Service, or on his ultimate retirement (whichever event is the later) the Fund shall contribute towards any pension granted by such Government an annuity calculated in accordance with this Chapter but based on his actual period of pensionable employment under the Administration. If he leaves the employment of such Government for any other cause his contributions shall be returned to him. If he dies, they shall be returned to his legal representative. In the absence of any such agreement or if the member so desires, he shall be treated in all respects as if he had voluntarily retired from the Service.

**Act No. 20  
of 1908.**Admission of  
females to the  
Fund.

**45.** If it is decided at any date hereafter to admit females as members of the Fund (which the Board is hereby authorized to do) it may make such special rules and provide such scales of contributions and pensions as may be necessary, provided that any such scales shall be approved by an actuary before adoption.

*(4) Financial.*Accounts of  
the Fund.

**46.** (1) The Chief Accountant of the Administration shall cause full and true accounts to be kept showing separately for each division of the Fund—

(a) all sums of money received or due and disbursed or payable in respect of members and particulars of the matters and things for which such sums of money have been received or disbursed ;

(b) the time of commencement of membership and amounts and dates of payment of all contributions together with all chronological and other particulars necessary to admit of proper accounts of the divisions of the Fund being kept in accordance with this Chapter and the regulations and to admit of an actuarial valuation of the Fund to be made at any time ;

(c) all sums of money due to or from other administrations in respect of Joint Service pensions or other pensions partly payable by another administration or Government ;

(d) all amounts due to or from the Administration in connection with the Fund ;

(e) all other matters provided for or contemplated in this Chapter and the regulations.

For the purpose of such accounts, when a member is transferred from one division of the Fund to the other, twice the amount of his contributions accumulated at five per cent. compound interest shall be transferred from the one division to the other and thereafter any contributions shall be paid into the other division.

(2) The Chief Accountant shall cause the books and accounts of the Fund to be balanced up to the thirtieth day of June in every year and a balance-sheet to be made up showing the assets and liabilities of the Fund at the date when such balance-sheet is framed.

(3) The balance-sheet shall be signed by the Chief Accountant, and audited and thereafter countersigned by the person auditing the railway accounts and shall be distributed among all the members.

47. (1) The Fund shall be valued and reported upon as at the thirtieth day of June next succeeding the expiry of five years from the fixed date and at the expiry of every further period of five years by an actuary appointed by the Board. The actuary shall report direct to the Board, and in his report shall indicate such changes (if any) as are necessary to maintain the Fund in a sound financial position.

Quinquennial  
valuation of  
Fund.

(2) If the actuary's valuation shall disclose a surplus beyond the requirements likely to arise under this Chapter or any amendment thereof or regulations made thereunder the benefits shall be increased or the contributions shall be reduced in such manner as the Board and four-fifths of the members shall agree; but if his valuation shall disclose a deficiency, such deficiency shall be met, if necessary, in such fair and equitable manner as may appear to the Board to be reasonable, but no person to whom a pension has been granted shall have the same reduced, or be called upon to refund any amount already received.

(3) The wishes of all the members shall be ascertained by ballot in such manner as the Board may determine, before any change is made in the scales of pensions or rates of contribution, or whenever any question arises in connection with the Fund which is, in the opinion of the Board, of sufficient importance to justify such action being taken.

48. The business of the Fund shall be conducted by means of the staff of the Administration and the cost of administering the Fund and of any actuarial investigations and matters incidental thereto shall be borne by the Administration out of revenue.

Cost of admin-  
istration of  
Fund to be  
borne by  
revenue.

#### CHAPTER IV.

##### PENSIONS OF TRANSFERRED SERVANTS.

49. (1) Any railway servant who was a contributor to a pension fund while in employment under the Cape Civil Service, the Cape Government Railways, the Cape Colony Harbour Boards

Description of  
transferred  
servants and  
manner of  
determining  
claim to be so.

**Act No. 20  
of 1908.**

or the Orange Free State Railways and was transferred under competent authority to the old Administration shall be entitled to reckon the whole of his employment with any such service, board, or railways, and with the old Administration and with the Administration as continuous for purposes of pension and widow's pension and shall enjoy the pension rights defined in this Chapter, provided the Government of Cape Colony agrees to bear such proportion of the pension ultimately payable as was earned by such servant while in such employment according to Regulation *six*, Section III, Chapter G, of the Cape Civil Service Regulations set forth in the Second Schedule to this Act.

(2) The Board or other authority acting on its behalf shall examine the claim of any applicant to be treated as a transferred servant, shall thereafter prepare a list of transferred servants and give written notice to every railway servant who is included in it, that he is entitled to the rights conferred by this Chapter on compliance with its conditions and is subject to all its obligations.

Contributions  
by transferred  
servants.

**50.** Contributions as hereinafter provided shall be collected from each transferred servant from the date of the cessation of his contribution to the Cape Civil Service Pension Fund or the Orange Free State Pension Fund (as the case may be); provided that, in the case of a transferred servant who left the Orange Free State Railways during the hostilities between the Imperial Government and the Government of the Orange Free State and was afterwards employed by the Imperial Military Railways, no contributions shall be collected for the period from the date of his leaving the Orange Free State Railways to the date of his joining the Imperial Military Railways but such period shall nevertheless be reckoned as employment for pension.

Rate of  
contributions.

**51.** (1) Every transferred servant shall contribute in respect of pension at the rate of three per cent. per annum of his pensionable emoluments and the contributions shall be collected monthly by deduction from such emoluments; provided that, in the case of fees receivable by a servant which cannot be definitely ascertained,



the deduction shall be made upon the average net amount of such fees received annually during the three years immediately preceding.

(2) In any case in which the pensionable emoluments vary from month to month the monthly contribution to be made by the servant shall be calculated on one-twelfth of that sum which in the opinion of the Board, would fairly represent the amount of his pensionable emoluments for a whole year.

**52.** (1) If any transferred servant die while in the Service before his retirement on superannuation, leaving a widow or one or more minor children, it shall be lawful for the Board to grant to such widow or minor children an amount equal to the total contributions of such servant under this Chapter.

Benefits to widow and children.

(2) If any transferred servant to whom any pension has been granted on his retirement, dies, leaving a widow or a minor child or minor children, before the aggregate amount paid or payable to him as pension has become equal to the total amount contributed by him, it shall be lawful for the Board to grant to such widow or minor child or children an amount equal to the excess of such total contributions over the total amount paid or payable to him, as pension, up to the date of his death.

**53.** (1) A transferred servant who is a telegraphist, driver, fireman, guard, or shunter and who shall have attained the age of fifty, may be required to retire on superannuation.

Age of superannuation.

(2) Any other transferred servant may be required to retire on superannuation as soon as he shall have attained the age of sixty.

(3) Save as is in this Chapter hereinafter provided, no pension shall be granted to any transferred servant under the age of sixty or, in the case of telegraphists, engine-drivers, firemen, guards, and shunters under the age of fifty, unless it appears from such medical certificate as the Board may prescribe that he is incapable from infirmity of body or mind of discharging the duties of his office and that such infirmity is likely to be permanent.

**54.** (1) No transferred servant who is dismissed for fraud or misconduct, or who voluntarily retires from the Service on grounds other than

Persons to whom pensions shall not be paid.

**Act No. 20  
of 1908.**

those set forth in sub-section (3) of section *fifty-three* shall be entitled to a pension.

(2) Save as in this Chapter is excepted no pension may be granted to any transferred servant who is not required to give his whole time to the Service.

Scale of  
pension.

**55.** Subject to the provisions of this Chapter the pension which may be granted to any transferred servant shall be as follows—

(a) to a servant whose period of employment for pension purposes is less than ten years, a gratuity not exceeding the amount arrived at by allowing one month's pensionable emoluments for each completed year of employment ;

(b) to a servant whose period of employment for pension purposes is ten years, an annuity of ten-sixtieths of such emoluments; and in like manner a further addition to the annuity at the rate of one-sixtieth in respect of each additional year of employment until the completion of a period of employment of forty years, when an annuity of forty-sixtieths may be granted; no addition shall be made in respect of any period of employment over forty years.

Retirement  
owing to  
injury or  
permanent  
ill-health.

**56.** (1) A transferred servant who is compelled, before his period of employment is ten years, to leave the Service by reason of severe bodily injury or permanent ill-health occasioned without his own default while engaged in the discharge of his official duties, may be granted a gratuity not exceeding the amount arrived at by allowing three months' pensionable emoluments for every year of pensionable employment or an annuity not exceeding ten-sixtieths of such emoluments.

(2) Any transferred servant, who is compelled from permanent infirmity of mind or body to leave the Service before his period of employment is ten years, may be granted such gratuity as the Board may think proper, but not exceeding an amount arrived at by allowing one month's pensionable emoluments for each year of pensionable employment.

**57.** If any transferred servant die from bodily injury, occasioned without his own default, while engaged in the discharge of his official duties it shall be lawful for the Board to grant to the widow or children of such person, or, if dependent on him for their maintenance, to his parents, or brother, or sister, a gratuity not exceeding an amount arrived at by allowing one month's pensionable emoluments for each year of pensionable employment; provided that if such gratuity appear to the Board to be inadequate to meet the circumstances of any particular case it may grant a gratuity not exceeding one year's pensionable emoluments.

Gratuity to widow or dependents of deceased servant killed in discharge of duty.

**Act No. 20  
of 1908.**

**58.** (1) It shall be lawful for the Board to grant, by way of compensation for loss of office or post, to any transferred servant retiring or removed from the Service in consequence of the abolition of such office or post, such special annuity (not exceeding two-thirds of his pensionable emoluments) as on a full consideration of the circumstances of the case the Board may think just and reasonable; provided that such annuity shall not exceed the amount which might be granted if one-third of the period of pensionable employment were added thereto; provided further that the number of years to be added shall in no case exceed such number as would, if added to the actual age of the person retiring or removed, amount to sixty-five years.

Compensation for abolition of office, etc.

(2) If any transferred servant be found to be unfit from physical or any other causes to discharge efficiently the duties of the particular office or post which he is filling, or if it should be found necessary to remove any such servant in order to facilitate improvements in the organization of the department to which he belongs by which greater efficiency and economy can be effected, it shall be lawful for the Board to, if such servant's period of pensionable employment is ten years or more, place him on temporary pension pending the occurrence of a suitable vacancy, on the same scale as in section *fifty-five* is provided for servants with that period of pensionable employment, or if his period of employment is less than ten years, may dispense with his services upon the payment of a gratuity of one month's pensionable emoluments for each year of employment; provided

**Act No. 20  
of 1908.**

Pension in  
case of  
transferred  
servants  
being  
reappointed  
after  
retirement.

that whenever such temporary pension has been continued for a period of five years, no such transferred servant shall be recalled to duty.

**59.** (1) If a transferred servant who has been granted an annuity in consequence of his having retired from the Service on the ground of age, infirmity, or other cause, or who has been granted compensation for past service in consequence of a reorganization or reduction of establishment, be appointed to fill any office or post in the Service or a public office elsewhere, of which the whole or any part of the emoluments is payable out of the Imperial revenue, or the revenue of The Transvaal, or of the Orange River Colony, or of any other Colonial Government, or of any Harbour Board of the Cape Colony, such annuity shall cease to be paid for any period subsequent to such appointment if the annual amount of such emoluments be equal to those of the office or post formerly held by him in the Service, and if the emoluments be not equal to those of such office or post, then only so much of the annuity shall be continued as would, with the emoluments of his new appointment, be equal to the emoluments drawn by him in such office or post.

(2) Any transferred servant who has been reappointed to an office or post in the Service as mentioned in sub-section (1), may, on his ultimate retirement, be granted an annuity not exceeding forty-sixtieths of his pensionable emoluments based on such periods of actual employment before and after his temporary retirement, precisely as if such periods had been continuous employment; provided that if such annuity, so calculated, be less than that granted to him on his temporary retirement, he shall be entitled to receive his former annuity and in such case he shall also be entitled to a refund of the contributions (if any) in respect of pension made after the date of such temporary retirement.

Increases of  
pensions for  
special  
reasons.

**60.** It shall be lawful for the Board, with the assent of the Governments of The Transvaal and of the Orange River Colony, to grant to a transferred servant an annuity or a gratuity of greater amount than the amount which might be awarded to him under any preceding section of this

Chapter when special services rendered by such person and requiring special reward shall appear to it to justify such increase, but no such increased annuity shall exceed the emoluments drawn by such person at the time of his retirement.

**61.** An annuity which may be granted to any transferred servant under this Chapter shall not be computed upon the amount of the pensionable emoluments drawn by him at the time of his retirement unless he shall have been in the receipt of the same for a period of at least three years immediately before the grant of such annuity; and if he has not been drawing those emoluments for that period such allowance shall be calculated upon the average amount of pensionable emoluments received by him from time to time during the three years immediately preceding the commencement of such annuity; provided that in the case of an employee the annuity may, if he so desires, be calculated upon the average amount of emoluments received by him either for the three years immediately preceding his retirement or for the entire period of his employment.

Computation  
of annuity.

**62.** (1) Any period of absence on leave with pay shall be regarded as part of the period of pensionable employment and during such absence the transferred servant shall be deemed to have drawn his full emoluments for the purpose of calculating an annuity and shall be liable to make full contributions.

Absence on  
leave—effect  
on pension  
and  
contribution.

(2) Any period of absence on leave without pay shall not be a period of pensionable employment but no such absence shall break the continuity of employment.

**63.** Employment in respect of which a pension may be granted shall be continuous, and shall not be deemed to be interrupted by temporary absence owing to reorganization or reduction of establishment, leave of absence, or other temporary suspension of employment not arising from misconduct or voluntary resignation.

Employment  
to be  
continuous.

**64.** (1) In computing the amount of any pension, the term "pensionable emoluments" shall be taken to include in addition to salary or wages (as the case may be)—

What are  
emoluments  
for purposes  
of pension.

Act No. 20  
of 1908.

(a) house rent or house allowance or the annual value of quarters in any buildings which the servant may be allowed to occupy belonging to or hired by the Administration, to an extent not exceeding one-sixth of the average emoluments of the office during the three years immediately preceding retirement;

(b) the net amount of fees to an extent not exceeding one-fourth of such emoluments;

(c) the allowed value of rations;

(d) any other unquestionable remuneration for personal service;

but "pensionable emoluments" shall not include local allowances contingent on high cost of living in certain localities or allowance for horse-keep, or locomotion, or stationery, or any other allowance contingent on the particular nature and actual transaction of the business of the office or post and presumably spent in the discharge of such business; provided that the nett amount of fees shall be obtained by deducting from the average gross amount of fees received during the three years immediately preceding retirement the average office expenses (if any) which during such three years were payable by the servant himself.

(2) In computing the amount of any pension no fractional part of a month and no increase of emoluments granted after the date of the notice of retirement shall be taken into consideration.

Pensions to be paid on retirement from all offices.

65. Unless the Board deem it necessary in the public interest or just on the ground of good service and special infirmity, no pension shall be granted to a transferred servant holding more than one office or post until he shall retire from all the offices or posts held by him.

Pensions to be calculated on actual period of employment.

66. Save as in this Chapter is otherwise provided every pension shall be calculated according to the actual period of employment of such person, and no addition shall under any circumstances be made to such period for the purpose of calculating the amount of such pension.

Pensions to transferred servants to be paid out of revenue.

67. All pensions payable under this Chapter shall be paid out of revenue and all contributions in respect of such pensions shall be paid into revenue.

## CHAPTER V.

Act No. 20  
of 1908.PENSIONS TO WIDOWS OF TRANSFERRED  
SERVANTS.

68. (1) The provisions of this Chapter shall not be in operation if any arrangement be entered into by the Administration with the Government of Cape Colony, and so long as such arrangement continues, whereby the contributions made, in respect of widows' pensions, by transferred servants since the date of their transfer to the Service shall, together with further contributions in respect of widow's pension, be paid by each servant to the Widow's Pension Fund mentioned in Act No. 32 of 1895 of Cape Colony and whereby the widows of such transferred servants shall be paid out of such Widows' Pension Fund pensions on the scale and in accordance with the provisions and conditions set forth in that portion of the said Act dealing with widows' pensions.

Provisions of this Chapter not to be in operation if and so long as an arrangement subsists between the Board and the Government of the Cape Colony providing for continuation of widows' pension contributions to widows' pension fund of that Colony.

(2) If no such arrangement be entered into as aforesaid or, if entered into, shall terminate, then the provisions of this Chapter shall come into operation.

69. (1) Every transferred servant shall, provided his salary, in the case of an officer, or wages, in the case of an employee, exclusive of other emoluments, amount to at least one hundred pounds per annum, be required to make contribution at the rate of one per cent. per annum on his pensionable emoluments to provide for a pension to his widow.

Contribution in respect of widow's pension.

(2) Such contribution shall be made upon the same emoluments and be collected in the same manner as is hereinbefore provided in Chapter IV in respect of the contributions to such servant's own pension; provided that if at the contributor's death there is any amount to become due to complete the contributions of a year (dating from the time the contributions were first made), the amount shall be deducted from the first payment of pension due to the widow.

(3) Such contribution shall be continued at the rate of one per cent. per annum by every person who has, under Chapter IV, retired upon an annuity but on the amount of his emoluments at the date of retirement; provided that, if such

**Act No. 20  
of 1908.**

annuity be less than one hundred pounds per annum, he may, with the approval of the Board, be permitted to contribute to widow's pension at the rate of one per cent. per annum on the amount of that annuity only.

Conditions of special contributions to widow's pension to secure more than ordinary benefits.

**70.** (1) Any transferred servant may at any time before his retirement on pension make application to the Board to be permitted to contribute at a higher rate than one per cent. in order to secure for his widow a pension greater than a contribution of one per cent. would secure, and shall, with such application, transmit a certificate of a medical practitioner as to the state of his health. If upon consideration of the application and certificate the Board is satisfied that the applicant's health is sound it may grant the application.

(2) If upon consideration of the application the Board is not so satisfied it may either refuse the application altogether or require that such larger contribution as may be agreed upon between the Board and the servant be made from his emoluments or from his pension than would be required if he were in sound health, and in default of agreement as to the amount of the larger contribution the application shall be refused. If the amount be agreed upon, the application shall be granted.

Amount of widow's pension.

**71.** There shall be paid to the widow of every transferred servant a pension calculated on his actual contributions in accordance with such tables approved by an actuary as the Board may direct to be used for the purpose and further in accordance with regulation; provided that, in cases in which the contributions have not greatly varied for any particular number of consecutive years, the calculation may be made as if the servant had actually contributed during those years at the average rate of contribution for those years; provided further that no widow's pension shall exceed one-third of the servant's salary or wages (as the case may be) during the year immediately preceding his retirement from the Service or death (as the case may be) or in any case the sum of two hundred and fifty pounds per annum.



**72.** If any transferred servant retire from the Service on a gratuity, the surrender value computed by an actuary of his contributions in respect of widow's pension may be refunded to him.

Refund of value of contributions to transferred servant retiring on a gratuity.

**Act No. 20 of 1908.**

**73.** (1) If a widow's pension does not exceed the sum of ten pounds per annum, the Board may before the first payment of such pension commute the same by the payment of a capital sum of money calculated according to the estimated duration of the life of the widow.

Commutation of widow's pension.

(2) In calculating the amount payable as commuted widow's pension the following rules shall be observed :—

- (a) The age of the widow shall be reckoned as her age on her next birthday.
- (b) Interest shall be calculated at the rate of three per cent. per annum.
- (c) The duration of her life shall be calculated according to tables approved by the Board and an actuary.

**74.** All pensions payable under this Chapter shall be paid out of revenue and all contributions in respect of such pensions shall be paid into revenue.

Widow's pensions payable out of revenue.

## CHAPTER VI.

### SPECIAL PENSION PROVISIONS APPLICABLE TO CERTAIN OFFICERS.

**75.** (1) There shall be paid out of revenue to—

- (a) the officer who immediately prior to the second day of June 1908 was Auditor to the Inter-Colonial Council which terminated on that day ; and
- (b) the officer who immediately prior to that day was Statistician to the old Administration ;

Auditor of Inter-Colonial Council and Statistician of old Administration to be pensioned on same scale under same conditions as if they had remained in Civil Service of United Kingdom.

on the retirement for any cause of each such officer from the Service a pension on the same scale and under the same conditions as would have been paid to him in such several circumstances if he had remained in the Civil Service of the United Kingdom but had been drawing on retirement therefrom annual emoluments equal in amount to those actually drawn by him on

Act No. 20  
of 1908.

retirement from the Service; provided that he shall be entitled to reckon, for purposes of pension, as portion of his period of employment in the Service any continuous period of employment in the said Civil Service together with any continuous period of employment under the said Council or the old Administration or in the public service of The Transvaal.

(2) The Board shall take all steps (in accordance with regulation) necessary for the recovery from the Imperial Government and from the Government of The Transvaal of any sums which should be contributed by either such Government towards the pensions mentioned in this section and shall pay such sums, when recovered, into revenue.

## CHAPTER VII.

### GENERAL AND MISCELLANEOUS.

Power of  
Board to  
make  
regulations.

76. (1) The Board may from time to time make, alter, or rescind regulations not inconsistent with this Act with respect to all or any of the following matters :—

(a) The admission, appointment, period of probation, classification, grading, pay, promotion, transfer, discipline, hours of work, leave of absence of railway servants, and the conditions of employment in the several departments, offices, or branches of the Service ;

(b) the offices and posts in the Service which may be filled by temporary railway servants ;

(c) the scales of overtime payment and of local, travelling, climatic, and other allowances to railway servants ;

(d) the security to be given by railway servants and the form and amount thereof ;

(e) privileges which may be granted to railway servants ;

(f) the mode of administering the Fund and the form and manner in which the accounts thereof shall be kept ;

(g) the manner in which contributions shall be made to the Fund by its members ;

(h) the method of calculating antedated contributions to the Fund and the arrear instalments thereof ;

(i) the classes of railway servants (other than those in permanent employment) who shall not be eligible for membership of the Fund ;

(j) the method to be adopted in calculating the value of free quarters, rations, or other allowances for the purpose of determining pensionable emoluments ;

(k) the forms and period of notice to be given by members of the Fund and transferred railway servants respectively, who are entitled to or claim pensions ;

(l) the mode of payment of contributions and pensions ;

(m) the establishment of a medical board to examine and report upon any cases in which a medical certificate is under this Act required, the form and conditions of medical certificates and the procedure to be observed by railway servants in furnishing the same, in the several circumstances in which they are required ;

(n) the methods of calculating the proportions of pensions to be recovered from the Imperial Government or the Government of any British Possession whenever in the several circumstances described in this Act a railway servant has been or shall be transferred to the Service from pensionable employment under such Government ; }

(o) the methods of calculating the proportion of the contributions to be made by the Fund or the Administration (as the case may be) when a railway servant in the several circumstances described in this Act is transferred from the Service to pensionable employment under another Government ;

(p) generally for the better carrying out of the objects and purposes of this Act.

(2) Every such regulation shall be of force and effect notwithstanding that it has not been published in the *Gazette*, provided that the railway servant to whom it applies shall have received notice of its terms.

**Act No. 20  
of 1908.**

(3) The General Manager shall give notice of any such regulation by circular and notice shall be deemed to have been given to a railway servant when the circular has been received by the head of his office. It shall be the duty of every head of an office to give every railway servant an opportunity of obtaining a copy of any such circular and of inspecting at all reasonable times a copy of the regulations affecting him.

Service to be public service for purposes of section *thirty-three* of Act No. 36 of 1907.  
Special provision as to staff of Railway Board and Auditor.

**77.** The Service shall for the purpose of section *thirty-three* of the Workmen's Compensation Act 1907 be deemed to be the public service in such section mentioned.

**78.** Notwithstanding anything in this Act contained

(1) the staff employed in the office of the Secretary to the Railway Board shall in respect of all matters arising out of this Act be under the authority only of the Board;

(2) the Auditor for the railways and the staff employed in his office shall, subject to article *fourteen* of the Convention set forth in the First Schedule of the Inter-Colonial Conventions Ratifications Act 1908, be under the authority only of the Board.

Circumstances under which pension, etc., may be withdrawn.

**79.** A pension or any balance thereof may, if the Board so determine, be withdrawn or recovered at any time after the grant, if it be satisfied that during employment in the Service the person, to whom the grant was made, was guilty of any misconduct which, if known, would have merited dismissal on the ground of fraud or dishonesty, or if such person shall refuse or neglect to comply with a reasonable request to perform some special duty, or to supply some special information in connection with the affairs of any former office or post held by him.

Pensions, etc., not assignable or executable.

**80.** No pension or right to a pension shall be capable of being assigned, transferred, mortgaged or otherwise ceded, pledged or hypothecated, nor shall the same be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, and in the event of the beneficiary attempting to assign, transfer, mortgage, or otherwise cede or hypothecate such pension or right, payment of the same may be

withheld, suspended or entirely discontinued if the Board so determine.

**Act No. 20  
of 1908.**

**81.** (1) If any person in receipt of an annuity becomes insolvent such annuity shall forthwith determine; provided that in any such case the Board may order that all or any part of the annuity be paid to or for the benefit of all or any of the following persons, namely, such insolvent, his wife or any minor children, or, failing a wife or minor children, to any children or relatives dependent on him for maintenance.

Pension to  
cease on  
insolvency.

(2) Whenever an annuity has determined under this section, the Board may order that it shall be revived on rehabilitation of the insolvent, and that he shall receive an annuity at the same rate, and under the same conditions as before insolvency.

**82.** If any person in receipt of an annuity be convicted before any court in His Majesty's dominions of any crime or offence and be sentenced therefor to death, or to any term of imprisonment with hard labour exceeding twelve months, and shall not within two months thereafter receive His Majesty's free pardon, such annuity shall forthwith determine; provided that the Board may, if it thinks fit, order that such annuity shall be revived if such person at any time after the conviction or sentence receive His Majesty's free pardon; provided further that the Board may, if it think fit, authorize the payment to or for the benefit of such person's wife or minor children, or failing a wife or minor children, to any children or relatives dependent on him, of such portion of the annuity as it may consider necessary for her or their maintenance.

Pension to  
cease on  
conviction.

**83.** Save as is otherwise provided in section *seventy-three* if an annuity not exceeding twenty-five pounds is granted the Board may, at the request of the recipient, and before the first payment thereof has been made, commute such annuity by a single cash payment calculated actuarially according to the period for which the recipient may be expected to draw the annuity.

Commutation  
of small  
annuities.

**84.** Whenever the Board is satisfied, after enquiry, that a railway servant has not rendered satisfactory service it may order that a pension less than is ordinarily payable to him in accordance with this Act be paid to him; provided

Diminution of  
pension in  
case of  
unsatisfactory  
service.

**Act No. 20  
of 1908.**

that such railway servant shall not receive owing to the exercise of the powers of this section, in the case of an annuity, less than the annual value calculated actuarially of any sum contributed by him, or in the case of a gratuity, less than any actual sum contributed by him under this Act.

Recall to duty  
after pension.

**85.** Any railway servant to whom an annuity has been granted before he has attained the age of sixty years or, in the case of an engine-driver, fireman, or telegraphist, the age of fifty years, shall, until he has attained the age of sixty or fifty years (as the case may be), be liable to be called upon to resume his duties in his former office or post or to fill any office or post of a rank equal to or higher than that previously held by him; and if, being in a competent state of health, he shall decline or neglect, when called upon to do so, to resume or fill such office or post or to execute the duties thereof satisfactorily, he shall forfeit his right to the annuity granted to him; provided that if such annuity has been continued for a period of five years, no such officer shall be recalled to duty.

Continuity of  
employment  
under old  
Administra-  
tion or Inter-  
Colonial  
Council for  
purposes of  
pension.

**86.** A period of employment of any railway servant—

- (a) under the old Administration; or
- (b) in the South African Constabulary; or
- (c) in the Railway Police of The Transvaal or the Orange River Colony; or
- (d) in any department administered by or on the advice of the Inter-Colonial Council; or
- (e) in the public service of The Transvaal or Orange River Colony; or
- (f) in any other service specially admitted by the Board under the provisions of subsection (4) of section *twenty*;

shall, if the employment shall not have been interrupted, be deemed when calculating his pension to be one continuous period of employment in the Service.

Title and date  
of operation  
of Act.

**87.** This Act may be cited for all purposes as the Railway Service and Pension Act 1908 and shall not come into operation unless and until the Governor shall have declared by proclamation in the *Gazette* that it is His Majesty's pleasure not to disallow the Act and thereafter it shall come into operation on such date as the Governor may by like proclamation declare.

**First Schedule.****Act No. 20  
of 1908.****TABLE I.—APPLICABLE TO OFFICERS.**

Table showing the percentage of average pensionable emoluments payable as pension to members of the Superannuation Fund in respect of each completed year of contribution.

Age at birthday nearest to date from which contributions paid.	Pensions for each completed year of contribution.
20 and under .. ..	2.00 of average pensionable emoluments.
21 .. ..	1.97 " " "
22 .. ..	1.92 " " "
23 .. ..	1.87 " " "
24 .. ..	1.82 " " "
25 .. ..	1.77 " " "
26 .. ..	1.72 " " "
27 .. ..	1.67 " " "
28 .. ..	1.62 " " "
29 .. ..	1.57 " " "
30 .. ..	1.53 " " "
31 .. ..	1.49 " " "
32 .. ..	1.45 " " "
33 .. ..	1.41 " " "
34 .. ..	1.38 " " "
35 .. ..	1.34 " " "
36 .. ..	1.31 " " "
37 .. ..	1.28 " " "
38 .. ..	1.25 " " "
39 .. ..	1.23 " " "
40 .. ..	1.20 " " "
41 .. ..	1.18 " " "
42 .. ..	1.15 " " "
43 .. ..	1.13 " " "
44 .. ..	1.11 " " "
45 and over .. ..	1.09 " " "

**TABLE II.—APPLICABLE TO EMPLOYEES.**

Table showing the percentage of average pensionable emoluments payable as pension to members of the Superannuation Fund in respect of each completed year of contribution.

Age at birthday nearest to date from which contributions paid.	Pensions for each completed year of contribution.
24 and under .. ..	2.00 of average pensionable emoluments.
25 .. ..	1.94 " " "
26 .. ..	1.87 " " "
27 .. ..	1.80 " " "
28 .. ..	1.74 " " "
29 .. ..	1.68 " " "
30 .. ..	1.62 " " "
31 .. ..	1.56 " " "
32 .. ..	1.51 " " "
33 .. ..	1.46 " " "
34 .. ..	1.42 " " "
35 .. ..	1.38 " " "
36 .. ..	1.34 " " "
37 .. ..	1.30 " " "
38 .. ..	1.27 " " "
39 .. ..	1.24 " " "
40 .. ..	1.21 " " "
41 .. ..	1.19 " " "
42 .. ..	1.16 " " "
43 .. ..	1.14 " " "
44 .. ..	1.11 " " "
45 and over .. ..	1.09 " " "

Act No. 20  
of 1908.

TABLE III.—APPLICABLE TO OFFICERS.

Table showing the percentage of average pensionable emoluments payable as pension to members of the Superannuation Fund in respect of each completed year of contribution under this table for each additional contribution of one per cent.

Age at birthday nearest to date from which contributions paid.	Supplementary pensions for each completed year of contribution under this Table.
30 .. .. .	.51 of average pensionable emoluments.
31 .. .. .	.50 " " "
32 .. .. .	.48 " " "
33 .. .. .	.48 " " "
34 .. .. .	.46 " " "
35 .. .. .	.46 " " "
36 .. .. .	.44 " " "
37 .. .. .	.44 " " "
38 .. .. .	.42 " " "
39 .. .. .	.41 " " "
40 .. .. .	.41 " " "
41 .. .. .	.39 " " "
42 .. .. .	.39 " " "
43 .. .. .	.38 " " "
44 .. .. .	.36 " " "
45 and over .. .. .	.36 " " "

TABLE IV.—APPLICABLE TO EMPLOYEES.

Table showing the percentage of average pensionable emoluments payable as pension to members of the Superannuation Fund in respect of each completed year of contribution under this table for each additional contribution of one per cent.

Age at birthday nearest to date from which contributions paid.	Supplementary pensions for each completed year of contribution under this Table.
30 .. .. .	.54 of average pensionable emoluments.
31 .. .. .	.52 " " "
32 .. .. .	.50 " " "
33 .. .. .	.50 " " "
34 .. .. .	.48 " " "
35 .. .. .	.46 " " "
36 .. .. .	.45 " " "
37 .. .. .	.44 " " "
38 .. .. .	.43 " " "
39 .. .. .	.41 " " "
40 .. .. .	.41 " " "
41 .. .. .	.39 " " "
42 .. .. .	.39 " " "
43 .. .. .	.38 " " "
44 .. .. .	.36 " " "
45 and over .. .. .	.36 " " "



**Second Schedule.**

**Act No. 20  
of 1908.**

REGULATION *Six*, SECTION III, CHAPTER G, OF THE CAPE CIVIL SERVICE REGULATIONS.

*III.—Officers taken from the Service of this Colony into the Imperial or other Service.*

6. Whosoever in the case of an officer who has been taken, without a break, from the service of this Colony into the Imperial or other Service, the Imperial or other Government is prepared to grant him on his retirement, under such rules as may in that respect be in force at the time in the United Kingdom, or rules similar thereto, a pension based on his period of service under both Governments capable of being counted for pension purposes, the Governor may sanction a contribution from the revenues of this Colony toward such pension, for each year of his continuous service in this Colony, at the rate of one-sixtieth of his average salary and emoluments capable of being counted for pension purposes at the date when he is so taken over; provided that no fractional part of a month may be taken into consideration; provided, further, that such officer retires from the Imperial or other Service on ground which would render it lawful for the Governor to grant him a pension if he were then in the Civil Service of this Colony.

ACT NO. 21 OF 1908.] [Came into operation 28th August, 1908.

AN

**ACT**

**Act No. 21  
of 1908.**

**To provide for the exercise by other persons specially appointed of the powers and jurisdiction conferred by the Volunteer Corps Ordinance 1904 upon the Commandant of Volunteers.**

(Assented to 22nd August, 1908.)

**BE IT ENACTED** by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

\*1. Anything to the contrary in the Volunteer Corps Ordinance 1904 or any regulations made thereunder any powers or jurisdiction conferred by the said Ordinance or regulations upon the Commandant of Volunteers may be exercised by any officer (as in such Ordinance defined) on whom the Governor in Council may confer such powers and jurisdiction.

Exercise of powers and jurisdiction conferred by Ordinance No. 37 of 1904 on Commandant of Volunteers.

2. This Act may be cited for all purposes as the Volunteer Corps Amendment Act 1908 and shall come into operation on the date of its first publication as an Act in the *Gazette*.†

Title and date of operation of Act.

\* See Govt. Notice No. 948 of 1908 (*Gazette*, 18th Sept., 1908, p. 1017), conferring powers, etc., of Commandant on Inspector of Volunteers.

† This date was the 28th Aug., 1908.

Act No. 22 of 1908. ACT NO. 22 OF 1908.] [Came into operation 28th August, 1908.

AN  
ACT

To amend the law relating to the notification of  
Infectious Diseases.

(Assented to 22nd August, 1908.)

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

Power to alter list of notifiable infectious diseases and render such diseases notifiable in portion of Colony only.

\* 1. (1) The Colonial Secretary may from time to time by notice in the *Gazette* declare—

(a) that any disease mentioned in section four of Proclamation No. 21 of 1900 or any other disease proclaimed under such section shall cease to be a disease notifiable under the said Proclamation; and

(b) that any disease which under this Act has ceased to be notifiable under the said Proclamation shall again become notifiable thereunder for such period and under such conditions as he may deem advisable;

(c) that any infectious disease other than those mentioned in or proclaimed under the said Proclamation shall be notifiable for such period and under such conditions as he may deem advisable.

(2) The Colonial Secretary may from time to time by like notice declare that any such disease shall only be notifiable in one or more districts or portions thereof described in such notice and not in every district of the Colony.

(3) A copy of any notice under this section shall, within seven days after its publication, be laid on the tables of both Houses of Parliament if Parliament be then in session or if it be not then in session within seven days after the commencement of the next ensuing session.

Title and date of operation of Act.

2. This Act may be cited for all purposes as the Infectious Diseases Notification Amendment Act 1908, and shall take effect from the date of its first publication as an Act in the *Gazette*.†

\* See Govt. Notice No. 909 of 1908 (*Gazette*, 18th Sept., 1908, p. 1016), declaring certain diseases no longer notifiable.  
† This date was the 28th Aug., 1908.

ACT NO. 23 OF 1908.] [Came into operation 28th August, 1908. **Act No. 23 of 1908.**

AN  
**ACT**

**To amend the Field Cornets Act 1907**

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

1. Sub-section (2) of section *six* of the Field Cornets Act 1907 shall be and is hereby repealed. Amendment of section *six* of Act No. 34 of 1907.

2. This Act may be cited for all purposes as the Field Cornets Amendment Act 1908 and shall come into operation on the date of its first publication as an Act in the *Gazette*.\* Title and date of operation of Act.

ACT NO. 24 OF 1908.] [Came into operation 28th August, 1908.

AN  
**ACT**

**To amend the law relating to the export of Angora Rams and Ewes.**

(Assented to 22nd August, 1908.)

**Act No. 24 of 1908.**

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

1. The Angora Export Duty Ordinance 1906 (Ordinance No. 3 of 1906) shall be and is hereby repealed. Repeal of Ordinance No. 3 of 1906.

2. (1) On and after the coming into operation of this Act it shall not be lawful to export from this Colony, save as in this section provided, any Angora ram or ewe. Prohibition of exportation of Angora rams and ewes save to colonies or territories with reciprocal legislation.

(2) Nothing in this section contained shall apply to the export of any Angora ram or ewe from this Colony to any colony or territory in South Africa in respect of which the Governor shall declare by proclamation in the *Gazette* that there is a law in force in such colony or territory prohibiting, under penalties equal to the penalties hereinafter mentioned, the exportation therefrom of Angora rams or ewes except to a colony or territory in South Africa which is in like manner exempted from the prohibition contained in such law.†

\* This date was the 28th Aug., 1908.

† Prohibition of exportation not to apply to Cape of Good Hope, Natal, Orange River Colony, Southern Rhodesia, Swaziland, Bechuanaland Protectorate, Basutoland, and Delivered by the Open Scholarship & Digitisation Program of the University of Pretoria, 2016 (Gazette, 23rd Oct., 1908, p. 144).

ANGORA EXPORT DUTY AMENDMENT  
LYDENBURG RAILWAY.

198

Act No. 24  
of 1908.

Penalties for  
contravention  
of Act.

Special  
jurisdiction  
of courts  
of resident  
magistrate.

Title and  
date of  
operation  
of Act.

3. Any person who shall contravene the provisions of this Act shall be guilty of an offence and shall be liable on conviction to imprisonment with or without hard labour for a period not less than one year and not exceeding two years.

4. Courts of resident magistrate shall have special jurisdiction to impose any penalty prescribed by this Act for a contravention thereof.

5. This Act may be cited for all purposes as the Angora Export Duty Amendment Act 1908, and shall come into operation on the date of its first publication as an Act in the *Gazette*.\*

ACT NO. 25 OF 1908.] [Came into operation 28th August, 1908

Act No. 25  
of 1908.

AN  
ACT

To approve the construction of a railway by the Railway Board from Belfast to Lydenburg in this Colony and to authorize the Government thereof to advance to such Board moneys to meet the cost of such construction.

(Assented to 22nd August, 1908.)

WHEREAS by article *ten (b)* of a Convention entered into between the Governments of The Transvaal and of the Orange River Colony dated the second day of June, 1908, the terms of which are set forth in the First Schedule to the Inter-Colonial Conventions Ratification Act 1908, it was agreed that the Railway Board by such Convention constituted (and hereinafter referred to as the Board) should have power to construct lines of railway and to complete arrangements concerning the same subject to the approval of the Parliament of the Colony in which any such line is to be situated and that if such line be wholly within one Colony, then subject to the approval only of the Parliament of that Colony ;

AND WHEREAS the Board purposes to construct wholly within this Colony from Belfast to Lydenburg a line of railway the particulars of which are more specifically set forth in the Schedule to this Act ;

AND WHEREAS it is proposed that the moneys necessary for the construction of the said line shall be advanced on loan to the Board by the Government of this Colony (hereinafter referred to as the Government) for the construction of the said line out of the portion of the guaranteed loan mentioned in Head No. II of Act No. 8 of 1907 and upon like terms to those upon which the Government is able to raise the said

\* This date was the 28th Aug., 1908.

guaranteed loan, provided that the interest to be paid by the Board to the Government upon the advance do not exceed the rate of four per cent. per annum ; **Act No. 25 of 1908.**

AND WHEREAS it is necessary as hereinbefore recited that the construction of the said line of railway by the Board be approved and that the advance of moneys by the Government to the Board to meet the cost of such construction be sanctioned by Parliament ;

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

1. The construction by the Board of a line of railway (together with all sidings, stations, buildings, and other appurtenances necessary or incidental to the proper working of the railway when constructed) from a point at or near the railway station of the Central South African Railways at Belfast to the town of Lydenburg in this Colony is hereby approved. Construction by the Board of a line of railway from Belfast to Lydenburg approved.

2. The Government is hereby authorized to advance to the Board out of the guaranteed loan raised or to be raised under Act No. 8 of 1907, and more particularly out of that portion thereof described in Head II of the Schedule to the said Act, a sum not exceeding three hundred and sixty thousand pounds sterling. Such moneys shall be advanced upon the terms and conditions following, that is to say— Government authorized to advance to Board out of guaranteed loan of 1907 a sum not exceeding £360,000 for construction of railway according to Schedule and conditions of advance.

(1) the moneys advanced shall be applied by the Board towards such railway construction as is mentioned in section *one* of this Act and is more particularly described in the Schedule thereto ;

(2) interest shall be paid half-yearly by the Board to the Colonial Treasurer upon any moneys so advanced at the same rate at which the said guaranteed loan is raised by the Government but not exceeding four per cent. per annum. Such interest shall be payable on such days as the Colonial Treasurer may determine ;

(3) the Board shall pay to the Colonial Treasurer upon the same days a sum equal to ten shillings per cent. on the amount advanced as aforesaid to enable the Government to meet sinking fund payments due or to become due by it under Act No. 8 of 1907 in respect of that proportion of the said guaranteed loan which represents the amount so advanced or if His Majesty's Imperial Treasury shall certify that a greater sum is necessary

**Act No. 25  
of 1908.**

for the purposes described in sub-section (2) of section *seven* of the said Act, then such greater sum ;

(4) the Board shall further pay to the Colonial Treasurer on the same day a sum covering the expenses incidental to the issue of and the management charges of the said proportion ;

(5) so long as the administration and control of the Central South African Railways are vested in the Board, the said line shall be worked by it and incorporated in and form part of its system of railways ; and whenever those lines of the Central South African Railways which are in this Colony cease to form part of that system, all the liabilities of the Board in respect of the said advance shall cease and determine.

Title and date  
of operation  
of Act.

**3.** This Act may be cited for all purposes as the Lydenburg Railway Act 1908 and shall come into operation on the date of its first publication as an Act in the *Gazette*.\*

**Schedule.**

PARTICULARS OF RAILWAY.

MATERIALS AND MODE OF CONSTRUCTION.	APPROXIMATE COST OF CONSTRUCTION.	APPROXIMATE LENGTH.
Ordinary sixty-pound rails or if the rails used in the construction of the railway known as the Selati Railway are purchased by the Board from the Government, then with additional sleepers making the line equivalent to a sixty-pound railway line.	£356,000	Sixty-three and one-half miles.

ACT NO. 26 OF 1908.] [Came into operation 1st January, 1909.

**Act No. 26  
of 1908.**

AN  
**ACT**

**To Amend the Law relating to Prescription.**

(*Assented to 22nd August, 1908.*)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

\* This date was the 28th Aug., 1908.

1. Any law or usage inconsistent with the provisions of this Act shall be and is hereby repealed, and in particular article *sixteen* of the Placaat of the Emperor Charles the Fifth dated the fourth day of October 1540 establishing in certain cases a prescription of two years is withdrawn from operation in this Colony ; provided that nothing in this Act contained shall affect any period of prescription which is or may be in force in this Colony under any statute of this Colony enacted prior to or after the commencement of this Act ; provided further that the law in force prior to the commencement of this Act shall regulate all prescriptions which have been completed at such commencement.

Repeal of laws.

Act No. 26 of 1908.

2. In this Act unless inconsistent with the context ;

Interpretation of terms.

“action” shall mean and include any legal proceeding of a civil nature which may be brought in a competent court in this Colony for the enforcement of a right ;

“commencement of this Act” shall mean the date of the coming into operation of this Act ;

“creditor” shall mean any person by whom a right is enforceable by action ;

“debtor” shall mean any person against whom a right is enforceable by action ;

“person under disability” shall mean a minor and in the case of an action between spouses the wife unless she is separated from her husband by order of court and shall also include a person of unsound mind or any other person under curatorship ;

“prescription” shall mean the limitation of time within which actions may be instituted.

3. The period of prescription in respect of proceedings at common law known as the *actio redhibitoria* or the *actio quanti minoris* shall be one year.

Prescription in *actio redhibitoria*.

4. The period of prescription in an action for defamation of character shall be one year which shall be reckoned from the date when the defamation was first brought to the knowledge of the creditor, or where the debtor is not known to the creditor, the period of prescription shall be reckoned from the date on which the creditor ascertained or might reasonably have been expected to ascertain the name of the debtor.

Prescription in actions for defamation of character.

Act No. 26  
of 1908.

Prescription  
in case of  
vindictory  
actions  
against *bona  
fide* possessors  
of movables.

5. The period of prescription in respect of vindictory actions against *bona fide* possessors of movables shall be one year except in the case of sales of movables for cash when the period of prescription shall be fourteen days reckoned from the date of the delivery of the movables to the purchaser.

Prescription  
of three years  
established in  
cases of pro-  
fessional fees  
debts salaries  
oral contracts  
rent interest  
or damages  
for tort.

6. The period of prescription in respect of—  
(a) the fees, disbursements, salary, wages or any other remuneration whatever due to any person for services rendered, labour done or work performed by him in his profession, trade, occupation or calling; or  
(b) the price of movables sold and delivered, or of labour done, and materials provided, or of board or lodging supplied; or  
(c) any oral contract; or  
(d) rent due upon an agreement in writing or interest due upon a mortgage bond; or  
(e) all actions for damages; other than those for which another period of prescription is laid down in this Act; or  
(f) *condictiones indebiti* and *condictiones sine causâ*;  
shall be three years.

Period of  
prescription  
in proceedings  
for *restitutio  
in integrum*.

7. The period of prescription in respect of proceedings at common law for *restitutio in integrum* shall be four years.

Prescription  
in cases of  
liquid  
documents  
and written  
contracts.

8. The period of prescription on any bill of exchange, or other liquid document or in respect of any written acknowledgment of debt or written contract of any nature (other than a mortgage bond, general or special or a promissory note not negotiated) shall be six years.

Period of  
prescription  
in other cases.

9. The period of prescription in respect of matters for which a period is not hereinbefore fixed shall be thirty years; provided that there shall be no prescription in respect of a judgment of a court of law.

Prescription  
in case of  
mixed actions.

10. If two or more periods of prescription may be applied in one action the longest period shall be the period of prescription.

When  
prescription  
shall begin.

11. (1) Save as is otherwise specially provided in this Act prescription shall begin to run:  
(a) in respect of a right of action accruing after the commencement of this Act, from the date on which such right of action first accrued against the debtor;



- (b) in respect of a right of action which accrued before the commencement of this Act and not then prescribed, if the period of prescription fixed by this Act is less than was the period prior to the commencement of this Act, then from the commencement of the Act.
- (c) in respect of a right of action which accrued before the commencement of this Act and not then prescribed, if the period is the same or greater than was the period prior to the commencement of this Act, then from the date on which the right of action first accrued against the debtor.

(2) In every case mentioned in this Act if the creditor is a person under disability, prescription shall not begin to run until disability has ceased. And if a debtor is absent from the Colony when a right of action accrued against him, prescription shall not begin to run until he has returned to the Colony.

12. (1) Prescription shall be interrupted by the acknowledgment of the debtor either by— Interruption of prescription.

- (a) part payment ; or
- (b) payment of interest ; or
- (c) the giving of security ; or
- (d) in any other manner admitting liability ;

and shall begin to run again *de novo* for the same period from the date when the interruption occurred.

(2) Prescription shall further be interrupted by the institution of action, submission of a dispute to arbitration, filing of a claim against an insolvent estate or company in liquidation or estate of a deceased person, or in any other manner recognised by the common law.

(3) Interruption as against the principal debtor shall be deemed an interruption as against the surety.

13. (1) Prescription shall be suspended so long as performance of an obligation is delayed by *vis major*, or the debtor is lawfully entitled to delay performance on any other ground. Suspension of prescription.

(2) Prescription shall further be suspended as soon as disability commences and during the period of disability.

(3) Prescription shall further be suspended during absence of the debtor from the Colony for a period exceeding six consecutive months.

**Act No. 26  
of 1908.**

(4) If a creditor has, by the fraud of the debtor, been prevented from discovering the true facts in respect to his right of action, prescription shall be suspended until the date on which he might with reasonable care have discovered such true facts.

(5) In an action founded upon the fraud of a debtor prescription shall be suspended until the creditor might with reasonable care have discovered the fact of such fraud.

(6) The period of suspension of prescription shall not be deemed to form part of the period of prescription.

Circumstances which do not interrupt prescription.

**14.** (1) Prescription shall not be interrupted or affected in respect of one joint debtor by reason of any fact which would interrupt or affect prescription in respect of any other joint debtor except in the case of debtors liable *in solidum*.

(2) If action is instituted for the amount or balance of an account containing any number (being more than one) of items or matters of claim which are subject to any period of prescription fixed by this Act, no action shall be maintainable for an item or matter of claim the right of action in respect of which arose outside the period of prescription so fixed by reason only that there is comprised in the same account one or more items or matters of claim the right of action in respect of which first arose within the period of prescription; provided that all the fees of advocates, and the fees and disbursements of attorneys, conveyancers, public notaries and law agents shall for the purposes of this Act be held to become due and payable—

(a) in litigious matters, on judgment or settlement, or on abandonment of action; and

(b) in non-litigious matters, when the work in question shall have been completed

or when the relationship of lawyer and client shall have ceased in regard to the particular matter.

Period of prescription in regard to immovable property and servitudes limited to thirty years.

**15.** The period of prescription in regard to immovable property and servitudes upon or connected therewith shall be thirty years, and shall be reckoned from the date on which the right of action first accrued.

Exclusion extension or renunciation of prescription.

**16.** (1) Prescription shall not be excluded or extended by act of parties otherwise than in accordance with this Act.

(2) Prescription may only be renounced after the period of prescription has elapsed and the renunciation shall be in writing.

Act No. 26  
of 1908.

17. Save as may be otherwise specially provided by any statute, prescription shall apply in favour of and against every person, local authority, corporate body, and institution, and any body of persons, whether corporate or unincorporate.

Prescription to apply to all persons indiscriminately, but limited as against the Crown.

18. This Act may be cited for all purposes as the Prescription Amendment Act 1908 and shall come into operation on the first day of January 1909.

Title and date of operation of Act.

ACT No. 27 OF 1908.] [Came into operation 1st October, 1908.

AN  
**ACT**

Act No. 27  
of 1908.

**To Consolidate and Amend the Law relating to the use of Water of Public Streams, and to provide further facilities for the Irrigation of Land and use of Water.**

*(Assented to 22nd August, 1908.)*

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

PRELIMINARY.

1. Law No. 17 of 1887, Law No. 11 of 1894 and Ordinance No. 67 of 1903 shall be and are hereby repealed.

Repeal of Laws.

2. In this Act, unless inconsistent with the context ;

Interpretation of terms.

“arbitration” shall mean arbitration in manner provided by the Arbitration Ordinance 1904, or any amendment thereof ;

“Chief Engineer” shall mean the chief engineer of the department or any person lawfully acting in such capacity ;

“department” shall mean the Irrigation Department established under this Act ;

“farm” shall mean a piece of land registered as a farm or portion of a farm in the Deeds Office and shall include a town and any town lands vested or to be vested in any local authority ;

“Governor” shall mean the officer for the time being administering the government

**Act No. 27  
of 1908.**

of this Colony, acting by and with the advice of the Executive Council thereof ;

“ irrigation work ” shall mean—

(a) a canal, channel, reservoir, embankment, weir, dam, or other work constructed for or in connection with the impounding, storage, passage, drainage, or use of water or the conservation of rainfall ; and

(b) any land occupied by the department, or a river board, or a proprietor, for or in connection with the impounding, storage, passage, drainage, or use of water ; and

(c) gauge posts, measuring weirs, and other appliances erected or used by the department or a river board ;

“ local authority ” shall mean a Municipal Council constituted under the Municipal Corporations Ordinance, 1903, or any amendment thereof, or under any special law, and shall include a local authority constituted under any law hereafter enacted which makes provision for local government ;

“ Minister ” shall mean the Minister of Lands or any other member of the Executive Council to whom the Governor may assign, from time to time, ministerial responsibility for the department ;

“ proprietor ” shall mean the person registered in the Deeds Office of this Colony as the owner of a farm ; or, if such person has disposed of his right to use the surface of the farm by lease or other document registered against title, the person registered as the holder of such lease or document, and shall include the legal representative of any such person who has died, become insolvent, is a minor, or is of unsound mind, or is otherwise under disability.

“ public stream ” shall mean a natural stream of water—

(a) which in ordinary seasons flows for the greater part of the year in a known and defined channel (whether or not such channel is dry during any period of the year) ; and

(b) which is capable of being applied to the common use of riparian proprietors.

A stream of water which fulfils these conditions as to part of its course only shall be deemed to be a public stream as regards such part ;

“regulation” shall mean a regulation set forth in the Second Schedule to this Act or any additions or alterations to such Schedule made by the Governor under the powers of this Act ;

“riparian farm” shall mean a farm held under an original grant or a deed of transfer of such grant through which, or along the boundary of any portion of which, a public stream flows. A sub-division of a riparian farm, even if a public stream does not flow through or along the boundary of the sub-division shall derive its riparian rights from the riparian farm of which it originally formed a portion, unless, in respect of the sub-division, no right to water from a public stream has been acquired by deed of transfer, agreement, order of a competent court, or other mode of acquisition. A farm which is Crown Land and the situation of which in relation to a public stream would render it riparian, shall not be deemed to be non-riparian by reason that no original grant thereof has been made ;

“riparian proprietor” shall mean the proprietor of a riparian farm ;

“river board” shall mean a board of a river district constituted under Chapter II, and when used in reference to a particular river district, shall mean the river board of such district ;

“river district” shall mean an area for the time being constituted a river district under the powers of Chapter II, and, when used in relation to a river board, shall mean the district under the jurisdiction of such board ;

“subterranean water” shall mean any water obtained from underground sources ;

“surplus water” shall mean any water in a public stream in excess of the normal flow of such stream, and any water which, not being required for the uses described in section *forty-six* on riparian farms, would otherwise run to waste ; and “normal flow” shall be the average flow of the public stream during the period from the first

**Act No. 27  
of 1908:**

Division  
of Act.

day of May to the last day of October as determined after investigation by the department.

**3.** This Act is divided into eight Chapters, relating to the following matters respectively:—

Chapter I—Central Control over the use of Public Water.

Chapter II—Local Control over the use of Public Water.

Chapter III—Use of Private and Public Water.

Chapter IV—Use of Subterranean Water.

Chapter V—Water Courts.

Chapter VI—Servitudes which may be acquired under this Act in respect of Water.

Chapter VII—Loans, Subsidies, and Grants-in-Aid for irrigation purposes.

Chapter VIII—General.

#### CHAPTER I.

##### CENTRAL CONTROL OVER THE USE OF PUBLIC WATER.

Irrigation  
Department.

**4.** (1) There shall be a department, to be known as the Irrigation Department, which shall be subject to the direction and authority of the Minister.

(2) The functions of the Irrigation Department shall, subject to the provisions of this Act, be—

(a) to supervise and control irrigation works, and to do all acts necessary or incidental to the establishment and maintenance of irrigation works;

(b) to prepare hydrographic maps and collect information necessary for their preparation;

(c) to make surveys, plans, and estimates for public irrigation works, to prepare schemes for the prevention of the run off, and for the conservation of rain-water in localities where conditions are favourable and for the prevention of the denudation of the country by the action of storm-water in the removal of alluvial soil, and to record information as to the result of surveys made and investigations held;

(d) to examine and advise upon any scheme for the establishment, maintenance, repair, or alteration of irrigation works, submitted to it by private individuals, river boards, local

authorities, or any corporate body, whether in connection with the grant of a loan under this Act or otherwise ;

(e) to advise as to the expediency of sanctioning or granting loans under this Act or any other law, in connection with irrigation works ;

(f) generally to carry out, in accordance with directions, the powers and duties by this Act or any amendment thereof or by regulation conferred or imposed upon the Governor or the Minister.

(3) The Irrigation Department in existence at the commencement of this Act shall be deemed to have been established under this section.

5. (1) The Governor shall, from time to time, appoint an officer to be styled the Chief Engineer, who shall be subject to the orders and directions of the Minister.

Appointment of Chief Engineer and other officers of the department.

(2) The Governor may, from time to time, appoint such engineers, geologists, surveyors, clerks, and other officers as may be necessary to enable the function of the department to be effectually exercised.

6. The Governor may, by the officers of the department, and out of the moneys provided by Parliament for the purpose,—

General powers of the Governor.

(a) establish or maintain hydrographic stations and record the observations made thereat ;

(b) construct, control, extend, alter, maintain, and repair irrigation works ;

(c) sink boreholes and wells and obtain from underground sources supplies of water, and conserve the same when obtained ;

(d) obtain and record information as to the extent of land in this Colony under irrigation, the quantity of water used for the same, and the amount, nature, and value of crops raised thereby, and generally obtain and record information and statistics as to the hydrographic conditions of this Colony ;

(e) advise proprietors as to the construction, alteration, maintenance, or repair of irrigation works, and assist therein, and generally assist in and advise on matters affecting the irrigation of land on conditions prescribed by regulation, and charge fees for the assistance and advice on a scale to be likewise prescribed ;

**Act No. 27  
of 1908.**

(f) furnish engineering assistance, at or without the prescribed charges, to local authorities and river boards, and give technical advice to water courts in the hearing by them of disputes and claims under this Act ;

(g) inspect any irrigation work or the course of any public stream and order any local authority, river board, or any person to do such acts and execute such repairs as may be deemed necessary in the public interest, and, in default of compliance within a time specified in such order, execute the same at the cost of the defaulting local authority, board, or person.

Construction  
of irrigation  
and drainage  
works by the  
Government.

7. (1) The Governor may, from time to time and subject to any existing rights, construct any irrigation work which he may think necessary or desirable for the purpose of draining into or conserving or utilizing any public stream, or for abstracting, storing, or preventing the waste of subterranean water, and may supply and distribute, in accordance with regulation, water from such works.

(2) The Governor may further, from time to time, assess and levy rates (to be called Government rates) from the proprietors of farms irrigated or benefitting directly or indirectly by water from works constructed under this section or from any other such works the property of the Government.

(3) The provisions of sub-section (1) of section *thirty-one* sub-sections (5) (6) and (7) of section *thirty-two* and section *thirty-three* shall, *mutatis mutandis* and so far as they are applicable, apply in respect of the assessment, levying, and recovery of rates mentioned in this section, the functions assigned to the river board or the chairman thereof, under such sections being exercisable in the application thereof by the Minister.

(4) The Governor may enter into agreements with proprietors for the transfer or exchange of any portions of farms in commutation of the rates payable by such proprietors under this section.

(5) No works mentioned in this section, nor any water distributed therefrom, shall be subject to the administration or jurisdiction of any river board.



## CHAPTER II.

Act No. 27  
of 1908.LOCAL CONTROL OVER THE USE OF PUBLIC  
WATER.*(a) Constitution of River Districts.*

8. (1) If at any time it shall appear to the Governor expedient that the use of the water in any public stream or streams should be subject to special control, he may, by proclamation in the *Gazette*, constitute the area comprising such streams, or any portion thereof, a river district, assign a name to such district and, if it appear desirable, divide the same at any time for electoral purposes into wards.

Power to  
establish river  
districts.

(2) The powers of the Governor under sub-section (1) may be exercised after or without the presentation of such petition as in sub-section (3) is described; provided that such power shall not be exercised without the presentation of such petition, unless notice shall have been given by the Minister once in each of three consecutive weeks in the *Gazette* and in a newspaper circulating in the proposed area, stating the intention of the Governor to exercise such power and the proposed boundaries of the river district, and, within one month after the date of the last publication of such notice, no sufficient cause shall have been shown against the proposed exercise of the power.

(3) A petition for the constitution of a river district shall state the area to be included in such district and shall be signed by not less than three proprietors of riparian farms, situate in such area, who hold not less than one-tenth portion of the land irrigated from the public streams in such area. The petition shall further state the proposed boundaries of the area and of the wards (if any) into which it is proposed that the area be divided for electoral purposes. Such summary of, or extracts from, the petition, as the Minister may determine, shall be published in the *Gazette* and a newspaper circulating in the area, and shall be posted outside all public offices and at such other conspicuous places in the area as the Minister may determine.

(4) A counter-petition, in opposition to the constitution of a river district, setting forth the grounds of opposition, may be presented, signed by persons qualified to sign a petition, and shall be published in manner provided by sub-section (3) for the publication of a petition.

**Act No. 27  
of 1908.**

(5) The Minister shall cause investigation to be made as to any matters alleged in a petition or counter-petition, and may appoint an officer of the department or other person to hold such investigation.

(6) Upon the report of the investigation the Governor may grant the petition, with or without modifications, or may refuse the same.

Alteration of  
boundaries,  
etc., of river  
districts.

- 9.** (1) The Governor may, from time to time,—
- (a) alter the boundaries of a river district or of any wards thereof; or
  - (b) combine two or more river districts into one river district; or
  - (c) sever any portion of a river district and add the portion so severed to another river district with which it forms a continuous area; or
  - (d) constitute any severed portion a new river district;

provided that no such alteration, combination, severance, or constitution of severed portion into a new river district, shall take place except after a petition presented and investigation carried out in manner described in the last preceding section.

(2) In the event of the boundaries of a river district or of its wards being altered or a portion of the district being severed and added to another river district, the Governor may order all such steps to be taken with regard to the increase or decrease of members of the river board for each district, the election of members, or the apportionment of members, among the districts, or (as the case may be) among the wards, as may be expedient to meet the circumstances of the case, and may determine the period for which any member so elected or apportioned is to hold office, and may apportion the assets and liabilities between the river boards for the districts so that the general intent and purpose of the provisions hereinafter contained, relating to the constitution, powers, and duties of river boards, may have effect.

Exercise of  
powers of  
river board by  
Minister in  
respect of  
public streams  
not included  
in river  
districts.

**10.** The Minister may (subject to the provisions of this Act) exercise, in respect of public streams not included in a river district, all the powers by this Act conferred upon a river board, with the exception of the power of levying the river rates mentioned in section *thirty-two*.

(b) *Constitution of River Boards.*

River boards  
for every  
river district.

**11.** For every river district there shall be a river board consisting of five, seven, nine or eleven members, as the Governor may determine,

electd in manner hereinafter provided and, if the river district be divided into wards, the Governor shall determine the number of members to represent each ward.

**12.** (1) The qualification of persons to vote at elections of a river board shall be determined in accordance with the rules set forth in the First Schedule to this Act.

Qualification  
of voters and  
framing of  
list of voters.

(2) As soon as the Governor shall have issued a proclamation under this Act constituting any area a river district, it shall be the duty of the resident magistrate having jurisdiction in such area (or if there be more than one such magistrate, then the resident magistrate having jurisdiction over the largest portion of such area) to frame a provisional list of persons qualified to vote at elections of the river board, and, if the river district be divided into wards, a provisional list of persons qualified to vote in each ward. Such list shall show the number of votes which each person is entitled to record at such elections.

(3) The said magistrate shall cause the provisional list so framed to be posted outside the principal door of his court house and at all public offices and such other conspicuous places in the river district, or, if it be divided into wards, in each ward, as he may determine, and the said list shall remain so posted for a period of three weeks, together with a notice that—

(a) any person, qualified to vote in accordance with the First Schedule to this Act, whose name is not inserted in the said list or in that portion of the list relating to the particular ward in which he claims to be qualified to vote ;

(b) any person to whom fewer votes are assigned than he is entitled to in accordance with such Schedule ;

(c) any person objecting to the inclusion of any name in the said list or in any portion of the list relating to a particular ward ;

(d) any person objecting that a larger number of votes have been assigned to a particular name than ought to have been assigned ;

may appear on a day, and at a time and place to be in such notice specified, and put forward his claim or objection (as the case may be).

(4) Upon the day and at the time and place so specified the said resident magistrate shall hear and determine the claims and objections so put forward, and may do all acts in respect of such list necessary to make the final list correct as to

**Act No. 27  
of 1908.**

the names of persons lawfully qualified to vote, as to the wards (if any) in respect of which they are qualified to vote, and as to the number of votes which each such person is lawfully entitled to record.

(5) The final list shall be preserved by the said magistrate and, until amended or revised in accordance with the next succeeding section, shall be conclusive and deemed to be the only proof of the right of any person to vote at any election of the river board for that river district.

(6) A copy of the final list so determined and certified by the said magistrate as correct, shall be transmitted, as soon as complete, to the department, and a further copy, likewise certified, shall be kept and be open at all reasonable times to public inspection at the place at which the river board holds its meetings.

Triennial  
revision of  
list of river  
voters.

**13.** The final list shall, whenever the said magistrate shall become aware of any change in the proprietorship of a riparian farm, be amended to the extent rendered necessary by such change, and shall further be revised every third year in the month of April by the said magistrate and converted into a correct list of all persons who, at the amendment or revision, were qualified to vote, with the correct number of votes which each such person is entitled to record at elections of the river board and, if the river district is divided into wards, into a correct list of voters qualified respectively to vote in each ward. The provisions of the last preceding section as to the hearing of claims and objections shall apply to any amendment or revision under this section, and the provisions of the last preceding section as to the transmission to the department and the keeping and inspection of copies of final lists shall apply to any list amended or revised under this section.

Nomination  
of candidates.

**14. (1)** As soon as the copy of any final or revised list of voters for a river district has been received by the department, the Minister shall, by notice in the *Gazette* and in a newspaper circulating in such district and posted in such conspicuous places therein as he may determine, appoint a day, hour, and place at which the said magistrate shall hold a public meeting to receive nominations of candidates for membership of the river board.

(2) Every person to be so nominated shall be qualified as in the next succeeding section is provided, and shall be proposed and seconded by

two persons whose names appear in the final, amended, or revised list of voters (as the case may be).

(3) If the river district is divided into wards every person to be nominated for any ward shall be proposed and seconded respectively by two persons whose names appear in the final, amended, or revised list of voters for such ward.

(4) Every nomination shall be in writing, and shall contain the full name and address of the person nominated and shall be signed by the proposer and seconder.

(5) Every nomination so signed may be handed to the said magistrate at the meeting, or may be transmitted to him by post or otherwise, but no nomination received by him after the close of such meeting shall be accepted as a valid nomination.

**15.** (1) Every proprietor in the river district, whose name is included on any register for the time being in force of persons qualified to vote at the election of members of the Legislative Assembly of this Colony for any electoral division forming part of the river district, shall be qualified to be elected a member of the river board of that river district and in addition—

Election of  
members.

(a) if the Crown is a proprietor in any river district a person designated by the Minister shall be deemed to be a proprietor in such district for the purpose of this sub-section ; and

(b) if a body corporate is a proprietor in any river district a person whose name is notified in writing to the Minister by the body corporate shall be deemed to be a proprietor in such district for the purposes of this sub-section.

(2) If the number of persons, validly nominated as aforesaid, does not exceed the number of persons to be elected at any election, or, if the river district is divided into wards, the number of persons to be selected for the ward for which the election is being held, the persons so nominated shall forthwith be declared by the said magistrate to be duly elected.

(3) If the number of persons validly nominated exceed the number of persons to be elected at any election, or, if the river district is divided into wards, the number of persons to be elected for the ward for which the election is being held, the said magistrate shall fix a date upon which a poll shall be taken, not being less than

**Act No. 27  
of 1908.**

fourteen days after the date of nomination, and shall forthwith give notice of such date in a newspaper circulating in the river district, and at such conspicuous places in the river district or in each ward (as the case may be) as he may determine.

(4) Such poll shall be taken by means of a voting paper sent through the post to each voter at his address on the final, amended, or revised list of voters; and such voter shall indicate thereon for which candidate or candidates he desires to vote and the number of votes he desires to record for any one candidate. A voter who, in accordance with the rules laid down in the First Schedule to this Act, is entitled to record more than one vote, may record all or any of such votes for one candidate, or distribute his votes among the candidates to be elected; provided that a voter may not record a vote for more candidates than there are members to be elected for the river district or ward (as the case may be). Upon completing his voting paper the voter shall return the same to the said magistrate, by post or otherwise, within the period to be fixed by such officer.

(5) Upon ascertaining the result of the poll the said magistrate shall declare the same and shall further declare the candidates elected by a majority of votes, to be duly elected for the river district or ward (as the case may be). In the event of the number of votes recorded for any two or more candidates being found to be equal, and in the event of such equality of votes rendering it impossible to declare which candidates are elected, the said magistrate shall, by lot, immediately determine the election.

(6) As soon as possible after the said magistrate shall have declared which persons are duly elected he shall transmit to the Minister a statement, showing the full names and addresses of such persons, and the Minister shall thereupon publish in the *Gazette* a notice showing the names of such persons and stating the date and place of the first meeting of the river board the election of which has been held.

(7) The expenses incurred by the said magistrate in the conduct of any election held under this section shall be defrayed out of the general revenue of the Colony.

Provision in case of failure to elect the proper number of members.

**16.** If, from any cause whatever, the prescribed number of members be not elected, the Minister shall appoint so many qualified persons as will complete the prescribed number, and any person

so appointed shall be a member of the river board and if the river district be divided into wards, shall represent such ward as the Minister may determine, being a ward for which the prescribed number has not been elected.

17. Any member of the river board who shall cease to possess any of the qualifications for being a member, or who shall absent himself from three consecutive ordinary meetings of the river board without its leave, or who shall receive any salary, fee, or reward (pecuniary or otherwise) in connection with his service as a member or acquire any pecuniary interest or advantage in any contract to be performed by or for the river board shall *ipso facto* vacate his office.

Disqualifi-  
cations of  
members of  
board.

18. (1) Any member of the river board may resign his office on giving one month's previous notice in writing of his intention to the chairman; and the chairman shall at the first meeting of the river board after receiving such notice, or after satisfying himself of any member's death or disqualification (as the case may be), declare a vacancy of such member's office, and in the case of a disqualification give written notice to such member; provided that a member whose office has been declared vacant by reason of disqualification may apply to the court of resident magistrate having jurisdiction, to have such declaration set aside, and notice of intention to make such application and the grounds thereof shall be given to the chairman within one week after the declaration, and the application shall be made within twenty-one days thereafter.

Casual  
vacancies.

(2) When a member of a river board shall die or vacate his office, the remaining members shall, as soon as may be after the declaration of vacancy, choose a qualified person to fill his place.

(3) Any person so chosen shall hold office for the remainder of the period for which the member who has died or vacated office and whose place is so filled would otherwise have continued in office, and shall be deemed to represent the ward (if any) which the dead or vacating member represented.

19. (1) Save as is provided in this section and in sections *nine*, *twenty-two*, and *twenty-three*, every river board shall hold office for a period of three years.

Period and  
date of  
assumption of  
office of  
river boards.

(2) A newly constituted river board shall hold office until the thirtieth day of June, in the third year succeeding its first election.

**Act No. 27  
of 1908.**

(3) Every election of a board subsequent to the first election (other than boards constituted by reason of the exercise of the powers mentioned in sub-section (1) ) shall be held before the period of office of the existing river board expires, and every river board subsequently elected shall assume office on the first day of July after its election.

(4) Every member of a river board shall, subject to the provisions relating to qualifications and disqualifications of members, be eligible for re-election as a member of such board.

Chairman of  
river board.

**20.** (1) The river board shall elect one of its members to be chairman of the board, and he shall preside at all its meetings at which he is present. Such election shall be made if possible at the first meeting of the board held after any general election of its members, or if from any cause a chairman be not elected at such first meeting he shall be elected at the next ordinary meeting, or at a special meeting to be held as soon thereafter as possible.

(2) If the chairman be absent from any meeting of the river board, the members present shall elect one of their number to preside at such meeting.

(3) Any person presiding at a meeting of the river board, in accordance with this section, shall, in case of an equality of votes upon a matter which the board is determining, have a casting vote in addition to his deliberative vote.

Engineer to  
assist river  
board.

**21.** (1) The Minister may, at the request of the river board, nominate one of the engineers of the department to assist such board or any committee thereof with advice upon technical matters which come before the board or such committee for discussion.

(2) Any notice which, under this Act or the regulations, is sent to any member of the river board, shall be sent also to the engineer so nominated.

(3) Such engineer and the Chief Engineer may attend all meetings of the river board or any committee thereof, and shall have the right to speak but not to vote thereat.

Power of  
Governor in  
regard to  
boards in  
default.

**22.** If a river board makes default in carrying out any duties imposed upon it by this Act or by regulation, the Governor may order such board to carry out its duties, and in the event of the failure of such board to comply with such order within a time fixed thereby, the Governor may



dissolve such board and order a new board to be elected in manner hereinbefore provided; provided that during any period between the dissolution of one river board under this section and the election of another river board, the powers and duties of such board shall be and are hereby vested in the Minister.

23. If at any time on the termination of the period of office of members of a river board (otherwise than by its dissolution under the last preceding section) a new river board shall not have been elected as provided by this Act, such members shall, notwithstanding the termination of their period of office, continue to be the river board for the river district until a new river board is so elected.

Outgoing members to hold office until new members appointed.

(c) *Procedure of River Boards.*

24. (1) Ordinary meetings of a river board shall be held at such intervals, not being longer than two months, as it may from time to time determine.

Meetings of river boards.

(2) Special meetings of a river board may be convened by the chairman at any time and shall be convened by him upon a requisition in writing signed by two members of the board.

(3) Every river board shall fix the number of its members which is to constitute a quorum at its meetings; provided that in no case shall the quorum fixed be less than three or more than five members.

(4) Minutes of the proceedings of every meeting of a river board or of any committee thereof, shall be regularly kept in a book set apart for the purpose and such minutes shall be submitted for confirmation at the next subsequent meeting of the board or such committee, and, if confirmed, signed by the person presiding thereat. The Chief Engineer or any engineer nominated under section *twenty-one* shall at all reasonable times have access to such minutes.

(5) A copy of all such minutes, to be signed by the chairman and certified under his hand as a correct copy, shall be *prima facie* evidence in all courts of the proceedings of any meeting of which they purport to be minutes.

(6) Until the contrary is proved, every meeting, minutes of the proceedings of which have been kept, signed and certified as aforesaid, shall be deemed to have been duly convened and held and all the members present at the meeting shall be deemed to have been duly qualified, and if the

**Act No. 27  
of 1908.**

proceedings are proceedings of a committee of the river board, such committee shall be deemed to have been duly constituted and to have had power to deal with the matter referred to in the minutes.

Officers of the river board.

**25.** (1) Every river board shall, at its first meeting or as soon thereafter as may be, appoint one person to be secretary and treasurer of the board; provided that—

(a) if a member be appointed secretary and treasurer, he shall receive no remuneration;

(b) if a person appointed secretary and treasurer be not a member, he shall receive such remuneration (if any) as the board may fix, subject to the approval of the Minister.

(2) Every river board may further appoint an officer to be styled the water bailiff, who shall perform such duties and have such powers as the board may fix by bye-law and receive such remuneration as the board may fix, subject to the approval of the Minister. The office of secretary and treasurer and the office of water bailiff may be held by the same person. A member of the river board shall not be appointed its water bailiff.

Miscellaneous provisions relating to boards.

**26.** (1) A river board shall be a body corporate, and, as such, capable of suing and being sued, of holding land or other property, movable or immovable, and of doing all acts that bodies corporate may do, subject to the provisions of this Act.

(2) No payment shall be made by the treasurer out of the funds of a river board, except in pursuance of a resolution of the board.

(3) Every order, notice, or other document requiring authentication by a river board shall be deemed to be sufficiently authenticated if signed by the chairman and any one or more members.

(4) Every contract of a river board shall be deemed to be duly executed by or on its behalf, if signed by the chairman and any one or more members thereto authorized by resolution of the board.

*(d) Power and Duties of River Boards.*

General powers of river board.

**27.** (1) Every river board may, subject to the provisions of this Act, exercise the following powers; namely, it may—

(a) protect the sources of the water of any public stream in the river district;

(b) prevent the waste of the water of any public stream in the river district;

(c) exercise general supervision over all public streams within the river district, and if it deems necessary or expedient, cause such streams to be cleansed, deepened, widened, straightened, or otherwise improved, and enter into contracts for the performance of such work ;

(d) prevent the leakage or flow of any public water from the surface into subterranean channels ;

(e) prevent by all lawful means any unlawful diversion, abstraction, or storage of public water or subterranean water, cause to be removed any obstruction unlawfully placed in a public stream, and prevent any unlawful act which is calculated to diminish the quantity of water in any part of a public stream ;

(f) institute legal proceedings for the purpose of carrying out any power or duty conferred or imposed upon it under this Act, and defend any legal proceedings instituted against it, provided that it shall not institute or defend proceedings involving title to immovable property or in which a declaration of rights is sought, unless two-thirds of the votes (determined by reference to the voters list for the river district) be recorded in favour of instituting or defending such proceedings by the holders personally present at a meeting specially called for the purpose after one month's notice by the chairman of the board ; provided further that the votes of a person whom it is proposed to make a party to such proceedings shall not be recorded ;

(g) with the previous sanction of the Minister, acquire by purchase or otherwise, or construct irrigation works in connection with the public streams of the river district ; and, for the purpose of managing or administering such works, delegate powers or duties to a committee as provided in paragraph (j) of this sub-section.

(h) maintain in proper order and repair any irrigation works acquired or constructed by it under the powers of this Act, take all steps for the conservation of the water stored in, diverted or abstracted by, or utilized in connection with such works, and arrange for its proper distribution and use in accordance with this Act or with regulation ;

(i) with the previous sanction of the Minister order any riparian proprietor to carry out

**Act No. 27  
of 1908.**

such work and execute such repairs in relation to his own irrigation works as it may deem necessary in the public interest, and, in default of compliance with such order, itself cause such work to be carried out or repairs to be executed at the cost of such person ;

(j) with the previous sanction of the Minister delegate to a committee any powers or duties conferred or imposed by this Act or by regulation upon the board and place upon any such committee persons who are not members of the board but are voters of the river district approved by the Minister.

(2) Nothing in this section contained shall be deemed to authorize a river board to arrange for the distribution and use of water within the area of jurisdiction of a local authority. In any such area the local authority shall have all the powers as to distribution and use of water conferred upon it by the Municipal Corporations Ordinance, 1903, or any amendment thereof, or in the case of a local authority constituted under a special law, the powers conferred upon it by such law or any amendment thereof.

General  
duties of  
river board.

**28.** Every river board shall subject to the provisions of this Act carry out the following duties ; namely, it shall—

(a) investigate, define, and record in accordance with regulation, the quantity or share of water of a public stream which, at the different stages of its flow, may be used by persons having the right of user thereof, and determine the manner in and the times at which such quantity or share may be taken by such persons ;

(b) determine the method by which rights to the use of water may be exercised, keep a register of such rights, and allow the same to be open to inspection at all reasonable times ;

(c) supervise and regulate the distribution and use of the water of the public streams in the river district in accordance with established rights ;

(d) prescribe for its district in consultation with the department a standard showing the area of land which can be effectively irrigated in respect of any particular kind of crop by a constant flow of water equal to one cubic foot per second ;

(e) assist the Governor and the Minister in carrying out, so far as concerns the river district, the powers and duties conferred and imposed upon them under Chapter I.

**29.** (1) It shall not be lawful for a river board to remove from a public stream or otherwise interfere with, so as to injuriously affect the supply of water, any weir constructed before the commencement of this Act without the consent of all persons having the actual use of it,

(a) except upon the authority of a water court or a superior court; and

(b) unless any compensation awarded by such court has been paid or is payable to such persons.

(2) For the purposes of this section the term "weir" shall include any storage or other dam or any obstruction made for the purpose of raising the level or diverting the flow of the water of a public stream.

**30.** Every person entitled to any servitude acquired before the commencement of this Act in connection with the use of water shall, within such period as the river board may fix in each particular case, define and register such servitude at the office of such board in accordance with regulation; and in default of compliance with the requirements of this section or such regulation within the time fixed as aforesaid, and as long as such servitude remains unregistered, it shall not be recognised by the board for the purpose of the distribution of water by it or for any other of its purposes under this Act.

**31.** (1) Every river board shall, as soon as possible after its election, prepare in accordance with regulation a schedule of the ratable area of riparian farms within the river district, and may from time to time alter such schedule in manner prescribed by regulation.

(2) In fixing the ratable area, a river board shall have regard to the share or volume of water (other than water stored under the permission mentioned in section *forty-eight*) from the public streams in the river district which a proprietor has a right to use upon his farm, and the number of morgen (to be ascertained after investigation) annually irrigated on the farm by such share or volume of water.

**32.** (1) To defray any expenditure lawfully incurred by a river board under this Act or the regulations for the general administration or improvement of the public streams in the river district such board may levy river rates, subject to the provisions of this and the last preceding section.

Protection of weirs and other obstructions erected before the commencement of this Act.

Duty of persons claiming servitudes acquired prior to Act to register the same within a time fixed by river board.

Duty of river board to prepare schedule of ratable areas.

Revenue of the river board.

**Act No. 27  
of 1908.**

(2) Whenever a river board shall have determined by resolution that the levying of a river rate is necessary, the chairman shall give notice in writing of such resolution to every person whose name appears on the schedule mentioned in the last preceding section and at the address mentioned in such schedule. Such notice shall specify approximately the total amount of river rate that would be payable in accordance with such schedule by such person, and shall fix a place, date and hour (not being less than one month after the date when the notice was given) at which a meeting of voters for the river district shall be held to consider the proposal. The chairman shall preside at such meeting and if thereat more than one-third of the votes which the holders thereof are entitled to record at elections of the river board, be recorded by such holders present at such meeting, against the levying of a river rate, no such rate shall be levied during that year. A like procedure shall be observed in the event of a river board resolving in any subsequent year that the levying of a river rate is necessary.

(3) If a river board has at any time levied a river rate and any portion of a loan raised upon the security of such rate remains unpaid, or, if in the opinion of the Minister, the levying of a river rate by a river board is necessary for maintaining and keeping in repair works constructed by it or for satisfying its liabilities, the Governor may order such board to levy a river rate to an amount sufficient for the purposes in this sub-section described.

(4) The Governor may at all times disallow a resolution of a river board to levy a river rate, notwithstanding that the holders of one-third of the votes determined as aforesaid have not signified their objection thereto in manner aforesaid; and as soon as the disallowance of the resolution shall be notified to the board, such resolution shall be deemed to have been rescinded.

(5) After the passing of a resolution to levy river rates and subject to the provisions of sub-sections (2) (3) and (4) the board shall cause to be prepared a list (called the river assessment roll) specifying the names of all persons holding ratable farms, the description and extent of such farms and the extent of ratable area therein, the proportion of rate to be levied, and the total amount due from each proprietor.

(6) A copy of the river assessment roll shall be open for inspection at the office of the board at all reasonable times free of charge.

(7) River rates shall be assessed at a uniform sum per morgen of ratable area, and as soon as the same are assessed notice shall be given by the river board to the Registrar of Deeds of the names and numbers of the farms in respect of which the assessment is made and the amount thereof.

**33.** (1) All river rates imposed upon the proprietors of ratable farms shall be payable at the office of the river board on a day to be appointed by it, one month's notice of the day so appointed being given to each such proprietor.

Recovery of  
river rates  
levied.

(2) If within one month after such day the river rates due from any proprietor have not been paid, the board may without further demand apply to the court of resident magistrate within whose jurisdiction the ratable farm is situate, which may, if satisfied that the rate is due and unpaid, issue a summary warrant addressed to the messenger of his court requiring him to levy, without judgment or other proceedings, sufficient execution against the movable and immovable property (being within his magisterial district) of the person in default to cover the amount of rate due and the costs of execution.

Process in aid granted by the Supreme Court shall not be necessary to enable execution to be levied against any immovable property under the warrant.

(3) No transfer shall be passed before the Registrar of Deeds of any farm in respect of which the notice aforesaid has been given to him until a certificate of the secretary and treasurer of the river board shall be produced showing that all river rates due to the board under this Act from the proprietor have been paid.

**34.** To defray the interest and redemption charges on expenditure lawfully incurred by a river board in constructing irrigation works for the benefit of any particular portion of its district and to defray the cost of administering and maintaining such works, the board may, with the approval of the Governor and in addition to the powers conferred by section *thirty-two* levy rates to be called "irrigation rates" on all land irrigated or capable of being irrigated by such works and the provisions of sub-section (1) of section *thirty-one*, sub-sections (5), (6) and (7) of section *thirty-two* and section *thirty-three* shall *mutatis mutandis*

Power of  
river board  
to levy  
irrigation  
rates.

**Act No. 27  
of 1908.**

Power of  
river board to  
raise loans.

and so far as they are applicable apply in respect of the assessment, levying and recovery of irrigation rates.

**35.** (1) A river board may from time to time raise loans in such amounts and on such conditions as may be approved by the Governor, for the purpose of purchasing or carrying out any permanent irrigation works which it is authorized under this Act to carry out or purchase, or for any capital expenditure in connection therewith.

(2) No such loan shall be raised without the previous approval of the Governor of the objects of the loan, nor if the holders of more than one-third of the votes (as determined by reference to the voters list of the river board) signify their objection to the raising of the loan in manner provided by section *thirty-two*, after the procedure described in such section has been observed.

(3) Every such loan shall be secured on the property, rates, and other revenue of the board.

(4) Before signifying his approval to the raising of a loan by a river board, the Governor shall require the board to furnish such particulars as it is required under Chapter VII to furnish before obtaining a loan under such Chapter.

Power to  
Minister to  
grant money  
to river boards  
towards  
expenditure  
during first  
year.

**36.** The Minister may, out of funds voted by Parliament for the purpose, grant to any river board sufficient money to cover its probable expenditure during a period of twelve months immediately succeeding its constitution ; provided that—

(a) the total amount so granted to any one board shall in no case exceed one hundred pounds ;

(b) an estimate of such expenditure has been first submitted to and approved by the Minister.

Records and  
accounts to  
be kept by the  
river board.

**37.** (1) A river board shall keep such records, statistics, registers, and accounts, as are prescribed by regulation, and shall prepare and transmit to the department such returns and reports as the Minister may from time to time require ; and in particular a river board shall transmit to the department, as soon as may be after each thirtieth day of June, financial statements made up to such date and in the form prescribed by regulation, showing—

(a) receipts and expenditure of moneys on its revenue account ; and

(b) receipts and expenditure of moneys on its capital or loan account.



(2) The financial statements so transmitted shall be placed before the Auditor-General of the Colony, who shall, in respect of the accounts of the board, have all the powers vested in him by law in respect of the public accounts of the Colony.

**38.** (1) A river board may, from time to time, make, alter or rescind bye-laws (not inconsistent with this Act or the regulations) prescribing—

Power of river board to make bye-laws.

- (a) the procedure to be followed at its meetings ;
- (b) the powers and duties of its water-bailiff and other officers ;
- (c) the method of the diversion, distribution, and use of water under its control and the supervision thereof including provisions regarding the diversion, distribution and use of Sunday or night water ;
- (d) the method of assessment and collection of river rates ;

and generally as to any other matter or thing relating to its powers and duties.

(2) No such bye-law or any alteration or rescission thereof shall be valid until approved by the Governor and published in the *Gazette*: nor shall the same take effect until one month after notice of intention to apply for approval has been given by the board, by notice published in a newspaper circulating in its district and posted outside the door of its office.

(3) A river board shall supply copies of all bye-laws in force to any person on payment of a sum not exceeding one shilling per copy, and copies of all such bye-laws shall be open to inspection at the office of the board at all reasonable hours.

**39.** (1) Whenever it shall appear to the Minister that an order or act of any river board is calculated to infringe or detrimentally affect rights existing in the river district of another river board, or that a power exercisable by one river board can with advantage to the public interest be exercised by two or more river boards acting jointly, the Governor may constitute a joint committee to investigate the matter, and determine the action to be taken.

Joint committee to deal with matters affecting more than one river district.

(2) Such joint committee shall consist of two persons, nominated from its own members by each of the boards specified by the Governor and two persons together with a chairman appointed by the Governor.

**Act No. 27  
of 1908.**

(3) A joint committee constituted under this section shall have all the powers and jurisdiction which may be conferred on a commission by the Commissions Powers Ordinance 1902 and shall, so far as concerns the matter within the area for which it has been appointed, have all the powers and be subject to the same duties and obligations as a river board.

Crown farms subject to the jurisdiction of the river board.

**40.** Any farm of which the Crown is the proprietor and any other property of the Crown within a river district (other than works constructed under the powers of Chapter I) shall be subject to the jurisdiction of the river board for such district, or the joint committee of two or more such districts; and save as is otherwise specially provided in this Act the Crown, as a proprietor, shall have all the rights and be subject to all the obligations conferred or imposed upon proprietors under this Act.

*(e) Co-operative Irrigation Societies.*

Section *thirty-eight* of this Act may apply to Co-operative Irrigation Societies.

**41.** (1) The Governor may, upon the written request of any society registered under the Co-operative Agricultural Societies Act 1908, or any amendment thereof, and having for its objects the construction or maintenance of irrigation works for utilizing the water of streams other than public streams, apply to such society as regards its members and such works the provisions of section *thirty-eight*.

(2) No such provisions shall be applied unless the Governor is satisfied that two-thirds of the members of the society in general meeting have passed a resolution in favour of the application of such provisions.

*(f) Saving Provisions.*

Exemption of Pretoria Municipality from jurisdiction of river board.

**42.** Notwithstanding anything in this Chapter contained, the area comprising the Municipality of Pretoria and any property or rights belonging to the Council thereof shall not be included in a river district or be subject to the jurisdiction of any river board or of the Minister acting as a river board.

Exemption of Rand Water Board from jurisdiction of river boards.

**43.** The powers and jurisdiction of every river board shall be exercised subject to rights lawfully acquired or exercised prior to the coming into operation of this Act by the Rand Water Board under the Rand Water Board Statutes 1903 to 1906.

## CHAPTER III.

Act No. 27  
of 1908.

## USE OF PRIVATE AND PUBLIC WATER.

**44.** (1) Every proprietor shall be entitled to use exclusively and without restriction all water rising naturally on the land held by him, in so far as such water has not reached a public stream or does not form the source or part of the source of a public stream.

Private streams and water.

(2) All water which falls or naturally drains on to the surface of land shall be the sole and undisputed property of the proprietor thereof, as long as it remains upon such land and does not join a public stream.

**45.** All water which joins or forms part of a public stream shall be public water, the use of which shall, subject to rights lawfully acquired, be regulated by this Act. There shall be no right of property in public water save as is otherwise provided in section *forty-eight* in respect of surplus water.

Public water and use of public streams.

**46.** (1) Public water shall be subject to primary, secondary, and tertiary uses.

Primary secondary and tertiary uses of public water.

(2) The primary use of public water shall be the use necessary for the support of animal life, and in the case of use by riparian proprietors, the use necessary for domestic purposes.

(3) The secondary use of public water shall be the irrigation of land under cultivation.

(4) The tertiary use of public water shall be for mechanical or industrial purposes.

(5) An upper riparian proprietor shall not be entitled to the secondary use of public water, if he thereby prevents its primary use by any lower riparian proprietor who, prior to the coming into operation of this Act, has ordinarily had such primary use.

(6) Subject to the provisions of this Act and to rights lawfully acquired, an upper riparian proprietor shall be entitled to divert a reasonable quantity of public water for its primary and secondary use, provided he does not infringe the rights of any lower riparian proprietor to such use and returns the same at a definite place to the public stream with no diminution other than is caused by such use.

In determining what is a reasonable secondary use regard shall be had to the relative extent of the upper riparian and lower riparian farms, the area and situation of ground cultivated and capable of being cultivated, the extent of river

**Act No. 27  
of 1908.**

frontage of each riparian farm, the method of user, the flow of the public stream and the rainfall over an area.

(7) The tertiary use of public water by an upper riparian proprietor shall be subject to reasonable secondary use of public water by all lower riparian proprietors who, prior to the coming into operation of this Act, have ordinarily had such secondary use.

(8) No person shall have the use of public water to develop water power greater than ten horse power without the permission of the Governor or of the river board, which may, subject to the provisions of this Act or the regulations and with the approval of the Governor, permit such use on terms and conditions to be specified by it.

Diversion of surplus water of public streams on to non-riparian farms or across the watershed.

**47.** (1) If the river board is satisfied that during any period of a year all the water of a public stream cannot be utilized by all the riparian proprietors, it may grant written permission for the diversion, during such period, of the surplus water of such stream—

- (a) on to non-riparian farms within the catchment area of such stream ; or
- (b) across the watershed of such stream into another catchment area in which the surplus water can be usefully employed for irrigation or other purposes.

Provided that

- (i) a riparian proprietor is not thereby deprived of water necessary for land which is, at the time, under irrigation, or might thereafter reasonably be expected to be brought under irrigation ;
- (ii) in the grant of the permission, preference shall be given to the farms described in paragraph (a) of this sub-section.

(2) The permission may be granted upon application made to the river board in accordance with regulation and shall not be valid until confirmed by the Minister and the diversion of surplus water from a public stream shall not be lawful unless such permission has been granted.

Storage of surplus water under permit.

**48.** (1) Written permission may be granted by a river board, subject to the provisions of this Act or the regulations, to any person to store the surplus water of a public stream and the storage of surplus water in a public stream shall not be lawful unless such permission has been granted.

(2) An appeal shall lie to the Minister against the grant or refusal of such permission.

(3) Every person authorized under this section to store surplus water shall be entitled to the property in such water and notwithstanding that the surplus water so stored be left to mingle with the other water in a public stream.

**49.** (1) Any diversion or storage of surplus water under the last two preceding sections shall be at a place described in the permission, which shall also specify—

Determination of place of diversion or storage.

(a) in the case of diversion the line of passage of the water;

(b) the nature of the diversion or storage works;

(c) the amount of compensation (if any) to be paid to any proprietor on whose farm it is stored or through or over whose farm the surplus water is diverted or conveyed for storage.

(d) the amount of surplus water which may be stored or diverted.

(2) The river board shall not grant any permission for the diversion or storage of surplus water if the grant would interfere with the use, enjoyment or exercise of any permission or right to divert or store surplus water previously granted or held under the Act unless the consent of the holder of the permission or right has been obtained.

**50.** (1) Whenever a public stream, which formed the boundary between two or more farms, changes or has changed its course the boundaries of such farms shall not be thereby changed nor shall a change in the course of such stream constitute a riparian proprietor a non-riparian proprietor.

Rights of proprietors on change of course of public stream.

(2) Such riparian proprietor may apply to the river board to fix a point or points on the changed course of the stream to which he shall have access and at which he may take the water thereof subject to the provisions of section *forty-six*, and to further fix the line along which such water may be so diverted and taken. The river board may grant the application on such terms as to it may seem just.

(3) Whenever a riparian proprietor has been injuriously affected by any such change in the course of a public stream, he may make written application to the river board for permission to construct works necessary to restore the stream to its former course.

(4) The river board shall, if satisfied that the riparian proprietor has been so injuriously affected, and subject to any rights lawfully acquired in

**Act No. 27  
of 1908.**

respect of the changed course, grant the permission, but may attach thereto conditions as to the nature of the work to be constructed and the time within which it shall be completed.

#### CHAPTER IV.

##### USE OF SUBTERRANEAN WATER.

Presumption of fact in case of subterranean water in dolomite formation.

Use of subterranean water.

**51.** All subterranean water in the dolomite formation shall, until the contrary is proved, be presumed in courts of law and other places to flow in defined channels.

**52.** (1) The proprietor of every farm shall be entitled to abstract any subterranean water thereunder for his own use, for any purpose.

(2) The proprietor of a farm shall not be entitled, without legislative sanction, to dispose of subterranean water derived from the dolomite formation, nor to convey it, after it has been abstracted, beyond the limits of his farm; provided that the holder of mining title may take steps for removing to any place any subterranean water from a mine worked by him, if necessary for the efficient working of the mine or the safety of persons employed therein, and may with the consent of the Governor dispose of such water.

(3) Any superior court may, upon application, interdict any person from abstracting subterranean water if thereby substantial interference with the water supply of a town or any populated area is probable; provided that if the court, on such application, grant a perpetual interdict, the operation of such interdict may be suspended pending the payment by the applicant to the person to be interdicted of compensation on the basis of the value to such person of the use of the water of which he is actually deprived and to which he is entitled, the amount of compensation being determined in the absence of agreement by arbitration.

(4) Nothing in this Chapter contained shall affect any rights lawfully acquired or exercised prior to the coming into operation of this Act, under the Rand Water Board Statutes 1903 to 1906.

#### CHAPTER V.

##### WATER COURTS.

Constitution of water courts.

**53.** (1) Whenever a dispute arises between two or more river boards or between a river

board and any person, or between any two or more persons, in relation to the diversion, use, storage or other appropriation of public water, or whenever a claim to a servitude is made under Chapter VI of this Act, or whenever any other dispute or claim is under this Act to be determined by a water court, the Governor shall, upon the application of any party to the dispute or the claimant (as the case may be), constitute a special court (called a water court) to hear and determine the dispute or claim.

(2) A water court shall consist of three persons to be appointed by the Governor, one of whom (being in every case a judge of the Supreme Court, a resident magistrate, or an advocate or attorney of the Supreme Court) shall be president of the water court. Each of the other two members of the court shall possess fixed property within the Colony of the value of five hundred pounds at least. The members of a water court other than a judge or magistrate shall receive remuneration in accordance with a tariff of fees to be prescribed by the Governor.

(3) No member of a water court shall be related within the third degree of consanguinity or affinity to any party to the dispute, or shall be a person interested in the claim to be determined, or if any river board is a party to the dispute or interested in the claim to be determined, no member of such court shall be a member or officer of such board.

(4) Notice constituting the court and specifying the members thereof, and the date and place at which it will sit, shall be published in the *Gazette* and in a newspaper circulating in the magisterial district or districts in which the dispute or matter has arisen.

54. Save as is otherwise provided in this Act, a water court, constituted to hear and determine a dispute or claim, shall have exclusive jurisdiction in the first instance to hear and determine the same, and no process shall issue out of any other court involving a question arising on the dispute or claim as soon as it shall have been notified in the *Gazette* that a water court has been constituted to hear and determine the same and if any such process has been issued prior to its being notified that a water court has been constituted to hear and determine the dispute, such process, and all proceedings thereunder shall *ipso facto* stand referred to such water court.

Exclusive jurisdiction of water courts in the first instance.

**Act No. 27  
of 1908.**

Procedure  
before the  
water court.

**55.** (1) Any party to a proceeding before a water court may appear—

(a) in person, or by a person authorized by him under power of attorney ; or

(b) by an advocate or attorney of the Supreme Court or a duly admitted law agent ; and any local authority or river board may appear by its mayor, chairman, town clerk, secretary, or similar officer nominated by it for the purpose, and any company may appear by one of its directors or its secretary or other of its officers nominated for the purpose.

(2) At the date, hour, and place fixed by the notice mentioned in section *fifty-three* the water court shall sit and hear the evidence and arguments of every party to the proceedings, and may adjourn its sitting from time to time or from place to place on giving to the parties reason for the adjournment and adequate notice of the time and place of its next sitting.

(3) If at any stage of the proceedings a question of law arises which, in the opinion of the water court, it is desirable to have finally determined, it may state such question in writing in the form of a special case for the decision of the Supreme Court, and the rules of the Supreme Court as to special cases in an action before it shall *mutatis mutandis* apply to the form of a special case stated under this sub-section. The case stated shall be transmitted to the Registrar of the Supreme Court and the question may be answered by such Court or a judge thereof, with or without argument on behalf of the parties, as such Court or judge may determine, and such Court or judge may require the water court to furnish any further particulars before answering the question. The Registrar of the Supreme Court shall, as soon as the question submitted has been answered, transmit the answer to the water court, which shall, in making an order or award in the proceedings before it, adopt and apply the law so laid down by the Supreme Court.

Order or  
award of  
water court.

**56.** (1) A water court shall make such order or award on any proceedings brought before it as it shall think just, and the costs of any such proceedings shall be in the discretion of the court, and shall be taxed and recoverable in manner prescribed by regulation ; provided that such court shall not in any order for payment of costs include any sum for the payment of fees other than witness fees to any person who is not an advocate attorney or duly admitted law agent.



(2) The order or award shall be reduced to writing, and a copy thereof certified by the president or the other two members served upon each party to the proceedings, and upon every other person who, in the opinion of the water court, is materially affected thereby. The order or award shall be binding on the parties to the proceedings, unless or until it is set aside or altered on appeal under the next succeeding section.

(3) An order or award of the water court for the payment of money by a party shall have the same effect as an order of the Supreme Court, unless and until set aside or altered upon appeal under the next succeeding section, provided that the water court may grant stay of execution pending the determination of such appeal on such terms and conditions as it thinks just.

**57.** (1) Any party and any other person upon whom a certified copy of the order or award of the water court is served under sub-section (2) of the last preceding section, may, if aggrieved thereby, appeal to the Supreme Court against such order or award.

Appeals  
against order  
or award of  
water court.

(2) Every appeal under this section shall be prosecuted in manner prescribed by law for appeals to the Supreme Court against a civil judgment or order of a court of resident magistrate, save that the period within which such appeal shall be noted, shall be two months from the date of the order or award, or within such further time as the Supreme Court may, upon application, allow.

(3) Upon the hearing of the appeal the Supreme Court may confirm, reverse, or vary the order or award, or may remit the proceedings to the water court with such instructions relative to further proceedings to be had and taken as the Supreme Court may think fit to give, and it may, upon the appeal, make such order as it may think just as to costs of the appeal or of the original proceedings in the water court.

(4) In addition to the jurisdiction conferred upon it by sub-section (3), the Supreme Court may, if one of the grounds of appeal is that the order or award of the water court is against the weight of the evidence, upon the application of either party to the appeal or of its own motion, order the dispute or claim to be heard and determined by any judge of the court at such place at or near the locality where the dispute or claim arose, as the Supreme Court may determine. The

**Act No 20  
of 1908.**

the Board may make arrangements with the governing body of any such other administration or administrations with regard to the control and management of the Fund, the apportionment of the liabilities of the governing bodies in any such joint fund in respect of interest, management, and other charges, and any other questions which may arise out of the amalgamation or conversion of the fund into a joint fund ; provided that no such amalgamation or conversion shall be deemed to affect the provisions of this Chapter in respect of contributions to or pensions from the Fund.

*Membership of Fund.*

Membership  
of the Fund.

**16.** (1) Membership of the Fund shall be optional in the case of railway servants in the employment of the Administration on the fixed date and shall, save as is provided in sub-sections (4) and (5) of this section, be obligatory in the case of those admitted to permanent employment after that date ; provided that—

(a) unskilled labourers and such other railway servants (not being persons in permanent employment of the Administration) whom the Board shall decide not to admit as members ;

(b) temporary railway servants or railway servants described in sub-section (4) of section *four* or engaged for a fixed period of employment, unless subsequently taken into permanent employment ;

(c) female railway servants subject to the provisions of section *forty-five* ;

shall not be eligible for membership of the Fund.

(2) Any railway servant whose membership of the Fund is under this section optional and who desires to become a member, shall give written notice to the General Manager of his intention within six months after the fixed date and shall thereupon become liable for the payment of contributions as provided in this Act. Unless he shall give such notice within such period he shall thereafter be ineligible for membership of the Fund.

(3) If a temporary railway servant or a railway servant described in sub-section (4) of section

**Act No. 27  
of 1908.**

and the proprietor of any such land shall remain subject to any encumbrance attaching to it.

Servitude of storage.

**62.** (1) "Servitude of storage" shall mean the right to occupy the land of another by submerging it with water by means of a dam or weir or other works, and shall include a right of passage over the land and along the boundary of and throughout the particular area subject to the servitude, for the purpose of maintaining and cleansing such works, or for any other purpose necessary for the effective enjoyment of the servitude.

(2) A servitude of storage shall not, subject to the terms of any award or agreement establishing it, deprive the proprietor of the area subject to the servitude of the use of that part of the area which is not submerged; provided such use is not detrimental to the enjoyment of the servitude.

(3) A servitude of storage shall give the holder thereof a prior claim to surplus water over servitudes subsequently acquired.

(4) When a permanent servitude of storage has been acquired by a proprietor over the land of another proprietor, the latter named proprietor may, before the commencement of the storage-work and on payment of his proportion of the cost thereof (to be determined in case of dispute by arbitration), demand, and thereafter shall be entitled to receive, the benefit of the storage-work in the proportion which the capacity of that part of the reservoir, which is on the land subject to servitude, bears to the total capacity of the reservoir.

Servitude of passage of water.

**63.** (1) "Servitude of passage of water" shall mean the right to occupy so much of the land of another as may be necessary for or incidental to the passage of water, and shall include a right to construct on such land irrigation works necessary for such passage over, under, or alongside another irrigation work, or to enlarge an existing irrigation work.

(2) The servitude shall include the right of access to any piece of land (after giving notice to the proprietor thereof) for the purpose of constructing, inspecting, maintaining, and repairing such works.

(3) The servitude shall be subject to the duty of passage of water along such works by any proprietor on or over whose land the servitude exists, on payment of such proportion of the cost of constructing and maintaining such works as may be agreed, or, failing agreement, as may be determined by arbitration.

(4) In exercising such servitude across a public road, the holder thereof shall construct such works as will prevent danger or inconvenience to the public, and shall keep the same in repair, the manner of construction and repair being prescribed by the Minister for Public Works or the local authority (according as such road is under the control of the Government or a local authority).

**64.** (1) "Servitude of abutment" shall mean the right to occupy, by means of a dam or weir, the bed or banks of a public stream or land adjacent thereto, belonging to another.

Servitude of abutment.

(2) The proprietor, on whose ground a servitude of abutment exists, may, before the construction of the dam or weir is commenced, demand and thereafter shall be entitled to lead water therefrom, on paying to the holder of the servitude such proportionate cost of the dam or weir as may be agreed, or, failing agreement, as may be determined by arbitration.

**65.** Every servitude in this Chapter described shall include a right to take materials from the land on or over which the servitude exists for the purpose of constructing, maintaining, or repairing any irrigation works thereon.

Servitude to include right to take materials for works.

**66.** A person who, by paying a proportion of the cost of constructing any irrigation work, as provided in sections *sixty-two*, *sixty-three*, or *sixty-four*, has acquired the right to use the same, shall be liable to pay a like proportion of the cost of its maintenance and repair until he shall in writing have surrendered such right of user and three months shall have expired after the surrender.

Person who acquires right to use works by paying proportionate cost to be proportionately liable for repairs.

**67.** Every person who, under this Chapter constructs works for the passage of water which—

(a) prevents any proprietor passing freely over or on to his land ; or

(b) checks the circulation of water in the irrigation or drainage of such land,

shall construct and maintain in repair—

(i) such bridges and other works as will make communication safe and convenient, and

(ii) such culverts, aqueducts, and other works as are necessary to secure the free circulation of such water,

unless he shall be exempt from such duty by agreement or other lawful cause.

Duty of proprietor to construct bridges, etc., for communication for other proprietors.

**68.** (1) A servitude described in this Chapter may be claimed by serving written notice upon

Mode of acquiring servitudes.

**Act No. 27  
of 1908.**

the proprietor of the land on or over which the servitude is desired, demanding the servitude and specifying the following particulars, namely—

- (a) the line of passage along which the water is to be conducted or diverted ;
- (b) the locality on which the water is to be stored ;
- (c) the nature and locality of the works to be constructed ;
- (d) the compensation offered ;
- (e) the period of the servitude.

(2) If such proprietor shall not, within one month after service of such notice, agree to the claim and the particulars specified in the notice, the claimant may apply to the Minister for the constitution of a water court to hear and determine his claim, and shall serve a copy of the application upon such proprietor.

(3) If the land over which the servitude is claimed is subject to a mortgage or lease, the claimant shall further serve upon the mortgagee or lessee (as the case may be) the notice and copy of application required to be served on the proprietor.

(4) Every such mortgagee or lessee shall have the right to appear as a party before the water court on the hearing of the claim and shall have all the privileges belonging to and be subject to all the obligations imposed or which may be imposed on a party before a water court by this Act or the regulations.

Jurisdiction  
of water  
court as to  
claims for  
servitudes.

**69.** (1) The water court, upon the hearing of such claim, may—

- (a) award the same, with or without modifications and subject to such conditions as it deems just ;
- (b) award, or refuse to award, compensation for the right of servitude granted ;
- (c) if the land, over which the servitude is claimed, is subject to a lease, award compensation to the lessee for any loss or damage he is likely to sustain by the exercise of the right of servitude ;
- (d) if the land, over which the servitude is claimed, is subject to a mortgage and the mortgagee claims a share of any compensation awarded, determine the claim of the mortgagee and the amount (if any) of his share of the compensation ;
- (e) dismiss the claim, but on the following grounds only, namely—

- (i) that the servitude claimed does not fall within the provisions of this Chapter ; or
- (ii) that the object for which the servitude is claimed could be better attained in another manner ; or
- (iii) that the claim is not made in good faith ; or
- (iv) that the works appertaining to the servitude claimed are not of sufficient agricultural or other utility to justify the acquisition of the servitude ; or
- (v) that the works appertaining to the servitude will interfere with any irrigation scheme of the department or the river board, or generally with the development of irrigation in the locality ; or
- (vi) that the damage likely to be caused by the proposed works would be greater than the benefits that would be derived therefrom.

(2) Compensation awarded by a water court for a temporary servitude shall not exceed an annuity equal to the rental value (as nearly as can be ascertained) of the land to be actually occupied by the work contemplated, together with an annual sum for actual inconvenience or loss likely to be suffered by the exercise of the right of servitude.

(3) Compensation awarded by a water court for permanent servitude shall not exceed an amount equal to the average market value (as nearly as can be ascertained) of the land to be actually occupied by the work, together with an annuity for actual inconvenience or loss that may be suffered by the exercise of the right of servitude, or, in lieu of such annuity, an amount equal to twenty times such annuity.

**70.** A person who, under this Chapter, holds a temporary servitude, may claim an award of the water court converting it into a permanent servitude subject to the payment of such compensation to the proprietor of the land on or over which the temporary servitude exists as may be determined by the water court. The provisions of sections *sixty-eight* and *sixty-nine* shall, so far as applicable, apply to a claim for conversion under this section.

Conversion of temporary into permanent servitudes.

**71.** Any servitude acquired under this Chapter shall lapse if the work specified in the particulars of the claim be not completed within three years from the date of acquisition by agreement or of the award of the water court or within

Lapse of servitude.

**Act No. 27  
of 1908.**

any extended period that may be agreed or that the water court may have fixed on the hearing of the claim.

Registration  
of servitudes.

**72.** No servitude acquired or awarded under this Chapter shall be recognised until registered in accordance with regulation at the office of the river board and against the title to the land on or over which it has been so acquired or awarded, and the Registrar of Deeds shall, upon production of a certified copy of the award of the water court, register the servitude described therein on the titles to the land in favour of and over which it has been so acquired or awarded. The proprietor of the land over which such servitude has been so acquired or awarded may be compelled by order of the water court to produce his title deeds for the purposes of the registration. Nothing in this Chapter contained shall affect servitudes or other rights acquired by the Railway Administration of this Colony by expropriation or otherwise either before or after the passing of this Act.

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## CHAPTER VII.

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### LOANS, SUBSIDIES AND GRANTS-IN-AID FOR IRRIGATION PURPOSES.

Loans by  
Governor to  
river boards  
and  
proprietors.

**73.** (1) The Governor may from time to time advance money on loan to a river board or to any proprietor for the construction of any work which under this Act a river board or proprietor is authorized to construct, or to enable a proprietor to pay compensation awarded by a water court against him on acquiring a servitude under Chapter VI.

(2) The loan to a river board shall be upon the security of any rates levied and revenue acquired by it under this Act or such other security as the Governor may approve.

(3) The loan to a proprietor shall be upon the security of first mortgage of immovable property, the amount advanced not exceeding sixty per cent. of the value of such property as determined (at the cost of the proprietor) by two sworn appraisers appointed by the Minister.

Mode of  
application  
for loan and  
particulars  
same.

**74.** (1) Application for a loan shall be made in writing to the Minister and shall state the object of the loan, the nature of any proposed works, the estimated cost of construction thereof, the position and extent of the land to be irrigated

or drained, and the extent to which it is expected that the value of the land will be enhanced by the works ; and,—

**Act No. 27  
of 1908.**

(a) if the applicant be a river board, its existing liabilities shall be stated and a detailed account of its revenue and expenditure, and in particular, the extent to which the rates leviable by or the other revenues of the board have been encumbered or charged and the names and addresses of the persons entitled to the encumbrances or charges ; and a certificate shall be submitted under the hand of its chairman that written objections to the proposal to raise a loan have not been made by the holders of more than one-third of the votes as determined by the voters' list of the river board in accordance with section *thirty-two* ; and

(b) if the applicant be a proprietor, the nature and extent of the property offered as security for the loan shall be stated.

(2) If the application is for an advance exceeding one hundred pounds, or if the enhanced value expected from the proposed works is an element of the security, plans of such works and an estimate of the cost thereof shall be submitted together with such other particulars as may be prescribed by regulation.

(3) The Minister may direct such further enquiry to be made as he deems necessary for determining the expediency or otherwise of advancing a loan, and, if the applicant is a proprietor, may, instead of submitting the application to the Governor, refer it to the Land and Agricultural Bank to be dealt with in accordance with the provisions of Act No. 26 of 1907 or any amendment thereof.

## CHAPTER VIII.

### GENERAL.

**75.** (1) The Minister, or any person or persons acting under his written authority, may, after notice to the proprietor, enter upon any land with such men, animals, vehicles, appliances, and instruments, and do all such acts thereon as are necessary for or incidental to the exercise of the powers conferred or the performance of the duties imposed by this Act upon the Governor, the Minister, or the department ; provided that—

Right of entry  
upon land.

(a) no such engineer or person shall enter any building or any enclosed yard attached



**Act No. 27  
of 1908.**

to a dwelling, except with the consent of the occupant thereof ;

(b) as little damage as possible shall be caused to land by the exercise of the powers of this section, and compensation shall be paid by the department for all damage so caused, the amount thereof, if not mutually agreed, being determined by arbitration.

(2) Members of a river board or a water court, or a person authorized in writing by the chairman of the board or the president of the court, shall to the extent necessary for carrying out its powers duties or jurisdiction of such board or court, have the right of entry upon land, with the powers incidental thereto, mentioned in sub-section (1) subject to the restrictions and obligations in the said sub-section provided.

(3) Any person who prevents such entry on land as is authorized by this section, or who wilfully obstructs or hinders any person so authorized in lawfully carrying out his powers or duties under this Act or the regulations shall be guilty of an offence.

Service of  
notices and  
document.

**76.** (1) Any notice, order, or other document required by this Act or a regulation to be served upon any person shall be deemed to be effectually served, if delivered personally to such person or left at or sent by registered post to his last known place of abode, or, whenever such person is absent from the Colony, if such notice, order, or document is published in the *Gazette*.

(2) A notice, order, or document required by this Act or a regulation to be served upon a river board shall be deemed to be effectually served if delivered or left at or sent by registered post to the office of the board or the residence of the chairman or secretary.

(3) A notice, order, or document issued under this Act or a regulation shall be valid according to the terms thereof, notwithstanding any want of form or of authority on the part of any person to issue or authenticate it, provided the authority is subsequently conferred upon such person.

Regulations.

**77.** (1) The regulations set forth in the Second Schedule to this Act or any additions to or alterations of such regulations made under sub-section (2) shall be the regulations referred to in this Act.

(2) Additions or alterations may be made to the regulations by the Governor, and, when published by proclamation in the *Gazette*, shall be of the

same force and effect as if they were in the said Schedule contained; provided that no such additions or alterations shall be in conflict or inconsistent with the provisions of this Act.

(3) All such additions and alterations shall, within seven days after their publication, be laid on the tables of both Houses of Parliament if Parliament be then in session, or if it be not then in session within seven days after the commencement of its next ensuing session. Such additions or alterations may be disallowed by resolutions of Parliament without prejudice to any act done, right acquired, or liability incurred thereunder before the disallowance.

**78.** (1) Any person who without lawful right or authority (the proof whereof shall lie upon him)— Offences and penalties.

(a) alters, enlarges, or obstructs an irrigation work or destroys, defaces, or moves any level mark, beacon or other structure or appliance erected or made in connection with such work;

(b) interferes with, or alters the flow of, or pollutes or fouls the water of an irrigation work or of a public stream, or interferes with the distribution of such water, or takes more water than he is entitled to, or uses it in a manner contrary to this Act or the regulations;

(c) while using or being liable for the maintenance of an irrigation work, wastes or does not take due precaution to prevent the waste of water from such work, or fails to properly maintain the work and keep it in repair;

(d) wastes the water of a public stream;

(e) aids or abets or knowingly permits any such act or default;

shall be guilty of an offence and liable—

(i) in the case of a first conviction to a fine not exceeding twenty-five pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding one month, or to both such fine and imprisonment;

(ii) in the case of a second or subsequent conviction to a fine not exceeding one hundred pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding six months, or to both such fine and imprisonment.

(2) Any person who wilfully and maliciously does any of the acts mentioned in paragraphs (a) or (b) of sub-section (1) shall be liable to a fine not

**Act No. 27  
of 1908.**

exceeding one thousand pounds, or to imprisonment with or without hard labour for a period not exceeding five years, without the option of a fine.

(3) Any person who contravenes any bye-law made by a river board, or a regulation, or commits an offence against this Act for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding twenty-five pounds, or in default of payment to imprisonment, with or without hard labour, for a period not exceeding one month.

Application of  
fines in  
certain cases  
towards  
revenues of  
river boards.

**79.** Any fine recovered on a conviction—

(a) for a contravention of a bye-law made by a river board; or

(b) in respect of an irrigation work or public stream under the control or supervision of river board

shall be paid into the revenues of such board.

Power of  
court of  
resident  
magistrate on  
criminal  
prosecution to  
award  
damages  
summarily  
against  
accused and  
in favour of  
complainant.

**80.** (1) Whenever any person is convicted of an offence under this Act or the regulations by a court of resident magistrate, and it shall appear that such person has by that offence caused damage to any river board or proprietor, such court may at the written request of such river board or proprietor (as the case may be) but in the presence of the convicted person inquire summarily and without pleadings into the amount of damage so caused.

(2) Upon proof of such amount, such court shall give judgment therefor in favour of the river board or proprietor (as the case may be) and against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before such court; provided that—

(a) judgment shall not be given under this section for a sum exceeding one hundred pounds;

(b) if the judgment is in favour of a river board the convicted person shall be entitled to deduct from the amount of such damages the amount of any fine which under the last preceding section has been paid to such board in respect of the conviction.

Special  
provisions as  
to expropria-  
tion of water  
etc., under  
Ordinance  
No. 20 of  
1903.

**81.** Nothing in this Act contained shall be construed as derogating from any powers granted under the Railway Expropriation of Lands Ordinance of 1903 save that in the exercise of any powers conferred by section *four* sub-sections (a) (b) (c) and (g) or section *eight* of the Railway Expropriation of Lands Ordinance 1903 the officers of the railway administration of this

Colony shall consult with the Minister; nor shall anything herein contained prevent the said Administration from acquiring from any proprietor the use of water from any public stream or subterranean water by expropriation or otherwise, or from leading such water from one farm across any other farm or farms or from one watershed to another, provided such water is required for railway purposes and such other purposes as the Minister may approve.

**82.** All powers and jurisdictions exercisable under this Act by the Governor, the Minister, or a river board shall be exercised subject to all lawful rights existing or acquired prior to the coming into operation of this Act. Saving of existing rights.

**83.** Nothing in this Act contained shall be construed as derogating from any powers or jurisdiction conferred by the Precious and Base Metals Act 1908 or any amendment thereof, upon the Minister of Mines or any Mining Commissioner, nor shall any proclaimed land (as by such Act defined) be included in a river district, and, if land in a river district becomes proclaimed land under such Act or an amendment thereof, the public streams within the land proclaimed shall cease to be subject to the jurisdiction of the river board of such district. Saving as to powers of Mining Commissioner and as to proclaimed land.

**84.** This Act may be cited for all purposes as the Irrigation Act 1908 and shall come into operation on the first day of October 1908. Title and date of operation of Act.

### **First Schedule.**

#### RULES FOR DETERMINING QUALIFICATIONS OF RIVER VOTERS AND NUMBER OF VOTES WHICH EACH RIVER VOTER MAY RECORD.

1. Every riparian proprietor of irrigated land in the river district shall be entitled to be placed on the list of river voters prepared under section *twelve* or amended or revised under section *thirteen* of the Act, and if the river district be divided into wards, shall be placed upon the list, for the ward in which such land is situate.

2. The number of votes which each riparian proprietor whose name is placed upon the said lists shall be entitled to record at an election of a river board shall be proportionate to the extent of irrigated land held by him, the proportion being fixed as follows:—

(a) Less than five morgen of irrigated land	... ..	one vote.
(b) Five morgen and less than ten morgen	... ..	two votes.
(c) Ten morgen and less than twenty-five morgen	... ..	three votes.
(d) Twenty-five morgen and less than fifty morgen	... ..	four votes.
(e) Fifty morgen and less than one hundred morgen	... ..	five votes.
(f) One hundred morgen or more	... ..	six votes.

3. Where irrigated land is held jointly by two or more riparian proprietors neither or none of whom occupy separate and definite portions thereof, such proprietors shall agree amongst themselves which shall be entitled to be placed upon the list of voters in respect of such land and in case such proprietors are unable so to agree the magistrate framing, amending, or revising the list of voters shall determine the question.

**Act No. 27  
of 1908.**

4. The person whose name is to be placed on the list or amended or revised list where the Crown is the riparian proprietor, shall be a person nominated in writing by the Minister.

5. The person whose name is to be placed on the list or amended or revised list where a local authority is the riparian proprietor, shall be any person nominated by resolution of such local authority : and for the purpose of this Schedule when a local authority is entered on the list as a voter it shall be deemed to be the proprietor of all the irrigated land within its area of jurisdiction and no other proprietor shall be placed upon the list in respect of irrigated land within the area of jurisdiction of such local authority.

6. The person whose name is to be placed on the list or amended or revised list where a body corporate is the proprietor shall be a person nominated by or on behalf of such body.

7. No proprietor who is in arrear with river rates levied by the board under section *thirty-two* shall be entitled to have his name, or the name of any person on his behalf, entered on the list or amended or revised list (as the case may be) in respect of the land on which such rates have been levied.

**Second Schedule.****REGULATIONS MENTIONED IN THE ACT AND SPECIALLY IN  
SECTION SEVENTY-SEVEN.****PART I.****ELECTION OF RIVER BOARDS.**

*Regulations Made and Instructions Issued to Returning Officers in connection with the Election of River Boards, in accordance with Sections Eleven, Twelve, Thirteen, Fourteen, and Fifteen of the Act.*

1. In these regulations the expression "the Act" shall mean the Irrigation Act 1908, and any expression used in these regulations which is defined in section *two* of the Act shall have the same meaning as is for the purposes of the Act assigned to it by that section.

"List of voters" shall mean the list of persons entitled to vote for members of a river board prepared, amended or revised by the magistrate in accordance with section *twelve* of the Act.

2. A returning officer, who shall be the magistrate, shall be appointed by the Minister for every river district, and every such appointment shall be notified by the Minister in the *Gazette*. In such notice shall be set forth—

- (a) the number of persons to be elected members of the board for the river district, and if the river district be divided into wards, the number of persons to be elected for each ward ;
- (b) the date, hour, and place at which the returning officer shall hold a public meeting for the nomination of candidates for election as members of the board for such district, and the hour of closing such meeting.

Such date shall be not less than twenty-one days after the date of publication of such notice.

3. The Minister shall transmit copies of such notice to the returning officer, who shall forthwith cause the same to be published in one or more newspapers circulating in the river district, and to be posted outside such conspicuous places in such district, or if the district is divided into wards, in each ward of the river district as he may determine (e.g. schools, post offices, magistrates' offices, and police stations).

4. Every nomination shall be in writing, in the form set forth in Annexure A hereto, and signed by the proposer and two seconders (all of whom shall be qualified voters for the river district, and if the district is divided into wards, then for the ward for which the candidate is to be nominated), and shall be accompanied if possible by a certificate in the form set forth in Annexure B hereto, signed by the person nominated to the effect—

- (1) that he accepts nomination ; and
- (2) that to the best of his knowledge and belief he is qualified to be elected a member of the board for the river district for which he is nominated.

If it be impossible by reason of the absence of the person nominated or other sufficient cause to obtain the certificate at the time of the nomination, the proposer and seconders shall satisfy the returning officer that the person nominated accepts the nomination and is qualified to be elected a member of the board and the returning officer shall decline to accept the nomination unless he be so satisfied.

5. Nomination forms (accompanied, if possible, by such certificate) may either be handed to the returning officer on the day and at the place fixed by the notice aforesaid for the holding of the public meeting and before the close of such meeting, or may be transmitted to the returning officer by post or in any other way, and no nomination form received by the returning officer after the time prescribed by the next succeeding regulation for the closing of the public meeting shall be accepted as a valid nomination.

*On Nomination Day.*

6. The returning officer shall open the public meeting on the day and at the hour and place named in the notice mentioned in regulation *two* with a copy of the list of voters for the river district, or if the river district is divided into wards, a copy of the list of voters for each ward, and, after orally declaring the number of persons to be elected members of the Board for the river district for each ward thereof, he shall call for nominations of candidates to be so elected.

The returning officer shall close such meeting after a period of sixty minutes from the time of opening.

7. The returning officer shall examine all nomination forms handed to him or received by him as aforesaid with the list of voters for the district, and shall ascertain whether the proposers and seconders are duly registered as voters for such district, or if the river district is divided into wards, as voters for the ward in respect of which nomination is made. If in any case the proposer and the two seconders are so duly registered, and if the nomination form is accompanied by the certificate mentioned in regulation *four*, or the returning officer is satisfied as required in such regulation, he shall orally declare the person named on the form to be duly nominated. If in any case the proposer or either of the two seconders is not so registered, or if the nomination form is not accompanied by the certificate aforesaid, or the returning officer is not satisfied as aforesaid, he shall orally declare the nomination to be invalid.

8. If at the time prescribed for the closing of the public meeting the number of candidates for election duly nominated as aforesaid be not more than the number of persons to be elected for the river district or ward (as the case may be) the returning officer shall orally declare such candidates to be duly elected members of the Board for the river district or for the ward (as the case may be) in the following words in English and Dutch:—

“1,....., being the returning officer for the river district of....., do hereby declare that....., being persons duly nominated as candidates for the said district (or ward) as the case may be, have this day been duly elected members of the river board for the said district, no other persons having been duly nominated as candidates for the said district (or ward).”

The returning officer shall reduce to writing, sign and date such declaration, and cause the same to be forthwith publicly affixed outside the place where the meeting was held. He shall further, as soon as possible, transmit to the Minister by registered post a statement in the form set forth in Annexure C, showing the full names, occupations and addresses of the persons elected.

9. If the number of candidates for election duly nominated exceed the number of persons to be elected for the river district or ward (as the case may be) the returning officer shall forthwith fix a date (not being less than one month after the date of nomination) and place when and where a poll shall be completed, and shall orally give notice of such date and place and the hours during which the poll will be open. The returning officer shall further publish in one or more newspapers circulating in the river district and at such conspicuous places in such district, and if the river board be divided into

**Act No. 27  
of 1908.**

wards, then in each ward, as he may determine, a notice in the form set forth in Annexure D, stating the place, date and hours of the poll, the names, occupations and addresses of the persons duly nominated for election for the district or ward, as the case may be, and the number of persons to be elected therefor.

The returning officer shall further transmit to the Minister a copy of such notice.

*Between Nomination and Polling Day.*

10. As soon as possible after the day of nomination the returning officer shall cause to be sent by post to every person whose name appears on the list of voters for the river district or ward (as the case may be) at the address given in such register, a voting paper in the form set forth in Annexure E, showing—

- (1) the names of the candidates duly nominated for election for the river district or each ward (as the case may be) in alphabetical order;
- (2) the addresses and occupations of such candidates;
- (3) the number of persons to be elected for the river district or each ward (as the case may be);
- (4) the latest day and hour by which the completed voting paper is to be received by the returning officer;

and there shall be inscribed on it in the top left-hand corner, and in the spaces left for the purpose, the name of the voter and the serial number of the entry of that name in the list of voters for the district or ward (as the case may be) in which he is registered as a voter.

Every such voting paper shall before its issue be stamped through by means of a perforating stamp with a distinctive mark for the river district, or for the ward (as the case may be.)

11. The returning officer shall send with every such voting paper—

- (1) a copy of the instructions to voters set forth in Annexure F hereto, and
- (2) an envelope in the form set forth in Annexure G hereto to enable the voter to return by post without expense to himself the voting paper to the returning officer.

12. The returning officer shall not open any such envelope or any other cover which shows on the face of it that it contains a voting paper, or any voting paper not covered received by him, but shall place unopened all such envelopes, covers or uncovered voting papers as soon as they are received in a locked ballot box, sealed in such a way that the key cannot be inserted in the keyhole without breaking the seal and having an aperture in the lid to allow voting papers to be inserted; and he shall keep the key of such box in his own possession until the box is opened for the counting of votes as hereinafter prescribed.

13. If a voter inadvertently spoil the voting paper sent to him by marking it wrongly, tearing it or in any other way dealing with it so that it cannot conveniently be used as a voting paper, he may return the paper to the returning officer who shall, if satisfied of such inadvertence, and on the return to him of the spoiled paper, but not otherwise, give the voter another voting paper marked and inscribed as prescribed in regulation *ten*.

Every spoiled paper so returned shall be endorsed with a note to the effect that a fresh voting paper has been issued to the person named on it, and shall be preserved separately by the returning officer for the period and under the conditions prescribed by regulation *twenty-six*.

14. It shall be lawful for any candidate duly nominated for election to sign and deliver to the returning officer, not later than three days before the polling day, a notice of his retirement, and the returning officer shall, if by such retirement the number of candidates for election for the river district or ward, as the case may be, is reduced to a number not exceeding the number of persons to be elected therefor, proceed as follows:—

- (1) He shall forthwith publish in one or more newspapers circulating in the river district and in such other manner throughout the river district or ward (as the case may be) as he may think fit, a notice that no poll will be completed in consequence of such retirement.
- (2) He shall on the day fixed for the completion of the poll declare the remaining candidates to be on that day duly elected for the river

district or ward (as the case may be) by orally pronouncing the following words in public outside the place at which the public meeting for the nomination of candidates was held :—

“ I,.....,being the returning officer for the river district of.....do hereby declare that.....being persons duly nominated as candidates for the said district (or for the.....ward of the said district), have this day been duly elected members of the river board of the said district (or for the.....ward of the said district), one A.B. (and one C.D., etc.) duly nominated as candidate (or candidates) as aforesaid having delivered me notice (or notices) of his (or their) retirement from his (or their) candidature and there being no other persons duly nominated as candidates for such district (or ward, as the case may be).”

- (3) He shall reduce to writing, sign and date such declaration, and cause the same to be forthwith publicly affixed outside the place where such public meeting was held.
- (4) He shall as soon as possible after such declaration transmit to the Minister by registered post a statement in the form set forth in Schedule C, showing the full names, occupations and addresses of the persons elected, and if the river district is divided into wards, for the particular wards for which they have been severally elected.

*At the Poll.*

15. On the day fixed for the completion of the poll, the returning officer shall, at 8 a.m., remove to the appointed place the boxes used for the reception of voting papers under the provisions of regulation *twelve*, and shall take his seat at such place provided with

- (a) copies of the list of voters for the district, and if the river district is divided into wards, with copies of the list of voters for each ward of the district, and
- (b) a supply of voting papers for the use of any voters who may have spoiled the voting papers sent to them by post.

16. The returning officer shall make such arrangements as he may deem necessary for keeping order at the polling place, and shall not allow any person to enter therein other than

- (1) the assistants he may require ;
- (2) the candidates and any person (not exceeding one for each candidate) appointed in writing by a candidate to represent him ;
- (3) persons who desire to return completed voting papers which have been sent to voters under regulation *ten*.

17. The returning officer shall place in the boxes used for the retention of voting papers all voting papers which may under the last preceding regulation be returned to him before the hour when the poll is closed.

18. Subject to the provisions of regulation *thirteen* the returning officer may at the polling place issue to any voter a new voting paper and, in the case of a river district divided into wards, for the particular ward for which he is registered as a voter, in place of a spoiled voting paper returned by such voter.

19. The poll shall close at 2 p.m. precisely, and no person shall be admitted to the polling place nor shall the returning officer accept any returned voting paper after that hour, provided that any voter admitted to the polling place before that hour shall be permitted to record his vote.

*The Counting of Votes.*

20. Immediately after the close of the poll the returning officer shall proceed as follows :—

- (1) He shall personally open every box used for the reception of voting papers, first observing whether the seals of each box are intact, and cause to be removed therefrom all voting papers.
- (2) He shall cause his assistants to examine all the voting papers and sort them according to the wards for which the voter is registered and set aside for his decision all papers which apparently
  - (a) do not bear the perforated mark ; or



Act No. 27  
of 1908

- (b) purport to give votes for more candidates than there are persons to be elected, or to record a greater number of votes than he is entitled, according to the voters list, to record ;
  - (c) are unmarked or so marked that it is uncertain for which candidates the voter intended to vote ; or
  - (d) are not signed by the voter or by some person on his behalf under the provisions of regulation *twenty-nine* ;
  - (e) are signed by a voter not registered for the ward (if any) in respect of which he has recorded votes.
- (3) He shall personally examine all voting papers so set aside and decide which of them are to be accepted or rejected, after listening to any objections or arguments put forward by any candidate or his authorised representative for or against such acceptance or rejection.
- (4) He shall endorse on every voting paper he decides to reject the word "Rejected."
- (5) He shall enclose all voting papers which he decides to reject, with a statement showing the number of such papers signed by himself, in a sealed packet on the cover of which he shall endorse the words "Voting Papers Rejected" over his signature and the date.

## 21. Any voting papers which—

- (1) do not bear the perforated mark ; or
- (2) purport to give votes for a greater number of candidates than there are persons to be elected, or to record a greater number of votes than he is entitled, according to the voters list, to record.
- (3) do not purport to give a vote to any candidate ; or
- (4) are so marked that it is uncertain for which candidates the voter intended to vote ; or
- (5) are not signed by the voter or by some person on his behalf under the provisions of regulation *twenty-nine* ;
- (6) are signed by a voter not registered for the ward in respect of which he has recorded votes ;

shall be invalid and shall be rejected by the returning officer, provided that in the case described in sub-section (4) hereof the voting paper shall, if for other reasons it is not invalid, be rejected only so far as concerns those candidates as to the voting for whom there is an uncertainty.

22. The returning officer shall then count the votes recorded on the remaining voting papers which he has accepted as valid in the following manner :—

- (1) He shall cause to be prepared a schedule showing the names of the candidates for the river district or for each ward thereof, as the case may be, one below the other in alphabetical order.
- (2) He shall cause the number of votes marked on each paper to be written across the face thereof in red.
- (3) He shall cause to be read out from each voting paper the names of the candidates for the river district or for each ward thereof (as the case may be) for whom votes are recorded in alphabetical order and shall cause the appropriate marks to be placed on the schedule or each schedule against the name of each such candidate showing the number of votes recorded for him in accordance with these regulations.
- (4) He shall cause the marks against the name of each candidate on the schedule to be totalled and shall check the sum of such totals with the sum of the numbers written across the face of voting papers as in sub-section (2) hereof prescribed.

The candidates who have received the greatest number of votes (according to the number of members to be elected for the board for the river district, or, as the case may be, for the wards within the river district) shall be deemed to have been elected members of such board, and, as the case may be, for the ward for which he has received the greatest number of votes.

23. In the event of the number of votes recorded for two or more candidates being equal and in the further event of such equality affecting the

result of the election of the river board of a river district or a ward thereof, as the case may be, the returning officer shall determine such result in the following manner :—

**Act No. 27  
of 1908.**

One of such candidates or his authorised representative (or if none of such candidates or representatives are present or willing so to do then one of the returning officer's assistants) shall write on separate slips of paper of identical shape, size, and appearance the name of each such candidate ; such slips of paper shall be rolled up and put into a closed receptacle to be held by the returning officer and another of such candidates or his authorised representatives (or if none of such candidates or representatives are available or willing so to do, then another of the returning officer's assistants) shall draw out one or more of such slips as may be required to complete the number of persons to be elected. The candidate or candidates named on the slip or slips so drawn out shall be deemed elected members of the board for the river district, and, as the case may be for the ward.

*Declaration of Poll.*

24. (1) Immediately after the result of the poll has been ascertained in the manner aforesaid, the returning officer shall declare such result by orally pronouncing in English and Dutch inside and outside the polling place the following words :—

“I, ....., being the returning officer for the river district of....., do hereby declare that I have in accordance with law ascertained the result of the polling for the said.....or, as the case may be, for the.....ward of the said river district, and there have been recorded

for C.D.....votes,  
for E.F.....votes,  
for G.H.....votes,  
for J.K.....votes,  
for L.M.....votes,  
for N.O.....votes,

and (the result of the election between G.H. and J.K. having been determined by lot as by law prescribed, and such determination by lot having resulted in favour of the said J.K.) I do therefore declare the said C.D., E.F., J.K., L.M., and N.O. to be this day duly elected members of the river board for the river district of.....” (or, as the case may be, “for the.....ward of the river district of.....”).

(2) The returning officer shall forthwith reduce to writing and sign and date such declaration and cause such declaration so reduced to writing to be forthwith affixed outside the polling place.

The persons declared to be duly elected in accordance with this paragraph shall thereupon be deemed to be duly elected.

*After Declaration of Poll.*

25. As soon as the returning officer has declared the result of the poll as aforesaid he shall proceed as follows :—

(1) He shall enclose all the voting papers he has accepted with a statement showing the number of them signed by himself in a separate sealed packet, or in the case of a river district divided into wards, in a separate sealed packet for each ward, on the cover of which he shall endorse the words “Voting Papers Accepted” over his signature and the date and the name of the ward (if any) in respect of which the votes were recorded.

(2) He shall then enclose the packets of “Voting Papers Accepted,” “Voting Papers Rejected,” and “Voting Papers Spoiled” in one sealed packet, or in the case of a river district divided into wards, in one sealed packet for each ward, on the cover of which he shall endorse the words

“Election of members of the river board for the river district of.....” (or, as the case may be, “for the.....ward of the river district of.....”) over his signature and the date.

26. The returning officer shall keep the packet or packets containing the accepted, rejected and spoiled voting papers aforesaid in a safe place under lock

**Act No. 27  
of 1908.**

and key until the expiry of a period of six months from the date of the declaration of the poll. On the expiry of the said period he shall cause it and its contents to be destroyed by fire. On no account shall he allow the packet while it is in his possession to be opened for any reason whatsoever or its seals to be broken.

27. As soon as possible after the declaration of the poll the returning officer shall forward to the Minister by registered post a statement in the form set forth in Annexure C, showing the full names, occupations and addresses of the persons declared to be duly elected, and the name of the particular ward (if any) for which each such person was elected.

*Marking of Voting Papers.*

28. A voter who desires to record his vote at an election of members of a board shall, on receipt of a voting paper, place on the right-hand side thereof opposite the name of each candidate for whom he desires to record a vote, figures showing the number of votes which he desires to record, but so that the aggregate number recorded for all the candidates is not greater than the number which, according to the list of voters, he is entitled to record, and sign the voting paper at the foot in the space provided for the purpose. A voter shall not record votes for more candidates than there are persons to be elected for the district, or if the district is divided into wards, for the ward in which he is registered as a voter.

29. If a voter be unable to read or is incapacitated by blindness or other physical cause from marking a voting paper, it shall be lawful for any other person to mark the paper for such voter under his or her direction; provided that in such case the person so marking a voting paper shall endorse on the paper the words

“marked by me at the request of the said (name of voter) and under his (or her) direction,”

and shall sign his (or her) name beneath his (or her) endorsement.

*Offences and Penalties.*

30. Any person who shall directly or indirectly use or attempt or threaten to use any force, violence or restraint, or who shall inflict or attempt or threaten to inflict any temporal or spiritual injury, damage or loss upon or against any other person in order to induce or compel such other person to vote or refrain from voting, or on account of such other person having voted or refrained from voting at any river board election or for any particular candidate at such election, shall be guilty of an offence.

31. Any person who shall directly or indirectly give or lend, or agree to give or lend, or offer or promise to procure or endeavour to procure any money or valuable consideration, or any office, place or employment, or any profit, advancement or enrichment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or on account of such voter having voted or refrained from voting at any river board election or for any particular candidate at such election, shall be guilty of an offence.

32. Any voter who shall, during or after any election, directly or indirectly receive or agree to receive or contract for any money or valuable consideration whether as a gift or as a loan or any office, place or employment, or any profit, advancement or enrichment whether for himself or for any other person in consideration of such voter voting or refraining from voting at any river board election or for any particular candidate at such election, shall be guilty of an offence.

33. Any person who shall mark any voting paper issued for the use of any voter except at the request of such voter (being a voter unable to read or incapacitated by blindness or other physical cause from marking such paper) or shall mark such paper otherwise than in accordance with such voter's directions shall be guilty of an offence.

34. Any person who is guilty of any such offence as is mentioned in the last four preceding paragraphs shall be liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months, or to such period of imprisonment without the option of a fine or to both such fine and such imprisonment; and any person aiding in or abetting the commission of any such offence shall likewise be guilty of an offence and liable on conviction to the penalties in this regulation mentioned.

35. Any person who not being qualified to be elected a member of a river board accepts nomination as a candidate at any election of members of such board shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds.

36. Any person who—

- (1) being ordered by a returning officer to leave the polling place shall refuse to do so; or
  - (2) shall interrupt, obstruct or disturb the proceedings of an election
- shall be guilty of an offence and liable on conviction to a fine not exceeding ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding fourteen days.

37. Any returning officer or other person who—

- (1) wilfully places or is privy to the wilful placing in any box used for the retention of voting papers a voting paper which has not been lawfully issued to and marked by a voter knowing the same to be such voting paper, or
- (2) removes from any box or other receptacle used for the retention of voting papers any voting paper placed in such box or receptacle except for the purpose of counting the votes given at any election and in accordance with the provisions of regulation *twenty*; or
- (3) opens any packet in which voting papers have been placed by a returning officer under the provisions of regulation *twenty* or *twenty-five*, knowing the same to be such packet, except under the order of a competent court, or
- (4) forges or counterfeits or fraudulently defaces or destroys any voting paper, or the official mark thereon,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one year, or to such period of imprisonment without the option of a fine or to both such fine and such imprisonment.

38. No prosecution for an offence under these regulations shall be instituted after the expiry of one month from the date of the declaration of the result of the election in connection with which such offence is alleged to have been committed.

#### *Voidance of Election.*

39. If any person elected a member of a river board is convicted of an offence described in regulations *thirty*, *thirty-one*, *thirty-two*, *thirty-three*, or *thirty-four*, or of aiding in or abetting the commission of such offence, the presiding officer of the Court before which such person is convicted shall forthwith forward to the Minister a certificate under his hand showing the particulars of such conviction and the Minister shall by notice in the *Gazette* declare the election of such person to be null and void and such election shall thereupon be null and void.

#### ANNEXURE A.

##### *Form of Nomination.*

I (full names).....  
of (address).....being a registered voter for  
the river district of.....(or the ward of the river district  
of.....) hereby propose  
(full names).....of  
(address).....  
(occupation).....as a candidate for  
membership of the river board for the river district of.....  
(or for the.....ward of the river district of.....).  
Place..... Signed.....  
Date.....

I (full name).....of (address).....  
being a registered voter for the river district of.....  
(or for the.....ward of the river district of.....)  
second the above proposal.  
Place..... (Signed).....  
Date.....  
Place.....  
Date..... (Signed).....

Act No. 27  
of 1908.

ANNEXURE B.

*Form of Certificate to be signed by Person Nominated for Election.*

I (full names).....  
of (address).....  
(occupation).....hereby certify  
(1) That I accept nomination as a candidate for membership of the river board for the river district of.....or for the.....ward of the river district of.....and  
(2) that I am to the best of my knowledge and belief qualified to be elected a member of the said river board or for the.....ward of the said river district.  
Place..... Signed.....  
Date.....

ANNEXURE C.

*Form of Statement of Persons Elected.*

To the Honourable  
the Minister of Lands.

I (full names).....  
being the Returning Officer for the river district of.....  
hereby certify that the following persons have been duly elected members of the river board for the river district of.....

	Full Names.	Occupation.	Address.	Ward No. or Name.
1.				
2.				
3.				

.....  
Signed.....  
Place..... *Returning Officer.*  
Date.....

ANNEXURE D.

*Form of Notice of Poll.*

It is hereby notified for general information that the poll for the election of members of the river board for the river district of..... will be held at (description of polling place).....on the..... day of.....19.....

The persons nominated for election are as follows :-

	Full Names.	Occupation.	Address.
1.			
2.			
3.			

.....  
There are.....persons to be elected.  
(Signed).....  
Place..... *Returning Officer.*  
Date.....

*Note.*—If the river district is divided into wards a separate form shall be used for each ward, and the form headed with the number of the ward, and it shall be stated how many persons are to be elected for such ward.

ANNEXURE E.  
*Form of Voting Paper.*

Act No. 27  
of 1908.

Name of voter.....  
River district of.....  
Ward.....

There are.....persons to be elected.

1	BROWN.	
2	BURGERS.	
3	DUNN.	
4	HOFMEYR.	
5	JONES.	
6	MACINTOSH.	
7	MINNAAR.	
8	SWART.	
9	WILSON.	

Signature of voter.....

This form should be marked and signed by the voter and returned by post or otherwise to the returning officer so as to reach his hands not later than 2 p.m. on the.....day of.....19.....

ANNEXURE F.  
*Instructions to Voters.*

(a) The voting paper enclosed herewith is sent to you to enable you to vote by post for the election of members of the river board of your district, (or for the election of members of the..... ward of your district).

(b) You should place on the right-hand side of the voting paper, opposite the name of each candidate for whom you desire to vote, the number showing the number of votes which you desire to record for each candidate not being in the aggregate greater than the number allotted to you on the voters list, and sign the voting paper with your name in the space provided for the purpose. You cannot vote for more candidates than there are persons to be elected, nor record a greater number of votes altogether than the number allotted to you on the voters list.

(c) After so marking and signing the paper in manner described above, you should place the voting paper in the envelope enclosed herewith, and forthwith send it to the returning officer by post or transmit it by hand.

(d) If you should inadvertently spoil the voting paper by marking it wrongly, tearing it, or in any other way dealing with it so that it cannot conveniently be used as a voting paper, you may return such paper to the returning officer by post or otherwise, and the returning officer will, if satisfied of such inadvertence, issue to you another voting paper in exchange for the spoiled paper.

**Act No. 27  
of 1908.**

(e) You must return the marked voting paper so that it is in the custody of the returning officer not later than 2 p.m. on the day fixed for the completion of the poll.

(f) The following voting papers will be held to be void and will be rejected by the returning officer when counting the votes :—

- (1) Papers which do not bear the perforated mark.
- (2) Papers which purport to give votes for more candidates than there are persons to be elected, or to record a greater number of votes than you are, according to the voters list, entitled to record.
- (3) Papers which are so marked that it is uncertain for which candidates the voter intended to vote.
- (4) Papers which are not signed by the voter, or by some adult person on his behalf as mentioned in the next succeeding paragraph (or are signed by a voter not registered in the ward for which he has recorded votes).

(g) If you are unable to read or are incapacitated by blindness or other physical cause from marking the voting paper, any other person may mark the voting paper under your directions ; provided that in such case the person so marking the paper shall endorse the paper with the words

“marked by me at the request of the said.....  
and under his direction,”

to which endorsement such person shall subscribe his signature.

**ANNEXURE G.***Form of Envelope for Return of Voting Paper.*

O.H.M.S.

To the Returning Officer,  
Magistrate's Office,

River District of.....

Election of River Board.

(Free through post.)

**PART II.****REGULATIONS GOVERNING THE NOTICE OF RIVER BOARD MEETINGS.**

1. Every meeting of the river board shall be convened by the chairman or other officer appointed by him in that behalf, by written notice sent by post or delivered to each member of the board, at his usual address, at least six clear days before the date of such meeting. The notice shall specify the date, hour, and place of such meeting, a copy of the agenda to be considered thereat, and a copy of the minutes of the previous meeting shall accompany the notice.

2. A resolution of the river board shall not be passed in respect of any subject which has not been included on the agenda attached to the notice of the meeting, unless every member of the board is present.

3. Any member desiring that a subject be included on the agenda shall lodge notice with the secretary at least fourteen clear days before the date of the next regular meeting.

4. No subject which has not been included on the agenda of any meeting shall be considered at that meeting, unless at least two-thirds of the members are in favour of its being considered thereat.

**PART III.****REGISTRATION OF SERVITUDES ACQUIRED BEFORE THE COMING INTO OPERATION OF THE ACT, IN ACCORDANCE WITH SECTION THIRTY THEREOF.**

1. Any person who desires to register a servitude acquired before the commencement of the Act, in accordance with section *thirty* thereof, shall submit the following form in triplicate, addressed to the secretary of the board :—

*Registration of Servitude.*

River district of.....

I certify that I,.....  
(owner, lessee) of the farm.....No.....

District....., hold the following servitude on  
the farm.....No.....

District....., Proprietor.....

(Here state nature of servitude and its duration and conditions under  
which it was granted.)

If registered in the office of the Registrar of Deeds:

No. of Deed.....

Date of Deed..... (Signed).....

2. On the receipt of such notice the Secretary of the board shall  
communicate at once with the proprietor of the farm over which the servitude  
is claimed, explaining to him the full nature of such claim, and informing  
him of the date the said claim will be considered by the river board, and shall  
submit the notice to the river board at its next regular meeting after having  
given due notice to all members of the river board.

3. The river board shall make such enquiries as are necessary to ascertain  
whether the claimant is entitled to the servitude, and if and when satisfied  
that he is so entitled the Secretary shall return to the claimant one of the forms  
submitted by him with the following endorsement:—

“Accepted by.....river board at a meeting  
held at....., on.....190...

Chairman.

Registered in the office of the.....  
river board, No....., date.....

Secretary.”

A second copy with the endorsement shall be transmitted to the Irrigation  
Department, and another shall be filed in the records of the.....  
river board.

*Note.*—If there is no river board in the river district, the form should be  
sent in duplicate to the Minister of Lands.

**PART IV.**

**PREPARATION OF SCHEDULES OF RATABLE AREAS,  
IN ACCORDANCE WITH SECTION THIRTY-ONE OF THE ACT.**

1. In this Part of these regulations, “ratable area” shall mean the  
area of irrigated land measured by the river board in respect of which river  
rates may be assessed under section *thirty-two* of the Act.

2. In preparing the schedule of ratable areas the river board shall, as  
far as possible, measure only such areas as are actually and usually irrigated  
from the river within the river district.

3. The measurements of ratable areas shall be reduced to morgen or fractional  
parts of a morgen, and shall be tabulated in the form following, and a copy thereof  
shall be open to inspection at the offices of the river board at all reasonable hours.

.....River District.

Name of Farm.	No. of Farm.	District.	Name of Person liable for rates.	Owner, Lessee, or Occupier.	Area on which rate is assessed.	Rate £ per Morgen.	Amount due.

4. The measurement of ratable areas shall be subject to revision on the  
first day of July of any year.



Act No. 27  
of 1908.

## PART V.

APPLICATION FOR PERMISSION TO STORE OR DIVERT WATER  
FROM A PUBLIC STREAM, IN ACCORDANCE WITH SECTIONS  
FORTY-SEVEN AND FORTY-EIGHT OF THE ACT.

1. Any person who desires to divert or store the surplus water of any public stream shall fill in the application form following, in so far as it is applicable, and shall transmit it to the secretary to the river board of the river district in which the point of the storage or diversion desired is situate, or if there be no river board then he shall transmit it to the Minister.

*Application for permission to  $\frac{\text{store}}{\text{divert}}$  the surplus water of a public stream.*

To.....

Application of.....  
Of farm No.....  
District No.....  
River district.....

in respect of a permit for the  $\frac{\text{diversion}}{\text{storage}}$  of the surplus water of the.....  
.....river.

*N.B.*—The applicant must fill in the blank spaces in this form with the required information, and where alternative expressions are given he shall strike out those that do not apply.

(a) The applicant is the owner (or agent lawfully authorised by the owner as the case may be) of the property.....situated in the district of.....

(b) The said property..... is (not) riparian to the.....river situated in the watershed of the.....  
river.

(c) The applicant has the right to or to the use of the water of the.....river for the following reasons, viz.:.....

(d) The applicant is entitled to superintend and control the use of the water of the.....river for the following reasons, viz.:.....

(e) The accompanying plan (1) shows the general arrangement of the proposed works and the land or lands on which the surplus water is to be diverted.  
stored.

(f) The following is a description of the works in respect of which the  $\frac{\text{diversion}}{\text{storage}}$  of the water is required:—

- (1) Maximum height of  $\frac{\text{weir}}{\text{dam}}$ .....
- (2) Length of  $\frac{\text{weir}}{\text{dam}}$ .....
- (3) Profile of  $\frac{\text{weir}}{\text{dam}}$ .....
- (4) Full supply of reservoir.....cubic feet.
- (5) Equivalent constant flow of (4).....cu secs  
for.....days.
- (6) Materials of construction.....
- (7) Point of diversion from river.....
- (8) Nature of gauging apparatus provided.....
- (9) Point water is returned to river by a defined channel.....
- (10) Size and gradient of canal.....
- (11) Length of canal.....
- (12) Full supply discharge.....
- (13) Type of headworks.....
- (14) Area irrigable.....
- (15) Purposes for which required.....

- (16) Area of catchment.....
- (17) Provision for flood discharge.....
- (18) Areas of land submerged on each property affected.....
- (19) Areas of land occupied on each property affected.....
- (20) Estimated total cost of proposed works.....  
If for water power—
- (21) Type of machine.....
- (22) Horse power to be developed.....
- (23) Head under which machine will work.....

(g) The applicant wishes to enjoy the use of the surplus water for a period of.....years.

(h) On the schedule attached to this form is set forth the names of the owners, mortgagees, and lessees of the properties riparian to the..... river, the surplus water of which the applicant desires to  $\frac{\text{store.}}{\text{divert.}}$

Notice with full particulars was not less than one month ago given to all the owners, mortgagees, and lessees herein named and with the following result :—

Fill in this table for each name set down in the form (Annexure A).

Ref. No. of farm.	Name of Owner, Mortgagee, or Lessee.	Does the person acquiesce or not in the claim for <u>diversion.</u> storage.	(3) Does the person propose to participate in the work.

*Certificate of Applicant.*

I..... of.....  
certify that I have read the foregoing and that the matters and things set forth therein are to the best of my knowledge and belief true and accurate and I am not aware that any dispute in respect of the rights claimed in clauses (c) and (d) is pending in a competent court.

Signed.....

2. The plans to be submitted with the application must be drawn on a scale of not less than 500 feet to the inch.

3. It is required that the applicant should notify, at least one month before submitting his application, the owners, lessees or occupiers of at least four farms on each side of the river both upstream and downstream of the site of the proposed works of storage or diversion, of his intention to make such application.

4. On the receipt of such application the secretary to the river board or the Minister, as the case may be, shall cause the same to be notified and circulated in the river district concerned at least one month before the date on which such application will be considered by the river board, or the Minister, and shall appoint a date after which objections to the application will not be considered.

5. The river board, in considering the application, shall give preference to any application that may be received from other owners for permission to participate in the benefits of the proposed works, and shall not permit works to be carried out for the sole benefit of one proprietor if such works are capable of enlargement or extension to benefit other proprietors, without detriment to the original applicant, and such proprietors are willing to participate in such benefit and pay a *pro rata* share of the cost of the works.

Act No. 27  
of 1908.

ANNEXURE A.

Schedule of Reference.

Referred to in the application of.....re the  
diversion of the surplus water of the.....river.  
storage

Dated.....

Reference No. to property (consecutively on plan).	Name of property.	Name of person to whom notice was served.	Date of service of such notice.

PART VI.

ACQUISITION OF SERVITUDES, IN ACCORDANCE WITH SECTIONS SIXTY-ONE, SIXTY-TWO, SIXTY-THREE, AND SIXTY-FOUR OF THE ACT.

1. Any person who desires to obtain any or either of the servitudes of storage, passage of water, or abutment, in accordance with the Act, shall fill in the following form in so far as it is applicable and communicate it to the proprietor, mortgagee, or lessee of the ground over which the servitude is desired. He shall also send such notice to the Secretary of the river board of the river district, or if no river board exists, then to the Minister.

Form of notice of claim of servitude.

Application of.....  
Of Farm No.....  
District.....

in respect of a servitude of  $\frac{\text{storage}}{\text{passage of water}}$   $\frac{\text{from}}{\text{on}}$  the.....  
abutment river, farm No.....

N.B.—The applicant must fill in the blank spaces on this form with the required information, and where alternative expressions are given he shall strike out those that do not apply.

(a) The applicant is the proprietor (or agent lawfully authorised by the proprietor, as the case may be) of the property....., situated in the district of.....

(b) The said property.....is (not) riparian to the.....river.

(c) The applicant has the right to or use of the water of the..... river for the following reasons, viz. :  
.....  
.....

(d) The applicant is entitled to superintend and control the use of the water of the.....river for the following reasons, viz. :  
.....  
.....

(e) The accompanying plan\* marked ( ) shows the general arrangement of the proposed works and the land or lands on which the servitude of  $\frac{\text{storage}}{\text{passage of water}}$  is claimed.  
abutment

\* The plan should be drawn to a scale of not less than 500 feet to an inch.

(f) The following is a description of the work in respect of which servitude of passage of water is claimed:—  
storage  
abutment

- (1) Maximum height of weir.....  
dam
- (2) Length of weir.....  
dam
- (3) Profile of weir.....  
dam
- (4) Full supply contents of reservoir.....cubic feet.
- (5) Equivalent constant flow of (4).....cu secs  
 for.....days.
- (6) Materials of construction.....
- (7) Point of diversion from river.....
- (8) Nature of gauging apparatus provided.....
- (9) Point water is returned to river by a defined channel.....
- (10) Size and gradient of canal.....
- (11) Length of canal.....
- (12) Full supply discharge.....
- (13) Type of head works.....
- (14) Area irrigable.....
- (15) Purposes for which required†.....
- (16) Area of catchment.....
- (17) Provisions for flood discharge.....
- (18) Areas of land submerged on each property affected [sec. 62 (4)]  
 .....
- (19) Areas of land submerged on each property affected [sec. 69 (2)]  
 .....
- (20) Estimated total cost of works [sec. 64 (2)].....  
 If for water power—
- (21) Type of machine.....
- (22) Horse power required.....
- (23) Head under which machine will work.....

(g) The applicant wishes to enjoy the servitude of passage of water  
storage  
abutment  
 for a period of.....years.  
in perpetuity.

(h) On the schedule attached to this form is set forth the names of the owners, mortgagees and lessees of the properties riparian to the.....  
storage  
 river over which the servitude of passage of water is claimed.  
abutment

Notice with full particulars was not less than one month ago given to all owners, mortgagees, and lessees herein named and with the following results.

Fill in this table for each name set down in the form (Annexure A).

Ref. No. of farm.	Name of Owner, Mortgagee or Lessee.	Does the person acquiesce or not in the claim for servitude for Storage	Does the person propose to partici- pate in the work to be constructed in virtue of the servitude. †
		<u>Passage of water</u> <u>Abutment.</u>	

† Irrigation, industrial, or domestic purposes.

‡ It is required that the owners of at least four farms on each side upstream and downstream of the site of the proposed works for storage, passage of water, or abutment or from the.....river, should be notified.

**Act No. 27  
of 1908.**

*Certificate of Applicant.*

I.....of.....  
certify that I have read the foregoing, and that the matter and things set forth therein are to the best of my knowledge and belief true and accurate, and I am not aware that any dispute in respect of the rights claimed in clauses (c) and (d) is pending in a competent court.

Signed.....

2. If the proprietors, mortgagees, or lessees of the properties on or over which the servitude is claimed do not acquiesce in the claim, the person desiring the servitude shall fill in the rest of the form from clause (h) onwards and forward the completed form in triplicate to the Minister with the request that the matter be referred to a Water Court.

The Minister may then appoint a Water Court to hear and determine the claim as provided for in the Act.

ANNEXURE A.

*Schedule of Reference.*

Referred to in the application of.....re the  
storage  
servitude for passage of water from .....river,  
abutment on .....  
Farm No. ....

Reference No. to property (consecutively on plan).	Name of Property.	Name of person to whom notice was served.	Date of service of such notice.

PART VII.

APPLICATION FOR LOAN UNDER CHAPTER VII OF THE ACT.

1. Any river board which desires to obtain a loan under Chapter VII of the Act shall submit an application in writing to the Minister in the following form :—

*Form of application for a loan to a River Board under the Irrigation Act, 1908.*

Application of the.....river board.  
Constituted for the..... river district, on.....  
190.....in respect of a loan amounting to £.....  
(Here state the purpose for which the loan is required.)  
for .....

The conditions on which the loan will be advanced are :—

- (1) The loan should be for a period not exceeding.....years, and interest at a rate not exceeding.....per cent. per annum shall be payable thereon half-yearly in advance for the first three years of the currency of the loan and thereafter interest and redemption shall be payable for the remainder of the period of the loan, in equal half-yearly instalments the amount of the redemption rising as the interest diminishes according to tables to be prepared by the Minister.

- (2) The security offered for the loan is.....  
(Here state the security in full.)
- (3) The existing liabilities of the board amount to £.....
- (4) The rates leviable by the board are encumbered to the following extent.....  
(Here state the names and address of any persons entitled to the encumbrances.)
- (5) A full statement of the revenue and expenditure of the River Board is attached.

*Certificate.*

I,....., Chairman of the..... river board certify that I have read the foregoing and examined the statement of revenue and expenditure of the river board appended thereto and that the matter and things set forth therein are to the best of my knowledge and belief true and accurate. I also certify that the conditions of section *thirty-five* of the Irrigation Act have been complied with.

.....  
*Chairman..... River Board.*

Witness (1)  
Do. (2)

2. On the receipt of such application the Minister may require the board to furnish such further information or may make such further investigation as he may think desirable and may thereafter deal with the application as he may see fit.

3. Any proprietor who desires to obtain a loan under the Act shall submit an application to the Minister in the following form :—

*Form of application for a loan to a proprietor under the Irrigation Act, 1908*

To the Honourable  
The Minister of Lands.  
Pretoria.

Application of.....  
Of farm No..... District.....  
in respect of a loan on first mortgage of.....  
Property described in form (Annexure A) for the purpose of construction of  
irrigation  
works for industrial purposes .....  
domestic supply  
acquisition of a servitude awarded by agreement sent hereunder.  
by order of Water Court No.....date.

Amount of loan required £.....

The conditions of the loan are :—

The loan shall be repayable without sinking fund at the end of the term for which it is granted, which shall not exceed.....years ; provided that the person to whom the loan is granted may on the due date of any half-yearly payment of interest during the term repay any sum not being less than £5 or a multiple of £5 in redemption of the principal sum. Interest on the loan or on so much thereof as for the time being remains unpaid shall be payable in advance at the rate of.....per cent. per annum by half-yearly payments, and the first half-yearly payment of interest shall be deducted from the amount of the loan when it is advanced.

The applicant must fill in the blank spaces on this form with the required information, and where alternative expressions are given he shall strike out those that do not apply.

(a) The applicant is the owner (or agent lawfully authorised by the owners as the case may be) of the property.....situated in the District of.....

(b) The said property.....is (not) riparian to the.....river.

(c) The applicant has the right of use of the water of the.....river for the following reasons :.....

**Act No. 27  
of 1908.**

(d) The applicant is entitled to superintend and control the use of water of the.....river for the following reasons :—.....

(e) The accompanying plan\* marked ( ) shows the general arrangements of the proposed works and the land or lands which are to be irrigated.

(f) The following is a description of the works in respect of which the application for a loan has been made :—

- (1) Maximum height of  $\frac{\text{weir}}{\text{dam}}$  .....
- (2) Length of  $\frac{\text{weir}}{\text{dam}}$  .....
- (3) Profile of  $\frac{\text{weir}}{\text{dam}}$  .....
- (4) Full supply contents of reservoir.....cubic feet.
- (5) Equivalent constant flow of (4).....cu secs for.....days.
- (6) Materials of construction.....
- (7) Point of diversion from river.....
- (8) Nature of gauging apparatus provided.....
- (9) Point water is returned to river by a defined channel.....
- (10) Size and gradient of canal.....
- (11) Length of canal.....
- (12) Full supply discharge.....
- (13) Type of head works.....
- (14) Area irrigable.....
- (15) Present value of area irrigated.....
- (16) Enhanced value of area irrigated after construction.....
- (17) Purposes for which required †.....
- (18) Area of catchment.....
- (19) Provision for flood discharge.....
- (20) Estimated total cost of works.....  
If water is required for water power (industrial purposes)—
- (21) Type of machine.....
- (22) Horse power required.....
- (23) Head under which machine will work.....

4. On the receipt of such an application the Minister may require the applicant to furnish such further information or security or may institute such enquiries as he may deem necessary and may thereafter deal with the application as he shall see fit.

\*The plan should be drawn to a scale of not less than 500 feet to an inch.

†Irrigation, industrial purposes, or domestic.

**ANNEXURE A.**

*Description of Property.*

- 1. Name of farm, number, district and ward; whether applicant owns a defined portion or undivided shares. How many morgen? Whether surveyed or unsurveyed?.....
- 2. Nature of title, whether freehold, quitrent, or occupation farm under Ordinance No. 25 of 1904?.....
- 3. State whether servitudes exist? If so, of what nature?.....
- 4. Is the property fenced? If so, to what extent and with what material? .....
- 5. What extent is under cultivation? State nature of crops and average annual yield? .....
- 6. How provided with water? .....
- 7. Buildings. State number, give description and particulars of construction and whether in good repair and by whom occupied .....
- 8. What other improvements on the property?.....
- 9. When was the property purchased and at what price?.....
- 10. By whom and upon what conditions is the property occupied?.....

11. Is the property already mortgaged or otherwise encumbered? If so, give particulars.....
12. Have you applied elsewhere for a loan in respect of this property? If so, give particulars .....
13. What other fixed property do you possess? If farm property, state name, number, district, surveyed or unsurveyed, and extent. If encumbered, in what way and to what extent. If town property, name of town, number of erf, its extent; value of buildings thereon, if any. If encumbered, give full particulars.....
14. What plant and machinery?.....

*Additional Security.—Town Property.*

1. Village or town where situated.....
2. Number of erf—its extent. If already encumbered in any way. If so, give particulars.....
3. If let, give full particulars.....
4. Buildings, if any; whether in good repair, and if let, give full particulars.....
5. If insured, state amount of insurance, name of company, and to what date premium is paid.....
6. When was property purchased, and at what price?.....
7. What improvements have been effected since your ownership thereof?.....
8. Are all rates, taxes, and licenses paid to date? If so, produce last receipts.....

*Declaration under Oath.*

....., the undersigned,.....  
 make oath and say, with reference to the loan solicited by.....from the Minister of Lands for a sum of £....., upon security of a first mortgage of the immovable property, more particularly described in the deed of transfer, passed in my favour on....., No....., that the several statements in foregoing schedule are strictly true and correct in every particular; that the conditions specified herein are familiar to me, and that I agree to the terms thereof; that my marriage with.....  
 is the first and only one I have ever contracted; that my spouse is still living, to whom I am married (state "in" or "out of").....  
 community of property in the most absolute sense of the term, and without any exception and reservation, and that she was a \* (state spinster or widow).....  
 .....when I married her.

That the said property or any portion thereof is not leased. †

That I am not entrusted with any guardianship of children belonging to another person; nor have I charge or control of any funds belonging to minors, nor am I, either directly or indirectly, accountable for such funds and moneys; further, that I am not charged with the collection of any funds or moneys belonging either to Government or any town or other local administrative body; that no person whatsoever has any right or tacit legal mortgage of what kind soever on my goods, that there is no unsatisfied judgment against me in any court of this Colony, and there are no interdicts against the disposal of the property in question; and lastly, to the best of my knowledge and belief, I have not failed to disclose any fact or circumstance which would or might impair the granting of the said loan.

Sworn at.....  
 this.....day of.....190.....  
 Before me.

*Justice of the Peace.*

\* If deponent or "spouse" has been married previously, state how many times, giving names of deceased spouses, and stating whether such deceased spouse had been married or not at the time of marriage with deponent or "spouse." Always state maiden names of women, and whether persons were married in community of property or not.

† If property leased, copy of lease to be annexed.



**Act No. 27  
of 1908.**

*Valuator's Report.*

(Made by the valuator at expense of applicant.)

*N.B.*—The valuator will please state his valuations at the current market value, giving values of lands [agricultural and (or) pastoral values only], buildings and other improvements separately. He must personally inspect and see that the land described by the applicant corresponds with that reported upon, and that the buildings and improvements specified are actually thereon. Describe the nature and quality of the land. If possible, give a rough sketch of the property, showing how situated with regard to adjoining properties.

I,.....  
do hereby declare that on the.....day of.....19.....,  
I personally inspected the property described in foregoing application, viz. :—  
.....  
that I found the description therein given to be correct, and that the present marketable value of the property (apart from the value of any minerals) is  
.....pounds sterling (£.....),  
which amount is arrived at as follows :—

† Land.....	£
.....	
.....	
.....	
.....	
.....	
.....	
.....	
.....	
.....	
§ Buildings and other improvements.....	£
	£
	_____

Given under my hand at.....this.....day of.....  
19.....

.....  
*Valuator and Sworn Appraiser.*

I hereby certify that I have carefully perused this application and recommend it to the favourable consideration of the.....  
the valuation of the property appearing to me to be fair and reasonable, and the applicant being of good character.

.....  
*Resident Magistrate of.....*

† Specify, if possible, area of cultivated lands and area of irrigable land.  
§ State whether buildings are in good repair and character of structure.

**PART VIII.**

**HIRE OF GOVERNMENT DRILLS.**

1. In this part of these regulations, "boring engineer" shall mean the officer in charge of boring operations under the chief engineer.
2. Government drills cannot be hired to drill for water
  - (a) for civil servants ;
  - (b) on erven in townships for private purposes ;
  - (c) for applicants who are not the proprietors of the ground on which boring is desired unless the application is endorsed and payment for the hire of the drill guaranteed by the proprietor of the ground or other approved security given ;
  - (d) for industrial companies not engaged in *bona fide* farming operations unless with special authority.
3. *Submission of Applications.*—Applications by farmers for the hire of a Government water drill for boring for water should be sent on form set forth in Annexure A to the Boring Engineer, Irrigation Department, Pretoria, through the resident magistrate of the district in which the applicant resides.

4. *Acceptance of Applications.*—This is subject to such enquiry by the resident magistrate and boring engineer as may be deemed necessary for ascertaining the following particulars:—

- (a) Geographical and geological practicability of the proposed bore.
- (b) Ability of applicant to pay all charges.
- (c) Necessity for water (1) for domestic purposes, (2) for stock, (3) for irrigation.
- (d) Proximity to other proposed bores.

Special regard will be given to the development of farming and agricultural industries.

5. *Notification of Acceptance of Application.*—The acceptance of his application will be notified to the applicant by the boring engineer through the resident magistrate. The applicant may be requested to give further necessary information before boring is commenced for him.

6. *Notice of Availability of Drill.*—Each accepted applicant will have at least four days' notice that a drill has been set apart for him. This notice will state where the drill is and the date from which the applicant should take it over. Should he not take it over within three days of the fixed date, he will be liable to forfeit the grant of the drill to him and to pay for the foreman's wages during the delay. The taking over of the drill shall preclude the applicant from any denial of liability for it.

7. *Classes of Government Drills.*—Government will provide one or other of the following classes of drill, at the discretion of the boring engineer, unless some prior arrangement has been made with the applicant:—

- (a) Steam diamond drill capable of boring a 2½ inch hole to a depth of 5,000 feet.
- (b) Steam percussion (or "jumper") drill capable of boring a 6 inch hole to a depth of 800 feet.
- (c) Steam rotary "shot" drill capable of boring a 6 inch hole to a depth of 600 feet.

The above drills are all equipped with the necessary tools and appliances and a tent or house for the foreman. For (a), the equipment will be arranged for specially as required.

8. *The Foreman.*—The foreman will be a capable man and will have the entire direct charge of the boring operations. He will receive instructions to meet the applicant's wishes as far as practicable, to use all expedition in carrying out the bore for him, and not to give him unnecessary trouble. Should the applicant have any complaint to make about him, he should prefer it in writing to the resident magistrate, who will enquire into the matter. No payment for his services is to be made to the foreman by the applicant.

9. *Charges.*—The charges to be paid by the applicant will be:—

- (a) For each day while the plant is being erected or dismantled the sum of 20s.; a similar daily charge of 20s. will be made during pumping tests.
- (b) For each working day from the erection of the drill, the sum of 40s. (Saturday to be reckoned half a day.)
- (c) For heavy diamond drills, class (a), the charge will be by special arrangement.
- (d) Any breakages for which the applicant is himself responsible.

The cost of replacements or repairs necessitated by boring, pure and simple, will be borne by the Government.

- (e) No charge will be made for periods during which a drill may be stopped for repairs or on account of bad weather, a breakdown or of the illness of the foreman, but full charges may be enforced for any delay due to the applicant.

10. *Transport.*—(a) Government will bear the cost of carriage by rail of the drill, appliances, and foreman in charge thereof, to the railway station or centre nearest to the farm of the first applicant in any district.

(b) Government cannot guarantee transport, but, where there is a Government transport station available and the applicant cannot himself arrange for the transport of the drill, will provide it for him at the Government rates. Drills cannot, however, be sent out to districts where there is animal sickness or where there are restrictions against the movement of animals.

**Act No. 27  
of 1908.**

(c) The first applicant will provide transport for the drill and its appliances and for the foreman and his baggage from the station or centre to his farm, and will use all expedition in this respect.

(d) A succeeding applicant will similarly provide transport from the previous farm to his own farm, and the last applicant will provide it back to the nearest railway station or centre, if required to do so.

(e) The applicant will also, when necessary, provide transport between his farm and the railway station, or such other spot as may be selected, for the conveyance of machinery and stores required to conduct boring operations.

(f) The applicant will also provide means of communication to and from the nearest post and telegraph office at least once a week.

11. *Casing*.—Government will provide free of charge the casing required to line the whole or part of a borehole which is not in solid rock. The amount of casing necessary will be at the discretion of the boring engineer.

12. *Working Hours*.—Working hours on ordinary week days will be nine per day, except on Saturdays, when they will be five hours, and work will cease at 1 p.m.

No work will be done on Sundays and public holidays, nor will a charge be made for these days.

13. *Supplies by Applicant*—(a) *Labourers*.—Government will provide, free of charge, the natives required for working the drilling machine. The applicant must supply, free of all charges, such other natives as may be required for unloading, erecting, dismantling and loading up the plant, and for cartage of water.

(b) *Water and Fuel*.—The applicant must supply and transport at his own cost, sufficient fuel (wood or coal) and water for the proper working of the drill, and for the use of the foreman and natives.

(c) *Provisions for Foreman*.—The applicant must either supply food for the foreman by private arrangement and at reasonable prices, or must bring supplies for him from a store not less than once a month.

(d) The applicant must generally give such other assistance as the foreman may require to perform his work efficiently.

14. *Cessation of Boring*.—Boring may be stopped

(a) at the applicant's request in writing to the boring engineer ;

(b) when a fair and reasonable supply of water has been struck ;

(c) at the discretion of the boring engineer when there is, or is likely to be, any damage to the drill, or further boring is unlikely to yield satisfactory results ;

(d) when the borehole is 300 feet deep, unless a special arrangement is made by the applicant with the boring engineer to continue it.

15. *Responsibility for Success*.—Beyond providing an efficient plant, foreman and natives, Government do not guarantee any successful result from the boring operations. The undertaking will, therefore, be entirely at the applicant's risk, but every reasonable assistance towards a successful issue of the work will be readily given.

16. *Limit of Period of Work and Number of Boreholes*.—A drill will not work on account of any one applicant for a longer period than 48 working days, unless exceptional circumstances justify an extension of this period.

Not more than three boreholes will be sunk on any one property, under one application, except under special sanction. Holes abandoned by order of the boring engineer will not be taken into account in this respect.

17. *Special Conditions*.—Further special conditions, additional to the foregoing, when necessitated by the nature of the ground to be bored in or by difficulty in getting to the site, may be imposed by the boring engineer after consultation with the applicant. Their acceptance by the applicant must be definitely notified before any work is undertaken or continued.

18. *Cores*.—As the boring branch is desirous for scientific purposes of collecting cores, showing the strata of the Colony, all cores saved shall be its absolute property. The applicant, however, may closely examine them, and may, if he desires and at the discretion of the boring engineer, have small pieces given to him for analytical purposes. Samples of all cores thus acquired by the Government will be carefully kept and registered.

ANNEXURE A.

Act No. 27 of 1908.

19. Form of Application for the Hire from Government of a Water Drill.

Postal Address.....  
.....

Date.....

To the Boring Engineer,  
Pretoria,

through the Resident Magistrate,.....District.

Sir,

I beg to apply for the hire of a water drill for use on my farm  
No..... District.....  
for.....

(2) I hereby agree and undertake to comply with the terms and conditions set forth in the rules and regulations governing the working of the Government water drills with which I acknowledge myself to be fully acquainted.

(3) I also agree that the core (if any is saved) shall be the absolute property of the Government, understanding that it will be open to my inspection at any time.

(4) I agree to pay for the drilling to be done for me in cash upon demand at any time by you

(4) a. I agree to pay for the drilling to be done for me in five equal instalments carrying interest at £6 per cent. per annum, the first instalment whereof shall become due and shall be paid by me in cash at the date of completion of the drilling (as ascertained by the certificate of the Chief Engineer or his representative, and which certificate shall be accepted by me as final and conclusive) and the remaining four instalments whereof shall become due and shall be paid by me in cash at six, twelve, eighteen and twenty-four months respectively, calculated from such date of completion, and in case of default in payment of any instalment on due date the remaining instalment or instalments shall become forthwith due and payable.

(4) b. The payment of the capital amount, all instalments and interest which shall become due under the foregoing provision is secured in form and manner endorsed hereon.

(4) c. I undertake that pending payment of the capital amount all instalments and interest due under the foregoing provision, numbered (4) a, and notwithstanding the security referred to in provision numbered (4) b, I will not sell, dispose or mortgage or pledge my said farm hereinbefore mentioned under pain of interdict and other legal proceedings as the Government may be advised.

I am, Sir,  
Your obedient Servant,

.....

(To be endorsed on application form.)

Date.....

I  
We the undersigned.....

hereby interpose and bind.....sel.....as suret.....in solidum and co-principal debtor.....for the due and punctual payment of the capital amount all instalments and interest due and to become due and payable under and in accordance with the terms of the above written application by .....should the said application be accepted or acted upon

I  
We renounce and waive to that end all benefit of the exceptions *ordinis seu excussionis et divisionis*.

- 1.....
- 2.....
- 3.....

NOTE.—If the applicant desires to pay by instalments, paragraph 4 should be deleted; if applicant desires to pay cash at completion of drilling, paragraphs (4) a, (4) b, and (4) c should be deleted.

Act No. 27  
of 1908.

20. On the receipt of an application on the form set forth in Annexure A, the Resident Magistrate shall make such enquiries as are necessary in order to ascertain if the application is in order and that the applicant is capable of paying for the hire of a drill, and when satisfied shall forward the application to the boring engineer with his recommendation on the following form :—

ANNEXURE B.

*Recommendation for Sanction to Application for a Government Water Drill.*

No.....

To the Boring Engineer,  
Pretoria.

Sir,

I have the honour to forward herewith an application in form (Annexure A) for the hire of a Government water drill for Mr..... of..... farm, No..... District.....

2. I have ascertained by enquiry, that the applicant requires the drill for the purposes of his farm; that he is capable of paying for its hire, and of providing transport for it; and that he will assist the foreman in charge in all his reasonable requirements.

3. I therefore recommend that his application be granted on the terms laid down in the Regulations.

I have the honour to be, Sir,  
Your obedient Servant,

.....  
*Resident Magistrate,*

..... District.

*Accompaniment :*

Application in form (Annexure A).

21. The boring engineer shall on receipt of such recommendation make such enquiries as are necessary in order to ascertain if it is practicable to undertake the drilling asked for, and after such drilling has been sanctioned he shall notify the applicant through the Resident Magistrate on the form set forth in Annexure C.

ANNEXURE C.

*Communication of Sanction of Application for the Hire of a Government Water Drill.*

(To be sent in triplicate, one copy to be retained by the Resident Magistrate, the second to be sent by him to the applicant, and the third copy to the foreman or contractor.)

To Mr.....

Sir,

Your application in form (Annexure A), dated..... for the hire of a Government drill for the purposes of obtaining water for your farm..... No..... District, has been sanctioned by the Chief Engineer, Irrigation, on the conditions laid down in the Regulations. Due notice of the date when the drill will be available will be sent to you by the resident magistrate.

.....  
*Boring Engineer.*

Through the Resident Magistrate..... District.

No.....

Forwarded to Mr..... for information.

.....  
*Resident Magistrate,*

..... District.

## PART IX.

Act No. 27  
of 1908.SERVICES OF GOVERNMENT ENGINEERS IN CONNECTION WITH  
SURVEYS AND INVESTIGATIONS.*I.—Informal Advice.*

1. Informal advice will be granted free of charge, either by officers on tour or at headquarters, provided that

- (a) no detailed surveys will be made nor any formal plans or drawings prepared without special authority; rough sketches may, however, be made, to illustrate and explain the advice given;
- (b) the officer affording advice will not be detained on the farm in connection with which advice is given for a period exceeding two days;
- (c) the applicant will give the advising officer shelter and will transport him from the nearest railway station to his farm.

*V.B.*—Neither the Government nor the Chief Engineer, Irrigation, will be responsible for any advice thus informally given, nor for the correctness or otherwise of opinions expressed by any officer, though such advice and opinions will be given and expressed in all good faith.

*II.—Surveys and other work for periods exceeding two days.*

2. Should it appear to the engineer that surveys or other work arising under the preceding section will occupy a period exceeding two days, or that the magnitude of the works is such as to call for more extensive preliminary survey prior to advice being given, the applicant, if he desires more complete information, shall make application on the Form "B."

3. The engineer will submit the completed form, with a brief report, to the Chief Engineer, Irrigation, who will then give instructions as to what should be done, and furnish to the applicant a lump sum estimate of the cost of the professional assistance required.

4. If thereafter the applicant shall desire that the services of a Government officer be made available for the work required, arrangements will be made to do the work as soon as possible, and an intimation will be given of the approximate date by which the work can be taken in hand.

Any applicant may, however if preferred, engage the services of an engineer in private practice for the execution of any work such as that in view.

5. Any applicant requiring professional assistance may apply in writing to any resident magistrate, field cornet, the engineer in charge of his district, or to the Chief Engineer, Irrigation, in Pretoria, on Forms "A" and "B," and the Chief Engineer will furnish the applicant with an estimate of the amount which will be charged for such professional advice as on the information forwarded he may deem to be required. On acceptance of this estimate by the applicant, the Chief Engineer will cause the necessary steps to be taken.

## FORM A.

*Irrigation Projects.**Surveys and other work for periods not exceeding two days.*

Application is hereby made for the services of a Government engineer for .....days, in accordance with the regulations under the Irrigation Act governing such advice, with all the terms of which I have fully acquainted myself, and which I hereby accept and agree to be bound by in all respects.

.....  
(Signature of Applicant.)

- (1) District.....
- (2) Field Cornet.....
- (3) Name of farm.....

**Act No. 27  
of 1908.**

**FORM B.**

*Irrigation Projects.*

*Application for Preliminary Survey and Investigation for period exceeding two days.*

Address.....

Date.....

To the

- (1) Resident Magistrate.....
- (2) Field Cornet.....
- (3) The Executive Engineer,.....District ; or
- (4) The Chief Engineer, Pretoria.

Application is hereby made for the services of a Government engineer for the survey and investigation of the irrigation project described below, under the terms and conditions of the regulations under the Irrigation Act, 1908, governing such service, with all of which I have fully acquainted myself, and which I hereby accept and agree to be bound by in all respects.

.....  
(Signature of Applicant.)

*General Description of Project.*

- (1) District.....
- (2) Field Cornet's Ward.....
- (3) Details regarding farms and area to be irrigated :—

Names or Numbers of farms.	Names of Owners.	Area to be irrigated in each farm. Morgen.

4. Chief classes of crops to be irrigated and time of year during which water will be required for each crop :—

.....

.....

.....

.....

5. Source from which water is to be obtained, whether from :—

- (a) Storage.....
- (b) Stream or river.....
- (c) Fountain, well, or borehole, etc.....

6. Nature of works to be constructed. State as full particulars as possible regarding the site, nature and dimensions of each proposed work ; the probable position, length, and height of each weir or dam ; the nature of the rock or soil upon which it will be founded ; the material available for its construction ; the probable length of each furrow, etc. :—

.....

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.....

.....

*PART X.***Act No. 27  
of 1908.****DRAWING UP WATER SUPPLY SCHEMES FOR LOCAL  
AUTHORITIES.***1. Preliminary Procedure for Drawing up Schemes.*

If a local authority desire to have their water scheme designed by the Chief Engineer, Irrigation, they should apply to the Minister of Lands for sanction to a preliminary report being drawn up.

*2. Submission of Preliminary Report to, and Information to be Supplied by, the Local Authority.*

Before the preliminary report is drawn up, the local authority shall communicate to the Chief Engineer the main lines on which the scheme shall be prepared. They shall furnish him with particulars as to the population to be served, and as to the amount of water required for industrial and other purposes. They shall settle and communicate to him any agreements entered into between them and other public bodies sharing in the scheme. They shall also undertake to furnish estimates of the cost of acquiring and ultimately to acquire servitudes and lands or other immovable property which may be required for the scheme.

The local authority and the Chief Engineer are authorised to correspond direct with each other in all matters connected with the preparation and execution of a water supply scheme.

*3. Submission of Final Report to the Local Authority.*

If the local authority approve of the scheme recommended in the preliminary report, they may ask the Chief Engineer to carry out a survey and prepare detailed drawings and estimates and furnish a final report. As soon as the detailed scheme has been prepared the Chief Engineer shall forward it to the local authority for consideration, and shall explain its nature to the local authority to enable them to decide whether they will adopt it entirely, or with whatever modifications they consider are desirable and which are feasible.

*4. Execution of Scheme, Contracts, and Payments.*

If the local authority approve of the scheme recommended in the final report, they may ask the Chief Engineer to carry out the works. The local authority shall then obtain the advice of the Chief Engineer as to the acceptance of the contracts for the work. The local authority shall be responsible for all contracts into which they enter and for making in connection with the execution of the scheme all payments which are certified by the Chief Engineer, Irrigation.

*5. Payment by Local Authority for Chief Engineer's Staff.*

Before any works are commenced which are to be carried out by the Chief Engineer, the local authority shall undertake to pay to Government for the services of the Chief Engineer, Irrigation, and his staff employed in connection with the works, the cost price to Government of such services as the Chief Engineer may certify as reasonable, but such charge shall in no case exceed 5 per cent. of the cost price of the works. The local authority shall pay to the Treasury from time to time such sums as the Chief Engineer shall certify to under this regulation. In addition the local authority shall pay the full cost of the establishment especially employed on the construction of the works and resident on them. The Chief Engineer shall include the estimated cost of all charges in his estimate of the cost of the scheme.

*6. Stages Summarised.*

The different stages of procedure between a local authority and the Chief Engineer may be summarised thus:—

- (1) Preliminary Report.—This will be submitted with the approximately estimated cost of the works, and will include the estimated cost of the survey and the preparation of the final report and detailed estimates. For this report no charge will be made.
- (2) Final Report.—This will be submitted with the detailed plans and estimates. If a charge for this report is made, it will not in any case exceed 2½ per cent. of the estimated cost of the scheme.



**Act No. 27  
of 1908.**

(3) Construction.—This will include the preparation of contract documents, the letting of contracts and the supervision of the construction. For this the local authority will be charged in addition to the charge for preparing the plans and estimates :

- (a) The actual cost to Government so long as it does not exceed 5 per cent. of the actual cost of the works : and  
(b) the full cost of establishment resident on the works.

*7. Chief Engineer's Authority for Execution of Works.*

When any water supply scheme has been entrusted to the Chief Engineer for execution, he shall have sole authority in all matters connected with its construction in general accordance with the approved plans and estimates. Should any large modification of the approved proposals be found necessary he shall obtain the approval of the local authority to them before carrying them out.

*8. Chief Engineer's Responsibility for Cost of Works.*

The chief engineer shall exercise all due economy in executing the works, but shall not be responsible for any excesses or accidents which may occur.

ACT NO. 28 OF 1908.] [Came into operation 2nd Sept., 1908.

**Act No. 28  
of 1908.**

AN  
**ACT**

**To amend the Education Act, 1907.**

(Assented to 22nd August, 1908.)

**BE** IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

Amendment  
of section  
*thirty-eight*  
of Act No. 25  
of 1907.

1. Section *thirty-eight* of the Education Act 1907 shall be and is hereby amended by the deletion of the proviso to sub-section (2) thereof and the substitution for such proviso of the following words :—

“or withdraw from a school district any portion thereof, which is co-terminous with a polling district constituted under section *thirty-nine* of the Second Schedule to the Transvaal Constitution Letters Patent 1906, and add the portion so withdrawn to any adjoining school district.”

Amendment  
of section  
*sixty-seven*  
of Act No. 25 of  
1907.

2. Section *sixty-seven* of the said Act shall be and is hereby amended by the addition at the end of sub-section (1) thereof of the following words :—

“and every such Committee shall hold office for a period of three years. A person qualified under sub-section (1) of section *forty* to be a member of a school board in any school district shall be qualified for election as a member of any school committee within such school district”; provided that a person

shall not be disqualified from being a member of a school committee merely by reason of his being an alien."

and by the omission therefrom of sub-section (2) and the insertion in place thereof of a new sub-section (2) as follows:—

"(2) If a requisition signed by not less than fifty per centum of the parents of children on the roll of such school for which there is no Committee be transmitted to the Board such Committee shall be constituted for such school."

3. Section *sixty-eight* of the said Act shall be and is hereby amended by the omission therefrom of the figure "(1)" in line six thereof and the omission of sub-section (2) thereof and section *sixty-nine* of the said Act shall be and is hereby amended by the omission therefrom of all the words after "regulation".

Amendment of sections *sixty-eight* and *sixty-nine* of Act No. 25 of 1907.

4. This Act may be cited for all purposes as the Education Act Amendment Act 1908, shall come into operation on the date of its first publication as an Act in the *Gazette*,\* and shall be read as one with the Education Act 1907.

Title and date of operation of Act.

ACT NO. 29 OF 1908.]

[See section 18 as to coming into operation of Act.

AN  
A C T

Act No. 29  
of 1908.

To Consolidate and Amend the Law governing the Registration of Mining Titles in this Colony, and for other purposes.

(Assented to 22nd August, 1908.)

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

1. Proclamation (Transvaal) No. 35 of 1902, Repeal of Ordinance No. 6 of 1902, and Ordinance No. 6 of 1903 shall be and are hereby repealed; provided that notwithstanding such repeal the provisions of the laws repealed and the regulations made thereunder shall continue in force so far as they relate to matters connected with or incidental to those stands or leasehold lots in townships for which a freehold title may be obtained under the Townships Amendment Act 1908, until such freehold title is so obtained; provided further that the powers, duties, and jurisdiction of the Registrar of Mining Rights

\* This date was the 2nd September, 1908.

**Act No. 29  
of 1908.**

under the laws repealed by this section shall be exercised as regards such townships and the stands and leasehold lots therein, by the Rand Townships Registrar and be carried on in the Rand Townships Registration Office mentioned in section *fifty-three* of the said Act.

Interpreta-  
tion of terms.

**2.** In this Act and the regulations, unless inconsistent with the context ;

“ diagram ” and “ confirmed diagram ” shall have the meanings respectively assigned to those terms in and for the purposes of the Precious and Base Metals Act 1908 ;

“ Governor ” shall mean the officer for the time being administering the Government of this Colony, acting by and with the advice of the Executive Council thereof ;

“ mining district ” shall mean any such district or sub-division thereof as is mentioned in section *seven* of the Precious and Base Metals Act 1908 ;

“ mining title ” shall mean—

(a) all such rights as are included in the definition of “ mining title ” in the Precious and Base Metals Act 1908 or any amendment thereof ;

(b) discoverers' certificates and alluvial claim licenses held under the Precious Stones Ordinance 1903 or any amendment thereof ;

(c) any such interest in a mine as is mentioned in Chapter V of the Precious Stones Ordinance 1903 and is held by the owner as therein described ;

“ office ” shall mean the Mining Titles Registration Office established under section *three* of this Act ;

“ Registrar ” shall mean the Registrar of Mining Titles appointed under this Act ;

“ regulation ” shall mean any regulation mentioned in section *fourteen* of this Act ;

“ stand title ” shall mean the license for any stand mentioned in Part II, Chapter X, of the Precious and Base Metals Act 1908 or any amendment thereof ;

“ surface rights ” shall mean all such rights as are described in Part II, Chapter IX, of the Precious and Base Metals Act 1908, or any amendment thereof, whether the same depend upon a grant made under such Chapter or under Law No. 15 of 1898 or under a prior law, and shall include sites selected under

section *sixty-nine* of the Precious Stones Ordinance 1903 or any amendment of such section.

**Act No. 29  
of 1908.**

3. There shall be established at Johannesburg on the date of coming into operation of this Act an office (to be styled the Mining Titles Registration Office) for the registration of all mining titles and stand titles, and of those other rights and documents the registration of which is hereinafter provided for; and on the establishment of such office all those matters in connection with the registration of such titles, rights and documents which were being dealt with immediately prior to that date in the office of the Registrar of Mining Rights, and uncompleted on that date, shall be handed over to the Registrar of Mining Titles appointed under section *four*, and he shall carry out the completion of such matters, but in accordance with the laws hereby repealed and the regulations made thereunder.

Establishment of Mining Titles Registration Office.

4. The Governor shall appoint an officer (to be styled the Registrar of Mining Titles) who shall be in charge of the said office and whose duties shall be—

Registrar of Mining Titles and his duties.

(a) to take charge of, and preserve all records of title deeds, documents, and diagrams of every kind relating to mining title which were, prior to the coming into operation of this Act, in charge of the Registrar of Mining Rights ;

(b) to register all mining titles and stand titles issued in accordance with law and to certify, sign, and transfer transfers or cessions thereof, and to take charge of and preserve all records of such titles and the deeds, documents, and diagrams of every kind incidental to the registration of such titles, transfers or cessions ;

(c) to register all certificates of bezitrecht and water-rights granted under the Precious and Base Metals Act 1908 or any amendment thereof, or under Law No. 15 of 1898 or a prior law, and register any transfer of such certificates or water-rights ;

(d) to register all surface rights ;

(e) to certify, sign and register all mortgage bonds specially hypothecating any mining title or stand title or any lease thereof, and to register any servitude or encumbrance contained in a deed of transfer of any such title or created by notarial deed or order of a court of law ;

(f) to register cessions of registered bonds ;

**Act No. 29  
of 1908.**

(g) to cancel or partially cancel any registered bond or registered deed (other than a deed of transfer) and to release from the operation of such bond the whole or any part of the property thereby specially hypothecated ;

(h) upon the registration of any document to make all such endorsements on the registered title or other document in his office as may be necessary to give effect to such registration ;

(i) to keep a register of all interdicts and orders of court served upon him and affecting the transfer of any title registered in his office, and of all notices relating to estates furnished to him by the Master of the Supreme Court ;

(j) to keep all such debt and other registers as may be necessary for the due performance by him of his duties ;

(k) to permit any member of the public, upon payment of the prescribed fee, to inspect the registers and other like records in his office, and to obtain copies of or extracts from such registers and records ;

(l) to give immediate notice to the Registrar of Deeds of all transfers, leases, cessions of leases of, and of all mortgages, cancellations of mortgage and other encumbrances on any mynpacht brief or any lease under the Base Metal Law Amendment Ordinance 1903, and like notice of any amendment made of errors in documents under the authority of paragraph (b) of section five ;

(m) to give immediate notice to the Mining Commissioner of any mining district of all registrations effected in the office in relation to any mining title, stand title, certificate of bezitrecht, water-right, or surface right in that district ;

(n) generally to carry out the objects and purposes of this Act and the regulations.

Powers of  
Registrar.

**5. The Registrar shall have the power—**

(a) to require proof upon oath or solemn declaration of any fact necessary to be established in connection with any registration sought to be effected in the office ;

(b) whenever, in consequence of an error in any document, whether in the name or description of any person or property therein mentioned, it is found necessary to amend such document, to amend the error subject to the consent in writing of every person interested ; provided that if the error is common

to two or more interdependent documents, both or all such documents shall be amended; provided further that if any such interested person refuse to consent to the amendment, the same shall not be made, except upon the order of the Witwatersrand High Court, the Supreme Court or any judge thereof;

(c) to issue copies of lost documents registered in the office and to issue new titles where documents are so defaced or mutilated as to be illegible or unserviceable or, where mining title or stand title is held in undivided shares, and any holder thereof desires to obtain a separate title for his undivided share, to issue a new title, on production of the original title for endorsement.

6. (1) No deed of transfer, bond, or any other document affecting a mining title or stand title and no cession of a lease thereof shall be registered unless it is accompanied by a receipt or certificate from some competent revenue officer that any transfer duty, stamp duty, license moneys, and all taxes due to the Crown in respect of such mining title or stand title have been paid.

Conditions of registration of mining or stand titles.

(2) Every transfer of a mining title or stand title and every cession of a lease thereof shall be accompanied by such diagram or plan of the ground held under such title as is provided in the Precious and Base Metals Act 1908, unless such diagram or plan is at the date of the transfer already filed in the office.

7. No deed of transfer shall be cancelled by the Registrar except upon the order of the Supreme Court or a judge thereof.

Transfer only to be cancelled on order of Court.

8. (1) A mining title or stand title or any lease thereof may be transferred to two or more persons by one and the same deed of transfer:

When separate deeds of transfer necessary or unnecessary in transferring more than one interest.

(2) Different kinds of mining titles or stand titles (as the case may be) shall not be transferred by one and the same deed of transfer.

(3) Mining titles or stand titles (as the case may be) situate on different farms, or on different portions of the same farm not owned by the same person, shall not be transferred by one and the same deed of transfer.

(4) Not more than one mining title (other than a claim stand or *bewaarplaats* license) shall be transferred by one and the same deed of transfer.

9. (1) If, in the partition of any mining title or stand title or of any lease thereof, held in undivided shares, it shall happen that one or more shares of

If undivided share of mining title hypothecated

**Act No. 29  
of 1908.**

the transfer of a divided share may be passed under certain conditions and when conditions fulfilled the divided share to be regarded as originally hypothecated.

any holder thereof is hypothecated under a mortgage bond, the Registrar may, upon production of the bond and of the consent in writing of the legal holder of the bond (which consent shall state that it is given under this section), allow transfer to be passed to such holder of the portion or portions awarded to him on partition, notwithstanding that the bond remains uncanceled.

(2) In every such case the Registrar shall, at the time of passing such transfer,

(a) endorse on the bond that such portion or portions are, in terms of this section, substituted for the undivided share or shares previously held by such holder; and

(b) make an entry of the substitution in the debt register; and

(c) endorse on the transfer of such portion or portions received in lieu of the share or shares that, in terms of this section, they are mortgaged by the bond.

(3) From and after the completion of the entry and endorsements aforesaid, such portion or portions shall be deemed to be hypothecated as fully and effectually as if they, and not an undivided share or shares, had been originally hypothecated by the bond.

Duties of Master of Supreme Court to notify certain payments and make certain payments in connection with insolvent estates.

**10.** (1) As often as it shall appear from the liquidation account of any insolvent estate and from the vouchers annexed thereto that a payment has been made to any creditor on account of a registered obligation of debt, the Master of the Supreme Court shall notify such payment to the Registrar, who shall thereupon write off the same in the debt register of the office and also, if possible, on such obligation of debt.

(2) The Master of the Supreme Court shall from time to time transmit to the Registrar returns specifying—

(a) the name and address of every person who has obtained his discharge or rehabilitation after the sequestration of his estate under the law for the time being relating to insolvency; and

(b) the property and registered obligations of debt appearing in such person's schedules or in the liquidation account of his estate;

and upon receipt of any such return the Registrar shall write off in the debt register of the office all debts registered against such person prior to the sequestration of his estate, and, if possible, endorse upon the obligation of debt that it has been cancelled in terms of this section.

11. No document of hypothecation executed at any time after the coming into operation of Proclamation (Transvaal) No. 35 of 1902 or hereafter, shall be of any force or effect for the purpose of giving preference or priority to the payment of any advances, debts, or demands made or accruing after the date of such document—

Where hypothecation is for future debts, that fact is to be expressly stated and a maximum amount fixed.

(a) unless it is expressly stipulated therein that it is intended to cover or secure future advances, debts, or demands generally or some particular description thereof to be in such document described; and

(b) unless a sum is fixed in such document as a sum beyond which such future advances, debts or demands shall not be deemed to be covered or secured by the hypothecation created by such instrument.

12. Save as in this Act and the regulations is specially provided the law and regulations for the time being of the Deeds Office of this Colony shall be applied *mutatis mutandis* for the purposes of this Act, or any amendment thereof

Deeds office law to be applied save as otherwise provided.

13. (1) The Mining Commissioner of every mining district shall, as soon as any surface right has been granted under Part II Chapter IX of the Precious and Base Metals Act 1908 and before issue to the grantee of the documents evidencing such grant, transmit to the Registrar such documents together with all other documents, diagrams, or plans connected therewith, and thereupon the originals of such documents and copies of the diagrams or plans shall be filed of record in the office.

Mining Commissioner to transmit to Registrar original documents in connection with grants of surface rights

(2) The Mining Commissioner shall further, as soon as he has made any reservation under the powers of the Precious and Base Metals Act 1908, transmit in writing to the Registrar full information of the situation and nature of such reservation.

14. (1) The Governor may from time to time make, alter, or rescind regulations (not inconsistent with this Act) prescribing—

Regulations.

(a) the fees (if any) to be charged in respect of any act, matter, or thing required or permitted to be done in the office;

(b) the manner and form in which any document required to be registered or preserved of record in the office, shall be prepared, executed, registered or recorded;

(c) the manner and form in which information which is required or permitted by law to be furnished to the public or to the office shall be recorded in the office and the manner and



Act No. 29  
of 1908.

form in which information relating to mining title and stand title shall be recorded by the Mining Commissioner;

(d) the conditions under which copies of lost documents may be issued or new documents issued in place of defaced or mutilated documents;

(e) the manner and form in which consent to the cancellation of bonds or other documents shall be signified;

(f) the powers and duties of the Registrar and other persons employed in the office;

and generally for efficiently carrying into effect the objects for which the office is established and the purposes of this Act.

(2) All regulations made under the laws hereby repealed and in force at the coming into operation of this Act shall, so far as they apply to the matters to be dealt with under this Act and are not inconsistent therewith, be deemed to be regulations made under this section.

(3) All regulations made under sub-section (1) or any alteration thereof or additions thereto shall be of force and effect when published in the *Gazette* and shall further be laid upon the tables of both Houses of Parliament within seven days after publication if Parliament be then in session, or if it be not then in session, within seven days after the commencement of its next ensuing session.

Assistant  
Registrar.

**15.** The Governor may, if he shall deem it necessary, appoint an officer to be styled the "Assistant Registrar of Mining Titles," who shall, subject to the directions which may from time to time be given by the Minister of Mines, have authority to do any act or thing which may be lawfully done by the Registrar.

Validation  
of issue or  
renewal of  
licenses  
by District  
Registrars,  
etc.

\* **16.** Whenever prior to the publication of this Act in the *Gazette*, any District Registrar, Assistant District Registrar, or Beacon Inspector appointed under the laws hereby repealed, shall have issued or renewed for his mining district or division thereof prospecting or digger's licenses, *bonâ fide* acting in the belief that he was empowered by law to issue or renew such licenses, the same shall, notwithstanding anything in such laws contained, be deemed to have been validly issued or renewed (as the case may be) and it shall be lawful for the officers in this section described to continue, until the date when the Precious and Base Metals Act 1908 comes into operation, to issue and renew any such licenses.

17. (1) Whenever in respect of mining title or stand title a diagram not approved or confirmed by the Surveyor-General is filed in the office such diagram, if found correct, shall be approved by the Surveyor-General without fee or charge.

Diagrams not approved by Surveyor-General to be approved if found correct.

**Act No. 29  
of 1908.**

(2) The Registrar may at any time demand from the holder of title described in this section the production of his copy of such diagram for the purposes of approval by the Surveyor-General.

18. This Act may be cited for all purposes as the Mining Titles Registration Act 1908 and shall, save as to section *sixteen*, come into operation on the date on which the Precious and Base Metals Act 1908 comes into operation,\* and as to section *sixteen* on the date of its first publication as an Act in the *Gazette*.†

Title and date of operation of Act.

ACT NO. 30 OF 1908.] [Came into operation 15th October, 1908.

A N  
**ACT**

**Act No. 30  
of 1908.**

**To amend the law relating to Courts of Resident Magistrate.**

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

1. In this Act ;

“Governor” shall mean the officer for the time being administering the government of this Colony acting by and with the advice of the Executive Council thereof ;

“principal law” shall mean the Magistrates Court Proclamation 1902.

Interpretation of terms.

2. (1) Sections *fifty-three* to *sixty-three* inclusive of the principal law shall be and are hereby repealed as from a date to be fixed by the Governor by notice in the *Gazette*, and from that date courts of resident magistrate shall be established for each of the districts herein mentioned, that is to say:—

Repeal of sections *fifty-three* to *sixty-three* inclusive of Proclamation (Transvaal) No. 21 of 1902 and establishment of courts of resident magistrate for other districts.

The District of Johannesburg at Johannesburg;

the District of Boksburg at Boksburg ;

the District of Germiston at Germiston ;

the District of Krugersdorp at Krugersdorp.

(2) The local limits of jurisdiction of each of such districts shall be as defined by like notice and

Act No. 30  
of 1908.

such courts when established shall be deemed to be courts of resident magistrate established under the principal law.

(3) All records, proceedings, judgments, and sentences of any court of landdrost or resident magistrate which formerly existed within the area now known as the Witwatersrand District, shall be kept and preserved of record in the court of resident magistrate for the district by this section established and comprising the place where such former court was held; and all such records, proceedings, judgments, and sentences shall be deemed to be for all purposes, records, proceedings, judgments, and sentences of that court of resident magistrate.

Special provisions as to district of Johannesburg.

3. The Governor may from time to time appoint for the district of Johannesburg, in addition to a resident magistrate and assistant resident magistrates, persons, duly qualified, to be styled civil or criminal magistrates, each of whom shall be subordinate to the resident magistrate of such district and shall have and exercise therein all powers, duties and authorities (whether administrative or judicial) conferred or imposed on resident magistrates by the principal law or any amendment thereof or any other law and shall hear and determine all such cases and proceedings as may be assigned to him by such resident magistrate. Wherever in any law the court of any civil magistrate at Johannesburg is referred to, the court of the resident magistrate for Johannesburg shall be deemed to be meant thereby, and whenever in any law any power, duty, or jurisdiction is conferred or imposed on the chief magistrate of the Witwatersrand district, such power, duty, or jurisdiction is hereby conferred or imposed on the resident magistrate of the district of Johannesburg.

Power to try juvenile offenders in private.

4. Anything to the contrary notwithstanding in section *eleven* of the principal law contained, a criminal trial of any person under the age of sixteen years may be conducted by a court of resident magistrate in private.

Use of Dutch language equally with English language in courts of resident magistrate specially proclaimed by Governor.

5. Notwithstanding anything in section *eleven* of the principal law contained, the Governor may declare by proclamation in the *Gazette* in respect of courts of resident magistrate in any district that :—

(a) in all proceedings, civil or criminal, any parties to such proceedings or their counsel, attorneys, or agents may use either the

English or the Dutch language in the conduct of such proceedings in court, and any witnesses may give their evidence in either such language ;

(b) either the English or the Dutch language may be used in any summons, notice, or process, or in any document referred to in such summons, notice or process ;

provided that if it shall appear to the officer issuing such summons, notice, or process, from his personal knowledge or otherwise, that the person upon whom it is intended to be served is sufficiently acquainted with the one language to understand the purport of the same if drawn in that language, and is so insufficiently acquainted with the other as not to understand the purport of the same if drawn in that other language, such officer may, in his discretion, issue such summons, notice process, or document in the one of the two languages with which it appears to him that the said person is the better acquainted.

6. Section *six* of the Magistrates' Court Proclamation Amendment Ordinance 1904 shall be and is hereby amended by the addition to such section of the following new sub-section (10) :—

Amendment  
of section *six*  
of Ordinance  
No. 12 of 1904.

“(10) Nothing in this section contained shall authorize a court of resident magistrate to make any order thereunder for payment by a garnishee of a debt due from him to a debtor in respect of salary or wages.”

7. Section *thirty-three* of the principal law shall be and is hereby amended by the deletion of the proviso to such section and the addition thereto of the following :—

Amendment  
of section  
*thirty-three* of  
Proclamation  
(Transvaal)  
No. 21 of  
1902.

“provided that the fees and any costs occasioned by the employment of any such advocate shall only be charged in the taxation of costs between party and party in such cases as the magistrate may certify in writing to be of sufficient importance to warrant it, and upon such scale as may from time to time be prescribed by rules made under section *fifty-one* of this Proclamation.”

8. This Act may be cited for all purposes as the Magistrates' Courts Amendment Act, 1908, and save as to section *five* shall come into operation on a date to be fixed by the Governor by proclamation in the *Gazette* and as to section *five* shall come into operation six months after such date.\*

Title and date  
of operation  
of Act.

\* This date was the 15th Oct., 1908. See Proc. 86, Admn. 1908 (*Gazette*, 9th Oct., 1908, p. 50).

Act No. 31  
of 1908.

ACT NO. 31 OF 1908.] [Came into operation 2nd Sept., 1908.

AN  
ACT

To amend the Precious Stones Ordinance 1903.

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

Repeal of sections *twenty-nine to thirty-one* inclusive of Ordinance No. 66 of 1903.

1. Sections *twenty-nine to thirty-one* inclusive of the Precious Stones Ordinance 1903, shall be and are hereby repealed.

Method of calculating and dividing between the Crown and the owner the profits of a mine on private land.

2. (1) Where a mine mentioned in section *twenty-two* of the said Ordinance is worked by the owner (as in such section and in section *twenty-eight* of the said Ordinance described), the realized profits derived from its working shall be divisible between the Crown and the owner in the proportions of their respective shares in the mine; provided that the Crown shall not be entitled to receive any share of such profits until the owner shall have been repaid thereout any capital expended by him in or for the purposes of the mine together with interest thereon (computed from the date of expenditure) at the same rate as may have been incurred or borne by the owner in respect of the raising of such capital but not exceeding the rate of ten per cent. per annum.

(2) When such mine is worked by the owner he shall keep all books and accounts proper and necessary to the working, and such accounts shall be made up annually to such date as may be agreed between the Colonial Treasurer and the owner.

(3) In this section capital shall have the meaning assigned to it in section *four* of the Profits Tax (Gold Mining) Proclamation 1902 or any amendment thereof. A loss made in any accounting year shall be carried forward and set off against the profits of any succeeding years.

(4) A division of the realized profits of any mine between the Crown and the owner shall be deemed to be due and shall be made for every accounting year as soon as the profits of such year have been

ascertained; provided that, whenever any owner appropriates or distributes profits from the working of the mine, he shall also pay to the Crown its proportion of such profits.

3. Any assets acquired or created out of profits which would otherwise have been divided between the Crown and the owner in accordance with the last preceding section or with the provisions hereby repealed, shall be the property of the Crown and the owner in the proportions of their respective shares in the mine, and in the case of immovable property it shall be transferred to and vested in the Crown and the owner in such proportions. The provisions of this section shall in no way affect the full and free use of such assets in and for the purposes of working the mine.

Division of assets acquired or created out of profits that would otherwise have been divided.

4. (1) The Colonial Treasurer may agree with the owner that the profits or any portion thereof of any mine (before distribution between the Crown and the owner of their respective shares) be applied to the establishment of a trading fund, reserve fund, or emergency fund on the basis of contributions thereto by the Crown and the owner in the proportions of their respective shares in the mine.

Power of Colonial Treasurer to enter into agreement for application of profits before distribution.

(2) Any fund established under this section and any interest which may accrue thereon shall belong to the Crown and the owner in the proportion of their respective contributions to it.

(3) The fund shall be held, administered, invested, and used as may be mutually agreed between the Colonial Treasurer and the owner.

(4) Any portion of such fund which is no longer required for the purposes for which it was established may, by like agreement, be withdrawn, and such portion shall thereupon be subject to those provisions of this Act which relate to the division of the profits of the mine.

\* 5. The Colonial Treasurer shall appoint an officer to examine into, assess and collect any amounts due to the Crown under this Act, who shall for this purpose have full and free access to and the use of all books and accounts relating to the working of the mine and shall be supplied by the owner with all information or particulars which he may from time to time require in order to enable him to make his examination and assessment.

Appointment of officer to examine and collect amounts due to the Crown under this Act.

6. This Act may be cited for all purposes as the Precious Stones Amendment Act 1908, shall come into operation on the date of its first publication as an Act in the *Gazette*,† and shall be read as one with the Precious Stones Ordinance 1903.

Title and date of operation of Act.

\* For appointment of officer see Govt. Notice 1042 of 1908 (*Gazette*, 16th Oct., 1908, p. 107).

† This date was the 2nd Sept. 1908.

Act No. 32  
of 1908.

ACT NO. 32 OF 1908.]

[Came into operation 1st October, 1908

AN

# ACT

**To regulate the Closing Times of Shops and Hairdressing Saloons in Towns, Villages, and certain other places.**

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

Application  
of Act.

**1.** This Act shall apply to all areas under the jurisdiction of any Municipal Council, Village Council or Health Committee now or hereafter established for the control, management and local government of the same and to all places situate within a distance of five miles from the boundary of any such area.

Repeal of  
laws.

**2.** Section *four* of the Municipal Amending Ordinance 1906 and sub-sections (a) and (c) of Article *four* of Law No. 28 of 1896 in so far as those sub-sections relate to the selling on Sundays of medicines by apothecaries and druggists and of meat and fish by butchers and fishmongers shall be and are hereby repealed.

Inter-  
pretation of  
terms.

**3.** In this Act unless inconsistent with the context;

“auctioneer” shall have the meaning assigned to such term in the Revenue Licenses Ordinance 1905;

“chemist” and “druggist” shall mean a person in possession of a registration certificate entitling him to practice as a chemist and druggist under the Medical Dental and Pharmacy Ordinance 1904, or any amendment thereof;

“closed” in relation to a shop, shall mean closed against the admission of any person for the purpose of buying or obtaining goods or merchandise;

“Governor” shall mean the officer for the time being administering the government of this Colony acting by and with the advice and consent of the Executive Council thereof;

“hairdresser” or “hairdresser's assistant” shall mean a person who carries on, or who assists in carrying on the business of shaving, or cutting, or the dressing of hair of human beings for payment or other valuable consideration;

- “hawker” shall have the meaning assigned to such term in the Revenue Licenses Ordinance 1905 ;
- “Health Committee” shall mean a Committee constituted under and by virtue of the Epidemic Disease and Hospital Committees Ordinance 1905 or any amendment thereof ;
- “Municipal Council” shall mean the Council of a Municipality established under any law ;
- “open”, in relation to a shop, shall mean open for admission to a person for the purpose of selling or supplying to him in such shop any goods or merchandise ;
- “pedlar” shall have the meaning assigned to such term in the Revenue Licenses Ordinance 1905 ;
- “public holiday” shall mean any day prescribed as such by section *two* of the Public Holidays Ordinance 1903, or any day appointed as a public holiday under the provisions of section *three* of the said Ordinance ;
- “shop” shall mean any building, structure, room, market stall, tent, booth, vehicle or any place whatever if such building, structure, room, market stall, tent, booth, vehicle or other place be used for the sale therein, thereon, or therefrom of merchandise or goods or as a hairdressing saloon, but shall not include any premises licensed for the sale of intoxicating liquors under the provisions of the Liquor Licensing Ordinance 1902, or any amendment thereof ;
- “shop assistant” shall include a salesman and saleswoman, shopwalker and any other person engaged in any shop in or about the selling or supplying to customers of merchandise or goods or engaged in or about the preparation of the same for sale or supply in such shop ;
- “shopkeeper”, in relation to a shop, shall mean its owner or the representative for the time being of such owner in the business carried on in the shop ;
- “tobacconist” shall mean a person who sells or carries on business in tobacco, cigars, cigarettes, pipes and such goods as are by the general custom of trade usually sold in connection with the business of a tobacconist.

4. No shop in which any business (other than a business mentioned in section *six* or in the Schedule to this Act) is conducted within the Municipalities of Pretoria, Johannesburg, Boksburg, Germiston, Open time for shops in Pretoria and on Witwatersrand area.



**Act No. 32  
of 1908.**

Krugersdorp, Roodepoort-Maraisburg, Springs, and Benoni, and within a distance of five miles from the nearest boundary of any such municipality shall be permitted to remain open

(a) later than seven o'clock in the evening on Mondays, Tuesdays, Thursdays and Fridays ;

(b) later than one o'clock in the afternoon on Wednesdays ;

(c) later than nine o'clock in the evening on Saturdays ;

provided that shops in which wholesale trade is carried on exclusively shall be permitted to be open on Wednesdays till seven o'clock p.m. if they are closed not later than one o'clock p.m. on Saturdays.

Open time for shops in other areas.

\* 5. No shop in which any business (other than a business mentioned in section *six* or in the Schedule to this Act) is conducted in any Municipality or area under the jurisdiction of any Village Council or Health Committee (except the Municipalities and places specified in section *four*) or within a distance of five miles from the boundary of any such Municipality or area shall be permitted to remain open later than six o'clock in the evening on any day of the week except Saturday, on which day they shall be permitted to remain open not later than seven o'clock in the evening, unless Saturday be set apart as the day on which a half-holiday is to be observed in any particular Municipality. And all shops so situated as in this section mentioned shall observe one half-holiday in every week upon which they shall not be permitted to remain open later than one o'clock in the afternoon, such half-holiday to be observed in each individual place as shall be notified by the Governor in the *Gazette* after consultation with the Municipal Council, Village Council or Health Committee and the Chamber of Commerce or any other similar association (if any) in the particular town or village concerned, provided that on such day the closing hours prescribed for Wednesdays in the Schedule to this Act shall apply ; and provided further that in all towns or villages where Wednesday is not observed as a half-holiday the closing hours prescribed for Tuesdays in the Schedule to this Act shall apply to Wednesdays.

Exemptions.

~~6. The closing hours prescribed in this Act shall not apply to restaurants, tea-rooms (not being Asiatic tea-rooms) baker's shops, confectioner's shops, railway book-stalls, eating-houses (not being Kaffir eating-houses or Asiatic eating-houses) nor to any premises where no merchandise other than fresh milk or flowers is sold or offered for sale.~~

7. No shop in which is carried on any business mentioned in the first column of the Schedule to this Act shall be permitted to remain open later than the hours prescribed respectively for the several days in the second, third, fourth, fifth, sixth, seventh, and eighth columns of the said Schedule in respect of such business ; provided that in any shop where the business of a chemist or druggist is carried on, medical requirements may be supplied at any hour on weekdays Sundays and public holidays upon special call.

Special hours for closing certain shops.

**Act No. 32 of 1908.**

8. No shop (other than a shop which by Law No. 28 of 1896 or any amendment thereof may be open on Sundays) shall be permitted to be open on a public holiday, and no shop which by such Law or amendment thereof may be open on a Sunday shall be permitted to be open on a public holiday at any time other than the hours prescribed for it by such Law or amendment thereof ; provided that all shops shall, notwithstanding anything to the contrary in this Act or the Schedule contained, be permitted to be open on any day preceding a public holiday (not being a Sunday) up to but not later than the hours prescribed for closing on Saturdays for each particular class of trade or business.

Closing of shops on public holidays.

9. (1) Notwithstanding anything in this Act or the Schedule contained it shall be lawful to keep open any shop not later than the hour prescribed in respect of it for Saturday as the closing hour on any day between the twenty-second and thirty-first days of December, both days inclusive, provided any such day be not a public holiday ; provided further that on the twenty-fourth day of December (not being a Sunday or public holiday) shops shall be permitted to be open not later than eleven o'clock in the evening.

Saving as to certain days and circumstances.

(2) The sale of goods and merchandise to any person who has for the purpose of making a purchase entered a shop on any day on which it may be open, before the hour as in this Act or the Schedule prescribed as the latest hour for keeping open such shop on such day shall not be deemed to be a contravention of this Act, provided such sale shall be completed within a reasonable time (not exceeding half-an-hour) after such closing hour.

10. No auctioneer, pedlar, or hawker shall be permitted to carry on his trade or business on any public holiday or on any other day later than the hour prescribed as the closing hour in respect of the particular class of trade or business in which such auctioneer, pedlar, or hawker may be engaged or be doing business, and the provisions of this Act in

Limitation of hours for auctioneers, pedlars, and hawkers.

**Act No. 32  
of 1908.**

Sale in eating-houses, etc., after closing hours prohibited except as to food, etc., consumed on premises.

Closing hours of shops doing mixed business.

Limiting hours of shop assistants.

Penalties.

regard to the closing of shops shall *mutatis mutandis* apply to the closing of the business of auctioneers, pedlars, and hawkers.

~~11. After the general closing hours for shops prescribed in sections *four* and *five* no sale of goods or merchandise other than of food and drink to be consumed on the premises shall be permitted in any restaurant, tea-room, Asiatic tea-room, eating-house, Kaffir eating-house, Asiatic eating-house, or fruit shop.~~

12. No shopkeeper or hairdresser in whose shop any mixed trade or business is carried on, shall sell or supply or permit to be sold or supplied, any particular class of goods or merchandise at any hours later than those prescribed in this Act for trade in such goods or merchandise, notwithstanding that such shop may lawfully remain open at such later hours under this Act for the sale of any other class of goods or merchandise.

13. No shopkeeper shall employ or keep at work any shop assistant for more than fifty-four hours per week in any shop, whether such employment or work be under special contract or for any special payment or not.

14. (1) Any person contravening any of the provisions of this Act shall be liable on a first conviction to a fine not exceeding fifteen pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding one month, and in the case of a second or subsequent conviction to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

(2) In the event of any contravention of the provisions of this Act by a company, the managing director or person having the management or control of the shop in which the contravention was committed shall be liable to the penalties provided therefor, and in the event of any such contravention by a partnership each partner shall be liable to the penalties provided therefor.

(3) Every shopkeeper or hairdresser shall be liable to the penalties prescribed for a contravention of any of the provisions of this Act committed in his shop or hairdressing saloon, whether or not he was present and expressly or impliedly permitted such contravention, unless he shall prove to the satisfaction of the Court that he forbade the act or omission constituting such contravention, and every other person who at the time of such contravention was actually in charge of such shop shall be liable

to such penalties; provided that both the shopkeeper or hairdresser and such other person shall not be subjected to such penalties.

15. No prosecution for any contravention of any of the provisions of this Act shall be instituted after the lapse of one month from the time when such contravention was committed.

16. This Act may be cited for all purposes as the Shop Hours Act 1908 and shall come into operation on the first day of October 1908.

Limitation of time for prosecution of offences against Act.  
Title and date of operation of Act.

## SCHEDULE.

BUSINESS.	Monday.	Tuesday.	Wednesday.	Thursday.	Friday.	Saturday.	Sunday.
Chemist and Druggist } not later than ...	8 p.m.	8 p.m.	1 p.m., and between 7 p.m. and 8 p.m.	8 p.m.	8 p.m.	9 p.m.	10 a.m. to 12 noon, 5.30 p.m. to 7.30 p.m.
Butcher Fishmonger Poulterer } not later than ...	7 p.m.	7 p.m.	1 p.m.	7 p.m.	7 p.m.	9 p.m.	Not to open.
Vegetable-monger Fruiterer } not later than ...	10 p.m.	10 p.m.	1 p.m.	10 p.m.	10 p.m.	10 p.m.	Not later than 9 a.m.
Hairdresser, not later than ...	7 p.m.	7 p.m.	2 p.m.	7 p.m.	7 p.m.	9 p.m.	Not to open.
Tobacconist, not later than ...	8 p.m.	8 p.m.	2 p.m.	8 p.m.	8 p.m.	10 p.m.	Not to open.
Newspaper Vendor, not later than ...	8 p.m.	8 p.m.	2 p.m.	8 p.m.	8 p.m.	10 p.m.	Not to open.
Asiatic tea-room or eating-house, or Kaffir eating-house } not later than ...	8 p.m.	8 p.m.	8 p.m.	8 p.m.	8 p.m.	8 p.m.	Not later than 8 p.m.

Act No. 33  
of 1908.

ACT No. 33 OF 1908.] [Came into operation 2nd Sept., 1908.

AN  
ACT

To provide for the Admission of Law Agents as Attorneys  
of the Supreme Court.

(Assented to 22nd August, 1908.)

WHEREAS certain persons were after examination admitted to practise as law agents in the courts of landdrost of the late South African Republic and such persons have been eligible for admission and enrolment as law agents in courts of resident magistrates in this Colony;

And whereas the further admission of law agents to practise in the courts of resident magistrate in this Colony has been discontinued and it is desirable to provide facilities for the enrolment after examination of such law agents as attorneys of the Supreme Court of The Transvaal;

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

Law agents  
may be  
admitted as  
attorneys on  
passing an  
examination  
in law.

1. At any time within four years from the date of the taking effect of this Act any person who has been enrolled and admitted to practise as an admitted law agent in any of the Courts of The Transvaal and who is not under any order of suspension and whose name is not removed from the roll for misconduct or irregular practices shall on application to the Supreme Court be admitted as an attorney of the Supreme Court; provided that he gives satisfactory proof that he has passed the examination in law and jurisprudence of the University of the Cape of Good Hope or any examination of the Orange River Colony or of the late Orange Free State for the admission of attorneys or the Transvaal Law Certificate Examination or such special examination in law as is hereinafter described.

Special  
examination  
in law  
for law agents  
to be held  
every six  
months for  
four years.

\* 2. Within three months after the date of the taking effect of this Act and thereafter at intervals of not more than six months within the said period of four years if an application be made to the Registrar of the Supreme Court by any admitted law agent desirous of qualifying under this Act for admission as an attorney there shall be held for that purpose at Pretoria a special examination in law by three examiners of whom two shall be appointed by the Chief Justice of The Transvaal and the third by the Council of the Incorporated Law Society of The

Transvaal and each candidate at such examination shall pay such fees to the said Registrar to defray the expense of holding the same as may be fixed by the said Chief Justice.

**Act No. 33  
of 1908.**

3. The said special examination shall be equivalent to the Transvaal Law Certificate Examination and shall as far as possible be a practical examination and such as will in the opinion of the examiners best test the fitness of the candidates for admission to the practice of the profession of attorney.

Special examination for law agents to be equivalent to Transvaal Law Certificate Examination.

4. This Act may be cited for all purposes as the Admission of Law Agents as Attorneys Act 1908.

Title.

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ACT NO. 34 OF 1908.] [See section 73 as to date of operation.

AN  
**ACT**

**Act No. 34  
of 1908.**

**To amend the Townships Act 1907, to provide for the establishment of New Townships on Proclaimed Land and in Municipalities, and to effect conversion of title in certain township lots to freehold.**

*(Assented to 22nd August, 1908.)*

**BE IT ENACTED** by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

**PRELIMINARY.**

1. (1) In this Act unless inconsistent with the context or with the principal law; Interpretation of terms.
- “ commencement of this Act ” shall mean the date of the coming into operation of this Act ;
- “ Council ” shall mean the Council of the Municipality within which any township is situate ;
- “ Crown Land ” shall have the same meaning as is assigned to that expression in the Crown Land Disposal Ordinance, 1903 ;
- “ Mining Commissioner ” shall mean in relation to any township the Mining Commissioner for the mining district in which such township is situate ;

**Act No. 34  
of 1908.**

“ mining district ” shall have the same meaning as is assigned to it in the Precious and Base Metals Act 1908 and, when used in relation to any township or a stand or lot in a township, shall mean the mining district in which the same is situate ;

“ Municipality ” shall mean, in relation to a township, the Municipality within which such township is situate ;

“ principal law ” shall mean the Townships Act 1907 ;

“ proclaimed land ” shall have the same meaning as is assigned to that term in the Precious and Base Metals Act 1908, or any amendment thereof ; and shall also include land proclaimed an alluvial digging under the Precious Stones Ordinance 1903 or any amendment thereof ;

“ Schedule ” shall mean Schedule to this Act ;

“ stand ” shall include a portion of a stand held under separate title ;

“ stand township ” shall mean any township mentioned in the First Schedule to this Act ;

“ *voorkeurrecht* title ” shall include any transfer of such title ;

the expression “ Law No. 15 of 1898 ” shall include any amendment thereof expressed or implied by the Registration of Mining Rights Proclamation 1902, Ordinance No. 6 of 1902 and Ordinance No. 6 of 1903.

(2) Save as may in this Act otherwise appear from the context, any expression defined in and for the purposes of the principal law and used also in this Act, shall, when so used, bear the same meaning as is assigned to it in the principal law.

(3) “ Deeds Office ” and “ Registrar of Deeds ” in the principal law except in section *three* thereof shall be construed for the purposes of this Act as meaning respectively the registration office in which titles affecting land in townships are registered under this Act and the registering officer under this Act.

Application  
of Act.

**2.** (1) The provisions of section *fourteen* of the principal law shall be and are hereby amended by

the deletion of sub-section (1) and paragraph (c) of sub-section (2) thereof.

(2) The provisions of section *twelve* of the principal law shall apply to any township for which a local authority is constituted, if and so long as such local authority has no power to levy assessment rates on land therein.

(3) After the commencement of this Act no township shall be established except in accordance with the provisions of the principal law as amended by this Act.

3. (1) The provisions of Law No. 15 of 1898 which were in force on the day immediately preceding the commencement of this Act, save in so far as they are expressly amended, with regard to stands in stand townships, shall notwithstanding the repeal of such law be deemed to remain in force in regard to every such stand until a certificate of freehold title or deed of grant is issued in respect thereof under Part II of Chapter III of this Act, and the administration of and control over every such stand shall, until the issue of the said certificate, continue to be exercised by the Mining Commissioner or other officer in manner provided by the said law.

Certain provisions of Law No. 15 of 1898 as to stands in stand townships to remain in force for certain purposes.

(2) Nothing in this section contained shall subject the Government of this Colony to any provision of the said law with regard to the disposal of stands in stand townships on Crown Land if the *voorkeurrecht* or leasehold title thereto has not been sold or disposed of, or has lapsed to the Government.

(3) Nothing in this section contained shall prevent the Governor from disposing of any stand in a stand township under the provisions of the Crown Land Disposal Ordinance 1903 or any amendment thereof, and where prior to the commencement of this Act any such stand has been so disposed of, the grant of such stand shall be deemed to be valid for all purposes if registered as is by this Act or any other law provided.

(4) Where prior to the commencement of this Act a stand or the use of a stand in a Government township has been granted to any religious, educational, charitable, or benevolent body, subject to any conditions, the Governor may issue to such body a deed of grant of



**Act No. 34  
of 1908.**

Validation of existing townships and registration of lots and stands therein.

freehold title to such stand, and may, upon the request of such body, remove, annul, alter or amend any such conditions.

~~4. Notwithstanding any law or practice heretofore in force, every registration of transfers, leases, transfers and cessions of leases, and other documents affecting lots in townships which are situated within fields or diggings proclaimed as such under Law No. 15 of 1898 or any prior law relating to the mining of precious metals, but which have not been specifically approved by the Government or by the Government of the South African Republic and in which any such registration has been effected since the sixth day of June, 1902, shall be deemed to be as valid as if such township had been so approved, whether such registration shall have taken place in the Deeds Office or in the Registration of Mining Rights Office or in the office of any District Registrar of Mining Rights or Mining Commissioner, and all townships laid out by the Government or which have, by the registration after the said date in any registering office of transfers or leases of stands or lots therein, been approved or recognised by the Government shall be deemed to have been lawfully established.~~

**CHAPTER I.****ESTABLISHMENT OF NEW TOWNSHIPS ON PUBLIC DIGGINGS AND IN MUNICIPALITIES.**

Establishment of townships on proclaimed land.

5. (1) Save as in this section is provided, no township may be established or laid out on any proclaimed land unless such land has been reserved by the Mining Commissioner for such purpose, and every Mining Commissioner is hereby authorised to reserve for township purposes proclaimed land, not held under mining title subject to confirmation by the Minister of Mines.

(2) The Governor may, whenever it is necessary in the public interest, cause a township to be established upon any proclaimed land not held under mining title.

(3) The Governor may under like circumstances cause a township to be established on land held under mining title, if, in the opinion of the Minister of Mines, no interference would thereby be caused to mining.

(4) Where the proclaimed land, upon which the Governor may cause a township to be established, is private land—

(a) the Mining Commissioner shall consult the owner thereof (if possible) and if such land be held under mining title the holder thereof also (if possible);

(b) thereupon the Mining Commissioner shall give the said owner written notice requiring him to make application in respect of such area as may be specified by the Mining Commissioner under section *five* of the principal law, which law shall *mutatis mutandis* apply. If the said owner fail within three months after receiving such notice to make such application, or, having made such application, fails to carry out the requirements of sections *five*, *seven*, and *eight* of the principal law, the Mining Commissioner shall, after the expiry of the said period, make such application and carry out such requirements;

(c) if such township has been declared an approved township under section *seven* of the principal law, the owner may be required to sell any or all of the lots therein in manner and subject to conditions approved by the Governor; and if such owner fails so to do, the Governor may cause the freehold interest in such lots to be sold at public auction by the Mining Commissioner; whereupon the purchase price of every lot sold at such auction shall be paid to the owner after deducting the costs of survey, sale, and registration which have necessarily been incurred by the Mining Commissioner prior to such sale.

(5) The freehold interest in any lots in such township shall not include the right to minerals, mineral products, or precious stones thereon or thereunder.

6. (1) Subject to the provisions of the last preceding section the owner of land situate within a Municipality who proposes to establish a township thereon, shall make application to the Minister under the provisions of section *five* of the principal law and the provisions of that and the next

Establish  
ment of  
townships  
within a  
Municipality

**Act No. 34  
of 1908.**

succeeding section shall thereupon apply, except that the board, before making recommendations to the Minister under section *six* of the principal law, shall transmit the application with all particulars obtained by it to the Council of the Municipality. The Council shall transmit to the Board information as to the requirements of the Council's bye-laws and the Board shall embody those requirements in its recommendations to the Minister but shall note those of the Council's requirements of which the Board does not approve.

(2) Notwithstanding that any requirement of the Council so recommended to the Minister is in accordance with the Council's bye-laws, the Minister may, if he think fit, modify any or all of the said requirements and declare the township to be an approved township with or without such modifications; in such event the Council shall have no remedy or right of prosecution under its bye-laws against the owner for any breach of its bye-laws if the modified requirements permit of such breach.

(3) Upon and after making application under section *five* of the principal law the owner shall not be required to comply with the provisions of any bye-law in force within the Municipality regulating the giving of notice and the deposit of plans in connection with the laying out of new townships.

Where  
Council of  
Municipality  
desires to  
establish  
township on  
lands vested  
in it.

7. Subject to the provisions of section *five* and notwithstanding anything in any law contained relating to the alienation by any Council of land or immovable property vested in it, a Council which desires to establish a township on lands vested in it, shall make application under section *five* of the principal law and thereupon such application shall be treated *mutatis mutandis* as made under the provisions of that law; provided that no reserves shall be made as by sub-section (1) (b) and sub-section (1) (c) of section *eight* of the principal law provided; provided further that the streets, squares and open spaces shown on the general plan mentioned in section *seven* of the principal law shall be deemed to be appropriated and set apart by proper authority for the use of the public when the township has been declared an approved township under section *seven* of the principal law.

## CHAPTER II.

Act No. 34  
of 1908.CONVERSION OF VOORKEURRECHT AND LEASEHOLD  
TITLE TO FREEHOLD TITLE.

## PART I.

*General Conversion Provisions.*

8. In this Chapter and in Chapter III the following expressions shall have the meanings herein respectively assigned to them:—

Inter-  
pretation of  
terms and  
expressions  
used in this  
Chapter and  
Chapter III.

“Government township” shall mean a township situated on Crown Land and laid out under the provisions of Law No. 15 of 1898 or of any prior law, by the authority and on behalf of the Governor or of the Government of the late South African Republic ;

“private leasehold township” shall mean a township—

(a) in which lots have been sold in leasehold ; and

(b) in respect of which the Government receives no share of stand license moneys ; and

(c) which is situate on land whereof the freehold is vested in some person other than the Crown or on Crown Land held under lease by such person ; and

(d) which has been laid out under contract or agreement with the Government or with the Government of the late South African Republic, or the existence whereof has been recognised by the Government by the registration after the sixth day of June, 1902, of leases and transfers of leases of lots therein ;

“semi-Government township” shall mean any such township as is defined as a private leasehold township, laid out under the provisions of Law No. 15 of 1898 or of any prior law, but in which the Government receives or has been receiving some share or interest in the stand license moneys or some fixed payment from the township owner under an agreement with him ;

Act No. 34  
of 1908.

“private freehold township” shall mean a township on land whereof the freehold is vested in some person other than the Crown, situated in the mining district of Johannesburg, or of Krugersdorp or of Boksburg, if lots therein have been sold in freehold only;

“township owner” shall mean:—

(a) any person other than the Crown who is the owner of the freehold of the land on which a township is situate and who has sold or leased lots therein; or

(b) any person who, not being the owner of such freehold, has acquired directly or indirectly from the owner of the freehold, the right to issue leases of stands or lots in such township and who has sold or leased lots therein;

“freehold owner” shall mean the owner of the freehold of any land (other than Crown Land) upon which a township is situated;

“registered holder” shall mean any person for the time being registered under the provisions of Law No. 15 of 1898 as the owner of any stand or lot in a township, or registered under a lease granted by a township owner; and shall include any person who has entered into an agreement with the township owner for the purchase of the lease of any stand or lot;

“registered owner” shall mean a registered holder who has acquired under this Act the freehold of the stand or lot registered in his name;

“purchaser” shall mean any person

(a) who either before or after the commencement of this Act has agreed with a township owner for the purchase of the freehold of any stand or lot in either a semi-Government township, a private leasehold township, or a private freehold township without having previously purchased a leasehold interest in such stand or lot; and

(b) who has not before the commencement of this Act received a transfer of such stand or lot in freehold;

“registering officer” shall, with respect to townships and stands or lots therein situate in the mining districts of Johannesburg, Krugersdorp or Boksburg, mean the officer appointed under Chapter III Part I of this Act to register the freehold title to all stands or lots in townships situate within the said mining districts; and, with regard to townships situate elsewhere in this Colony, shall mean the Registrar of Deeds;

“value” as applied to a stand or lot shall mean (a) the value of such stand or lot (exclusive of any buildings thereon) fixed as at the thirtieth day of June 1908 by the valuation roll of the Municipality in which it is situate; or

(b) if no such valuation roll is in existence the valuation of stands or lots exclusive of buildings which the Governor has caused or may after the commencement of this Act cause to be made;

“diagram” and “general plan” shall in each case mean a “diagram” or (as the case may be) a “general plan” prepared by a person lawfully admitted to practise as a landsurveyor in this Colony, and approved by the Surveyor-General without publication;

“confirmed diagram” and “confirmed general plan” shall mean a diagram or a general plan (as the case may be) confirmed by the Surveyor-General after notice of confirmation has been published for four consecutive weeks in the *Gazette*.

*Government Townships and semi-Government Townships.*

9. (1) From and after the commencement of this Act the stand license moneys payable on any stand in a Government township before the commencement of the Act shall continue to be payable, but the registered holder shall have the right subject to the provisions of this Act to obtain a freehold title thereto in manner provided by this Act either—

Conditions on which freehold title may be obtained in existing Government townships.

(a) on payment, of the sum calculated as shown in Table “A” of the Second Schedule to this Act; or,

Act No. 34  
of 1908.

(b) after having paid stand license moneys accruing after the commencement of this Act in respect of such stand for the number of months shewn in Table "B" of the said Schedule.

(2) If such stand license moneys are paid for a part of the time fixed by Table "B" of the Second Schedule, the registered holder shall at any time, be entitled to pay the balance of the sum as fixed by Table "A" after deducting the sums paid under Table "B."

(3) If stand license moneys are not paid when due upon any such stand the provisions of article *one hundred and four* of Law No. 15 of 1898 shall apply whether such stand is or is not a specially registered stand under the said law, and notwithstanding the repeal of the said law.

(4) Any stand sold under the provisions of sub-section (3) shall be sold in freehold and the balance of the proceeds of sale shall, after deducting the arrear and extra stand license moneys and the sums payable and remaining unpaid under this section together with fines and expenses, be paid to the last registered holder of the stand unless there be a bond thereon: in such case so much of the balance shall be paid to the bondholder as may appear to be due to him.

Conditions under which payment of Government's share of stand license moneys may be liquidated in semi-Government townships.

10. (1) Notwithstanding anything in any lease or other contract contained, the registered holder of a stand in a semi-Government township shall be required to pay in respect of the share of stand license moneys on the stand which may become due to the Government after the commencement of this Act, such amount only as is provided by sub-section (2), and the amount payable to the Government by the township owner, or the amount which the Government is entitled to retain in cases where stand license moneys are collected by the Government, shall be diminished accordingly.

(2) The payment required under this section shall be as set forth in the Second Schedule that is to say—

(a) either the sum calculated as shewn in Table "A" of such Schedule; or

(b) stand license moneys for the number of months shown in Table "B" of such Schedule.

11. In semi-Government townships, where the Government receives a fixed annual payment and not a specified portion of the stand license moneys, the Government may remit such payment if the township owner offers to grant freehold on terms approved by the Governor.

Remission of payments due to Government in certain cases.

12. (1) The registered holder of any stand in a semi-Government township may agree with the township owner for the purchase of the freehold of such stand in the manner and subject to the conditions provided by section *fifteen* or section *sixteen* as if such township owner were the owner of a private leasehold township, and, on payment of the sum agreed upon with the township owner together with the sum fixed in section *ten*, the registered holder shall receive a freehold title to the land comprised in the said stand in the manner and subject to the conditions hereinafter provided.

Conditions for registered holder in semi-Government township obtaining freehold title.

(2) If the stand license moneys in such semi-Government township are payable to the Government, the purchase price shall also be payable to the Government, and the Registering Officer shall issue receipts for all payments made by the registered holder.

13. (1) That portion of the farm Doornfontein No. 140, District Witwatersrand, commonly known as "Fairview" and "Johannesburg Extension", otherwise "Fawcus Township", bounded on the north by the township of Troyeville, on the east by the township of Malvern, and on the south by the township of Jeppestown, and being the land leased to one George Edward Fawcus by Frederick Jacobus Bezuidenhout senior by deed of lease dated the eighth day of March 1889, registered under No. 242 of 1903 and consisting of twenty-three morgen five hundred and eighteen square roods according to diagram S.G. No. 1740/03 framed by Surveyor E. W. Ferguson in July 1896 shall, for the purposes of this Act be deemed to be a semi-Government township under the name of "Fairview" and one Margaret Henrietta Fawcus, the assignee of such lease from the said George Edward Fawcus, shall, for the purposes of this Act, be deemed to be the township owner of the said township of Fairview.

Creation of semi-Government township at Fairview and extension of semi-Government township at Roodepoort.



**Act No. 34  
of 1908.**

(2) The portions of the farm Roodepoort No. 43, District Witwatersrand, which are included within the boundaries of the township of Roodepoort and held as stands under article *ninety-two* of Law No. 15 of 1898 shall, for the purposes of this Act, be deemed a part of the said township of Roodepoort.

(3) Until conversion into freehold of any stand to be incorporated into a semi-Government township under this section, has taken place, nothing in this section contained shall affect the title of such stand or the conditions upon which such stand is held.

Application  
of payments to  
Government.

14. All payments made in respect of stands in a Government township, or the Government's share of stand license moneys in a semi-Government township, if the township be situate within a Municipality, shall be paid into a special account, and shall be set aside by the Colonial Treasurer for the Council of such Municipality for the purpose of such capital expenditure by such Council as the Governor may approve; provided that to moneys so set aside for the Council of the Municipality of Johannesburg there shall be added any sums by way of deposits forfeited under section *twenty-nine*; and provided further that, from the moneys so set aside for such Council, the Colonial Treasurer shall cause to be deducted the expenses of the survey of Government townships on the Government farm Randjeslaagte No. 138 and on the Government portions of the farm Braamfontein No. 127, District Witwatersrand, together with the expenses of the Arbitration Board appointed under section *twenty-eight*; that is to say, the remuneration paid to the members of such Board and other expenses incidental to the exercise by such Board of the duties assigned to it by the said section.

*Private Leasehold Townships.*

Mode of  
obtaining  
freehold  
in private  
leasehold  
townships.

15. (1) Where a registered holder of a lot in any private leasehold township whereof the township owner is the owner of the unencumbered freehold, agrees or has agreed with the township owner for the purchase of the freehold of such lot and makes, or has heretofore made, payment on account thereof, the township owner shall lodge with the

registering officer a duplicate copy of such agreement signed by the parties, unless the said agreement is embodied in the deed of lease registered in the office of the registering officer.

(2) The township owner shall also furnish the registered holder with a receipt in duplicate in the form set forth in the Third Schedule for all payments heretofore or hereafter made in respect of such agreement.

(3) It shall thereupon be the duty of the registered holder to lodge one copy of such receipt with the registering officer who shall note the payment in a suitable register. Any payment so made and duly noted by the registering officer shall be binding on any subsequent purchaser of the township or any creditor of the township owner.

(4) Upon the lodging of a receipt for the payment in full of the purchase price and upon the surrender by the registered holder of the leases of the said lot, the registered holder shall have the right to obtain a freehold title to the said lot in the manner and subject to the conditions by Chapter III provided. It shall also be the duty of the township owner to lodge his copy of the lease with the registering officer for cancellation.

16. Where a registered holder of a lot in a leasehold township of which the township owner is not the freehold owner, or in which there exists a bond or other encumbrance over or on the land comprised in the township, has entered into an agreement with the township owner for the purchase of the freehold of a lot and the township owner has also entered into an agreement with the freehold owner or the mortgagee or other encumbrancer (if any), as the case may be, by which the parties thereto agree that freehold of lots in the township may be granted free of all encumbrances or subject to such encumbrances as the said parties may agree it shall be the duty of the township owner to lodge notarially certified copies of the said agreements with the registering officer. The said agreements shall specify a person to whom the payments due from the registered holder are to be made and such person may be the registering officer, and thereupon all payments made by the registered holder to such person shall be binding

Mode of obtaining freehold by agreement, in case of private leasehold townships where the township is not the owner of the unencumbered freehold.

**Act No. 34  
of 1908.**

Collection of license money or rent by registering officer on behalf of township owner.

on all the said parties and their creditors and successors in title. The provisions of sub-sections (2) (3) and (4) of the last preceding section shall apply to lots falling within the provisions of this section.

17. (1) It shall be lawful at any time after the commencement of this Act for any township owner who has offered freehold to registered holders upon terms approved by the Governor, to make written application to the registering officer requesting him to collect, on behalf of the applicant, all stand license moneys or rent due or to become due in respect of stands or lots in such township and all instalments of purchase price due or to become due in respect of the purchase of the freehold of any such stands or lots, and, upon such application, and upon being furnished with all such leases and registers of leases or other title and all books of account showing the sums payable upon each stand or lot in the township as the registering officer may require, such registering officer shall on behalf of such township owner collect such stand license moneys rents or instalments and shall transmit to him the amounts collected either quarterly or half-yearly at the option of such township owner and without making any charge therefor.

(2) If any such stand license moneys, rents, or instalments in respect of any stand are in arrear for a period of six months or for such longer period fixed by any lease or other agreement as the period at the expiry of which the lease may be cancelled owing to non-payment of license moneys the registering officer shall deal with such stand in accordance with the provisions of sub-section (3) of section *nine*; provided that, one month before so dealing with such stand, the registering officer shall serve written notice on the registered holder or purchaser in default, and on the mortgagee of such stand of his intention so to do.

(3) The balance of the proceeds of such sale after deducting arrears of rent or stand license moneys, the costs of sale incurred by the registering officer together with any unpaid purchase money and interest thereon (which term shall be deemed to include the amount for which

freehold is obtainable under any agreement filed under this Act or under any statement mentioned in section *nineteen*) shall be paid to the registered holder who has made default, unless there exists a bond upon the stand or lot in which case so much of the balance shall be paid to the bondholder or bondholders as appears to be due to him or them.

18. (1) Whenever the township owner has not availed himself of the provisions of sub-section (1) of the last preceding section, in the case of a private leasehold township or semi-Government township the owner whereof offers freehold to the registered holder upon terms approved by the Governor, then, if the stand license moneys, monthly rentals or instalments of purchase price together with interest (if any) thereon in respect of a stand in any such township, are in arrear for six months, or for such longer period as is mentioned in sub-section (2) of the last preceding section the township owner may lodge with the registering officer a solemn declaration, in the form in the Fourth Schedule, stating that the stand license moneys, monthly rentals, or instalments (as the case may be), are in arrear for the said period.

Procedure where license moneys are in arrear.

(2) The provisions of sub-sections (2) and (3) of the last preceding section shall *mutatis mutandis* apply as soon as the township owner has lodged such declaration.

19. Any township owner who desires to avail himself of the provisions of either of the last two sections, shall lodge with the registering officer a statement of the terms upon which registered holders may obtain freehold. If such terms are approved by the Governor, a notice shall be published by the registering officer in the *Gazette* and in a newspaper circulating in the locality, and thereafter any registered holder in the said township may obtain freehold upon the terms contained in the said statement, without entering into any other or further agreement; provided that nothing in this section contained shall affect any agreement entered into before the commencement of this Act between the township owner and the registered holder, or be construed as preventing the township owner and registered holder from entering into any agreement for the purchase or sale of freehold upon such other terms as the parties to the agreement may see fit.

Conditions of obtaining benefit of section *seventeen* or *eighteen*.

Act No. 34  
of 1908.*General Conversion Provisions.*

Prohibition of  
sale of stands  
except in  
freehold.

**20.** (1) After the commencement of this Act no stands in semi-Government townships or lots in private freehold or leasehold townships shall be sold by a township owner except in freehold; provided that nothing in this section contained shall be deemed to prevent the registered holder, registered owner or purchaser (as the case may be) of a stand or lot in any such township who is not the township owner from leasing or transferring the lease of any stand or lot for such period as such holder, owner, or purchaser may see fit; provided further that this section shall not apply in respect of stands or lots in a semi-Government township or private leasehold township if the township owner was not on the fifteenth day of July 1908 the owner of the unencumbered freehold and has not entered into such agreements as are mentioned in section *sixteen* or other like agreements by which the township owner has at the said date been enabled to sell such stands in freehold.

(2) In semi-Government townships no agreement heretofore made between the township owner and the Government shall be deemed to prevent the township owner from selling in freehold stands therein if the leasehold interest therein has not been disposed of.

(3) Nothing in this section contained shall be construed as prohibiting the registration of the lease of any stand or lot a contract for which lease either written or verbal has been entered into before the commencement of this Act and particulars of which are lodged with the registering officer within one month after such commencement.

Receipts  
where  
payments  
made to  
Mining  
Commis-  
sioner.

**21.** In the case of townships where payments of the sums provided by this Act have been made to a Mining Commissioner who is not a registering officer for the district, receipts in duplicate shall be issued by such Mining Commissioner, and it shall be the duty of the registered holder to lodge one copy thereof with the registering officer.

## PART II.

Act No. 34  
of 1908.SPECIAL PROVISIONS APPLICABLE TO CERTAIN  
AREAS IN THE MINING DISTRICT OF JOHANNESBURG.

**22.** (1) Part II of this Chapter shall be applicable to the several portions of the mining district of Johannesburg therein specially described and to those portions exclusively.

Application of Part II of this Chapter and division of such Part.

(2) Such Part is arranged in the following divisions according to the provisions made applicable to each such portion of the said mining districts, that is to say :—

(A) Surveys of Government townships on the Government farm Randjeslaagte and the Government portions of the farm Braamfontein ;

(B) Township of Burgersdorp ;

(C) Township of Vrededorp ;

(D) Prospect Township ;

(E) Township of Newtown.

(A) *Surveys.*

**23.** (1) As soon as may be after the commencement of this Act the Surveyor-General shall cause surveys to be made of every Government township on the Government farm Randjeslaagte No. 138 and the Government portions of the farm Braamfontein No. 127 District Witwatersrand in respect of which no approved or confirmed general plan exists, and shall cause a general plan of every such township to be lodged with the registering officer.

Framing and lodging of general plans in respect of townships on Randjeslaagte and Government portions of Braamfontein.

(2) For such purpose the Surveyor-General shall give not less than fourteen days' notice in the *Gazette* and in a newspaper circulating in the mining district, of the date on which and hour at which the survey of any such township will be commenced, the section of any part of such township where the survey will be commenced, and the name of the person (being a duly admitted land surveyor) who will commence the survey.

(3) The Surveyor-General shall further cause not less than eight days written notice to be given to every registered holder of a stand or lot in such township of the date and hour at which the said land surveyor will attend to point out the boundaries of his stand or lot and such land surveyor.

**Act No. 34  
of 1908.**

shall do all things necessary and possible to point out to each such holder the boundaries of his stand or lot.

(4) For the purposes of a survey under this section and the succeeding sections, such land surveyor may at all reasonable hours enter upon any land or buildings and do all things necessary therein or thereon for the purpose of carrying out his duties under the said sections.

Manner of fixing and marking boundaries of stands and lots.

**24.** (1) In the case of unoccupied blocks of stands or lots the surveyor shall fix and mark the boundaries thereof as nearly as may be in accordance with the existing plan of the township; and in the event of the survey disclosing a surplus or deficiency of land as compared with the existing plan, such surplus or deficiency (as the case may be) shall be allocated in equal proportions to all the stands or lots.

(2) In the case of stands or lots on which exist at the commencement of this Act substantial buildings, the walls whereof at such commencement were by repute the boundaries of the stands or lots, the surveyor shall fix the boundaries between the stands or lots accordingly; provided that, if any such building encroaches more than six inches upon an adjoining stand or lot, compensation shall be paid to the registered holder thereof, the amount of such compensation, if not mutually agreed upon by the registered holders concerned, being determined by the Arbitration Board constituted under section *twenty-eight*; provided further that if any such building encroaches upon a public street, square, open space, or side-walk, the Council of the Municipality of Johannesburg may make application to the said Board for an order for the removal of the encroachment or portion thereof and the said Board shall make such order thereon as to it may seem just, except that it shall in no case order compensation to be paid to the Council in respect of any such encroachment.

Boundaries fixed by surveyor to be deemed true boundaries unless appeal lodged to Arbitration Board.

**25.** (1) After the provisions of section *twenty-three* have been complied with, the surveyor shall, where possible, demarcate all boundaries of a stand or lot fixed by him as aforesaid and thereupon such boundaries shall be true boundaries, for the purposes of this Chapter, of such stand or lot, unless

the registered holder thereof after its boundaries have been pointed out as aforesaid shall within twenty-one days lodge with the surveyor and serve upon the registered holder of any adjoining stand or lot a notice of appeal to the said Arbitration Board.

(2) Upon receipt of such notice the surveyor shall forthwith transmit the same to the said Arbitration Board.

**26.** (1) The registered holders of two or more adjoining stands or lots may agree in writing as to the situation of the boundaries thereof.

Agreement between holders of adjoining stands or lots as to boundaries thereof.

(2) Any such agreement may be lodged at the office of the Surveyor-General who, if satisfied that the agreement has been executed by or on behalf of the parties between whom it purports to have been made, and that the agreement purports to determine the boundaries of adjoining stands so as to correspond as nearly as possible to the boundaries demarcated by the surveyor under the last preceding section, shall file the same in his office and thereupon the boundaries so agreed upon shall be deemed to be the true boundaries for the purposes of this Chapter.

(3) The Surveyor-General shall transmit a copy of any such agreement which has under subsection (2) been lodged at his office to the surveyor charged with the fixing of the boundaries of such stands or lots.

**27.** (1) As soon as possible after any appeal disputing the accuracy of the boundaries of any stand or lot demarcated as aforesaid has been determined by the said Board, or if there be no such appeal, as soon as possible after the expiry of the period prescribed by section *twenty-five*, the surveyor shall lodge at the Surveyor-General's office a general plan of the township showing the boundaries of each stand or lot therein.

Diagram to be lodged and to be indisputable when published by the Surveyor-General for confirmation.

(2) After confirmation of such general plan by the Surveyor-General the same shall be indisputable and the boundaries shown thereon shall be the true boundaries of any stand or lot represented on the general plan.

**28.** (1) The Governor may, from time to time, whenever it may be necessary for the purposes of this Act, appoint an Arbitration Board consisting of three persons one of whom shall be

Constitution powers and jurisdiction of Arbitration Board.



**Act No. 34  
of 1908.**

an advocate of the Supreme Court and chairman of the Board and at least one of the remaining members shall be a duly admitted land surveyor.

(2) The said Board shall have jurisdiction to hear and determine the amount of compensation payable under section *twenty-four* in respect of any encroachment of substantial buildings upon an adjoining stand or lot.

(3) The said Board shall further have jurisdiction to hear and determine any appeal of which notice has been given under section *twenty-five*.

(4) The said Board shall for the purpose of exercising its jurisdiction have all the powers, jurisdiction, and privileges mentioned in the Commissions Powers Ordinance 1902 as if it were such Commission as is mentioned in section *five* thereof.

(5) Every decision of the said Board shall be final and conclusive of the matter in dispute; provided that any award of compensation made by it may, upon motion by any party after due notice to the other parties, be made a rule of Court and enforced in the same manner as a judgment or order to the same effect of the Supreme Court is enforceable.

(6) A copy of every decision of the said Board as to boundaries shall be lodged with the Surveyor-General as soon as the same is made.

Procedure  
before the  
Board.

**29.** (1) Any person having an interest in any matter which may be heard by the Board may appear before it in person or by any agent nominated by him in writing.

(2) No such claim for compensation as is mentioned in section *twenty-four* and no such appeal as is mentioned in section *twenty-five* shall be entertained by the Board unless there be deposited simultaneously with the claim or notice of appeal the sum of twenty-five pounds.

(3) If the claim or appeal be sustained, the deposit shall be returned to the appellant.

(4) If the claim or appeal be dismissed, the Board may order that so much of the deposit be paid to any successful respondent as will reimburse him for any reasonable expenditure to which he may have been put, in appearing

before it on the claim or appeal, and the remainder (if any) refunded to the claimant or appellant; provided that, in the event of the claim or appeal being held by the Board to be frivolous, it may order any portion of the deposit which remains, after reimbursing the respondent as aforesaid, to be forfeited to the Treasury. Any such forfeited deposit shall be applied by the Colonial Treasurer in manner provided by section *fourteen*.

**30.** Upon survey under the provisions of this part of this Chapter, the area disclosed by such survey of any stand or lot and marked or indicated as the area of such stand or lot on such confirmed general plan aforesaid shall be the area in respect of which a certificate of freehold title may be granted notwithstanding that such area does not correspond with the area in respect of which the registered holder held his *voorkeurrecht* or leasehold title to such stand or lot.

Surveyed area of stand or lot to be the area on which title is granted.

(B) *Township of Burgersdorp.*

**31.** A registered holder of stands in the township of Burgersdorp held under the same conditions as those upon which stands in the township of Vrededorp were held (being the conditions contained in Executive Council Resolutions, Article No. 709, dated the thirteenth day of December 1893; Article 137 dated the twentieth day of March 1894 and Article 180 dated the third day of March 1896) shall in addition to the amount payable under section *nine* pay for freehold title an amount determined as follows:—The registered holder of a stand of a value not exceeding two hundred pounds shall pay ten pounds. The registered holder of a stand of a value not exceeding three hundred pounds shall pay fifteen pounds and the registered holder of a stand of a value exceeding three hundred pounds shall pay twenty pounds.

Terms of freehold title in township of Burgersdorp.

Such sums shall be payable in monthly instalments of not less than ten shillings each, payable in advance on the first day of each month after the commencement of this Act, and each instalment shall for all purposes be deemed to be a portion of the stand license moneys payable in respect of the stand within the meaning of Law No. 15 of 1898.

**Act No. 34  
of 1908.** Valuation  
of certain  
stands in  
Burgersdorp.

**32.** The registering officer shall cause a valuation to be made by a sworn appraiser of stands numbered 80 and 87 and stands numbered from 1137 to 1150 inclusive in the said township of Burgersdorp and shall give written notice to the occupant of each stand who has been in occupation not less than five years, of the sum at which the stand occupied by him is valued. Such occupant shall thereupon have the right at any time within three months thereafter to enter into an agreement to purchase the same. The purchase price shall be payable in not more than one hundred and twenty equal monthly instalments without interest. The said agreement shall be in the form set forth in the Fifth Schedule hereto.

Provision  
where more  
than one  
person in  
occupation of  
a stand.

**33.** If more than one person is in occupation of any stand or part thereof, the registering officer shall call for tenders from such occupants and the person making the highest tender (provided it be not less than the said valuation) shall, subject to the completion of the agreement, be deemed the purchaser. Upon the failure of any purchaser to pay the instalment of the purchase price when due the provisions of sub-section (3) of section *nine* shall apply in the same manner as if such instalments were stand license moneys.

The owner who has not purchased his stand under this section shall be entitled to remove any buildings thereon at any time within six months from the commencement of this Act, but shall not be entitled to any compensation for loss or damage on any account whatsoever. If such buildings are not removed within the said six months the registering officer may cause the same to be removed without any form of legal process at the cost of such owner.

Confirmation  
of reservation  
of stands for  
Rand Aid  
Association.

**34.** The reservation of certain thirty-nine stands numbered 1068*a*, 1069*a*, 1070*a*, 1071 to 1086 inclusive, and 1151 to 1170 inclusive, and of Madras Street in the said township in favour of the Trustees of the Rand Aid Association by Deed of Reserve No. 495 (which purported to have been granted by the Lieutenant-Governor under the Crown Land Disposal Ordinance 1903 and Executive Council Resolutions No. 1321 dated the 23rd day of November 1904, and No. 293 dated the

22nd day of February 1905, upon condition that the land reserved be used for charitable purposes) shall be and is hereby deemed to have been at all times a lawful reservation.

(C) *Township of Vrededorp.*

**35.** (1) Section *five* of the Vrededorp Stands Act 1907 shall be and is hereby amended by the substitution of the words "fifteen pounds" for the words "forty pounds" occurring in sub-section (1) thereof.

Provisions for conversion of title in the Township of Vrededorp.

(2) The Municipal Council of Johannesburg shall lodge with the Registrar of Deeds an approved or confirmed diagram of the Township of Vrededorp (as in the Vrededorp Stands Act 1907 described), and the title deeds thereto in manner provided by section *fifty* of this Act.

(3) As soon as the provisions of sub-section (2) have been complied with, the registering officer shall issue a certificate of freehold title to a Vrededorp stand to any registered holder (as defined in the Vrededorp Stands Act 1907) who produces to him a receipt (in the form shown in the Sixth Schedule hereto) for payment of moneys due to the said Council under the said Act as by this Act amended, and who pays for such certificate the fee of ten shillings mentioned in sub-section (2) of section *sixty-four* of this Act.

(4) The certificate of freehold title issued by the registering officer under this section shall be subject to the conditions prescribed by section *four* of the Vrededorp Stands Act 1907, and such conditions shall be incorporated in the certificate.

(5) Whenever in the Vrededorp Stands Act 1907, the words "Registrar of Deeds" occur, the term "registering officer" shall for the purposes of this Act be substituted therefor.

(D) *Prospect Township.*

**36.** Notwithstanding anything in any law in force at the commencement of this Act, it shall be lawful for the Governor to cause such areas within that portion of the proclaimed farm Doornfontein No. 140, Witwatersrand District, more particularly described in the Seventh Schedule as may be necessary to give effect to sections *thirty-six* to *forty-two* inclusive to be surveyed into lots, streets, and one square

Power to proclaim certain areas known as Prospect Township.

Act No 34  
of 1908.

not exceeding one morgen in extent, and proclaimed as a township under the name of "Prospect Township" being approximately the ground which was in the year 1888 surveyed as a township under the said name of Prospect Township; provided that the holders of the mineral rights thereunder shall not in any way be affected in the free and undisturbed right of mining such as hitherto enjoyed by them according to law subject to the Mining Regulations from time to time in force.

Terms upon which *bona fide* purchasers of stands in such areas may obtain certificate of registered title.

**37.** (1) Any person who *bona fide* purchased one or more stands within the said areas as stands in a township shall, upon payment of all arrear and current municipal rates, taxes assessments and sanitary fees and upon payment to the freehold owner of the ground of the sum of twelve pounds ten shillings for and in respect of each lot in extent five thousand square feet or less (and for any additional area at the same rate) be entitled to receive from the registering officer a certificate of title thereto and if possible to an adjoining lot also so as to make up a total area of one hundred by one hundred feet. Such certificate shall be subject to the provisions contained in the last preceding section.

Provided that if any rates, taxes, assessments or sanitary fees have been paid by any person in respect of any buildings or ground which is situated upon or within the said area and which is occupied or held by any person claiming under the provisions of this section, the person making such claim shall before obtaining freehold title repay the amount of such rates, taxes, assessments and sanitary fees to the person who has paid the same; provided further that no person who, prior to the commencement of this Act, has purchased the lease of a stand within the said areas shall be liable for arrears of stand license moneys or rent in respect of such lease.

(2) For the purposes of this section the word "person" shall include the heirs, executors, administrators or assigns of the *bona fide* purchaser described in sub-section (1) notwithstanding that any deed of assignment or transfer under which the applicant claims is an underhand

deed or has not been executed before or registered in the office of the Mining Commissioner or Registrar of Mining Rights.

**38.** (1) As soon as may be after the commencement of this Act, the registering officer shall cause a notice to be published four times in the *Gazette* and four times at intervals of one week in papers published respectively in Johannesburg, Durban, Capetown and London calling upon all persons who claim any interest under the last preceding section to lodge their claims, duly supported by proof thereof, with the registering officer within six months from the date of first publication; provided that no claim made or lodged after the expiry of six months from the date of the first publication in the *Gazette* of the notice required by this section shall be deemed to be valid.

Mode of  
establishing  
claims to  
rights in  
Prospect  
Township.

(2) At the expiry of the said term of six months the registering officer shall cause a list of all applicants, with the numbers of the stands claimed by each, to be published four times in the *Gazette* and as often at intervals of one week in a paper published in Johannesburg, calling upon all persons who desire to object to any claim to do so within six weeks of the first publication of such list and to lodge a notice of the objections with the grounds thereof with the registering officer and to serve a copy on the claimant. In the said notice the registering officer shall appoint a time and place at which such claims and objections shall be considered. At the time and place appointed in the said notice the registering officer shall hear and determine the said claims and all objections thereto and may adjourn the hearing from time to time. The decision of the registering officer shall be subject to appeal to the Witwatersrand High Court and the decision of such court shall be final; provided that notice of such appeal be given within fourteen days of such decision, and the appeal be prosecuted as soon as possible.

**39.** After the said claims have been finally determined as aforesaid the Governor shall cause the survey provided for in section *twenty-three* to be carried out under the direction of the registering officer which survey shall, subject to the

Surveys.

**Act No. 34  
of 1908.**

conditions herein set forth, include stands sufficient in number to provide for the grant of two lots of fifty by one hundred feet for each stand held or occupied by any person. The said survey shall follow the original survey and shall not without the consent of the freehold owner exceed the limit of such original survey as far as the same can be ascertained, but the said original survey may be varied so as to effect as far as possible the following objects :—

- (a) The placing of all lots awarded under this Act within a compact area ;
- (b) the placing of existing dwelling-houses or other permanent buildings entirely within the boundaries of lots awarded to the owners of such houses and buildings ;
- (c) the award of lots where their existence will cause the least interference with mining operations upon the said area or upon the mine of which the said area forms a part, and for the purpose of determining that question it shall be the duty of the registering officer to consult with the freehold owner ;

provided that the registering officer may award to the persons entitled to lots not built upon or occupied or lots occupied by roads, railways, or by other persons other lots in lieu thereof, in order to effect the objects in this section set forth.

Form which  
survey may  
take.

**40.** The survey hereby authorised may, in order to secure regularity in the laying out of the said township, provide for a number of lots in excess of the actual number required for the purposes of the preceding section as appearing by the number of claimants therefor at the time of survey ; provided that until the award, no lot shall be deemed to be an integral part of such township, which shall consist only of such lots as are awarded under this and the last preceding section ; provided further that, after all claims filed within the prescribed time have been decided, the Governor may direct that not more than ten of such lots in excess (if any), shall be devoted to Government or municipal purposes and the remainder (if any) may be sold in freehold, (but not otherwise), by the freehold owner of the ground, but no municipal rates, taxes, sanitary fees, special assessment or

other fees of any nature whatsoever shall be claimable in respect of any such excess lots or areas situate within the proposed township so long as such lots or areas remain unsold or unoccupied.

**Act No. 34  
of 1908.**

41. Licenses to trade may be issued for the said lots under the laws or municipal regulations in force save that no license to carry on the business of a jeweller or worker or dealer in precious metals, scrap metals or precious stones, nor a license under the laws for the time being regulating the sale of intoxicating liquors, shall be granted.

How far trading permitted on lots in Prospect Township.

42. The lessee at the commencement of this Act of any stand held under the provisions of article *ninety-two* of Law No. 15 of 1898, within the said area shall be deemed to be a registered holder under this Act in respect of such stand, and shall be entitled to receive a freehold title to such stand upon payment of all arrears of rent, together with the sum of twelve pounds ten shillings.

Standholder under Law No. 15 of 1898 to be deemed to be registered holder.

(E) *Township of Newtown.*

43. (1) Section *twenty-six* of Ordinance No. 19 of 1903 and section *six* of Ordinance No. II (Private) of 1905 shall be and are hereby repealed, and notwithstanding anything to the contrary in any law contained, the following provisions shall be substituted therefor and shall be applicable to that portion of the area described in Ordinance No. 19 of 1903 known as Newtown :—

Provisions applicable to the township of Newtown.

(a) Any land or lots in the said area may be used by the Municipal Council of Johannesburg for such municipal purposes and for such periods as the Council may from time to time determine ;

(b) Any land or lots in the said area may be leased by the said Council for a term not exceeding five years without the option of renewal ;

(c) Any land or lots in the said area may, with the consent of the Governor, be sold by the said Council, on such conditions as the Governor may approve, but the following provision shall be included in such conditions, namely :—



Act No. 34  
of 1908.

- (i) The land or lots shall be sold by public auction to the highest bidder for not less than an upset price to be fixed by the Council, with the approval of the Governor, such upset price to include the following special charges, namely: the cost of improvements made by the Council, survey and registration charges;
- (ii) The Council shall publish in a newspaper circulating within the Municipality of Johannesburg for at least once a week for three consecutive weeks prior to the date of sale a notice containing full particulars of the intended sale;
- (iii) The moneys realized by such sale shall after deducting the amount of the special charges above mentioned be applied by the Council in the manner prescribed in section *thirty-two* of the Johannesburg Borrowing Powers Ordinance 1903; provided that nothing in this section contained shall apply to streets, squares and open spaces in the said area.

(2) In the case of lands or lots in the said area which, prior to the commencement of this Act, have been leased by the Council under the provisions of section *twenty-six* of Ordinance No. 19 of 1903 or of section *six* of Ordinance No. II (Private) of 1905, the Council may grant the lessees thereof a freehold title on such terms and conditions as may be agreed upon between the Council and such lessees and as the Governor may approve.

(3) For the purpose of sub-section (2) of this section the Council shall be deemed to be a "township owner" and each of the said lessees to be a "registered holder" and the provisions of this Act with regard to the issue of a certificate of freehold title shall *mutatis mutandis* apply.

### PART III.

#### SPECIAL PROVISIONS APPLICABLE TO CERTAIN AREAS IN THE MINING DISTRICT OF KRUGERSDORP.

Inapplica-  
bility of cer-  
tain Volks-  
raad Resolu-  
tions.

44. The provisions of Second Volksraad Resolution No. 940 of 1896 and of the Brickmaking Regulations promulgated by Resolution of the

First Volksraad No. 188, dated the seventeenth day of May, 1892, shall be and are from the commencement of this Act no longer applicable, except as herein provided to that portion of the farm Paardeplaats No. 73, District Witwatersrand (Mining District of Krugersdorp), known as "Burghershooop" the "Coolie Location" and the "New Brickfields" as shown by a plan framed by F. H. Rissik, Esquire, Government land surveyor, and approved by the Surveyor-General under No. 2980/97 on the twentieth day of August, 1897.

45. From and after the commencement of this Act the following areas of land shown on the said diagram, that is to say:—

- (1) the area known as Burghershooop;
- (2) the area known as the "Old Coolie Location"; and
- (3) two certain portions of the area known as the "New Brickfields" which lie north of Wagen Street comprising
  - (a) the area laid out into brickmakers' residential stands numbered 1 to 160; and
  - (b) the area laid out into brickmaking sites and *bewaarplaatsen*, numbered 161 to 172 inclusive, together with streets adjoining the same;

shall be deemed to be a Government Township and shall be known as the "Township of Burgershooop." The holders of licenses for stands, brickmaking sites, and *bewaarplaatsen* therein shall be deemed to be registered holders and the brickmaking sites and *bewaarplaatsen* numbered 161 to 172 shall for the purposes of this Act be deemed to be stands.

Where any person, registered at the commencement of this Act in the office of the Mining Commissioner as the holder of any stand, brickmaking site or *bewaarplaats* in such areas has, at any time prior thereto, *bona fide* sold, transferred or assigned the said stand, brickmaking site or *bewaarplaats*, or his interest therein to any other person, the Mining Commissioner may, upon the application of such other person and after notice in the *Gazette* and in a newspaper circulating in the Mining District of his intention so to do,

Certain areas  
to be deemed  
a Government  
Township.

**Act No. 34  
of 1908.**

register such stand, brickmaking site or *bewaarplaats* in the name of such other person, who shall thereupon be deemed to be the holder of a license within the meaning of this section for such stand, brickmaking site or *bewaarplaats*. If any objection to such application be lodged with the Mining Commissioner within fourteen days after the first publication of such notice, the Mining Commissioner shall appoint a time and place for the hearing of such application and such objection, and after hearing such application and objection the Mining Commissioner shall give his decision thereon. Such decision shall be subject to appeal to the Witwatersrand High Court provided that notice of such appeal be given within fourteen days of such decision and the appeal be prosecuted as soon as possible.

Vesting of freehold title of Paardeplaats in Municipality of Krugersdorp.

**46.** On the commencement of this Act that portion of said farm Paardeplaats No. 73, enclosed within the boundaries set out in the Eighth Schedule shall be transferred in freehold to the Council of the Municipality of Krugersdorp under the provisions of the Crown Land Disposal Ordinance 1903 but subject to the conditions set forth in section *forty-seven* of this Act.

Administration of area by Council as brickfields.

**47.** The said Council shall administer the said area as a brickfields subject to the regulations promulgated by Resolution of the First Volksraad No. 188 dated the seventeenth day of May, 1892, subject also to such other regulations not in conflict therewith as the Governor may prescribe and subject further to the following conditions:—

(1) The persons holding licenses for brickmaking sites and *bewaarplaatsen* within the said area shall be entitled upon payment of the sum of five shillings per month to hold the same for the purposes of making and storing bricks thereon for a period of not less than five years.

(2) Any person who, being the holder of a license for a brickmaking site or *bewaarplaats* prior to the first day of July 1907, has erected a dwelling-house thereon, shall be entitled, upon payment of the sum of five shillings per month, to reside in the said dwelling-house for a period of ten years

and to use for the said period any ground fenced in provided such dwelling or fencing does not encroach upon the boundaries of an adjoining brickmaking site or *bewaarplaats* or other land adjoining.

(3) The said Council may with the approval of the Governor, expropriate the rights of any person holding brickmaking sites or *bewaarplaatsen* on the said area.

48. (1) That portion of the farm Paardekraal No. 73, District Witwatersrand, as is more particularly described in the Ninth Schedule shall be transferred in freehold to the said Council under the provisions of the Crown Land Disposal Ordinance 1903, and subject to the following conditions :—

Certain portion of farm Paardekraal to be deemed a private leasehold township.

(a) For the purpose of this Act, but subject to the provisions of this section, the said portion shall be deemed to be a "private leasehold township," the Council of the Municipality of Krugersdorp shall be deemed to be the "township owner" thereof, and the holders of brickmakers' stands within the said area to be "registered holders."

(b) It shall be the duty of the said Council within three months after the commencement of this Act to cause the said area to be surveyed into lots as nearly as may be as the same is now occupied, and reduced to diagram which shall be duly confirmed by the Surveyor-General and a copy thereof lodged with the registering officer.

(c) The holders of lots within the said area shall be entitled to a certificate of freehold title under this Act upon payment to the said Council of an amount determined as follows:—

- (i) The registered holder of a stand of a value not exceeding two hundred pounds shall pay ten pounds;
- (ii) the registered holder of a stand of a value not exceeding three hundred pounds shall pay fifteen pounds;
- (iii) The registered holder of a stand of a value exceeding three hundred pounds shall pay twenty pounds.

(2) Nothing in this section contained shall be deemed to exclude any lots in the said portion,

**Act No. 34  
of 1908.**

in respect of which a certificate of freehold title is not issuable under this section, from the provisions of the Municipal Corporations Ordinance 1903 or the Town Lands Ordinance 1904 or any amendment of such laws.

**PART IV.**

**SPECIAL PROVISIONS RELATING TO THE STAND  
TOWNSHIP OF HEIDELBERG.**

Issue of  
freehold title  
in respect of  
stand town-  
ship of  
Heidelberg.

**49.** Stands numbered 65, 66, 121 to 124 inclusive, 126 to 128 inclusive, 177, 179, 181, 182, 327, 328, 379, 518 to 520 inclusive, 622 to 624 inclusive, and 678 to 680 inclusive in the stand township of Heidelberg shall, for the purposes of this Act, be deemed to be stands in a Government township and shall be subject to the following conditions, namely:—

(1) The sum which shall be payable for the freehold of each of the said stands shall be the amount of the stand licenses in arrear on the thirtieth day of April, 1906, together with a sum calculated at the rate of three shillings per annum on each stand from the first day of May, 1906, until the date of issue of a deed of grant in freehold under this Act.

(2) The payment of such amount shall be made in one sum and shall be deemed to be payment under section *nine* and of all arrears due in respect of a stand.

(3) Unless payment of such amount be made within twelve months from the commencement of this Act, the Mining Commissioner shall cause each stand, in respect of which such payment is in default, to be dealt with under the provisions of sub-section (3) of section *nine*.

**CHAPTER III.**

**REGISTRATION.**

**PART I.**

*Mode of Registration.*

Duties of  
township  
owners in  
respect of

**50.** (1) It shall be the duty of the owner of every township in existence at the commencement of this Act (including a township owner as by this

Act defined), to lodge for noting, as in this section mentioned, with the Registrar of Deeds within six months after such commencement, a copy of an approved or confirmed diagram of the land comprised in the township, together with the title deed or lease under which he holds such land, unless such diagram and deed have already been lodged and noted.

lodging of  
diagrams and  
title deeds.

**Act No. 34  
of 1908.**

(2) The freehold owner if he is not the township owner, shall within the same period lodge the freehold title deed with the Registrar of Deeds. If such title deed or lease be for any reason in the possession or custody of any person other than the freehold owner, the person so in possession shall, within the period aforesaid, lodge the title deed with the Registrar of Deeds, and, where the land is mortgaged or otherwise encumbered, the mortgage bond or other instrument of encumbrance.

(3) Where the whole of the land held under such title deed is comprised in the township, the Registrar of Deeds shall thereupon make on each title deed and on his office copies thereof an endorsement in as nearly as possible the following terms :—

“ The land herein described has been laid out as a township under the name of.....  
.....according to diagram S.G.  
No.....framed by Surveyor.....  
in.....and <sup>approved</sup>/<sub>confirmed</sub> by the  
Surveyor-General on the.....day of  
.....190....and is subject to  
the provisions of the Townships Amendment  
Act 1908. ”

(4) Where only a portion of the land held under such title deed is comprised in the township, the Registrar of Deeds shall issue to the owner of the said land, a certificate (hereinafter styled a certificate of township title) under his hand and seal, of the said portion so comprised in the township, which certificate shall be as nearly as possible in the form set out in the Tenth Schedule and shall have attached thereto a diagram of the said portion. Upon issuing such certificate, the Registrar of Deeds shall write off the area of the portion therein described on the title deed aforesaid and

Act No. 34  
of 1908.

shall cause the necessary deduction to be laid down on the diagram of the land held under the said title deed. Thereupon such certificate of township title shall for all purposes be and serve as the sole title deed of the portion of land therein described, provided that, upon issuing such certificate the registrar shall in cases where the land comprised therein is subject to any bond or other encumbrance endorse the fact of such issue on such bond or other instrument of encumbrance, make an entry thereof in the debt or other register, and endorse on such certificate that, in terms of this sub-section, it is mortgaged or encumbered by such bond or other instrument; whereupon the land held under such certificate shall be deemed to be hypothecated or encumbered as fully and effectually as if it had been originally hypothecated or encumbered by such bond.

Survey of  
private  
leasehold  
townships.

51. (1) If at the commencement of this Act the township owner of a semi-Government township or of a private leasehold township has not lodged an approved or confirmed general plan of such township in terms of section *twenty-nine* sub-section (3) of the Transfer Duty Proclamation 1902 as amended by section *four* sub-section (d) of the Registration of Mining Rights Proclamation 1902, such township owner shall immediately cause a survey to be made of such township. For the purpose of such survey and of determining the boundaries of any stands or lots in such township the provisions of sections *twenty-three* to *thirty* inclusive shall apply in like manner as if such township were a Government township on the farms Randjeslaagte No. 138 or Braamfontein No. 127, provided that the Arbitration Board shall require any persons appearing before it to bear, in such proportion between the two parties as the said board may award, such expenses of the Arbitration Board as are described in section *fourteen*.

(2) Should the township owner fail to comply with the provisions of sub-section (1) hereof, the Surveyor-General may cause such survey to be carried out at the cost of the township owner and such cost shall be recoverable from the township owner on an order of the Supreme Court, granted on the application of the Surveyor-General.

(3) In order to determine the boundaries of any stands or lots in the township of Vrededorp, the Municipal Council shall be deemed to be a "township owner" and the township of Vrededorp a "private leasehold township" for the purposes of this section.

52. (1) The owner of any township approved after the commencement of this Act shall, upon notification by the Surveyor-General of approval or confirmation of the general plan and diagrams as is by section *seven* of the principal law provided, lodge with the Registrar of Deeds the documents mentioned in sub-section (1) of section *fifty*. The Registrar of Deeds shall thereupon make the endorsement on the title deed or issue a certificate of township title as is provided by sub-section (3) or sub-section (4) as the case may be of section *fifty*; provided that, in cases where the land upon which or upon a portion of which the township is situate is hypothecated under a mortgage bond, the registrar shall not make the endorsement under sub-section (3) nor issue the certificate of township title under sub-section (4) without the consent of the legal holder of such bond. Notwithstanding the fact that such bond remains uncanceled, the registrar may upon production of the bond together with the written consent of the legal holder thereof issue the certificate of township title in accordance with the provisions of sub-section (4) of section *fifty*. Thereafter the Registrar of Deeds shall notify the Minister that the provisions of this section have been complied with.

Duties of owners of townships approved after commencement of Act.

(2) Notwithstanding anything in section *seven* of the principal law contained, the Minister shall not cause the township to be declared an approved township until the Registrar of Deeds has notified him that the provisions of this section have been complied with.

53. (1) At any time between the passing and the commencement of this Act the Governor shall establish at Johannesburg an office to be styled "The Rand Townships Registration Office" and appoint an officer to be in charge of such office and carry out the registration described in sub-section (2) of this section. Such officer shall be styled "the Rand Townships Registrar".

Where registration of title to be effected.



**Act No. 34  
of 1908.**

(2) After the commencement of this Act the registration of all documents of whatsoever nature affecting the freehold title to the land comprised within any township, or any stand or lot therein situate, in the mining districts of Johannesburg, Boksburg or Krugersdorp may be effected either in the office of the Registrar of Deeds or in the office of the Rand Townships Registrar.

(3) If any such township or stand or lot therein be situate elsewhere in this Colony such registration shall be effected in the office of the Registrar of Deeds.

(4) Until the diagram and title deeds have been lodged and noted as by section *fifty* provided, no certificate of grant of freehold title shall be issued or registered.

Transmission  
of documents  
by Registrar.

**54.** (1) As soon as may be after the commencement of this Act, the Mining Commissioners of Boksburg and of Krugersdorp shall transmit to the Rand Townships Registrar, and every Mining Commissioner of other mining districts (except the Mining Commissioner of the Mining District of Johannesburg) shall transmit to the Registrar of Deeds, true copies of all property registers, deeds, bonds, plans, diagrams, and other documents affecting the title to stands or lots in townships registered in their respective offices.

(2) The Rand Townships Registrar shall at the same time transmit to the Registrar of Deeds such information as may be necessary for the purpose of opening registers of such townships as have hitherto been registered in the office of the Registrar of Mining Rights but not in the Deeds Office, such information to include, where necessary, copies of the general plans of the said townships.

(3) The Rand Townships Registrar shall supply the Registrar of Deeds with duplicates of all certificates of freehold title issued by him under the provisions of this Act, and of all deeds of grant registered by him.

(4) The Registrar of Deeds shall supply the Rand Townships Registrar with copies of the registers of all townships situated in the Mining

Districts of Johannesburg, Boksburg, or Krugersdorp registered in his office but which have not hitherto been registered in the office of the Registrar of Mining Rights, and with copies of the general plans thereof and of all current title deeds of lots in all townships in the said mining districts.

(5) Each Mining Commissioner and the Registrar of Deeds and the Rand Townships Registrar when transmitting the registers, deeds, and other documents or copies thereof or other information as above provided, shall also furnish true copies of all deeds, bonds, interdicts, attachments, Master's notices, or other processes or documents which affect or may be presumed to affect the properties to which the said registers, deeds, copies, or information relate.

55. (1) The registration and transfer of freehold title to all land including stands or lots in any township, and the registration of servitudes and other encumbrances on such land, shall be effected by the registering officer in accordance with the provisions of the Deeds Proclamation, 1902, or any amendment thereof and the regulations made thereunder, save in so far as this Act makes provision to the contrary; provided that in the event of the total or partial cancellation of a general plan of a township under section *two* of the Deeds Proclamation Amendment Ordinance 1903, the registration of all titles to land comprised within the township or portion so cancelled shall be effected in the office of the Registrar of Deeds in accordance with the Deeds Proclamation 1902 or any amendment thereof and the said regulations.

Deeds Office procedure to apply save as otherwise provided.

(2) The Rand Townships Registrar in so far as concerns the procedure and practice of his office in respect of the registration of the freehold title to land or of servitudes or encumbrances thereon shall follow the law regulations practice and procedure for the time being applicable to the Deeds Office.

(3) All deeds registered under the provisions of this Act in the Rand Townships Registration Office affecting land which has been converted into or was originally sold in freehold shall be in triplicate, and it shall be the duty of the Rand

**Act No. 34  
of 1908.**

Townships Registrar to transmit on the next business day after the date of registration, the triplicate originals of all such deeds to the Registrar of Deeds, who shall record the same in the appropriate registers kept in his office and shall file them of record in his office.

(4) All deeds registered in the office of the Registrar of Deeds affecting the title to any stand or lot in any township situate in the Mining Districts of Johannesburg, Boksburg or Krugersdorp, shall be in triplicate and it shall be the duty of the Registrar of Deeds to transmit on the next business day after the date of registration, the triplicate originals of all such deeds to the Rand Townships Registrar, who shall in like manner record the same in the appropriate registers kept in his office and shall file them of record in his office.

(5) Notwithstanding anything to the contrary contained in any law or regulation, such triplicate original deeds shall not require to be stamped nor shall any fees of office be required to be paid in respect of the registration or recording thereof, and they may be black carbon copies.

(6) Any deed of grant issued by the Crown under the provisions of the Crown Land Disposal Ordinance 1903 or any amendment thereof or under the provisions of this Act in respect of any stand or lot in any township situate in the Mining Districts of Johannesburg, Boksburg or Krugersdorp, shall be framed in triplicate and shall first be registered in the Rand Townships Registration Office. It shall be the duty of the Rand Townships Registrar to transmit on the next business day after the date of registration the triplicates of all such deeds of grant to the Registrar of Deeds who shall record the same in the appropriate registers kept in his office and shall file them of record in his office.

(7) Where copies are required to take the place of original deeds affecting the freehold title of stands or lots situate in the Mining Districts of Johannesburg, Boksburg or Krugersdorp, which original deeds have been lost or destroyed, application for such copies may be made either to the Registrar of Deeds or to the Rand Townships Registrar. Beforeis suing any such copy

the registrar to whom application has been made shall notify the other registrar of such application and shall not issue the copy until he shall have received from such other registrar a notification that there exists no objection to such issue. Upon issue of any such copy as aforesaid the registrar issuing the same shall forthwith notify the fact of such issue to the other registrar.

(8) When any interdict, attachment, Master's notice or other process or document restraining or purporting to restrain or hinder any owner of freehold stands or lots in any township situate in the Mining Districts of Johannesburg, Boksburg or Krugersdorp is served upon or lodged with either the Registrar of Deeds or the Rand Townships Registrar, such registrar shall forthwith in the speediest possible manner notify the fact to the other registrar.

(9) Notwithstanding anything in this Act contained it shall be lawful for the Mining Commissioners of the different mining districts of this Colony to continue and carry on under the provisions of the existing laws and regulations relating thereto, the registration of any stands or lots in any Government, semi-Government or private leasehold townships situate within their respective districts until such stands or lots have been converted into freehold under the provisions of this Act, or otherwise.

(10) It shall be the duty of all persons who serve upon or file with the registering officer any interdicts, attachments, notices, or other processes or documents to lodge two copies thereof with such registering officer.

56. (1) Where any lease or cession of lease of a stand or lot in any township whether freehold or leasehold, has before the commencement of this Act, been executed in good faith but has not been executed notarially as required by section *twenty-nine* of the Transfer Duty Proclamation 1902, it shall be competent for the registering officer upon satisfying himself that such lease or cession of lease was so executed, and that in other respects it complies in a reasonable manner with the law, to register such lease or cession thereof in the same manner as if the same had been notarially executed, and such lease and

Validation of certain non-notarial documents executed in good faith which should under Proclamation (Transvaal) No. 8 of 1902 have been executed notarially.

Act No. 34  
of 1908.

cession of lease shall upon such registration be deemed to be and to have been from the date of execution as valid and effectual for all purposes as if the said lease and cession of lease had been notarially executed.

(2) If any township owner has issued leases containing a proviso that the same may not be ceded, transferred, or mortgaged without his consent and if such township owner neglects or refuses to provide means or machinery whereby his consent may be obtained in a reasonable manner or at a reasonable cost, or is absent from South Africa without leaving a representative duly authorised to give such consent, or if such township owner unreasonably withholds such consent, the Supreme Court, or, when the land leased is situate within the Mining Districts of Johannesburg, Boksburg or Krugersdorp, the Witwatersrand High Court, may upon application by the registering officer authorise him to effect registration without such consent and thereupon such consent shall be deemed to be duly given.

Alteration  
to general  
plans of  
townships.

~~57. (1) Section *two* of the Deeds Proclamation Amendment Ordinance 1903 shall be and is hereby amended in so far that after the commencement of this Act it shall be lawful to make alterations in the general plan of a township so as to represent on such general plan :~~

~~(a) any lot, erf, stand, reserve, or other division of land consisting of any street, road, thoroughfare, sanitary passage, square, or other public place which has been wholly or partly closed by a competent local authority;~~

~~(b) any street, road, thoroughfare, sanitary passage, square, or other public places formed of lots, erven or portions thereof and the control whereof has been acquired by any competent local authority ;~~

~~(c) any street, road, thoroughfare, sanitary passage, square or other public place which has been widened, narrowed, straightened, extended or otherwise altered by any competent local authority ;~~

~~(d) any block of land within a township consisting of erven, stands, or lots and~~

streets, roads, thoroughfares, sanitary passages, squares or other public places which have been expropriated for railway or other public purposes; provided such streets, roads, thoroughfares, squares, sanitary passages or other public places have been closed by a competent local authority and provided further that in cases of townships for which no such local authority has been established, it shall be lawful for the Surveyor-General to make the alterations mentioned under this heading and under the headings (a), (b) and (c) of this section upon the consent of the registered owner of the township and of the registered owners of all lots which have already been transferred, or upon the Order of the Supreme Court or any Judge thereof.

(2) When any such alteration as is allowed under sub-section (1) or under section *two* of the Deeds Proclamation Amendment Ordinance 1903 has been made in a general plan of a township by the Surveyor-General, the Registrar of Deeds or the Rand Townships Registrar, or both, as the case may be, shall amend his or their register or registers thereof so as to make such register or registers correspond with such amended general plan.

(3) For the purposes of sub-sections (1) and (2) the words "street," "road," "thoroughfare," "square," "sanitary passage," "or other public place" shall mean and include the streets, roads, thoroughfares, squares, sanitary passages or other public places shown as such on the general plans of townships filed in the offices of the Surveyor-General, Registrar of Deeds or the Rand Townships Registrar and all land other than erven or lots shown thereon the control whereof is vested in a competent local authority or to which the registered owners of land within the township have a common right.

58. Notwithstanding anything to the contrary contained in section *one* of the Deeds Proclamation Amendment Ordinance 1903 or any amendment thereof, it shall be lawful after the commencement of this Act for the owner of any private freehold township to transfer or mortgage the whole of the land or the remainder thereof

Transfer of township or portion thereof.

Act No. 34  
of 1908.

comprised in such township or an undivided share in or a divided portion of such land or the remainder thereof, provided that

(a) such transfer or mortgage shall be in accordance with a duly approved diagram, to be annexed thereto if necessary, from which shall be excluded all lots in the township or portion thereof affected which may have been already transferred away ;

(b) only such divided portion may be transferred or mortgaged as includes, in addition to lots shown on the general plan, streets, squares, open spaces, or public places, or portions thereof, appearing on such general plan and the boundaries of which portion coincide with one or more of the division lines shown upon the general plan and do not intersect any of the lots shown thereon ;

(c) the deed of transfer or mortgage shall state that the land described therein has been laid out as a township or is a portion of or share in land so laid out, and that such land remains subject to the provisions of the laws and regulations in force relating to the registration of townships or lots therein, and also that such land is subject to the rights of the owners of lots in the particular township affected with respect to streets, squares, public places or open spaces therein to which such owners may have individual or common rights.

Records of semi-Government or private leasehold townships to be filed with the registering officer by township owner who shall have access thereto.

59. (1) Whenever the township owner of a semi-Government or private leasehold township has sold in freehold all the stands or lots therein, he shall transmit to the registering officer for filing of record

(a) all leases and transfers or cessions of leases which have been issued or noted in his office ;

(b) all cancellations of leases and documents relating thereto ;

(c) all registers in which such leases, transfers, cessions or cancellations have been noted ;

(d) all books of account showing periodical payments of licenses or rentals.

(2) Such township owner may at any time require the registering officer to receive and file

of record the books and documents mentioned in sub-section (1).

(3) The township owner shall at all reasonable times have the right of access, either personally or by his agent, to the books and records transmitted to or received by the registering officer under this section or to the documents furnished to the registering officer under section *seventeen*, may make copies thereof or extracts therefrom and may require the registering officer to cause such books, records or documents to be produced in any Court of Law.

(4) The registering officer shall make no charge whatever to the township owner for access given, copies or extracts taken or for the production of any books, records or documents under this section.

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PART II.  
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*Issue of Certificates.*

60. (1) Upon conversion under this Act of title to a stand or lot from *voorkeurrecht* or leasehold to freehold the freehold title shall—

(a) in the case where the freehold of the land before conversion is vested in the Crown, be in the form of a deed of grant under the Crown Land Disposal Ordinance 1903 or any amendment thereof;

(b) in the case where the freehold of the land before conversion is vested in any person other than the Crown, be in the form of a certificate as set out in the Eleventh Schedule.

(2) Such certificates shall be issued by, and such grant shall be issued through, the Rand Townships Registrar in respect of stands or lots in townships situate within the Mining Districts of Johannesburg, Boksburg, or Krugersdorp, and the Registrar of Deeds in respect of stands or lots in townships situate without the said mining districts.

(3) Such certificate or grant shall only be issued upon compliance by the registered holder with the requirements of this Act, and upon surrender by the registered holder to the Rand Townships Registrar or Registrar of Deeds (as the case may be) of the original *voorkeurrecht* or leasehold title, or any transfer thereof or, where the original

Form of  
freehold title.



**Act No. 34  
of 1908.**

has been lost, of a duly certified copy thereof issued to take the place of such original.

(4) It shall be lawful to include in such certificate or grant and in any transfer of any stands or lots falling under the provisions of this Act any number of stands or lots situate in the same township and held by the same registered holder or registered owner.

(5) Upon the registration of a certificate or grant of freehold title the *voorkeurrecht* or leasehold title in existence shall lapse, and the Rand Townships Registrar or Registrar of Deeds (as the case may be) shall, immediately upon such registration being effected, notify the Mining Commissioner of the district in which the stand or lot is situate of such registration, and thereupon all registration with respect to such stand or lot shall cease in the office of the Mining Commissioner.

(6) Upon conversion into freehold of all the stands or lots in any Government, semi-Government or private leasehold township the register or registers of such township kept by the Mining Commissioner and all title deeds, bonds, plans, diagrams and other documents relating thereto shall as soon as possible be transmitted by the Mining Commissioner to the Registrar of Deeds or Rand Townships Registrar (as the case may be), who shall take charge of the same and shall file them in his office.

Certificates to be subject to existing bonds, servitudes, etc.

**61.** Every certificate or grant issued under the last preceding section shall be issued subject to—

(a) all bonds servitudes or attachments, interdicts and other encumbrances of whatsoever nature affecting the stand or lot included therein, except those removed under this Act or otherwise, which bonds servitudes and other encumbrances shall, from the date of the registration of such certificate, be taken to bind the freehold title to the same extent for the same period and as effectually as the leasehold or *voorkeurrecht* title had been theretofore bound ;

(b) all such servitudes affecting the freehold title of the land comprised in such stand or

lot as have not been removed in respect of such stand or lot by agreement between the parties ;

and it shall be the duty of the registering officer at the time of the issue of such certificate or grant to endorse thereon a short memorandum containing the particulars of any such bonds servitudes or other encumbrances as are referred to in paragraphs (a) and (b) of this section and duly registered.

62. (1) The grant of a certificate of freehold title or deed of grant under section *sixty* shall have the effect of vesting in the grantee the freehold of the land included and described therein as fully as if transfer of the land had been made by transfer deed in freehold to such grantee and freed without any further or other deed of release or discharge from all bonds servitudes interdicts and other encumbrances (if any) from which, by virtue of an agreement under section *sixteen*, the said land is to be freed, subject—

Effect of issue of freehold title.

(a) to such of the terms and conditions appertaining to the *voorkeurrecht* or leasehold title of the stand or lot included in the said certificate or grant, or to similar terms and conditions, as may be approved by the Governor where the freehold of such stand or lot is vested in the Crown, or, as may be deemed necessary by the township owner, with the approval of the Governor, where the freehold of such stand or lot is vested in any person other than the Crown ;

(b) to the condition that the title conferred by such certificate or grant shall and shall not respectively be liable to be annulled, set aside, limited and affected on every ground and by reason of every and any cause, matter, or thing by which the *voorkeurrecht* or leasehold title to the stand or lot included in such certificate or grant would, or would not, have been liable to be annulled, set aside, limited or affected if such property had been regularly transferred to the holder of such certificate or deed of grant ; provided that such title shall not be liable to be annulled, set aside, limited, or affected by reason of any conditions or the breach of any conditions

Act No. 34  
of 1908.

contained in such *voorkeurrecht* or leasehold title unless such certificate or grant is under this section made subject to such conditions.

(2) The Governor may make, alter and rescind regulations for the purpose of fixing the terms and conditions to which the freehold title to stands or lots in each and every township shall be subject. Such regulations shall have the same force and effect as the provisions of this Act, from the date of the publication of the regulations in the *Gazette*.

Separate diagrams of stands or lots not to be necessary.

**63.** Notwithstanding anything to the contrary contained in the law for the time being relating to registration of deeds, it shall not be necessary for the purpose of the issue of a certificate of freehold title or deed of grant under section *sixty* or for the registration of any transfers of any stand or lot in any township falling under the provisions of this Act, to have framed separate diagrams of each stand or lot; but it shall be sufficient for such purpose to refer in such certificate, deed of grant, or transfer deed to the approved or confirmed plan of the township filed of record in the office of the registering officer; provided that nothing in this section contained shall be construed as preventing diagrams of the stands or lots included in any certificate or transfer being attached thereto at the option of the transferor or transferee; provided further that transfer or lease of portions of stands or lots may be registered, if an approved diagram be annexed to the first transfer of such portion, and an approved diagram of the stand or lot of which it is a portion be lodged at the office where the registration is to take place; provided also that, whenever a servitude on a stand or lot affects only a portion of such stand or lot, a diagram representing the portion of such stand or lot affected by such servitude shall be lodged at the office where the registration of the servitude is to take place, unless such servitude is already represented on the general plan of the township.

Exemption of certificate of title from transfer duty or stamp duty.

**64.** (1) Notwithstanding anything to the contrary in any law contained, the issue of a certificate or deed of grant of freehold title under this Act

upon any stand or lot for which a lease for more than forty years has been registered, or, if not registered, then duly executed before the taking effect of the Transfer Duty Proclamation 1902, shall not be subject to any stamp duty or transfer duty; provided that in case of any such lease for a term of less than forty years, the amount payable as transfer duty shall be reduced by an amount which bears the same proportion to the total amount of transfer duty as the unexpired term of the lease bears to the whole term.

(2) In all cases a registration fee of ten shillings shall be payable in stamps upon the registration of the certificate or deed of grant herein provided for.

65. Before a certificate of freehold title or deed of grant to any stand is issued under section *sixty* the applicant shall pay all arrear stand license moneys in respect of such stand (including extra license moneys fines and costs imposed by Law No. 15 of 1898), in the case of Government townships, and before the date of the agreement for the purchase of freehold title in the case of other townships, unless otherwise agreed.

Arrear stand licenses to be paid and fines and costs before certificate of title granted.

Provided that upon the recommendation of the Council of the Municipality, where a Municipality exists, or upon the recommendation of the Magistrate where there is no Municipality, the Governor may remit the arrear stand license moneys upon any stand in a Government township not exceeding in value one hundred pounds for any or all of the months from July to December 1908 (both such months inclusive).

66. (1) A certificate or deed of grant under this Act shall be deemed to vest the mineral rights in or under the stand or lot therein described in the holder thereof unless contrary provision is made in the agreement by which the freehold is obtained or in the lease of such stand or lot theretofore existing.

Vesting of mineral rights.

(2) A certificate or deed of grant in respect of a township laid out before the commencement of this Act on Crown Land shall not be deemed to vest the mineral rights in the holder thereof.

**Act No. 34 of 1908.** Liability of registered holder or registered owner.

**67.** (1) Nothing in this Act contained shall be deemed to absolve the registered owner of a stand or lot from paying all municipal rates, taxes in respect of erven or other moneys due to the Council of a Municipality for sanitary services in respect of such stand or lot, and the registering officer shall not pass transfer or cession of such stand or lot until a certificate signed by the town clerk or other person authorised by the Council as by law provided is produced to such registering officer showing that all such rates taxes and other moneys have been paid provided that the word "transfer" or "cession" shall not include the issue of a certificate or deed of grant of freehold title under this Act.

(2) The registering officer shall not issue a certificate of freehold title under this Act in respect of any stand or lot situate in a district in which definition (B) of ratable property contained in section *three* of the Local Authorities Rating Ordinance 1903 applies until a certificate signed as aforesaid is produced to such registering officer showing that all municipal rates in respect of the freehold interest therein have been paid.

Title to stands registered in name of Government.

**68.** In the case of stands in Government townships registered in the name of the Government the *voorkeurrecht* title thereto shall be deemed to have lapsed and shall be cancelled as at the commencement of this Act, and such stands shall thereupon be deemed to vest and shall be registered in the name of the Crown.

Provision for delay in obtaining certificate owing to general plan not being filed.

**69.** (1) In the case of a stand township or a private leasehold township for which there is no approved or confirmed general plan in existence at the commencement of this Act, no certificate or grant of freehold title shall be issued until an approved or confirmed general plan of the said township has been lodged in the office of the registering officer.

(2) A registered holder of a lot or stand in such a township who, if the diagram or general plan had been so filed, would be entitled to receive a certificate or deed of grant of freehold title under the provisions of this Act, shall be entitled to receive a receipt, in the form shown in the Twelfth Schedule.

(3) Such receipt shall be attached to the title-deeds of the stand or lot and form part thereof and shall be endorsed with all memoranda of transfer, bonds or other encumbrance in the same manner as the title-deeds. Such receipt shall be handed to the registering officer on issue by him of the certificate or deed of grant of freehold title in exchange.

(4) Such receipt shall be evidence of the fact of compliance by the said registered holder with those provisions of this Act which entitle him to a certificate or deed of grant of freehold title but shall not be regarded as evidence of such title.

70. The provisions of sub-section (4) of section *sixty* and section *sixty-three* shall apply to private freehold townships and to any lots or stands in semi-Government townships or private leasehold townships sold in freehold whether previously sold in leasehold or not before the commencement of this Act, and the word "purchaser" shall when applied to such townships, stands, or lots be substituted for the words "registered holder" or "registered owner" (as the case may be) occurring in sub-section (4) of section *sixty*.

Application of sub-section (4) section *sixty* and section *sixty-three* to semi-Government townships and private leasehold townships.

#### CHAPTER IV.

##### MISCELLANEOUS AND CONCLUSION.

71. Any notice or other document required by this Act to be served upon any person shall be deemed to be effectually served if delivered personally to such person or left at or sent by registered post to his last known place of abode or business, or, whenever he is absent from the Colony, if such notice or other document is served in manner aforesaid on any agent in this Colony of such person.

Service of notices and other documents.

72. Save as is otherwise by this Act provided, it shall be lawful for a "township owner" as defined by this Act, or for an "owner" as defined by the principal law, to sell any lot in a township in freehold subject (*inter alia*) to reservation by such owner of all rights to precious or base metals or precious stones thereon or thereunder.

Reservation of mineral rights from freehold title.

**Act No. 34  
of 1908.**

Title and date  
of operation  
of Act.

**73.** This Act may be cited for all purposes as the Townships Amendment Act 1908, and shall be and read as one with the principal law and shall come into operation on the date on which the Precious and Base Metals Act 1908 comes into operation.\*

### First Schedule.

#### LIST OF STAND TOWNSHIPS IN THE COLONY.

Mining District of Johannesburg.	
Albertskroon.	Jeppestown (including Belgravia.)
Booyens (portion on Claims).	Jeppestown South.
Braamfontein Werf.	Johannesburg.
Braamfontein (Lindeques).	Marshalls.
Burgersdorp.	Mayfair.
City and Suburban (including all extensions).	Malvern.
Denver.	Rooдеpoort.
Fordsburg.	Regents Park.
Florida (Old).	Rooдеpoort North.
Florida (New).	Springfield.
Ferreiras.	Sunnyside.
Germiston North.	Kenilworth (if and when authorised).
Germiston East.	Wanderers View.
Germiston West.	
Hamburg.	
Mining District of Heidelberg.	
Heidelberg.	Coetzeeberg.
Greylingstad.	
Mining District of Klerksdorp.	
Klerksdorp.	Venterskroon.
Pienaarsdorp.	Henley.
Mining District of Barberton.	
Barberton.	Kaapsche Hoop.
Berea.	Avoca.
Kimberley Square.	
Mining District of Ottoshoop.	
Ottoshoop (Old).	Ottoshoop (New).
Mining District of Pietersburg.	
Haenertsburg.	Old Agatha.
Leydsdorp.	Selati.
Mining District of	
Krugersdorp.	Kocksoord.
Luipaardsvlei.	Blaauwbank.
Lewisham.	Randfontein.
Mining District of	
Boksburg.	Kleinfontein.
Boksburg North Extension.	

\* This date was

## Second Schedule.

TABLE A.

The left-hand column indicates the value of a stand as defined by this Act. The first horizontal series of figures represents the various rates of monthly stand license moneys payable to the Government, either directly or indirectly.

The amount payable under section *nine* sub-section (1) (a) or under section *ten* sub-section (2) (a) is the amount appearing in the column under the rate of monthly stand license moneys for any given stand opposite the value of the stand as set out in the left-hand column.

Value.	10d.	1s.	1s. 8d.	1s. 11d.	2s.	2s. 6d.	2s. 11d.	3s. 0d.	3s. 4d.	3s. 9d.	3s. 10d.
To £100 ... ..	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.
From £101 to £250 ...	0 11 2	0 13 4	1 2 3	1 5 7	1 6 8	1 13 4	1 18 11	2 0 0	2 4 6	2 10 0	2 11 2
From £251 to £350 ...	1 2 3	1 6 8	2 4 6	2 11 2	2 13 4	3 6 8	3 17 10	4 0 0	4 8 11	5 0 0	5 2 3
From £351 to £450 ...	1 13 4	2 0 0	3 6 8	3 16 8	4 0 0	5 0 0	5 16 8	6 0 0	6 13 4	7 10 0	7 13 4
From £451 to £550 ...	2 4 6	2 13 4	4 8 11	5 2 3	5 6 8	6 13 4	7 15 7	8 0 0	8 17 10	10 0 0	10 4 6
From £551 to £650 ...	2 15 7	3 6 8	5 11 2	6 7 10	6 13 4	8 6 8	9 14 6	10 0 0	11 2 3	12 10 0	12 15 7
From £651 to £750 ...	3 6 8	4 0 0	6 13 4	7 13 4	8 0 0	10 0 0	11 13 4	12 0 0	13 6 8	15 0 0	15 6 8
From £751 to £850 ...	3 17 10	4 13 4	7 15 7	8 18 11	9 6 8	11 13 4	13 12 3	14 0 0	15 11 2	17 10 0	17 17 10
From £851 to £950 ...	4 8 11	5 6 8	8 17 10	10 4 6	10 13 4	13 6 8	15 11 2	16 0 0	17 15 7	20 0 0	20 8 11
From £951 to £1,050 ...	5 0 0	6 0 0	10 0 0	11 10 0	12 0 0	15 0 0	17 10 0	18 0 0	20 0 0	22 10 0	23 0 0
From £1,051 to £1,150 ...	5 11 2	6 13 4	11 2 3	12 15 7	13 6 8	16 13 4	19 8 11	20 0 0	22 4 6	25 0 0	25 11 2
From £1,151 to £1,250 ...	6 2 4	7 6 8	12 4 6	14 1 2	14 13 4	18 6 8	21 7 10	22 0 0	24 9 0	27 10 0	28 2 4
From £1,251 to £1,350 ...	6 13 4	8 0 0	13 6 9	15 6 9	16 0 0	20 0 0	23 6 9	24 0 0	26 13 6	30 0 0	30 13 6
From £1,351 to £1,450 ...	7 4 8	8 13 4	14 9 0	16 12 4	17 6 8	21 13 4	25 5 8	26 0 0	28 18 0	32 10 0	33 4 8
From £1,451 to £1,500 and over	7 15 10	9 6 8	15 11 3	17 17 11	18 13 4	23 6 8	27 4 7	28 0 0	31 2 6	35 0 0	35 15 10



TABLE A (continued).

Value.	5s. 0d.	5s. 8d.	5s. 9d.	7s. 6d.	8s. 4d.	11s. 3d.	15s. 0d.	22s. 6d.	45s. 0d.
	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.	£ s. d. Nil.
To £100 ... ..									
From £101 to £250 ... ..	3 6 8	3 15 7	3 16 8	5 0 0	5 11 2	7 10 0	10 0 0	15 0 0	30 0 0
From £251 to £350 ... ..	6 13 4	7 11 2	7 13 4	10 0 0	11 2 3	15 0 0	20 0 0	30 0 0	60 0 0
From £351 to £450 ... ..	10 0 0	11 6 8	11 10 0	15 0 0	16 13 4	22 10 0	30 0 0	45 0 0	90 0 0
From £451 to £550 ... ..	13 6 8	15 2 3	15 6 8	20 0 0	22 4 6	30 0 0	40 0 0	60 0 0	120 0 0
From £551 to £650 ... ..	16 13 4	18 17 10	19 3 4	25 0 0	27 15 7	37 10 0	50 0 0	75 0 0	150 0 0
From £651 to £750 ... ..	20 0 0	22 13 5	23 0 0	30 0 0	33 6 8	45 0 0	60 0 0	90 0 0	180 0 0
From £751 to £850 ... ..	23 6 8	26 8 11	26 16 8	35 0 0	38 17 10	52 10 0	70 0 0	105 0 0	210 0 0
From £851 to £950 ... ..	26 13 4	30 4 5	30 13 4	40 0 0	44 8 11	60 0 0	80 0 0	120 0 0	240 0 0
From £951 to £1,050 ... ..	30 0 0	34 0 0	34 10 0	45 0 0	50 0 0	67 10 0	90 0 0	135 0 0	270 0 0
From £1,051 to £1,150 ... ..	33 6 8	37 15 7	38 6 8	50 0 0	55 11 2	75 0 0	100 0 0	150 0 0	300 0 0
From £1,151 to £1,250 ... ..	36 13 4	41 11 2	42 3 4	55 0 0	61 2 4	82 10 0	110 0 0	165 0 0	330 0 0
From £1,251 to £1,350 ... ..	40 0 0	45 6 9	46 0 0	60 0 0	66 13 6	90 0 0	120 0 0	180 0 0	360 0 0
From £1,351 to £1,450 ... ..	43 6 8	49 2 4	49 16 8	65 0 0	72 4 8	97 10 0	130 0 0	195 0 0	390 0 0
From £1,451 to £1,500 and over	46 13 4	52 17 11	53 13 4	70 0 0	77 15 10	105 0 0	140 0 0	210 0 0	420 0 0

EXAMPLES.—If a stand in a Government Township is valued at £325 and the monthly stand license money payable thereon is 7s. 6d. per month, the total sum payable for freehold will be £10. If the value is the same and the license money is 11s. 3d. per month, the amount payable for freehold will be £15.

If a stand in a semi-Government Township is valued at £325 and the Government's share of the monthly stand license moneys is 5s. per month, then, after payment of £6 13s. 4d. in respect of the Government's share, no further sum will be payable in respect of such share, but the share accruing to the township owner will be payable as before.

TABLE "B."

Act No. 34  
of 1908.

As in Table "A," the column headed "value" indicates the value of a stand as defined by this Act.

The column headed "number of months" represents the number of months for which Stand License Money must be paid under sub-section (1) (b) section *nine* or under sub-section (2) (b) section *ten* before the registered holder becomes exempt from payment to the Government, directly or indirectly, of such monthly Stand License Money.

The number of months for which Stand License Money must be paid under sub-section (1) (b) section *nine* or under sub-section (2) (b) of section *ten* is the number appearing in the column headed "number of months" for any given stand shown opposite the value of the stand, as set out in the left-hand column.

	Value.					Number of Months.
To £100	...	...	...	...	...	Nil.
From £101 to £250	...	...	...	...	...	14 months.
" £251 to £350	...	...	...	...	...	27 "
" £351 to £450	...	...	...	...	...	40 "
" £451 to £550	...	...	...	...	...	54 "
" £551 to £650	...	...	...	...	...	67 "
" £651 to £750	...	...	...	...	...	80 "
" £751 to £850	...	...	...	...	...	94 "
" £851 to £950	...	...	...	...	...	107 "
" £951 to £1,050	...	...	...	...	...	120 "
" £1,051 to £1,150...	...	...	...	...	...	134 "
" £1,151 to £1,250...	...	...	...	...	...	147 "
" £1,251 to £1,350...	...	...	...	...	...	160 "
" £1,351 to £1,450...	...	...	...	...	...	174 "
" £1,451 to £1,500 and over	...	...	...	...	...	187 "

**Third Schedule.**

FORM OF RECEIPT FOR PAYMENT.\*

*The Townships Amendment Act 1908.*

*The Townships Amendment Act 1908.*

Registered Holder.....  
 Stands or Lots.....  
 Township of .....

Amount of Purchase Price ... £ s. d.  
 Instalment now paid ... £ s. d.

This is to certify that.....  
 the Registered Holder of stands (or Lots) Nos.....  
 in the Township of..... has paid to me  
 the sum of..... †  
 being the..... instalment of the price for  
 conversion to freehold title of the said stands (or lots), together with  
 interest to date on the outstanding balance, the total conversion price  
 being..... †  
 Dated at.....this.....day of.....190...  
 Total Purchase Price, £.....  
 Amount this day paid, £.....  
 Noted under section *fifteen*.....  
 of the above Act in Bk.....  
 fol.....this.....day  
 of.....1908.

(Registrar of Deeds).

(Mining Commissioner).

.....  
*Signature of Township Owner  
 or other person authorised  
 to receive payments.*

Revenue  
 Stamp  
 duly  
 cancelled  
 according  
 to law.

\* NOTE.—This Form must be completed in duplicate for each payment. † The amount must be described fully in words, not in numerals.

**Fourth Schedule.****Act No. 34  
of 1908.**SOLEMN DECLARATION OF TOWNSHIP OWNER (UNDER SECTION *Eighteen*)  
THAT A REGISTERED OWNER OR PURCHASER IS IN ARREARS.

I,.....of the.....  
of.....do solemnly declare :

(1) That I am the.....  
of the.....Company, Limited,  
and that as such.....  
I am in control of the collection of Stand License Moneys and of the Books  
of Account thereof for the Township of.....

(2) That.....  
the Registered Holder of  $\frac{\text{Stand}}{\text{Lot}}$  No.....in the said Township,  
has not paid either directly or indirectly any instalments of Purchase Price,  
Stand License Moneys, or Rentals\* which are due since the.....day  
of....., 190..., and that according to the conditions of  
the Lease under which the said.....  
holds the said Stand, a copy of which is hereto attached, the said.....  
.....Company, Limited, is entitled to cancel the  
said Lease.

Declared before me at.....this.....  
day of....., 190....

.....  
*Justice of the Peace.*

NOTE.—If instalments of Purchase Price are in arrear the following  
paragraph shall be substituted for paragraph (2) :—

That....., the Registered Holder of  
Lot No....., in the said Township, has not paid either directly or  
indirectly any instalments of Purchase Price due since the.....  
day of....., 190..., and that according to the terms of the  
Agreement under which the said.....is entitled  
to obtain freehold of the said lot, a copy of which is hereto attached, the said  
.....Company, Limited, is entitled  
to cancel the said Agreement.

\* Delete "Purchase Price," "Stand License Moneys," and "Rentals"  
wherever inapplicable.

**Fifth Schedule.**AGREEMENT OF PURCHASE IN FREEHOLD (UNDER SECTION *Thirty-two*)  
OF A STAND IN THE TOWNSHIP OF BURGHERSDORP, JOHANNESBURG.

I,....., being one of  
the persons described in section *thirty-two* of the Townships Amendment  
Act, 1908, do hereby agree with the Government of The Transvaal, herein  
represented by....., the Mining  
Commissioner at Johannesburg, for the purchase of Stand No.....  
in the Township of Burghersdorp for the sum of £.....payable as  
in the said Act provided, the first payment to become due on the first day  
of.....190...

I,.....  
the Mining Commissioner, do hereby on behalf of the Government of The  
Transvaal approve of and agree to the sale of the said Stand No.....  
to the said.....  
for the sum of £.....payable as above set forth.

Dated at Johannesburg this.....day of.....190....

Act No. 34  
of 1908.

### Sixth Schedule.

FORM OF RECEIPT UNDER SECTION *Thirty-five* IN RESPECT OF VREDEDORP TOWNSHIP.

THIS IS TO CERTIFY that the standholder of stand No. .... in the Township of Vrededorp has paid to the Municipal Council of Johannesburg :

- (a) all stand license moneys in arrear in respect of such stand up to the date of payment of the first instalment of the purchase price of the freehold ;
- (b) all charges due to the said Council for sanitary service which have become chargeable as from the 1st January 1903 ;
- (c) all charges due to the said Council for the supply of water, gas, or electricity and for all other municipal service in respect of such stand ; and
- (d) all assessment rates due in respect of such stand.

AND FURTHER that the said standholder has paid to the said Municipal Council the sum of .....pounds, being..... instalment of the price of the freehold title to the said stand No....., the total price of such freehold being fifteen pounds sterling, together with interest on the portion or portions of the said purchase price unpaid from time to time in terms of the Vrededorp Stands Act 1907.

Dated this.....day of.....1908.

.....  
*Town Treasurer of Johannesburg.*

Total purchase price of freehold	...	...	... £15 0 0
Amount paid inclusive of the instalment hereby certified	...	...	...

### Seventh Schedule.

DESCRIPTION OF "PROSPECT TOWNSHIP."

That portion of the proclaimed farm Doornfontein No. 140, District Witwatersrand, Mining District of Johannesburg, included within the lines joining the following beacons, viz. :—

Beacon D502, D505, D504, D528, D175, D41, D74, J4, D179, D529, D177, and D502 on the said farm Doornfontein No. 140.

### Eighth Schedule.

DESCRIPTION OF AREA COMPRISING BRICKFIELDS TO BE TRANSFERRED TO THE COUNCIL OF THE MUNICIPALITY OF KRUGERSDORP UNDER SECTION *Forty-six*.

Beginning at Beacon B72 at the south-westerly corner of the farm Paardeplaats No. 73, District Witwatersrand ; thence in an easterly direction along the southerly boundary of the said farm to the easterly side of Burgers Street ; thence in a northerly direction along the easterly side of Burgers Street to a point where the southerly boundary of Wagen Street, if extended, would meet the easterly boundary of Burgers Street ; thence along the southerly side of Wagen Street to its intersection with the westerly side of Oven Street ; thence along the westerly side of Oven Street to the north-east corner of Bewaarplaats No. 8 ; thence along the northerly boundaries of Bewaarplaats No. 8, Brickmaking Site No. 8, and Bewaarplaats No. 7 ; and continuing in the same line to the westerly side of Mijn Street ; thence in a southerly direction along the westerly side of Mijn Street to its intersection with the boundary between the farm Paardeplaats and the farm Waterval No. 124, District Witwatersrand ; thence in a southerly direction along the last-mentioned boundary to Beacon B72, the place of beginning.

**Ninth Schedule.****Act No. 34  
of 1908.**

DESCRIPTION OF AREA COMPRISING "THE OLD BRICKFIELDS" TO BE TRANSFERRED TO THE COUNCIL OF THE MUNICIPALITY OF KRUGERSDORP UNDER SECTION *Forty-eight*.

That portion of an area of land situated on the farm Paardekraal No. 73, District Witwatersrand, known as the "Old Brickfields," situate on the east of the continuation of Market Street in the town of Krugersdorp and between the Stand Township of Krugersdorp on the south and Erven Nos. 124-135 in the District Township of Krugersdorp on the north and extending along the Spruit in an easterly direction, approximately 3,100 feet, from the said continuation of Market Street between the Stand and Erven Township of Krugersdorp, and which area has been divided into brickmakers' stands, Nos. 1 to 48 inclusive, as shown by a plan dated 13th October, 1897, signed by J. J. W. van Staveren, and now filed under No. 251 in the Office of the Registrar of Mining Rights.

**Tenth Schedule.**

CERTIFICATE OF TOWNSHIP TITLE UNDER SECTION *Fifty* OF THE TOWNSHIPS AMENDMENT ACT 1908.

Know all men whom it may concern :

Whereas.....  
is the registered owner of.....  
(here describe the land held under his title deeds) held by him under Deed of Transfer (or Grant) No.....dated.....; and

Whereas he has laid out a township called the Township of.....  
.....upon a portion of the said land hereinafter described; and

Whereas under the provisions of section *fifty* of the Townships Amendment Act 1908 it is necessary that this certificate be issued in respect of the said portion ;

Now therefore, I, the Registrar of Deeds, do hereby certify that the said .....is the registered owner of .....(here describe the portion) now known as the Township of.....measuring.....  
as will more fully appear from the Diagram S. G. No. ....hereunto annexed framed by Surveyor.....in.....  
.....and  $\frac{\text{approved}}{\text{confirmed}}$  by the Surveyor-General on the .....day of.....190..., and subject to such conditions as are mentioned or referred to in the said Deed of Transfer (or Grant) and to the provisions of the Townships Amendment Act 1908.

And that by virtue of these presents the said.....  
his heirs, executors, administrators or assigns now is and henceforth shall be entitled thereto conformably to local custom, Government, however, reserving its rights.

In witness whereof I, the said Registrar, have subscribed to these presents and have caused my Seal of Office to be affixed thereto.

Thus done and executed at the Office of the Registrar of Deeds, Pretoria, on the.....day of.....in the year of Our Lord One thousand Nine hundred and.....

.....  
*Registrar of Deeds.*

Registered in the Register of.....kept at Pretoria,  
book.....page.....on the above date.

NOTE.—Where the land comprised in the township is subject to any special conditions or servitudes, such conditions or servitudes shall be set out in this Certificate.

Act No. 34  
of 1908.

**Eleventh Schedule.**

CERTIFICATE OF CONVERSION TO FREEHOLD TITLE.

I,.....the Registrar of Deeds (or  
 Rand Townships Registrar) do hereby certify that.....  
 .....of the.....  
 of.....in.....  
 (state profession or occupation)  
 is the owner under the provisions of the Townships Amendment Act 1908 of  
 the freehold of Lots numbered.....  
 .....  
 in the Township of.....according to a  
 General Plan S.G. No..... of the said Township of.....  
 framed by.....Surveyor.....  
 in.....and approved and confirmed by the Surveyor-  
 General on the.....day of.....19....., subject to the  
 provisions of the said Townships Amendment Act 1908 and to the special  
 encumbrances endorsed hereon and to conditions numbered.....  
 .....in the Twelfth Schedule to the said Act.

AND that by virtue of these presents the said .....  
 .....his heirs, executors, administrators and  
 assigns, now is and henceforth shall be entitled thereto, conformably to local  
 custom, Government, however, reserving its rights.

IN WITNESS WHEREOF I, the said Registrar, have subscribed to these  
 presents and caused my Seal of Office to be affixed hereto.

THUS DONE and executed at the Office of the Registrar of Deeds (Rand  
 Townships Registrar).....on this  
 the.....day of.....in the year of Our Lord One thousand Nine  
 hundred and.....

.....  
*Registrar of Deeds*  
*(Rand Townships Registrar)*

**Twelfth Schedule.**

FORM OF RECEIPT UNDER SECTION *Sixty-nine.*

I,.....Mining Commissioner, do hereby  
 certify that.....  
 the registered holder of.....  $\frac{\text{Stand}}{\text{Lot}}$  No.....  
 in the Township of.....has paid the full amount of  
 purchase price of the freehold of the said  $\frac{\text{stand}}{\text{lot}}$  and is entitled to a certificate  
 of freehold title to the said  $\frac{\text{stand}}{\text{lot}}$  upon the lodging by the township owner of  
 an approved or confirmed diagram of the said Township of.....  
 .....subject to the conditions of The Townships  
 Amendment Act 1908.

Dated at.....this.....  
 day of.....190.....

.....  
*Mining Commissioner.*

ACT NO. 35 OF 1908.] [See section 142 as to date of operation. **Act No. 35 of 1908.**

AN

# ACT

**To Consolidate and Amend the Law relating to Prospecting and Mining for Precious Metals and Base Metals and to provide for matters incidental thereto.**

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

## Preliminary.

1. The right of mining for and disposing of all precious metals is vested in the Crown; the ownership of, and the right of mining for and disposing of, base metals on Crown or private land is vested in the owner of such land.

Right of mining for and disposing of precious metals vested in the Crown and of base metals in owner of land.

2. The laws mentioned in the First Schedule to this Act shall be and are hereby repealed to the extent set forth in the second column of such Schedule.

Repeal of laws.

3. In this Act unless inconsistent with the context;

Interpretation of terms.

“arbitration” shall mean arbitration in accordance with the provisions of the Expropriation of Lands and Arbitration Clauses Proclamation 1902, and of the Arbitration Ordinance 1904, and any amendment of such laws;

“base metals” shall mean quicksilver, iron, lead, copper, tin, zinc, cobalt, nickel, arsenic, manganese, antimony, bismuth, as well as the ores of such metals, and sulphur, coal, graphite, or any other mineral substance, for the exploitation of which no special provision is made by law;

“claim” shall mean an area of ground which in accordance with this Act or a prior law has been lawfully pegged as a claim, and on which the right to prospect or dig for precious or base metals has been lawfully obtained;



**Act No. 35  
of 1908.**

- “coloured person” shall mean any African or Asiatic native or any other person who is manifestly a coloured person;
- “commencement of this Act” shall mean the date on which this Act came into operation;
- “Crown land” shall mean
- (a) all land in respect of which the Crown is the holder of the mineral rights; and
  - (b) all land which has or may become the property of The Transvaal Land Settlement Board in accordance with section *fifty-two* of The Transvaal Constitution Letters Patent 1906, or the Land Settlement Act 1907, unless the Crown is not the holder of the mineral rights in respect of such land or has alienated or contracted to alienate such rights;
- “diagram” shall mean a diagram prepared by a person lawfully admitted to practise as a land surveyor and approved by the Surveyor-General without publication; and “confirmed diagram” shall mean a diagram confirmed by the Surveyor-General after notice of confirmation has been published in manner prescribed by regulation;
- “dig” shall mean intentionally to win precious metals or base metals (as the case may be) from the earth, and shall include all excavating necessary for the purpose, whether by underground working, open cutting, boring, or otherwise;
- “digger’s license” shall mean a license mentioned in sub-section (3) of section *forty*, and shall include a digger’s license issued or renewed under Law No. 15 of 1898 and current at the commencement of this Act;
- “discoverer” shall mean a person who holds a certificate issued under section *nineteen*.
- “Governor” shall mean the officer for the time being administering the Government of this Colony, acting by and with the advice of the Executive Council thereof;
- “mine” when used as a verb shall have the same meaning as “dig”;
- “holder of the mineral rights” shall mean, in relation to land, the owner thereof, or, if the mineral rights are for the time being severed from the ownership of the land, the person registered in the Deeds Office as holding such rights;

“Mining Commissioner” shall mean any person appointed as such under this Act, or a person lawfully acting in such capacity, and, when used in reference to any mining district, shall mean the person appointed or lawfully acting as Mining Commissioner for such district ;

“mining district” shall mean one of the districts into which the Colony is for the time being divided in accordance with this Act ; and, when used in reference to land, shall mean the mining district in which such land is situate ;

“mining title ” shall mean

(a) a mynpacht-brief issued under this Act or Law No. 15 of 1898 or a prior law ;

(b) a prospecting or digger’s license issued under this Act, under Law No. 15 of 1898, or a prior law ;

(c) a mynpacht-brief issued under Article *thirty-one* of Law No. 15 of 1898 ;

(d) any right to mine granted by the Governor under section *forty-six* or *forty-seven* of this Act ;

(e) a license for a base metal claim issued under Part III of this Act, or under Law No. 14 of 1897 or a prior law, and shall include a lease granted under the Base Metal Law Amendment Ordinance 1903 ;

(f) any other right to mine existing at the commencement of this Act and lawfully granted ;

“Minister” shall mean the Minister of Mines, or any person lawfully acting in such capacity ;

“mynpacht” shall mean ground held as a mynpacht, whether at the commencement of or under this Act ;

“mynpacht-brief ” shall mean the document of title under which a mynpacht is held ;

“owner” shall mean, in relation to private land, the person registered as such in the Deeds Office of this Colony ;

“precious metals ” shall mean

(a) gold and silver, and their ores and gold or silver found in combination with a base metal, where such gold or silver cannot be worked apart from such base metal, and the value of the gold or

**Act No. 35  
of 1908.**

silver exceeds the cost of producing both such precious and base metal ;

(b) any other metal (not being a base metal) declared by proclamation of the Governor in the *Gazette* to be a precious metal for the purposes of this Act and the regulations ;

“ private land ” shall mean any farm or piece of land (whether held in divided or undivided shares) which is not Crown land ;

“ proclaimed field ” shall include all proclaimed land, and so much of any unproclaimed land as may be declared portion of a proclaimed field under this Act or is at the commencement thereof a proclaimed field ;

“ proclaimed land ” shall mean land proclaimed a Public Digging under this Act or Law No. 15 of 1898 or a prior law, provided it has not been lawfully deproclaimed ;

“ prospecting ” shall include all work which is necessary for or incidental to the search for precious or base metals ;

“ prospecting permit ” shall mean such permit as is mentioned in section *fourteen* ;

“ prospecting license ” shall mean a license issued under section *thirty-two*, and shall include a prospecting license issued or renewed under Law No. 15 of 1898 and current at the commencement of this Act ;

“ prospector ” shall mean the person or persons by whom or on whose behalf a prospecting permit is held under this Act, and shall include the holder of mineral rights prospecting on land over which he holds such rights ;

“ regulation ” shall mean a regulation set forth in the Third Schedule to this Act or any additions to or alterations of such Schedule made by the Governor under the powers of this Act ;

“ Treasurer ” shall mean the Colonial Treasurer or any person lawfully acting in such capacity.

Division of  
Act.

4. This Act is divided into four parts relating to the following matters :—

Part I, Administration of Mining Laws ;

Part II, Precious Metals ;

Part III, Base Metals ;

Part IV, General and Miscellaneous ;

and Part II of this Act is divided into Chapters relating to the following subjects :—

- Chapter I, Prospecting ;
- Chapter II, Discovery ;
- Chapter III, Rights of owners of private land ;
- Chapter IV, Proclamation of Public Diggings ;
- Chapter V, Pegging of claims and license moneys in respect thereof ;
- Chapter VI, Further rights to mine on Public Diggings ;
- Chapter VII, Bezitrecht ;
- Chapter VIII, Water-rights and use of water ;
- Chapter IX, Surface rights on ground held under mining title, and use of other proclaimed land ;
- Chapter X, Stands outside Townships ;
- Chapter XI, Lapsing of rights ;
- Chapter XII, Dealing in unwrought precious metals.

**Act No. 35  
of 1908.**

## PART I.

### **Administration of Mining Laws.**

5. (1) There shall be a department to be known as the "Mines Department", which shall be subject to the direction and authority of the Minister.

Mines  
Department.

(2) The function of the Mines Department shall be the supervision and control of the mining industry, and the exercise of all rights, powers, and jurisdiction vested in the Crown or conferred upon its officers by this Act or by any other law relating to precious metals, precious stones, or base metals, or any other mineral substance.

6. The Governor shall, from time to time, appoint an officer to be styled the Government Mining Engineer, who shall carry out the powers and duties conferred and imposed upon him by this Act, or by regulation, or by any law, and such other powers and duties as may be lawfully assigned to him by the Minister. The Governor may further, from time to time, appoint properly qualified inspectors and other officers to assist the Government Mining Engineer in the carrying out of such powers and duties.

Government  
Mining  
Engineer.

7. (1) The mining districts of Johannesburg, Boksburg, Krugersdorp, Pretoria, Heidelberg, Klerksdorp, Pietersburg, Barberton, Pilgrims Rest, and Ottoshoop, the boundaries whereof have

Division of  
Colony into  
mining  
districts and  
classification

**Act No. 35  
of 1908.**

of such districts for purposes of application of special provisions of this Act.

been defined prior to the commencement of this Act, shall be mining districts into which this Colony is divided; provided that the Governor may, from time to time, by proclamation in the *Gazette*, combine any two or more of such mining districts which form one continuous area into one mining district, or may sever any portion of a mining district from the remaining portion and constitute such severed portion a new mining district, or a sub-division of an existing mining district, or may alter and adjust the boundaries of adjoining mining districts.

(2) The mining districts aforesaid shall be and are hereby divided into two classes that is to say

class A, comprising the mining districts of Johannesburg, Boksburg, and Krugersdorp: and

class B, comprising the mining districts of Pretoria, Heidelberg, Klerksdorp, Barberton, Pietersburg, Pilgrims Rest, and Ottoshoop;

provided that the Governor may, from time to time by proclamation in the *Gazette*, declare that any mining district or a portion thereof shall be comprised in either one class or the other.

(3) Wherever any provision of this Act or any regulation is not expressly made applicable to one class, such provision shall be deemed to apply to both classes, and wherever any such provision or regulation is expressly made applicable to one class, the same shall be deemed to apply exclusively to such class.

Mining Commissioner.

8. The Governor shall from time to time appoint an officer to be styled "Mining Commissioner" for one or more mining districts; every Mining Commissioner, subject to the orders and directions of the Minister, shall be the head and have the supervision of all proclaimed fields within his district or districts, and shall have and exercise the powers and duties specially conferred and imposed by this Act, or by regulation, or by any other law, and any other powers and duties that may be lawfully assigned to him by the Minister, and in particular he shall have power to determine, subject to this Act or to regulation, the places where prospecting, pegging or digging shall not take place. The Mining Commissioner shall further have power to make reservations for roads, rights-of-way, water-rights, or any other purpose for which a reservation may be required

or authorized under this Act or any other law. Where no special provision is made by law or municipal bye-law, the Mining Commissioner shall regulate matters in relation to the sanitary condition of any proclaimed field in his district or districts.

**Act No. 35  
of 1908.**

9. The Governor may, from time to time, appoint such other officers of the Mines Department as may be necessary for the effectual exercise of its function and the carrying out of the provisions of this Act, or any regulation, or of any law for the time being regulating prospecting and mining for precious metals, precious stones, base metals, or any other mineral substance.

Appointment  
of other  
officers.

## PART II.

### Precious Metals.

#### CHAPTER I.

#### PROSPECTING.

10. (1) Subject to the provisions of this Chapter prospecting for precious metals under the authority of a prospecting permit may be carried on—

Land which is  
open to the  
public for  
prospecting.

- (a) on proclaimed Crown land, not held under mining title, if such land was proclaimed land at the commencement of this Act;
- (b) on all unproclaimed Crown land;
- (c) on unproclaimed private land, on the written request of the holder of the mineral rights;
- (d) on unproclaimed private land on which
  - (i) no *bona fide* prospecting by the owner or other person acting under contract with him; or
  - (ii) no *bona fide* agricultural, pastoral, or other farming operations by the owner personally or by a white person on his behalf;

are being carried on. For the purposes of this paragraph, agricultural, pastoral or other farming operations shall not be deemed *bona fide* unless carried on for three months during the twelve months immediately preceding the notice mentioned in sub-section (2) (b) (i) of this section.

(2) Land shall not be open to prospecting under this section until, by notice in the *Gazette* and in a newspaper circulating in the mining district, the Minister has declared it so open, and the Minister

**Act No. 35  
of 1908.**

may, in such or any subsequent notice, attach conditions to the prospecting ; provided that

(a) in the case of land described in subsection (1) (a), a portion thereof only may in the Minister's discretion be declared open to prospecting ;

(b) in the case of land described in subsection (1) (d)

(i) the Minister shall first cause three months' written notice to be served upon the owner ; and

(ii) if the owner alleges that the land has been occupied as aforesaid or that prospecting operations have been carried on thereon as aforesaid, the truth of that allegation shall be determined by arbitration.

(3) The Minister may at any time by like notice withdraw from prospecting any land declared open to prospecting under this section, without prejudice to any rights acquired under the prospecting permit while the land was so open.

Prospecting on unproclaimed private land which is not declared open.

**11.** Subject to the provisions of this Chapter, prospecting for precious metals may be carried on under the authority of a prospecting permit on unproclaimed private land (other than is described in the last preceding section) when the holder of such permit has obtained from the holder of the mineral rights his written consent to prospect for precious metals on such land ; provided that

(a) such written consent shall, before prospecting commences, be produced to the Mining Commissioner and a copy thereof lodged at his office ;

(b) the total period for which such consent is given be stated therein ;

(c) such total period be not exceeded.

Prospecting by owner or holder of mineral rights.

**12.** The owner or the holder of the mineral rights over unproclaimed private land may himself, or by his servants acting under his authority, prospect for precious metals on such land without a prospecting permit ; provided he give notice of such intention to the Mining Commissioner.

Prospecting on land settlement lands and native locations.

**13.** Nothing in sections *ten, eleven or twelve* contained shall be deemed to authorize prospecting

(a) on Crown land, which has or may become the property of the Transvaal Land Settlement Board under section *fifty-two* of the Transvaal Constitution Letters Patent 1906 or the Land Settlement Act 1907, until the said

Board has been consulted in accordance with the provisions of sub-section (5) of section *twenty-eight* of the said Act; or

(b) on a native location on which, if it be Crown land, prospecting shall only be allowed after the written permission of the Minister for Native Affairs has been obtained, and if it belong to a chief and tribe, after their written consent and the written permission of such Minister have been obtained.

14. (1) Subject to the provisions of this Chapter, a prospecting permit shall, upon application, be issued by any Mining Commissioner, or other person authorized thereto by the Minister, to any white person of the age of sixteen years or upwards either on his own behalf, or on behalf of another such person or persons or of an incorporated company. Every prospecting permit shall be in the form prescribed by regulation.

Issue of and rights attaching to prospecting permits.

(2) A prospecting permit shall be available for prospecting for precious metals throughout the Colony, subject to the provisions of this Act. It shall be in force for twelve months from the date of its issue, and a fee of five shillings shall be payable therefor.

(3) A prospector shall, for the purpose of authorized prospecting, be entitled to graze, free of cost, four draught animals, and, with the written consent of the Mining Commissioner, such additional number of draught animals up to sixteen as may appear necessary; the prospector shall further have the right for his personal requirements to use such water (not being water artificially conserved), and to take so much dead wood as the Mining Commissioner may authorize in writing.

15. (1) On land on which prospecting is permitted under section *ten*, a prospector may peg an area (called a prospecting area) as far as possible rectangular in shape, and not exceeding two thousand feet in length and two thousand feet in breadth. Such area shall be pegged by placing, in accordance with regulation, pegs on its sides and angular points. A prospector who has fulfilled the conditions of this section shall have the exclusive right of prospecting in such area so long as he prospects to the satisfaction of the Mining Commissioner and maintains his pegs according to regulation. In default of compliance by the prospector with the

How exclusive right of prospecting on an area may be obtained.



**Act No. 35  
of 1908.**

provisions of this section, the Mining Commissioner may declare forfeited the rights acquired thereunder, and such area, and any portion thereof, shall not be open for pegging by the same prospector within a period of twelve months from the date of such forfeiture.

(2) The prospector may at any time abandon the area and shall report the pegging or the abandonment to the Mining Commissioner or the Beacon Inspector within one month, and if he abandon the area or forfeit the rights aforesaid, or whenever his prospecting permit expires, he shall remove the pegs. If the prospector fails to comply with any provision of this sub-section he shall be liable to a fine not exceeding ten pounds.

(3) No prospector shall be entitled under this section to peg or hold more than one prospecting area at one and the same time in any one mining district.

Where  
prospecting  
not permitted.

**16.** (1) No person shall prospect in any town, village, or township, or on any public square, street, road, railway, cemetery, location for coloured persons, stand, places where tailings are heaped, *bewaarplaats*, machinery site, water-right, or on any other place reserved under this Act or a prior law or pointed out by the Mining Commissioner as reserved from prospecting.

(2) A prospecting permit shall not authorize the holder to enter upon any land used as a garden, orchard, vineyard, nursery, or plantation, or on land under cultivation, or within one hundred yards of any spring, well, borehole, stream, reservoir, dam, watercourse, or water-works, or within two hundred yards of any house, homestead, or building.

## CHAPTER II.

### DISCOVERY.

Duty of  
prospector  
etc., on dis-  
covery of  
precious  
metals to  
report the  
same to the  
Mining Com-  
missioner.

**17.** (1) It shall be the duty of every prospector who has discovered precious metals, to give notice in writing of such discovery to the Mining Commissioner, within fourteen days thereafter if the discovery be in a mining district comprised in class A, and within thirty days thereafter if the discovery be made in a mining district comprised in class B. With such notice there shall be transmitted a declaration containing particulars of the time when and the place where such discovery was made and any further particulars prescribed by regulation.

(2) If a prospector fails to comply with any provision of this section, or makes a declaration false in any material particular knowing the same to be false, he shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds; upon conviction of a prospector for such false declaration, the Minister may declare forfeited any rights granted in consequence of it.

**18.** The Minister may cause investigation to be made concerning the nature, extent, and results of prospecting, with a view to ascertaining if any discovery of precious metals, whether notified or not, has been made.

Investigation  
as to prospecting.

**19.** (1) When a discovery shall have been notified in accordance with section *seventeen*, in respect of any place, and the Minister is satisfied that it is, or having regard to all the circumstances, should be regarded as a genuine discovery and that there are reasonable grounds for believing that precious metals exist in payable quantities at such place, the Mining Commissioner shall give to the prospector a notice entitling him within a period, to be fixed by the Minister (not being less than thirty days), to peg at such place as follows:—

Rights and  
duties of  
discoverers.

(a) in the case of land described in subsection 1 (a) of section *ten* an area of one claim to every sixty morgen;

(b) in the case of land which is to be proclaimed within twelve months from the date of the notice aforesaid, an area of one claim to every sixty morgen of the land to be proclaimed;

(c) in the case of land which is not to be proclaimed within such twelve months, an area of one claim to every sixty morgen of such land;

but in no case an area of less size than ten nor more than fifty claims on private land and on Crown land an area of not less than twenty-five claims (where available) nor more than fifty claims.

Provided that if the discovery was made by prospecting or boring to a greater depth than one thousand feet, the Minister shall increase the size of the area by permitting the prospector to peg at the place aforesaid an area of one claim to every sixty morgen for every additional thousand feet of depth, but not exceeding fifty claims for every such additional thousand feet.

(2) If the prospector does not comply with terms of the said notice within the period fixed

**Act No. 35  
of 1908.**

as aforesaid, he shall be deemed to have abandoned his rights under this section.

(3) Such area shall, as far as possible, be rectangular in shape, and in respect of the proportions of length to breadth along and across the reef shall be at the highest as two is to one.

(4) As soon as the prospector shall have complied with the terms of the said notice, he shall be entitled to have issued to him a certificate in respect of the area pegged by him.

(5) Such certificate shall entitle the holder to the exclusive right of prospecting and mining on the said area for a period of three years from the date of the said certificate, but if the prospecting and mining is not carried on to the satisfaction of the Mining Commissioner, license moneys calculated as provided in section *forty* shall thereupon be payable in respect of the area, and in any event shall become payable after the expiry of the said period of three years.

(6) As soon as the certificate is issued, the provisions of Chapter V shall apply to the said area, and as soon as license moneys become payable, the said area shall, for all the purposes of this Act and the regulations, be deemed to be claims.

(7) The terms of the notice mentioned in subsection (1) shall be published in the *Gazette* and in a newspaper circulating in the mining district, and thereupon all prospecting, except by the discoverer, shall cease within such distance from the place where the discovery was made as the Minister may determine.

CHAPTER III.

RIGHTS OF OWNERS OF PRIVATE LAND.

*A.—Exploitation of Precious Metals under Mynpacht.*

Selection of  
mynpacht by  
holders of  
mineral  
rights.

**20.** (1) Whenever precious metals have been found on unproclaimed private land, the holder of the mineral rights shall, subject to the discoverer's rights (if any), have the right to select either one or two areas called a mynpacht, which shall in the aggregate be not more than one-fifth of the extent of land to be proclaimed if notice of proclamation has been given, or, if, after request by such holder, the Governor shall refuse to proclaim the land, then in the aggregate one-fifth of the land over which the holder has the mineral rights; on

obtaining, and as long as he holds a mynpacht-brief, he shall have the exclusive right of prospecting and mining for precious metals within the mynpacht.

(2) The proportion of the length of the mynpacht along the reef to its breadth across the reef shall be at the highest as two is to one, and it shall, as far as possible, be rectangular in shape.

(3) The said holder shall lodge at the office of the Mining Commissioner a diagram of the mynpacht so selected, together with a certificate from the Registrar of Deeds that he is the registered holder of the mineral rights over the land.

(4) If the said holder shall not have complied with the provisions of sub-section (3) within a period of three months after notice of intention to proclaim, he shall be deemed to have abandoned his right to the mynpacht.

(5) Ground selected as a mynpacht under this section, shall, upon proclamation, be deemed to be proclaimed land, but shall not be dealt with under section *thirty* save as is otherwise expressly provided in this Act.

21. The following provisions shall apply to the issue and renewal of a mynpacht-brief :—

Issue and  
renewal of  
mynpacht-  
briefs.

(a) Upon selection of his mynpacht, the person entitled thereto may obtain from the Mining Commissioner a mynpacht-brief, which shall be signed by the Minister and issued for a period of not less than five and not more than twenty years.

(b) The holder of a mynpacht-brief shall be entitled to renew the same, from time to time, for any such period aforesaid, subject to the provisions of the law for the time being in force. If he fails to make application for renewal of the mynpacht-brief, within six months of its expiry (notice of the expiry having been given to him by the Mining Commissioner as soon as possible thereafter), the land comprising the mynpacht may be dealt with in manner described in section *thirty*, and in the case of a mynpacht not on proclaimed land, may be proclaimed.

(c) Renewal of a mynpacht-brief shall be effected by endorsement thereon, signed by the Minister, and by or on behalf of the person in whose favour application for renewal is made.

**Act No. 35  
of 1908.**

(d) Save as is otherwise provided in this and the next succeeding section, no mynpacht-brief shall be renewed in any other name than that of the person in whose name it was last registered.

(e) If the holder of a mynpacht-brief be the lessee of the mineral rights within the area in respect of which it was issued, the period of the mynpacht-brief, or of its renewal, shall not exceed the unexpired period of the lease. On the expiry of the lease, the holder for the time being of the mineral rights shall be entitled to a mynpacht-brief for any such period as is mentioned in paragraph (a) of this section.

(f) If the holder of a mynpacht-brief, being the lessee of the mineral rights, fails to make application for renewal of the mynpacht-brief within six months after its expiry, notice of its expiry shall be given by the Mining Commissioner to the lessor, and the lessor may, within three months after the receipt of the notice, apply for and obtain a mynpacht-brief in respect of the mynpacht. If no such application be made, the land comprising the mynpacht may be dealt with in manner described in section *thirty*, and, in the case of a mynpacht not on proclaimed land, may be proclaimed.

(g) Whenever a mynpacht-brief, which is held by two or more persons having undivided interests in the mynpacht, expires, and one or more of such persons have failed in terms of paragraph (b) to exercise the right of renewal, the person or persons desiring to exercise such right shall be entitled to a new mynpacht-brief for such extent of ground as he or they may select corresponding with his or their interest in the mynpacht; provided a diagram of the ground selected be lodged at the office of the Mining Commissioner. Any portion of the mynpacht, in respect of which the right of renewal is not exercised, may be dealt with in manner described in section *thirty*, and in the case of a mynpacht not on proclaimed land, may be proclaimed.

(h) Whenever a mynpacht-brief is held by two or more persons having undivided interests in the mynpacht, and such persons desire that the mynpacht be divided in

a manner mutually agreed between them a mynpacht-brief may be issued for as many parts as there are divisions of the mynpacht; provided that in the case of an unexpired mynpacht-brief the new mynpacht-brief shall not exceed the unexpired period of the original mynpacht-brief; provided further, that a diagram has been lodged for each such division at the office of the Mining Commissioner.

**22.** Every mynpacht-brief shall be held upon the following conditions:—

Conditions upon which mynpacht shall be held.

(a) A sum of ten shillings per annum for every morgen, or fraction of a morgen, included in the mynpacht shall be payable, by the registered holder of the mynpacht-brief, at the office of the Mining Commissioner on the date on which it is issued, and on the same date in every year thereafter during its currency. On the division of a mynpacht, the holder of any divided portion thereof shall be liable to make payment in respect of his portion from the date of registration in his name of such portion.

(b) If the amount payable under this or the next succeeding section be six months in arrear, the Mining Commissioner shall forthwith, in writing, demand payment from the registered holder of the mynpacht-brief, and shall further give notice of such demand to the owner of the land, and to the holder of the mineral rights if he is not the owner, and to the registered holder of any mortgage bond over the mynpacht, and shall publish such demand in three consecutive ordinary issues of the *Gazette*; and in default of payment of the amount due within three months after the first of such publications, the Minister shall declare the mynpacht-brief cancelled, and the land comprising the mynpacht may be dealt with in manner described in section *thirty*, and, in the case of a mynpacht not on proclaimed land, may be proclaimed.

(c) A mynpacht may be transferred, either wholly or in part, from one person to another, or hypothecated, subject to the provisions of the law for the time being governing registration of mining title, and subject also, in the case of a transfer, to the provisions of the Transfer Duty Proclamation

**Act No. 35  
of 1908**

1902 or any amendment thereof ; provided that where transfer is made of a portion of a mynpacht, a new mynpacht-brief shall be issued in respect of such portion for the unexpired period of the original mynpacht-brief, on deposit of a diagram and production of the original mynpacht-brief at the office of the Mining Commissioner.

(d) The holder of a mynpacht-brief may permit any person to dig for precious metals on his own behalf on the mynpacht on such terms and conditions as may be mutually agreed upon ; provided that

- (1) such person shall be in possession of a prospecting or digger's license for a number of claims corresponding with the extent of ground on which he has permission to dig, such ground being deemed for all the purposes of this Act (save as to Chapter XI) and the regulations to be claims ;
- (2) written notice of the permission shall be given by the holder of the mynpacht-brief to the Mining Commissioner ;
- (3) nothing in this paragraph contained shall relieve the holder from the terms and conditions of his mynpacht-brief.

For the purposes of this paragraph any such person as is described in article *thirty-two* of Law No. 15 of 1898 shall be deemed to be the holder of a mynpacht-brief.

*B.—Owner's Reservations.*

Reservation to owner of private land of homestead cultivated lands buildings etc.

**23.** (1) Before any private land is proclaimed there shall be reserved to the owner the free and uninterrupted use of

- (a) any homestead (*werf*) on the land to be so dealt with ;
- (b) all buildings, cemeteries, and kraals situated outside any such homestead (*werf*);
- (c) all enclosed ground which has been under cultivation for two years prior to the date of the notice of intention to proclaim, which is given to the owner under this Act, and the springs, wells, boreholes and watercourses in the neighbourhood of such ground ;
- (d) sufficient water for the owner's use for domestic purposes, for watering his stock, and for irrigating the ground mentioned in paragraph (c) of this sub-section, and if the owner is also the holder of the

mineral rights, sufficient water for working his mynpacht.

(2) The quantity of water reserved under sub-section (1) shall, before the land is proclaimed and after the water has been gauged, be determined by the Mining Commissioner, subject to confirmation by the Minister. Thereafter the quantity of water so determined may be used by the owner for the purposes aforesaid, or disposed of by him. The remainder of the water, and the water not so used or disposed of, may be dealt with under the provisions of Chapter VIII. Lessees, servitude holders, and others entitled to water shall retain the right to the water so determined in so far as, at the time of proclamation, they are using it for the purposes mentioned in sub-section (1).

(3) After receiving the said notice of intention to proclaim, and before the expiry of three months from the date thereof or of such extended period as the Minister may grant, the owner shall submit to the Mining Commissioner a sketch plan showing clearly all portions of ground which he may desire to be reserved under sub-section (1) of this section.

The Mining Commissioner, at the expiry of such period or extended period (as the case may be), whether the owner has submitted a sketch plan or not, shall determine, subject to confirmation by the Minister, which portions of such ground shall be so reserved.

(4) After the portions of ground to be reserved have been determined as aforesaid, the owner shall lodge at the office of the Mining Commissioner a diagram of such portions, and such diagram shall be therein filed; and thereupon the owner shall be entitled to obtain from the Mining Commissioner a certificate setting forth the extent and purposes of the reservations, and containing a reference to the said diagram. Such certificate shall be capable of registration in the same manner as a mynpacht-brief, and shall be indisputable.

(5) Ground reserved under this section shall be deemed to be proclaimed land, but shall not be dealt with under section *thirty* or otherwise than under the provisions of section *fifty-two*.

*C.—Reservations in Native Locations.*

24. When land, being a native location, or portion of a native location, is proclaimed a Public Digging, the following provisions shall apply:—

Special provisions applicable to native locations.



**Act No. 35  
of 1908.**

(1) The chief and tribe occupying the location shall retain the right to graze their stock thereon in so far as such right does not interfere with prospecting and mining.

(2) All kraals, and such lands as were habitually under cultivation and irrigation for two years prior to the date of the notice of intention to proclaim, shall be reserved for the use of such chief and tribe, unless they consent to the reservation not being made.

(3) Sufficient water shall be reserved for the domestic purposes, and for watering the stock of such chief and tribe.

(4) If such location be Crown land there shall be granted to the chief and tribe as compensation for the land, of the use of which they have been deprived by the grant of discoverers' rights or by the location being proclaimed the use of an equal area of other land.

(5) If such location belong to such chief and tribe, any person who has become the holder of the mineral rights, may, in addition to any rights which he may obtain as a discoverer, select one or two areas as a mynpacht of a size to be fixed by the Minister for Native Affairs in consultation with the Minister, but not exceeding in the aggregate one-fifth of the extent of the land proclaimed, or if the Governor shall refuse to proclaim the land, then not exceeding in the aggregate one-fifth of the land over which such mineral rights are held. The moneys or other consideration (if any) payable to the chief and tribe for the acquisition of such mineral rights, together with one-half the moneys derived from time to time from mining titles or other rights on the land, shall be paid to the Minister for Native Affairs, and shall be held by him in trust for the chief and tribe, and applied for such purposes as they may desire, subject to the approval of the Governor.

*General.—Beaconing of Mynpacht and Reservations.*

Beaconing of mynpacht and reservation.

**25.** (1) Within seven days after any mynpacht or reservation mentioned in this Chapter has been finally determined, the Mining Commissioner shall give written notice to the person entitled to the mynpacht or reservation (as the case may be) requiring him to construct thereon beacons and trenches in accordance with this section and with regulation. If he does not comply with such notice within three weeks

after the date thereof, the Mining Commissioner shall cause the beacons and trenches to be constructed at the cost of such person.

(2) The beacons shall be constructed at the angular points of the mynpacht or reservation, and, except where natural boundaries exist, line beacons shall be constructed at clearly visible distances (not exceeding one thousand yards) along its sides : whenever it is possible, trenches shall be constructed so as to indicate the direction of the boundaries at each beacon.

(3) The beacons and trenches shall be maintained in repair to the satisfaction of the Mining Commissioner by the person for the time being entitled to the mynpacht or reservation (as the case may be); and if he shall make default in complying with a notice in writing by the Mining Commissioner, calling upon him to put the beacons and trenches in repair within a specified time, the Mining Commissioner may effect the necessary repairs at the cost of such person.

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#### CHAPTER IV.

#### PROCLAMATION OF PUBLIC DIGGINGS.

26. (1) Whenever the Governor is satisfied that there are reasonable grounds for believing that precious metals exist in payable quantities on unproclaimed land, he may proclaim such land a Public Digging after the discoverer's rights (if any) under this Act have been ascertained and secured, and subject, in the case of private land, to the provisions hereinafter contained.

Proclamation  
of Public  
Diggings.

(2) No land shall be proclaimed which is not necessary for the purposes of the Digging.

(3) Notice of intention to proclaim any land under this section, shall be published in four consecutive weeks in the *Gazette* and in a newspaper circulating in the mining district, and shall further be posted outside the principal door of the office of the Mining Commissioner for a period of one month.

(4) In the proclamation there shall be stated the date on which it shall take effect (not being less than thirty days after the first publication thereof), and in respect of any portion of the Public Digging which is to be declared open to pegging, the proclamation shall describe such portion and state the hour at which pegging may be commenced thereon.

**Act No. 35  
of 1908.**

(5) The Minister shall cause notice to be given in the *Gazette*, and in a newspaper circulating in the Mining District, of the places at which and the date upon and after which licenses under section *thirty-two* may be obtained to peg claims in such portion.

Effects of and matters incidental to proclamation.

**27.** (1) After such proclamation, prospecting on the land proclaimed shall only be allowed under a mining title.

(2) Whenever by any such proclamation damage is caused to rights existing on or over the land proclaimed at the date of the notice of intention to proclaim, the person entitled to such rights shall be compensated by the holder of the mineral rights. The amount of compensation shall, in the absence of agreement be determined by arbitration.

Provisions and conditions relative to proclamation of private land.

**28.** (1) No private land shall be proclaimed a Public Digging without the written consent of the holder of the mineral rights unless

(a) such land has been declared open to prospecting for precious metals under this Act ; or

(b) such holder has, by himself or his servants, prospected on the land, or has at any time given his written consent to prospecting thereon ; or

(c) the Minister has ascertained in manner provided by sub-section (2) that there are reasonable grounds for believing that precious metals exist in payable quantities on such land.

(2) If it be brought to the notice of the Minister that there are reasonable grounds for believing that precious metals exist in payable quantities on any unproclaimed private land on which prospecting is not permitted under sections *ten* or *eleven*, he may authorize the Government Mining Engineer to enter and make investigations thereon. The Government Mining Engineer shall thereupon, after consultation with the holder of the mineral rights, and subject to the provisions of section *sixteen*, carry on such prospecting on such land as will enable him to report whether there are such reasonable grounds as aforesaid. In carrying on such prospecting, the Government Mining Engineer shall conform to all regulations which are applicable to prospectors.

(3) The proclamation shall not take effect in the cases mentioned in paragraphs (a) and (b) of sub-section (1) until the expiry of four months from the date of a written notice given by the Minister to the holder of the

mineral rights, as well as to the owner, and in the case mentioned in paragraph (c) of sub-section (1), until the expiry of twelve months from the date of a like notice. Such notice shall state the intention of the Governor to proclaim the land, and shall call upon the holder of the mineral rights to select his mynpacht in accordance with section *twenty*, and upon the owner to select the reservations to be made under section *twenty-three*.

**29.** No land shall be proclaimed a Public Digging until beacons in accordance with regulation have been erected at the angular points thereof as well as line beacons at clearly visible distances at the cost of the public revenue, and a diagram of the land has been lodged at the office of the Mining Commissioner and the Deeds Office; nor, if it be private land, until the beacons and trenches mentioned in section *twenty-five* have been constructed. If in the opinion of the Surveyor-General any existing diagram having reference to the land to be proclaimed, is not sufficiently accurate, a new survey may be made by the Surveyor-General of the ground in accordance with the existing beacons and after due publication and passing of the new diagram the old diagram shall be cancelled by him.

Beaconing  
etc. of all  
land before  
proclamation.

**30.** The Governor may deal with proclaimed land in any or all of the following ways :—

Alternative  
methods of  
dealing with  
Public  
Diggings.

(a) He may declare the whole or any portion thereof open to the public for the pegging of claims in accordance with Chapter V;

(b) He may lease to any person the exclusive right to mine the precious metals on any portion of the Digging not held under mining title, subject to the provisions of sections *forty-six* and *forty-eight*;

(c) He may with the previous sanction of Parliament, establish a State Mine upon any portion of the Digging, subject to the provisions of sections *forty-nine* and *fifty*.

Nothing in this section contained shall be deemed to restrict pegging upon proclaimed land which was open to pegging on the day prior to the commencement of this Act or to authorize pegging upon proclaimed land in respect of which upon such day licenses to peg claims could not have been issued.

**31.** (1) Any portion of a Public Digging which has been declared open to pegging either under this Act or Law No. 15 of 1898 or a prior law may

Deproclama-  
tion of Public  
Diggings.

**Act No. 35  
of 1908.**

be deproclaimed by the Governor, if the extent of ground held under digger's license is at the date of the notice mentioned in sub-section (3) less than one digger's claim to every twenty morgen of such portion, and, according to the certificate of the Government Mining Engineer, precious metals are not being found or likely to be found in payable quantities on such portion.

(2) Any portion of a Public Digging which has not been declared open to pegging may be deproclaimed by the Governor whenever the Minister, from the report of the Government Mining Engineer, is satisfied that precious metals are not being found or likely to be found in payable quantities on such portion.

(3) Notice of intention to deproclaim any portion of a Public Digging shall be published in four consecutive weeks in the *Gazette* and in a newspaper circulating in the mining district.

(4) The deproclamation of any portion of a Public Digging shall not affect any rights granted on such portion under this Act or a prior law, and existing at the date of the notice of intention to deproclaim; provided that the owner may expropriate any such rights on payment of an amount, by way of compensation, to be fixed by mutual agreement, or in default of such agreement, to be determined by arbitration.

If, on or after the date of deproclamation, payment of license moneys due in respect of such rights be three months in arrear, such rights shall be cancelled by the Mining Commissioner and thereupon the ground shall no longer be portion of a Public Digging.

CHAPTER V.

PEGGING OF CLAIMS AND LICENSE MONEYS IN RESPECT THEREOF.

Pegging of  
claims under  
license.

**32.** (1) Every white person of the age of sixteen years or upwards, may, on payment of license moneys in accordance with section *forty*, obtain from the Mining Commissioner a license called a "prospecting license" entitling the holder, during a period of one month, to peg in the manner prescribed by regulation upon such portion of a Public Digging as is open to pegging the number of claims authorized by the license but not exceeding fifty.

(2) It shall not be lawful to peg a claim unless the license holder or his representative is present with his license on the ground

which he desires to peg, or in any place, where prospecting is forbidden by this Act, or which has been reserved or pointed out as reserved under this Act from pegging.

(3) No claim shall be pegged between sunset and sunrise, nor on Sunday or a day declared by law a public holiday.

(4) Any person contravening the provisions of sub-sections (2) or (3) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds.

**33.** A claim shall be one hundred and fifty feet in breadth and four hundred feet in length; and, in the case of a reef claim, the breadth shall be taken along the strike of the reef and the length across the strike. Every claim shall, as far as possible, be pegged in a rectangular shape and where the nature of the ground will not permit of its being so pegged, it shall not exceed sixty thousand square feet.

Dimensions and shape of claims.

**34.** (1) Every person pegging a claim shall report such pegging to the Beacon Inspector concerned, within two days in mining districts comprised in class A, and within fourteen days in mining districts comprised in class B, and, within seven days thereafter, shall indicate the angular points of the claim by the beacons required by regulation.

Report of pegging to beacon inspector.

(2) Every such person shall also, within one month from the date of pegging or before renewal of the license lodge at the office of the Mining Commissioner

(a) a certificate of the Beacon Inspector concerned, that the ground has been pegged and beacons erected in accordance with this section;

(b) a sketch plan, showing the situation of the claim or claims and such other particulars as are prescribed by regulation.

**35.** (1) The Mining Commissioner may, before or after the lodging of a sketch plan, require a diagram to be lodged, if, in his opinion, the same is necessary or expedient, provided that two months' notice be given to the license holder.

Power of Mining Commissioner to require diagram.

(2) A confirmed diagram shall be required by the Mining Commissioner when transfer of the claim is sought; provided that, in a mining district comprised in class B, transfer may in the discretion of the Mining Commissioner be registered, though a sketch plan only has been lodged, upon production of a certificate of the Beacon Inspector

**Act No. 35  
of 1908.**

Maintenance  
of beacons.

concerned, that all regulations relative to pegs and beacons have been complied with.

**36.** Every holder of a claim shall maintain his beacons in proper repair and in accordance with regulation, and if the same be out of repair he shall put them in repair within a time to be specified by the Mining Commissioner in a written notice to such holder.

Lapsing of  
claim on  
failure to  
comply with  
provisions as  
to diagrams or  
beacons.

**37.** If the holder of a claim fail to comply with any provision of section *thirty-four*, *thirty-five* or *thirty-six*, the claim shall lapse and be dealt with under Chapter XI; provided that no license shall be issued to such holder in respect of such claim until he has complied with all such provisions.

Pegging of  
ground by  
other person  
where first  
pegger has  
pegged in  
excess of  
number of  
claims  
allowed by  
his license.

**38.** (1) If any person (hereinafter called the first pegger) shall have pegged on any piece of land a larger superficial area than he is authorised to peg by the terms of his license any other person (hereinafter called the second pegger) who is duly licensed may peg off within the pegs of the first pegger claims adjoining one another but so that such claims shall be taken along the whole length of one of the sides of such piece of land; provided that—

(a) the second pegger shall not peg in places that have been worked or in such manner as to interfere with the first pegger;

(b) the second pegger shall within two days after such pegging give written notice thereof to the Mining Commissioner and to the first pegger;

(c) the second pegger shall within twenty-one days transmit to the Mining Commissioner a diagram of such piece of land showing the position of the claims pegged by him and, so far as it may be defined by pegs or beacons, the position of the area pegged by the first pegger.

(2) The Mining Commissioner may thereupon award to the second pegger the claims pegged by him in accordance with this section, or if the piece of land shewn to be in excess is insufficient to permit of claims of full size being marked off in manner aforesaid, the Mining Commissioner may award to and allow the second pegger, subject to the provisions of sub-section (1) (a) of this section, to locate within the pegs of the first pegger, such number of claims of full size as may be found to be in excess; provided that such excess claims shall adjoin one another on one of the sides of the said piece of land. An appeal

shall lie within fourteen days from the decision of the Mining Commissioner to the Minister whose decision shall be final. The Mining Commissioner shall upon expiry of the licenses of the first and second peggers renew the same in accordance with the terms of any award or decision given under this sub-section.

(3) Any person being a second pegger who pegs ground within the claims of a first pegger knowing the same to be ground not open for pegging shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred pounds.

(4) Any person who wilfully pegs an area more than ten per cent. in excess of the number of claims allowed by his license or any person who having pegged such excess shall not withdraw his pegs therefrom within five days after being required by the Beacon Inspector so to do shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds.

**39.** (1) A prospecting license shall entitle the holder to prospect and mine for precious metals on the claim or claims in respect of which it is held, and, subject to the provisions of this Act he shall be entitled, from time to time, for a period not exceeding three months to obtain a renewal of the license on payment of license moneys in accordance with section *forty*.

Rights  
conferred by  
prospecting  
license.

(2) The renewal of a prospecting license shall be refused by the Mining Commissioner

(a) if, on investigating a dispute as to pegging, he finds that any claim held under such license has been lawfully pegged by a person other than the applicant for renewal or is lawfully held ;

(b) if he finds that any person, professing to act under such license, has pegged at a time or place forbidden by law or on ground lawfully reserved from pegging, or where pegging is not authorised by law.

(3) Save as is otherwise provided in this Act, the Mining Commissioner shall not refuse to renew a prospecting license when a diagram of the claims held thereunder has been lodged, except upon the order of a court of competent jurisdiction.

(4) Nothing in this or the last preceding section contained shall affect the right of any party to a dispute to obtain in a court of law any relief to which he may be entitled.



**Act No. 35  
of 1908.**

License moneys payable in respect of claims where pegged before or after commencement of this Act.

**40.** (1) Subject to the provisions of this section there shall be paid in advance to the Mining Commissioner in respect of every prospecting license (whether the claims held thereunder were pegged before or after the commencement of this Act) two shillings and sixpence per month, per claim, in the case of Crown land, and five shillings per month, per claim, in the case of private land.

(2) If at any time ground held under prospecting license (whether on Crown or private land) is not being adequately prospected, the Mining Commissioner may demand, upon renewal of the license, an increased rate of license moneys at fifteen shillings per month per claim; provided that the applicant for renewal may, if aggrieved by such demand, appeal within a period of thirty days to the Minister, who may allow or dismiss the appeal and whose decision shall be final. For the purposes of this sub-section, prospecting upon any one claim with intent to prove the nature and value of precious metals on another claim, which is in direct relation or direct proximity to the first-mentioned claim, shall be deemed to be prospecting on such other claim.

(3) As soon as use is being made of machinery, wherever situate, for the crushing or treatment of ore obtained from a claim or a claim has been sufficiently developed to permit of the extraction of ore therefrom, the license holder shall, before he is entitled to win precious metals from any such claim, convert his prospecting license therefor into a license to be called a "digger's license" in respect of which there shall be paid in advance the sum of twenty shillings per month, whether the same be situate upon Crown or private land.

(4) A digger's license shall entitle the holder to dig for precious metals on any claim or claims in respect of which it is held, subject to the provisions of this Act, and, save as is in subsections (1) and (2) of this section otherwise provided, all the provisions of this Chapter relating to prospecting licenses shall *mutatis mutandis* apply to diggers' licenses.

Exemptions from payment of license moneys.

**41.** Notwithstanding anything in section *forty* contained—

(1) when a license holder holds on his own behalf not more than fifteen claims and has been personally working the same for

a period of six months since the license was issued or last renewed (as the case may be), the Mining Commissioner may, on renewing the license, remit so much of the license moneys as would accrue to the public revenue under this Act;

(2) when a claim is situate in an unhealthy locality, and the license holder has been working it in a manner which the Mining Commissioner deems sufficient, the Mining Commissioner may grant exemption from payment of license moneys for such period as, having regard to all the circumstances, he may think just. Every such exemption shall be subject to confirmation by the Minister. The Mining Commissioner, subject to review by the Minister, shall determine in each case whether a locality is healthy or unhealthy for the purposes of this section.

42. One half of the moneys received by the Mining Commissioner for the issue or renewal of prospecting and diggers' licenses shall be paid to the owner when the claim is situate upon private land.

Share of license moneys payable to the owner of private land.

43. A prospecting or digger's license may be transferred either wholly or in part in accordance with the provisions of the law for the time being in force governing registration of mining title and on payment of transfer duty in accordance with the Transfer Duty Proclamation 1902 or any amendment thereof. If a license is transferred as to part only of a claim, such part shall, notwithstanding anything in section *thirty-three* contained, be deemed to be a claim.

Transfer of license.

44. (1) Any claim held under a prospecting or digger's license may be abandoned, provided the holder thereof give written notice to the Mining Commissioner of his intention to abandon.

Abandonment of claims.

(2) Upon his giving such notice, he shall again be entitled to peg claims in accordance with the provisions of section *thirty-two* on ground open to pegging.

45. The right to mine for precious metals on any claim so abandoned shall lapse to the Crown, and that claim may be dealt with in manner described in section *thirty*.

Abandoned claims to lapse to Crown.

Act No. 35  
of 1908.

CHAPTER VI.

FURTHER RIGHTS TO MINE ON PUBLIC  
DIGGINGS.

Lease of right  
to mine  
precious  
metals on  
Public  
Diggings or  
portion  
thereof.

**46.** (1) Whenever the Governor shall have determined to exercise the power mentioned in sub-section (b) of section *thirty* he shall cause such portion to be divided into such number of claims as will, in the opinion of the Government Mining Engineer, be sufficient in extent to constitute a workable mining proposition. After a diagram has been made of such portion showing such areas, the Minister shall, by notice in the *Gazette* and in such newspapers as the Minister may consider advisable call for applications for the grant of a lease. Such notice shall set forth the period within which applications will be received, and the boundaries and description of the claims in respect of which such lease will be granted.

(2) The following conditions shall form part of every such lease:—

(a) The lessee shall provide within a specified time the capital required for the equipment of the mine to be worked under the lease and all further working capital necessary for the development of such mine.

(b) The lessee shall carry on mining to the satisfaction of the Minister, unless prevented by the influx or scarcity of water, serious accident, damage to the mine or machinery, disputes with workmen or by any other cause deemed adequate by the Minister.

(c) An amount to be agreed upon, being a percentage of the annual net produce obtained from the exercise of the right leased, shall be paid to the Treasurer, and for the purpose of ascertaining such net produce, the provisions of the Profits Tax (Gold Mines) Proclamation 1902 or any amendment thereof shall *mutatis mutandis* apply.

(d) No tax shall be payable under the said Proclamation or any amendment thereof on the annual net produce obtained in respect of the right leased.

(e) A rent shall be paid by the lessee of so much as would have been payable under sub-sections (1) and (3) of section *forty* if the claims had been held by the lessee under license in accordance with the provisions of Chapter V.

(*f*) If the lessee fails to provide the capital or suspends the carrying on of the mining required by the lease without the consent of the Minister, except as in paragraph (*b*) is provided, or fails to carry out any decision given in the arbitration mentioned in paragraph (*h*), the Governor may determine the lease.

(*g*) Within six months after the determination of the lease (whether under paragraph (*f*) or otherwise), the lessee or any other person entitled to plant, machinery, or equipment of the mine shall remove the same, but shall not remove or destroy any material used for supporting underground workings; and, if such plant, machinery, or equipment is not removed within such period, the Governor may, unless he allows an extension of time for removal cause the same to be sold after public tender or by public auction, notice of the same having been given in the *Gazette* and a newspaper circulating in the mining district and to the registered mortgagee (if any) of the lease. The proceeds of the sale shall, after deducting the costs thereof and any moneys which under this section remain due to the Crown under the lease, be paid to the lessee.

(*h*) All differences, which may arise between the lessee and the Governor, in respect of the carrying out of the terms and conditions of the lease, or of their respective interests therein, shall be determined by arbitration.

**47.** Whenever claims upon any Crown land have been worked and abandoned or the Governor is satisfied that in a particular locality insufficient advantages are to be derived from the working of claims in accordance with Chapter V upon such land, he may grant the same as a mynpacht for not less than one nor more than five years, subject to the following provisions:—

Grant of ground as mynpacht where insufficient advantages are derived from the working of claims.

(1) Application for the grant shall be made in writing to the Mining Commissioner, and notice thereof shall be posted by him at his office, and by the applicant at each angular point of such ground in manner prescribed by regulation, for a period of one month. Such notice shall contain a description of such ground and of its extent and situation.

(2) Any person shall have the right to lodge written objection to such application within twenty-one days after the date of such notice.

**Act No. 35  
of 1908.**

(3) The application and the objections thereto (if any) shall be considered by the Mining Commissioner at the expiry of thirty days from the date of such notice, and, as soon thereafter as possible, he shall transmit to the Minister the application and objections (if any) together with his report and recommendations thereon.

(4) The area granted shall not exceed fifteen hundred feet by fifteen hundred feet.

(5) A yearly rental shall be payable in advance in respect of the ground at the rate of ten shillings per morgen per annum.

(6) Prospecting and digging shall be carried on by the grantee to the satisfaction of the Mining Commissioner.

(7) Diagrams of the ground shall be lodged with the Mining Commissioner within a period to be fixed by him.

(8) If the grantee make default in complying with any of the provisions of this section (thirty days' notice having been given to him by the Mining Commissioner indicating the default) the Governor may, if the default be not made good, cancel the grant and thereupon the ground may be dealt with under any of the provisions of section *thirty* or under this section.

Transfer or mortgage of lease described in section *forty-six*.

**48.** The rights granted under sections *forty-six* or *forty-seven* may be transferred or mortgaged subject in the case of a lease under section *forty-six* to the approval of the Governor. Every transfer or mortgage shall be effected in accordance with the law for the time being governing registration of mining title, and, subject as to transfer, to the provisions of the Transfer Duty Proclamation 1902 or any amendment thereof.

State Mine.

**49.** (1) Whenever Parliament shall have sanctioned the establishment of a State Mine, the land selected for the same shall, if not already surveyed into claims and demarcated, be surveyed into claims and demarcated by beacons, and a diagram lodged at the office of the Mining Commissioner.

(2) A State Mine shall be developed and worked in accordance with instructions given from time to time, by the Minister acting upon the advice of the Government Mining Engineer.

(3) Any funds appropriated by Parliament for the purpose shall be deemed to be the capital thereof, and accounts shall be kept showing the

capital and other expenditure on and the net produce of the Mine.

(4) The methods of calculating any such expenditure and produce shall be as prescribed by regulation.

(5) The accounts kept as aforesaid, together with all reports of the Government Mining Engineer upon the Mine, shall be laid upon the tables of both Houses of Parliament not less than one month after the commencement of its ordinary session.

**50.** The following provisions shall be applicable to the working of a State Mine :—

Provisions applicable to working of State Mine.

(1) All mining operations thereon shall be conducted in accordance with the Mines Works and Machinery Regulations Ordinance 1903, or any amendment thereof, or any regulation made thereunder.

(2) The Minister may enter into such contracts as he may think fit for the acquisition and erection of plant, machinery, and equipment, for the appointment of managers and overseers, for the engagement of workmen, and their remuneration, and for any other matter or thing conducive or incidental to the development of the Mine and the winning of precious metals therefrom.

**51.** (1) One half of the rent received from the lessee in accordance with sub-section (2) (e) of section *forty-six* shall, when the rights conferred by the lease are over private land, be paid over by the Treasurer to the owner.

Moneys payable to owners in respect of rights to mine mentioned in sections *forty-six* and *forty-nine*.

(2) When a State Mine has been established on private land, the Treasurer shall pay to the owner one half of so much as would have been payable to him under sub-sections (1) and (3) of section *forty* if such land were held under license in accordance with the provisions of Chapter V.

**52.** (1) The right to mine for precious metals underneath

Right to mine under *bewaar-plaatsen* machine stands etc.

(a) any place which immediately prior to the commencement of this Act was subject to the provisions of article *one hundred and eighteen* of Law No. 15 of 1898 ;

(b) any ground reserved under section *twenty-three* ;

(c) any place mentioned in sub-section (1) of section *sixteen* ;

shall be and is hereby vested in the Crown, which may, by its officers, at all times enter upon the surface of any such ground, and sink shafts and do all acts and things necessary for the purpose of exercising such right.

**Act No. 35  
of 1908.**

(2) The Governor may, on terms which he may deem most advantageous, lease any such right or where the ground in respect of which undermining rights are exercisable is insufficient in extent to constitute, in the opinion of the Government Mining Engineer a workable proposition may dispose of the right in any other manner and any person to whom such right is leased or otherwise disposed of shall, subject to the terms of the lease or contract disposing of such right have all the powers vested in the Crown under sub-section (1): the provisions of sections *forty-six* and *forty-eight* shall, so far as they are applicable, apply in respect of any lease under this section.

(3) Every such lease shall contain such provisions as will adequately protect persons lawfully using the surface under which the right to mine is granted, from damage caused by the exercise of such right, whether from subsidence of the soil or otherwise, and compensation shall be paid by the lessee or other person to whom such right has been disposed of to every person who suffers such damage, the amount thereof in the absence of agreement being determined by arbitration.

Application of  
net sums  
accruing from  
rights to mine  
mentioned in  
section  
*fifty-two*.

**53.** The net sum accruing to the Treasurer from the rights to mine mentioned in the last preceding section shall be appropriated to the redemption of any loan heretofore or hereafter raised by the Governor under the authority of statute, provided that, in the case of a lease of a right to mine underneath any place mentioned in sub-section 1 (a) of the last preceding section, or other disposal thereof, the total moneys accruing to the Crown under the lease or other contract disposing of such right shall be paid by the Treasurer into a special account and set aside by him pending the direction of Parliament.

CHAPTER VII.

BEZITRECHT.

Applications  
for and condi-  
tions of grant  
of certificate  
of bezitrecht.

**54.** (1) Any person in possession of ground held under mining title, or of a water-right, machinery-site, or other right necessary or incidental to the development of a Public Digging, may at any time apply in writing to the Mining Commissioner for a certificate of bezitrecht in respect thereof.

(2) The application shall describe the situation of the ground in respect of which such right is held, and the nature of such right, and shall be accompanied by the full name and address of the

applicant, and if any other person is registered as the holder of such right, the full name and address of such registered holder. A confirmed diagram of the right in respect of which application is made shall be also transmitted therewith.

(3) Notice of such application, specifying the particulars furnished in accordance with subsection (2) of this section, shall be published in three consecutive weeks in the *Gazette* and in a newspaper circulating in the mining district, and shall require objections to the issue of the certificate of bezitrecht to be lodged at the office of the Mining Commissioner within three months from the date of the first of such publications.

(4) A copy of such notice shall forthwith be served upon

(a) the owner of the land on which such right is situate ;

(b) the registered holders of mining titles adjoining such right ;

(c) the last previous holder of such right at his last known address.

Notice of any objections and the grounds thereof shall be served on the applicant, and on the Mining Commissioner, prior to the expiry of the said period of three months.

(5) If, upon the expiry of such period, no notice of objection has been served, the Mining Commissioner shall issue a certificate of bezitrecht to the person entitled thereto in respect of the right for which the application was made, and if notice of objection has been served, the Mining Commissioner shall appoint a date for hearing the application ; notice of such date shall be given to the applicant and any objector.

(6) At such hearing the Mining Commissioner shall record the evidence given before him, and his decision thereon shall be in writing and filed for record.

(7) If the applicant or any objector is dissatisfied with the decision of the Mining Commissioner, he may, within three months from the date of such decision, institute an action in a superior court having jurisdiction, and if, after expiry of the three months, no such action has been instituted, such decision shall be deemed final, and a certificate of bezitrecht shall, in accordance therewith, be issued or refused. In the event of such action being instituted, the Mining Commissioner shall issue a certificate of bezitrecht in accordance with the judgment of the court thereon.



Act No. 35  
of 1908.

(8) A certificate of bezitrecht shall include every right shown by the diagram transmitted with the application, whether such right was obtained under permission, contract, or license under this Act or any prior law, and such certificate may be transferred, either wholly or in part, by the holder thereof; such certificate shall be conclusive evidence that the person to whom it was issued was, at the date of its issue, the lawful holder of the rights included therein, and shall further be indisputable and unassailable unless the same has been obtained by fraud on the part of the possessor thereof.

Power of Mining Commissioner to grant certificate of bezitrecht notwithstanding certain defects.

55. Whenever the Mining Commissioner after the provisions of section *fifty-four* have been complied with is satisfied that an applicant for a certificate of bezitrecht is the legal holder of the right in respect of which the application is made, he may grant such certificate, though the title to such right is defective by reason

(a) that transfer of the right to the applicant has not been passed owing to the death or absence from this Colony of the person in whose name it is registered, or owing to other good reasons; or

(b) of a defect in the competency or authority of any person who may have professed to pass transfer to the applicant; or

(c) of the original acquisition of such right through false or defective powers of attorney, or otherwise; provided the applicant shall not have been a party to the making of the false power, and is a *bona fide* possessor of the right;

provided that, before the issue of a certificate in the circumstances in this section described, the Mining Commissioner shall be satisfied by evidence, that the applicant has been for at least twelve successive months in peaceful possession and enjoyment of and entitled to the right in respect of which his application is made.

## CHAPTER VIII.

### WATER-RIGHTS AND USE OF WATER.

No proprietary right to water conferred by mining title etc. under this Act.

56. (1) No person shall, upon any Public Digging, have any proprietary right in the water running in any river, stream, water-course, or water-furrow, by reason of any mining title, license, or certificate granted to him under this Act or any prior law.

(2) Save as is otherwise provided in this Act no person shall, upon any Public Digging, be entitled to the use of any such water, unless he shall have obtained a water-right in manner prescribed by this Chapter or under a prior law or unless he shall, with the written approval of the Mining Commissioner, have acquired from the holder of a water-right permission to use water derived therefrom for purposes incidental to mining. Any such approval may be withheld or withdrawn or given subject to conditions.

57. (1) Every holder of a mining title shall be entitled to obtain a water-right in accordance with regulation, and on such conditions as the Minister may, from time to time, determine; provided that no water-right shall be granted which is not required for the purpose of working the ground held under such title or for purposes incidental to such working, unless such grant be expressly sanctioned by the Governor.

Who may obtain water-rights.

(2) No dues or license moneys shall be payable in respect of a water-right so obtained, and, in respect of water-rights obtained prior to the commencement of this Act, no dues or license moneys shall continue to be payable after such commencement.

(3) Notwithstanding anything in this section contained the Governor may, by agreement, grant special water-rights on Crown land and also for the public benefit on proclaimed private land.

58. (1) For a water-right written application shall be made to the Mining Commissioner, accompanied by a sketch plan, by such particulars as are prescribed by regulation, and by such further particulars as the Mining Commissioner may, in each case, specially require.

Application for water-rights.

(2) The provisions of section *fifty-four* shall *mutatis mutandis* apply in respect of the publication of notices of application, the service of notices of objection, and the fixing of the date of hearing; provided that one month shall be substituted for the period of three months in such section mentioned.

(3) Where an application for a water-right is made in a mining district comprised in class B, notice of the application, signed by the Mining Commissioner, shall be posted for one month outside his office, outside the office of the Beacon Inspector concerned, and upon the ground in respect of which the application

**Act No. 35  
of 1908.**

is made. Notice in writing of the application shall also be served upon every holder of ground held under mining title adjoining the ground in respect of which application is made and on any other person who, in the opinion of the Mining Commissioner, might be affected by the grant thereof.

(4) If more than one application be made for the same water-right, the Mining Commissioner shall treat any application lodged at a date later than the first application as an objection to such application ; provided that notice of the later application is served upon the first applicant in manner provided for service of notices of objections.

(5) At the hearing of the application the Mining Commissioner shall consider the evidence for or against it, and thereupon shall grant or refuse it, and, in the case of more than one application, shall decide which applicant (if any) is entitled to a water-right. An appeal shall lie from the decision of the Mining Commissioner to the Minister, who may confirm, reverse, or vary the decision. Every such appeal shall be prosecuted within fourteen days of the decision, and the order of the Minister thereon shall be final.

Confirmation of grants of water-rights by the Minister necessary.

**59.** No grant of a water-right shall be valid and effectual until confirmed by the Minister, nor until a diagram thereof has been lodged at the office of the Mining Commissioner, unless the grant is included in a certificate of bezitrecht ; and, for the purpose of the confirmation, a copy of the original application, the sketch plan aforesaid, and the report of the Mining Commissioner as to the desirability of confirmation and as to the validity and weight of the objections (if any) shall be transmitted by the Mining Commissioner to the Minister provided that in a mining district comprised in class B such grant may in the discretion of the Mining Commissioner be made although a sketch plan only has been lodged.

Beaconing off of water-rights.

**60.** The structure of beacons defining water-rights, and the manner in which they shall be erected, shall be as prescribed by regulation.

Transfer and removal of water-rights.

**61.** (1) A water-right, whether granted before or after the commencement of this Act, may be transferred by the registered holder thereof to another person without a transfer of the mining title to which it is attached, provided that the transferee is the holder of a right which would entitle him to the grant of a water-right, and the water-right to be transferred is required by the

transferee for the purpose of working the ground held by him under mining title.

(2) The holder of a water-right attached to a certain specific mining title may have the same attached to another such title belonging to him.

(3) Every such transfer shall be registered in accordance with the law for the time being governing registration of mining title.

**62.** The water-right granted in respect of a mining title before or after the commencement of this Act, shall lapse whenever such title lapses, unless the holder thereof is the holder of other such title, and within one month after the date of the lapsing of the one title, applies to the Mining Commissioner to have such water-right attached to such other title. Such application shall be made and dealt with in manner and form as prescribed by section *fifty-eight*.

Lapsing of  
water-rights.

**63.** Any water-right in existence at the commencement of this Act which is not attached to a mining title shall lapse at the expiry of one year thereafter, unless, within such period, application is made to attach such water-right to a mining title.

Lapsing of  
existing  
unattached  
water-rights.

The provisions of section *fifty-eight* shall apply to such application.

**64.** (1) If the Mining Commissioner is of opinion that no sufficient use or an improper use is being made of a water-right, whether granted before or after the commencement of this Act, he may serve a notice on the registered holder thereof, calling upon him to show cause why the water-right should not be cancelled; the Mining Commissioner shall fix a date and place for the hearing of the matter, such date being not less than three months after service of the notice.

Cancellation  
of water-  
rights for  
improper use.

(2) The Mining Commissioner shall hear the evidence of any complainant and of the registered holder aforesaid, and shall keep a record of all evidence, which, together with his report thereon, he shall transmit to the Minister as soon as may be. The Minister may, on consideration of the evidence and report, declare the water-right cancelled; provided that the declaration of cancellation may, within one month thereafter, be brought in review before the Supreme Court by the said registered holder.

(3) No water-right cancelled under this section may be pegged as a claim or the right to mine thereon otherwise disposed of but it shall be reserved for the purposes of a water-right.

**Act No. 35  
of 1908.**

Duty to construct bridges over water furrows traversing roads and footpaths.

**65.** Every person who makes a water furrow traversing a road or footpath open to the public shall construct such bridge or passage thereover as will render it safe; in default of compliance with this section such person shall, in addition to any liability to pay damage, be guilty of an offence and liable on conviction to a fine not exceeding ten pounds.

Regulations as to use of water.

**66.** The Minister may frame such regulations (not inconsistent with the provisions of this Chapter) as he may deem fair and reasonable

(a) for preventing the disturbing or fouling of rivers, streams, water courses, or water furrows;

(b) for the proper distribution and prevention of waste of water on Public Diggings among persons prospecting or mining for precious metals and for the grant of temporary rights to use water, regard being had to the rights of owners, lessees, or other lawful occupiers of land;

and by such regulations penalties may be imposed for the breach thereof.

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 CHAPTER IX.
 

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 SURFACE RIGHTS ON GROUND HELD  
 UNDER MINING TITLE AND USE OF  
 OTHER PROCLAIMED LAND.

Right of disposal of surface of ground held under mining title reserved to the Crown.

**67.** The rights conferred by a mining title, whether the same has been acquired under this Act or a prior law, shall not include the right of disposal over the surface of the ground held under such title which right of disposal is reserved to the Crown for the purposes of this Act or any other law.

Permission to use for certain purposes surface of ground held under mining title.

**68.** (1) Save as is otherwise specially provided in this Act, the surface of ground held under mining title shall not without the written permission of the Mining Commissioner, be used otherwise than for mining. Such permission shall only be granted for purposes of mining, or purposes incidental thereto, and application for such permission shall be made in writing, stating the particular purpose for which the use of such surface is desired. A dwelling, to be used by the holder of such ground while mining thereon or by the persons employed by the holder in mining, shall be deemed one of the purposes incidental to mining.

(2) With every such application there shall be transmitted a plan showing the area of ground which it is desired so to use. The Mining Commissioner may require written notice to be served on any person who may be affected by the grant of such application, and such notice shall specify the nature of the application and the particulars aforesaid.

(3) When the application is for the use of the surface of ground held under mining title by another person, the Mining Commissioner shall, unless the applicant and such person otherwise agree in writing, require the applicant to serve written notice on such person specifying the site applied for and particulars as to the use for which the ground is required. If such notice is required to be served, the provisions of sub-sections (3) and (4) of section *seventy-four* shall *mutatis mutandis* apply.

(4) The Mining Commissioner may grant any such application with or without modifications, or may refuse the same; provided that an appeal shall lie to the Minister either at the instance of the applicant or of any person affected by the grant.

(5) The Mining Commissioner may order the removal of any structure erected on ground held under mining title unless such permission has been obtained, and if it be not removed within a time to be specified by the Mining Commissioner, he may cause the same to be removed at the cost of the holder of such title.

69. (1) The Governor may use or permit the use of ground held under mining title for the erection of public buildings, schools, and places of worship, for the construction of roads, for burial grounds, locations for coloured persons, for sanitary purposes or any public purpose, or for any purpose conducive to the promotion of health or recreation provided that such use is not, in the opinion of the Government Mining Engineer, likely to interfere with mining or purposes incidental to mining.

Use of ground held under mining title for public and certain other purposes.

(2) Any ground to be so used shall be selected by the Mining Commissioner, after consultation with the owner and the holder of the mining title, and his selection shall be subject to confirmation by the Minister.

(3) When deemed necessary by the Mining Commissioner, any ground so selected shall be demarcated by beacons, and a diagram thereof lodged at the office of the Mining Commissioner

**Act No. 35  
of 1908.**

by or on behalf of the department, public body, or person to whom the use of such ground has been granted.

Prohibition against fencing of ground held under mining title except by permission and grounds on which permission granted.

**70.** (1) No person shall fence ground held under mining title, unless he shall first have obtained the written permission of the Mining Commissioner; provided that

(a) no such permission shall be granted for the fencing of a larger area than is necessary to protect any works or other mine property on the ground in respect of which application is made, or to safeguard the same from damage, destruction, or interference in a time of industrial dispute, or to ensure the safety of the public;

(b) no such permission shall be deemed effectual, unless and until the grant thereof has been confirmed by the Minister.

(2) The Mining Commissioner may order the removal of any fence erected without such permission, and if it be not removed within the time fixed by his order, he may cause it to be removed at the cost of the holder of the mining title to such ground.

Use of open proclaimed land for public and certain other purposes.

**71.** The Governor may use or permit the use of proclaimed land not held under mining title (hereinafter referred to as open proclaimed land) for any purpose mentioned in section *sixty-nine* and may permit the use of such land for the erection of workmen's dwellings and the land to be so used shall, after consultation with the owner, be selected and reserved by the Mining Commissioner subject to confirmation by the Minister. The provisions of sub-section (3) of section *sixty-nine* shall apply to the land so selected.

Permission to use proclaimed land two years after proclamation for agriculture etc.

**72.** The Mining Commissioner may, subject to confirmation by the Minister, permit the use of open proclaimed land for gardens, agriculture, and the planting of trees, orchards, and vineyards; provided that

(a) the permission shall not be granted unless such land has been proclaimed for two years, and within such period no precious metals have been discovered thereon in payable quantities;

(b) the permission shall not be granted in the case of private land, except upon request of the owner, and upon terms and conditions to which he may agree.

(2) Any such permission shall, if the Mining Commissioner so determine, include the right

to erect buildings and structures to be exclusively used for purposes incidental to such use.

(3) Whenever permission has been granted to use open proclaimed land for purposes in this section mentioned, it shall not be used for any other purpose unless the Governor under the last preceding section shall use or permit its use for purposes mentioned in section *sixty-nine*.

(4) If at any time thereafter it shall appear that precious metals exist in payable quantities on any portion of such land the Mining Commissioner shall allow prospecting and mining on such portion, subject to the provisions of this Act, and may, if he think fit, cancel the permission granted under sub-section (1); provided that compensation shall be paid by the person carrying on prospecting or mining for any damage caused to the gardens, agricultural products, or trees belonging to the holder of such permission, and such compensation shall, in the absence of agreement, be determined by arbitration.

**73.** (1) For the purpose of erecting machinery to develop and work ground held under mining title, the holder of such title shall have the right to acquire on any proclaimed land the use of one or more sites, called "machinery sites", each one hundred and fifty feet square;

(2) Written application accompanied by a sketch plan of the ground desired for a machinery site shall be made to the Mining Commissioner, who, if more sites than one are applied for, may determine the number to be granted having regard to the reasonable requirements of the applicant.

(3) When the application is for a site on the ground held under mining title by another person, the Mining Commissioner may require the applicant to serve written notice on such person specifying the site applied for and particulars as to the machinery proposed to be erected upon it, and, after hearing the applicant and such person, the Mining Commissioner may grant or refuse an application in respect of such site.

(4) Every site in respect of which an application has been granted shall be demarcated by beacons and a diagram of it lodged at the office of the Mining Commissioner.

(5) If a site granted is not used by the holder thereof within one year thereafter, or within such extended period as the Minister may allow, the Mining Commissioner may cancel the grant, and if the site is used for any purpose other than for machinery, the holder shall be guilty of an



**Act No. 35  
of 1908.**

Grant of permission to construct railway sidings power lines etc., on and over any proclaimed land.

offence and liable on conviction to a fine not exceeding five pounds for every day on which it is so used, and on such conviction the Mining Commissioner shall cancel the grant.

(6) A machine stand granted under Law No. 15 of 1898 or any prior law and held at the commencement of this Act as such, shall be deemed to be a machinery site for the purposes of this section.

**74.** (1) Notwithstanding anything in this Chapter contained, the Mining Commissioner may grant permission to any person making written application, to construct and use a building or other erection or an aqueduct, water-course, power-line, pipe-line, bridge, road, railway-siding, mechanical-haulage, and aerial-tramway, or other like work on or over any proclaimed land; provided that, if any such work would be situate upon or traverse ground held under mining title by a person other than the applicant, no such permission shall be deemed effectual unless and until the grant thereof has been confirmed by the Minister.

(2) With such application there shall be transmitted to the Mining Commissioner a plan showing the proposed work, and if any such work would be situate upon or traverse ground held under mining title by a person other than the applicant, notice of the application shall be published, in three consecutive weeks, in the *Gazette* and in a newspaper circulating in the mining district, and such notice shall further be served upon every holder of such title.

(3) After the expiry of one month from the date of the first publication of such notice in the *Gazette*, the Mining Commissioner shall hear the applicant and any objectors to such application, subject to the provisions of subsection (4).

(4) No person shall be heard as an objector unless, at least seven days before the hearing of the application, he shall have lodged particulars in writing of his objection at the office of the Mining Commissioner and served such particulars upon the applicant at the address stated in the application.

(5) The Mining Commissioner, in granting such permission, may impose such limitations, terms, and conditions as may appear to him necessary to protect the holders of ground upon which such work is situate, or which it traverses, from being injuriously affected by such work.

(6) The applicant or any such objector may, within ten days from the date of any decision of

the Mining Commissioner under this section, appeal from any such decision to the Minister, who may confirm, reverse, or vary the same as to him may seem fit.

(7) Nothing in this section contained shall be deemed to deprive any person injuriously affected by the carrying out or carrying on of any such work, of any right he may have at law, to recover damages from the person to whom such permission has been granted.

**75.** (1) On any proclaimed land, brick-making, quarrying, lime-burning, and the digging for sand or gravel may be permitted by the Mining Commissioner in accordance with regulation on the following conditions:—

Brick-making  
quarrying  
etc., on pro-  
claimed land.

(a) In the case of open proclaimed land, with the written consent of the owner ;

(b) in the case of ground held under mining title, by the holder of such title for any purpose incidental to his own mining operations on such ground, provided that the written consent of the owner has been obtained.

(2) A fee of five shillings per month shall be payable in advance to the Mining Commissioner for every such permission ; and one half of such fee shall be paid over to the owner.

(3) Notwithstanding anything in sub-section (1) contained, any person who at the commencement of this Act is lawfully using ground held under mining title for brick-making, quarrying; lime-burning, or the digging of sand or gravel, may continue so to use such ground on the same terms and conditions as if this Act had not passed.

**76.** (1) Every person, who at the commencement of this Act has the use of the surface of any proclaimed land, whether held under mining title or not, and is unable to produce a written permission issued under a prior law to use such surface, shall, within a period of six months after the commencement of this Act or within such further period as the Minister may in each case determine, make application to him for permission to continue such use.

Method of  
validating  
unauthorized  
use of  
proclaimed  
land  
existing at  
commence-  
ment of Act.

(2) If, within fourteen days after the expiry of any such period, such application be not made, or having been made has been refused, and any works, buildings, structures, or fences erected, or material stored on such land be not removed and such user discontinued, the Mining Commissioner may cause all such works, buildings,

**Act No. 35  
of 1908.**

structures, fences, or material to be removed at the cost of such person aforesaid.

(3) The provisions of section *sixty-eight* shall *mutatis mutandis* apply to every such application.

(4) The Minister may in his discretion prescribe that a rental for such use be payable to the Mining Commissioner by the said person and fix such rental; and, if the land so used be private land, one half the rent received shall be paid over by the Mining Commissioner to the owner.

CHAPTER X.

STANDS OUTSIDE TOWNSHIPS.

Stands  
granted under  
Law No. 15  
of 1898 or a  
prior law.

77. (1) Save as is otherwise provided in this section and in Chapter XI all the rights and obligations attaching at the commencement of this Act to a stand outside a township and acquired under Law No. 15 of 1898 or a prior law shall remain in force as if this Act had not passed and of the license moneys received by the Mining Commissioner the same proportion shall, if such is upon private land be paid over to the owner as was paid in respect of such stand before the commencement of this Act.

(2) The Mining Commissioner may upon application enlarge the size of any such stand under the following circumstances:—

(a) If it is so situated that compliance with the sanitary requirements of any law or municipal regulation is impracticable or difficult; or

(b) if no sufficient access to it can be obtained from a public road; or

(c) if buildings erected upon it in good faith extend beyond its boundaries and the application for enlargement be made by the standholder within six months from the commencement of this Act;

provided that no enlargement shall exceed fifty per cent. of the original size of the stand.

(3) Fourteen days' notice of the application shall be given to the holder of mining title (if the stand be situate on ground held thereunder) and to all adjacent standholders, and opportunity afforded to each of them to be heard in objection to the enlargement.

(4) An enlargement which would interfere with the rights of other persons shall not be permitted.

(5) If, in the circumstances described in sub-section (2) (c) of this section, application for enlargement be not made within the period prescribed, the Mining Commissioner may order the removal of buildings which extend beyond the boundaries of the stand, and if they are not removed within a time fixed by the Mining Commissioner, he may cause them to be removed at the cost of the stand holder.

(6) If such application be granted, a diagram of the stand as enlarged shall be lodged with the Mining Commissioner before the license is renewed.

**78.** Any white person who desires to erect a dwelling or place of business on open proclaimed land may make written application to the Mining Commissioner for one or more stands on such land, submitting with the application a sketch plan, clearly indicating the site required. The Mining Commissioner may in his discretion grant or refuse the application.

Grant of stands on open proclaimed land.

**79.** (1) Any white person who, or an incorporated company which, on any proclaimed land (whether open or held under mining title), desires to carry on works, necessary or incidental to the mining industry

Grant of industrial stands.

(a) for the generation of light, heat and power ; or

(b) for chemical works and the treatment of ores and bye-products,

may make written application to the Mining Commissioner for a stand called "an industrial stand" submitting therewith a sketch plan clearly indicating the site required.

(2) One month's notice of the application shall be given by the Mining Commissioner to the holder of the mining title, if the site required be on ground held thereunder, and to the owner of the land, if it be on private land, and opportunity afforded to each of them to lodge and be heard as objectors. The grant or refusal of the application shall be subject to confirmation by the Minister.

(3) An industrial stand shall be not less than one hundred feet square, and no trade or business other than in sub-section (1) is described shall be permitted thereon.

(4) A supply of light, heat, or power for purposes other than mining or incidental to mining shall not be permitted from works on an industrial stand without the consent of the local authority having jurisdiction in the area of supply.

**Act No 35  
of 1908.**

(5) A stand mentioned in Ordinance No. 23 of 1906 shall be deemed to be an industrial stand, and all the provisions of this Chapter which relate to industrial stands shall apply to it.

Stand licenses and issue and renewal thereof.

**80.** (1) When a stand mentioned in section *seventy-eight* or an industrial stand has been acquired, the holder shall obtain a license therefor from the Mining Commissioner, which may be renewed monthly, quarterly, or annually at the option of the holder; and license moneys at a monthly rate prescribed by regulation shall be paid in advance by the holder on the issue and renewal of the license. One-half of the license moneys received shall, when the stand is upon private land, be paid to the owner.

(2) Such license shall be transferable in accordance with the law for the time being governing registration of mining title.

Beacons and diagrams.

**81.** (1) Every stand if enlarged under section *seventy-seven*, every stand mentioned in section *seventy-eight* and every industrial stand shall be beacons in accordance with regulation and no stand license shall be issued until proper beacons are erected, or renewed unless beacons are properly maintained.

(2) A diagram of the ground which any such stand covers shall be lodged with the Mining Commissioner before a stand license is obtained.

Trading on ground held under mining title forbidden with certain exceptions.

~~**82.** After the commencement of this Act no person shall upon ground held under mining title carry on any trade or business except upon a stand mentioned in section *seventy-seven* or a stand for which a certificate is held under the provisions of the succeeding sections of this Chapter (hereinafter called a trading stand) and in the case of a trading stand no trade or business except that of a general dealer or keeper of a Kaffir eating-house shall be carried on.~~

Constitution of Board to select trading stands, etc.

**83.** (1) For the mining districts of Johannesburg, Boksburg and Krugersdorp, there shall be a Board appointed by the Governor, consisting of not less than three members, one of whom shall be the Mining Commissioner of the particular district in which the Board is exercising jurisdiction.

(2) In every other mining district, the Mining Commissioner shall exercise the jurisdiction by this Chapter conferred upon the Board.

(3) The Board shall have jurisdiction  
(a) to select and set apart trading stands on ground held under mining title;

(b) to grant certificates in respect of such stands, the holder of any such certificate being entitled to apply to the proper licensing authority to carry on the business of a general dealer and Kaffir eating-house on the stand for which the certificate was granted.

(4) The Board shall *mutatis mutandis* have the powers conferred by the Commissions Powers Ordinance 1902, as if it were a commission mentioned in section *five* of such Ordinance.

84. (1) The Board may from time to time provisionally select upon ground held under mining title any site suitable for a trading stand, subject to the following provisions, that is to say:—

Selection of trading stands by the Board and restrictions on selection.

(a) It shall be satisfied, having regard to the number of persons residing or employed in the neighbourhood of such site, to the number of existing traders capable of supplying the needs of such persons, and to the distance of such site from the nearest township, that there is a public necessity for a trading stand on such site.

(b) Written notice of intention to provisionally select such site shall be given by the Board to the holder of the mining title, and shall be published in the *Gazette* and in a newspaper circulating in the mining district. Such notice shall fix a time and place at which the Board will sit to hear objections to the selection, and written notice of objection shall be lodged with the chairman of the Board not less than seven days before the date so fixed. If no written notice of objection shall have been lodged within the time hereby required, or, if having been lodged, the objection has been overruled, the site provisionally selected shall, if confirmed by the Minister, be set apart as a trading stand.

(c) No such site shall be set apart, if the Board is satisfied that it is required by the holder of the mining title for mining purposes or purposes incidental to mining.

(2) All stands set apart by the Board constituted under Ordinance No. 35 of 1905, shall, as soon as the Board mentioned in sub-section (1) of section *eighty-three* has been appointed, be registered in the name of that Board as trading stands set apart under this section.

**Act No. 35  
of 1908.**

Beaconing of sites selected as trading stands and registration of same in the name of the Board.

**85.** (1) Whenever a site has been set apart as a trading stand, the Board shall cause beacons to be erected thereon, and a proper diagram thereof to be lodged with the Mining Commissioner, who shall issue to the Board a stand license for such site.

(2) Every such site shall be registered in the name of the Board as a trading stand at the office of the Mining Commissioner, and shall, for the purposes of the Local Authorities Rating Ordinance 1903 or any amendment thereof, be deemed to be an interest in land held by the Crown.

(3) If at any time the Board is satisfied that the circumstances mentioned in sub-section (1) (a) of section *eighty-four* have ceased to exist, it shall inform the Mining Commissioner who shall thereupon cancel the license for such stand, and if a certificate is held in respect of such stand the Board shall at the expiry of six months' notice in writing given by it to the holder, cancel such certificate.

Publication of list of trading stands for which certificates will be granted.

**86.** As soon as may be after the provisions of the last preceding section have been complied with, the Board shall publish in the *Gazette* and in a newspaper circulating in the mining district a notice specifying

(a) a list of the trading stands in respect of which it is prepared to grant the certificates aforesaid ;

(b) the registered number and situation of each of such stands ;

and calling upon persons who desire to obtain such certificates to lodge written application for the same with the chairman of the Board on or before a date to be fixed by such notice.

Applications for certificates for trading stands, objections to, and grant or refusal of the same.

**87.** Any white person may make application in writing to the chairman of the Board for the grant of a certificate, and every such application shall set forth

(a) the full name and address of the applicant and of each of his partners (if any) ; and

(b) the registered number of the stand in respect of which a certificate is applied for ; and

(c) the nature and description of the trade or business which the applicant proposes to carry on under the certificate.

(2) The chairman of the Board shall, as soon as may be after the date so fixed, publish in manner

aforesaid a further notice, setting forth the names and addresses of all the applicants and the registered numbers and situations of the stands in respect of which they have respectively made application. Such notice shall specify the place fixed for hearing the applications and the date and hour (not being less than fourteen days after the date of the notice), and shall call upon persons desiring to object to the grant of a certificate to lodge with the chairman of the Board, and to serve on any applicant, in respect of whose application objection is made, written notice of such objection not less than seven days before the date fixed for the sitting of the Board.

(3) The Board shall on the date fixed or on any later date hear such applicant and such objectors, and may of its own motion take notice of any matter or thing which, in its opinion, constitutes an objection to the grant of a certificate; provided that in such case, the Board shall adjourn the consideration of the application for not less than four days, to enable the applicant to meet its objection.

(4) The Board may in its discretion grant or refuse a certificate, and every certificate, whenever granted, shall expire on the thirty-first day of December next ensuing.

**88.** (1) Upon application to the Board every such certificate, and every certificate issued by the Board constituted under Ordinance No. 35 of 1905 and in force at the commencement of this Act, may in the discretion of the Board be renewed in the manner and subject to the conditions described in the last preceding section, unless the holder of the mining title concerned shall satisfy the Board (its decision being subject to confirmation by the Minister) that the stand is required for mining purposes or purposes incidental to mining; provided that such holder of mining title shall give to the holder of the certificate six months' notice in writing that he intends to oppose its renewal for such reasons; provided further that in every such case the Board may renew the certificate in respect of another trading stand not required for such purposes but as near as possible to the stand so required.

Renewal of  
certificate.

(2) In the event of a renewal of a certificate being refused by the Board in respect of a stand so required, the Mining Commissioner shall cancel such stand.

**89.** Upon application to the Board every certificate referred to in the last preceding section may

Transfer of  
certificate.



**Act No. 35  
of 1908.**

be transferred in the same manner and subject to the same conditions as apply to its renewal, provided that an application for a transfer shall not be necessary if the holder has died or become insolvent, and

(a) in the case of the death of the holder, his widow (if any) or executor, or if there be no executor, any *curator bonis* lawfully appointed or other person approved by the chairman of the Board; or

(b) in the case of the insolvency of the holder, the trustee of his insolvent estate may carry on the business, either personally or by an agent approved in writing by the chairman of the Board, until the next meeting or for such time as it may determine at its next meeting.

Conditions of grants renewals or transfers of certificates.

**90.** The Board may attach to the grant, renewal or transfer of a certificate one or more of the following conditions, that is to say:—

(a) That the holder shall personally reside on the trading stand, or personally manage the business carried on thereon.

(b) That the holder shall commence to carry on business within a fixed time, and shall continue to do so for the period of the certificate.

(c) That the holder shall not sub-let the stand without the authority of the Board certified by the transfer of the certificate in manner aforesaid.

(d) That the holder shall take over from any previous holder any buildings erected on the trading stand on such terms as the Board may determine.

(e) That the holder shall erect such buildings, or execute such repairs to existing buildings on the trading stand, as the Board may prescribe.

(f) Any special conditions not inconsistent with the provisions of this Chapter or with regulation.

Cancellation and suspension of certificates.

**91.** (1) The Board may at any time cancel or suspend a certificate during its currency, if satisfied, on the complaint of any person, that the holder

(a) has carried on a business on the trading stand other than that for which the certificate was granted; or

(b) has contravened any conditions attached to his certificate or to any trading license held by him in respect of the stand; or

(c) has traded on his stand without such trading license as is required by law or municipal regulation ;

provided that the Board shall cancel a certificate, if the holder during the previous twelve months has been convicted of an offence for which he was sentenced without the option of a fine to a term of imprisonment of three months or more, unless he has received a free pardon for such offence.

(2) Every trading license issued by a Receiver of Revenue or municipal council in respect of a particular trading stand shall lapse whenever the Board, under the powers of this section, cancels a certificate in respect of such stand.

(3) As soon as a certificate has been cancelled or in any other manner expires, the Board shall take all steps to eject from the trading stand the person who held the certificate and all other persons who are in occupation of such stand.

**92.** The Board shall furnish to the Mining Commissioner, when required, particulars as to the certificates granted by it and the trading stands in respect of which they are held, together with particulars of cancellations or transfers that have taken place since the previous return.

Returns to  
Mining  
Commissioner  
by the Board.

**93.** (1) For the occupation of trading stands such rent shall be payable to the Treasurer by the holders of certificates as is prescribed by regulation.

Rent and  
license  
moneys.

(2) The Board shall pay to the Treasurer for every trading stand held by it license moneys at a monthly rate prescribed by regulation ; in the case of stands on Crown land the license moneys shall be retained by the Treasurer, but in the case of stands on private land one-half shall be retained by the Treasurer and one-half paid by him to the owner of such land.

**94.** (1) Any person, whose certificate having been cancelled by the Board, shall fail to vacate the stand and remove therefrom all movable property belonging to him within a time fixed by the Board, shall be guilty of an offence and liable on conviction to imprisonment, without the option of a fine, for a period not exceeding six months.

Special  
offences in  
relation to  
holders of  
certificates.

(2) Any person who fails to disclose truthfully the names of any partners in a business carried on under the authority of a certificate, or who enters into a partnership in such business without obtaining from the Board its approval of the members of the partnership, or who, not being the holder of a certificate, agrees with the holder

**Act No. 35  
of 1908.**

Penalty for inducing coloured person to buy from particular license holder.

of a certificate to bring customers to him, shall be guilty of an offence and liable on conviction, to the penalties mentioned in sub-section (1).

**95.** Any person who brings undue pressure upon any coloured person to purchase goods solely from one particular holder of a trading license shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds, or to imprisonment, without the option of a fine, for a period not exceeding six months.

Penalties for carrying on business on any proclaimed land except upon a stand.

**96.** Any person who on any proclaimed land, except as provided in this Chapter, shall carry on any trade or business shall be guilty of an offence and liable

(a) in the case of a first conviction to a fine not exceeding ten pounds ; and

(b) in the case of a second or subsequent conviction to a fine not exceeding fifty pounds and to a further fine not exceeding ten pounds for every day on which after the first conviction the offence is continued, or to imprisonment, without the option of a fine, for a period not exceeding six months.

Penalty on persons carrying on mining being interested in stores, etc., on their own mining property.

**97.** Any person who

(a) carries on mining ; or

(b) is the director or officer of a company which carries on mining ; or

(c) is an employer of labour on behalf of a person or company which carries on mining ; and is at the same time interested, directly or indirectly, in a business

(i) the premises of which are on the ground on which such mining is carried on ; and

(ii) for which a general dealer's license or a license under municipal regulation is required,

shall be guilty of an offence and liable on conviction to the same penalties as are prescribed for a contravention of the last preceding section.

Penalty for paying wages other than in current coin.

**98.** Any person described in the last preceding section who

(a) pays any portion of the salary or wages earned by and payable to a person employed on a mine otherwise than in current coin of the Colony ; or

(b) becomes surety for the debt of a person employed on a mine due to the keeper of a business mentioned in the last preceding section

shall be guilty of an offence and liable

(i) in case of a first conviction to a fine not exceeding one hundred pounds or to imprisonment without the option of a fine for a period not exceeding six months ;

(ii) in case of a second or subsequent conviction to a fine not exceeding two hundred and fifty pounds or to imprisonment without the option of a fine for a period not exceeding one year.

## CHAPTER XI.

### LAPSING OF RIGHTS.

99. Whenever after the commencement of this Act the license moneys in respect of any stand outside a township and not described in section *one hundred and two* are in arrear, such stand shall lapse, and shall be dealt with as follows :—

(1) During a period of three months after the date up to which license moneys have been paid, the person who was, at such date, the license holder of such stand shall be entitled to obtain a new license in respect thereof, by paying the amount of the arrears due up to date, together with an additional sum equal to one-fourth of such amount, save as in sub-section (2) of this section is provided.

Procedure to be followed in cases of non-renewal of licenses for stands other than specially registered stands.

(2) If such new license be obtained within fourteen days after the date up to which license moneys have been paid, no such additional sum shall be payable.

(3) On the expiry of such period of three months the Minister shall cause the right to a license in respect of the lapsed stand to be advertised for sale by public auction, by notice in the *Gazette* and in a newspaper circulating in the mining district, published fourteen days at least prior to the date fixed for the sale. If, at any time prior to such date, the person mentioned in sub-section (1) shall make application for a new license as aforesaid, and tender payment of the amount due as license moneys up to date of tender, together with an additional sum equal to one-fourth of such amount, as mentioned in sub-section (1), and the costs incurred in connection with the intended sale, no sale shall take place, but a license shall be issued for the lapsed stand to the applicant. In default of such application prior to the date fixed for the sale, the same shall be carried out.

(4) Out of the proceeds of every such sale the amount due as license moneys up to the date of

**Act No. 35  
of 1908.**

sale together with the additional sum of one-fourth mentioned in sub-section (1) and the costs incurred in connection with any such sale, shall first be paid, and the balance (if any) shall be paid over to the person who was the license holder of the stand, and if the stand, having been offered for sale as aforesaid is not sold, it may be disposed of in any manner.

Procedure to be followed in case of non-renewal of licenses for claims other than specially registered claims etc.

**100.** The provisions of the last preceding section shall apply whenever the license moneys for a claim not described in section *one hundred and two* are in arrear, save that, on the expiry of the period of three months in the last preceding section mentioned, all the rights in such claim of the person who is in arrear with the license moneys shall lapse to the Crown, and the Governor may deal with the ground over which such rights have been held in any of the ways provided by section *thirty*.

Special provisions as to lapsing of rights belonging to estate of deceased person or insolvent.

**101.** Claims and stands belonging to the estate of a deceased person, or to an estate placed under sequestration, or to a company placed in liquidation, shall not lapse unless and until the executor, trustee, or liquidator (as the case may be) shall have failed to comply with the provisions of section *ninety-nine* or *one hundred* (as the case may be) for thirty days after his appointment, or, if confirmation of his appointment is required by law, after such confirmation.

Procedure to be followed if license moneys on specially registered claims and stands in arrear.

**102.** The provisions of sections *ninety-nine* and *one hundred* shall not apply to

(a) any claim or stand specially registered;  
(b) any claim in respect of which a certificate of *bezitrecht* has been granted;  
but the following provisions shall apply in lieu thereof :—

(1) When payment of license moneys in respect of any such claim or stand is six months in arrear, the Mining Commissioner shall immediately serve notice on the registered holder demanding payment of such moneys, and shall publish a copy of such notice in the *Gazette* and a newspaper circulating in the mining district.

(2) At the date of the publication mentioned in sub-section (1) a copy of such notice shall also be served immediately upon the registered holder of any mortgage bond over such claim or stand.

(3) In the case of a stand, if payment of all such arrears of license moneys and the costs of publishing the copy of the notice be not made within three months after the publication, a date shall be fixed for the sale by public auction of such stand, and notice of such sale shall be advertised in the *Gazette* and a newspaper circulating in the mining district fourteen days at least prior to such date. If prior to such date the arrears of license moneys up to date be not paid by the person in default, together with the additional sums and costs hereinafter mentioned, such sale shall take place. Out of the proceeds of sale the amount of all arrear license moneys up to the date of sale and an additional sum equal to one-fourth of such amount together with the costs of sale and of publication of all such notices shall first be paid, and after payment of the amount of any registered mortgage bond unsatisfied and the interest due thereunder the balance shall be paid over to the person who was the license holder of the stand, and if the stand having been offered for sale as aforesaid is not sold, it may be disposed of in any manner.

(4) In the case of a claim, if payment of all arrears of license moneys up to date and a fine calculated at one-fourth of such amount together with the costs of publication of the notice be not made within three months after the publication, all rights in such claim of the person who is in arrear with the license moneys shall lapse to the Crown and the Governor may deal with the ground over which such rights have been held in any of the ways provided by section *thirty*.

**103.** Notwithstanding anything in this Chapter contained, any person who

(a) has been called out on active or military service under the Volunteer Corps Ordinance 1904 or any amendment thereof, or under a law in force in any Colony or territory in South Africa for the preservation of peace and order ; or

(b) has served under arms in response to any request by the Governor for the preservation of peace and order in this Colony ;

shall be entitled to a period of thirty days' grace after the cessation of such service within which

Privileges to volunteers on active service and other persons when under arms as to renewal of licenses.

**Act No. 35  
of 1908.**

to renew any license mentioned in this Chapter ; provided that notice in writing shall have been given to the Mining Commissioner of the date of commencement and cessation of such service. On the renewal of such license, no license moneys shall be payable in respect of the period of such service.

CHAPTER XII.

DEALING IN UNWROUGHT PRECIOUS METALS.

Definition of terms used in this Chapter.

**104.** In this Chapter ;

“banker” shall include any manager, cashier, or other officer of a joint stock bank acting in such capacity ;

“license” shall mean a license described in sections *one hundred and six* and *one hundred and seven* ;

“licensed dealer” shall mean the holder of a license as in this section defined ;

“unwrought precious metal” shall include precious metal in any form whatever, which though smelted, is not manufactured or made up into any article of commerce, and shall include amalgam, slimes, slags, black sands, pots, battery chips, sweeping of reduction works and scrapings and bye-products of unrefined precious metal.

Penalties for unlawful dealing in unwrought precious metals.

**105.** (1) No person shall buy, sell, deal in, receive, or dispose of by way of barter, pledge, or otherwise, either as principal or agent, any unwrought precious metal, unless

(a) he is the holder of a license ;

(b) he is a banker within the Colony ;

(c) such unwrought precious metal has been won by him or his servant acting on his behalf from ground held by him under mining title, or on which he is lawfully entitled to prospect ;

(d) such unwrought precious metal does not exceed twenty pennyweights in quantity, and, not being a person described in paragraph (a) (b) or (c), he has obtained a certificate from the Mining Commissioner authorizing him to be in possession or dispose of such quantity of unwrought precious metal.

(2) Any person acting in contravention of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred pounds, or to imprisonment without the option of a fine for a period not exceeding two years, or to both such fine and imprisonment, and, in case of a second or subsequent conviction, to a fine not exceeding one thousand pounds or to imprisonment without the option of a fine for a period not exceeding five years or to both such fine and imprisonment.

(3) Any person who shall buy unwrought precious metal without having satisfied himself that the vendor thereof is lawfully entitled to sell the same, shall be guilty of an offence and liable on conviction to the penalties mentioned in sub-section (2) of this section.

**106.** (1) Any person who shall have in his possession any unwrought precious metal, unless

(a) he is a person excepted under sub-section (1) of the last preceding section; or

(b) he is in possession of such metal in fulfilment of a contract of service with any such excepted person; or

(c) he is able to satisfy the court that he came into possession of such metal in a lawful manner;

shall be guilty of an offence and liable on conviction to the penalties mentioned in the last preceding section.

Unlawful possession of unwrought precious metal.

(2) The Governor may from time to time make alter or rescind regulations for the licensing of persons authorized to buy or to sell or to deal in or to otherwise receive and dispose of unwrought precious metals and for the better prevention of thefts or unlawful possession of unwrought precious metal, and may by such regulations prescribe different classes of licenses for the various methods of dealing in different kinds of unwrought precious metals and may further prescribe penalties for the breach of any such regulations not exceeding the penalties mentioned in the last preceding section. The provisions of section *one hundred and thirty-two* shall apply to all such regulations.

**107.** (1) The Receiver of Revenue in any district may issue to any white person, who produces and lodges with such officer a certificate of fitness under the hand of the resident magistrate or assistant resident magistrate of such district, a license for such district. Such magistrate shall not issue such license except

Issue of licenses to deal in unwrought precious metals.



**Act No. 35  
of 1908.**

after enquiry from the Commissioner of Police and the Mining Commissioner.

(2) Every license shall be in the form prescribed by regulation, and shall be issued for one year or a quarter of a year.

(3) There shall be paid to the Receiver of Revenue in respect of every license the sum of twenty-five pounds if it be issued for a year, or eight pounds if it be issued for a quarter of a year.

(4) Every license, if yearly, shall, whenever issued, expire on the thirty-first day of December of the year in which it was issued, and every quarterly license shall expire on the last day of each quarter ending the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December.

(5) Any license issued under article *one hundred and forty-one* of Law No. 15 of 1898 and in force at the commencement of this Act, shall, until it has expired in accordance with the said law, be deemed to be a license issued under this section.

Penalties on licensed dealers contravening conditions of license.

**108.** Any licensed dealer, who shall deal in unwrought precious metal in a manner which is not specially authorized by the terms of his license, shall be guilty of an offence, and liable on conviction to the penalties mentioned in section *one hundred and five*, and, in addition, to forfeit his license and any right of renewal thereof for such time as the court, which passes sentence, may direct.

Prohibition of dealing in unwrought precious metal between sunset and sunrise and on Sundays etc.

**109.** Any person who shall buy, sell, deal in, or receive by way of barter, pledge, or otherwise, either as principal or agent, any unwrought precious metal between sunset and sunrise, or on a Sunday or a day declared by law a public holiday, or at any other place than his usual place of business, shall be guilty of an offence and liable on conviction to the penalties mentioned in section *one hundred and five*, and, in addition, in the case of a licensed dealer, to forfeit his license and any right of renewal of the same for such time as the court, which passes sentence, may direct.

Burden of proof of being licensed.

**110.** Whenever in any proceedings against any person under this Chapter, it is necessary to ascertain whether he is a licensed dealer or is otherwise authorized to buy, sell, deal in, receive, or dispose of unwrought precious metal, the burden of proving that he was such licensed

dealer or was otherwise authorized as aforesaid, shall lie upon such person.

**Act No. 35  
of 1908.**

**111.** (1) Every licensed dealer, and every banker and every person who receives or deposits for safekeeping or despatch unwrought precious metal, shall keep a true and correct register in the English or Dutch language, in the form prescribed by regulation, of all unwrought precious metal deposited with, or received, or despatched, or otherwise disposed of by him, and shall enter or cause to be entered in such register within twenty-four hours after every such transaction

Register of transactions to be kept by persons dealing in unwrought precious metal.

- (a) the date of the transaction ;
- (b) the names of the parties to the transaction ;
- (c) the nature and weight of the material and the weight of the precious metal, the subject of the transaction ;
- (d) the price (if any) received or paid.

(2) Any person required by this section to keep a register, who shall fail to keep the same in manner prescribed, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds, or to imprisonment, without the option of a fine, for a period not exceeding three months.

(3) Every person required by this section to keep a register, shall, on or before the fifteenth day of each month, transmit or deliver to the Inspector of Mines of the mining district, a true copy of such register in duplicate for the last preceding month, together with a solemn declaration of the correctness thereof, and shall also produce and exhibit such register to the senior officer of police having authority in such district whenever required in writing by such officer, and in default of compliance with any requirement of this sub-section he shall be guilty of an offence, and liable on conviction to the penalties mentioned in sub-section (2) of this section.

**112.** Any person who shall deliver or cause to be delivered unwrought precious metal in payment of any debt due from him or another person, or in consideration of any service rendered or to be rendered to him or to another person, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds, or to imprisonment, without the option of a fine, for a period not exceeding three months or to both such fine and imprisonment.

Prohibition of payment of debts or wages in unwrought precious metal.

**Act No 35  
of 1908.**

Penalty for receiving unwrought precious metal from coloured persons.

**113.** Any person who shall receive from a coloured person any unwrought precious metal by way of purchase, barter, pledge, or gift, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand pounds, or to imprisonment, without the option of a fine, for a period not exceeding five years or to both such fine and imprisonment.

Penalty on coloured persons trading dealing in or being in possession of unwrought precious metal.

**114.** Any coloured person who shall sell, barter, pledge, or otherwise dispose of any unwrought precious metal, or who shall obtain by purchase, barter, or pledge, or shall be in possession of any unwrought precious metal, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years; provided that nothing in this section contained shall apply to a coloured person handling unwrought precious metal in fulfilment of any contract of service with a person excepted under sub-section (1) of section *one hundred and five*.

Disposal of unwrought precious metals by the court in case of conviction.

**115.** On the conviction of any person for an offence mentioned in this Chapter, it shall be in the discretion of the court which passes sentence to order any unwrought precious metal in respect of which such conviction has been obtained, to be delivered up to the owner thereof (if it shall be satisfied of the ownership) or if not so satisfied to be forfeited to the Crown.

Penalty for maliciously placing unwrought precious metal on premises with intent.

**116.** Any person who shall maliciously place any unwrought precious metal in the possession of or on the premises of any other person, with intent that such other person shall be convicted under any provision of this Chapter, shall be guilty of an offence and shall be liable on conviction to the penalties mentioned in section *one hundred and five*.

Accessories to and persons attempting to contravene this Chapter.

**117.** Any person who shall be an accessory, either before or after the fact, to an offence described in this Chapter shall be liable to be charged and dealt with in all respects as if he were a principal offender, and any person who shall attempt to commit any such offence shall be deemed to have actually committed the same, and shall be liable to the penalties herein provided for the particular offence which he has attempted to commit.

Disabilities entailed by conviction under this Chapter.

**118.** No person who has been convicted of an offence described in this Chapter shall be entitled to obtain from a Receiver of Revenue or Municipal Council a license to trade, or carry on any business in a proclaimed field; and any such license shall *ipso facto* lapse on conviction of the holder for any such offence.

## PART III.

Act No. 35  
of 1908.**Base Metals.**

119. Where base metals exist, or are supposed to exist, on Crown land the provisions of Part II of this Act relating to Crown land (other than Chapter XII) shall *mutatis mutandis* apply; provided that

Application of Part II of Act to base metals on Crown land subject to certain provisos.

(1) the holder of a prospecting permit for precious metals may, under the authority of such permit prospect for base metals also, without obtaining a further permission to prospect for base metals;

(2) the maximum number of claims which the Minister may authorize under a certificate issued to a discoverer of base metals in accordance with section *nineteen* or which may be pegged in accordance with section *thirty-two*, shall be one hundred;

(3) the license moneys payable in respect of base metal claims shall be calculated at the rate of one penny per claim per month for the first year and sixpence per claim per month for any year after the first year;

(4) the holder of a prospecting or digger's license for precious metals may saving rights existing at any time prospect and mine on his claim for base metals on payment by him to the Mining Commissioner of the amount payable for a license mentioned in sub-section (3) of this section in addition to the amount paid or payable by him under section *forty*. On payment of such additional amount, the Mining Commissioner shall endorse the license "available for base metals";

(5) the holder of base metal claims may, saving rights existing at any time, prospect and mine for precious metals on such claims (not exceeding fifty) on payment of the amount payable under section *forty* in addition to the amount paid or payable by him under sub-section (3) of this section. On payment of such additional amount the Mining Commissioner shall endorse the license "available for precious metals" to an extent not exceeding fifty claims;

(6) notwithstanding the extension to a prospecting or digger's license of the privileges obtainable under sub-sections (4) and (5)

**Act No. 35  
of 1908.**

of this section, such license shall be deemed for all purposes one license;

(7) any prospecting or digger's license available for precious metals, whether or not it be also available for base metals, may be converted into a license available exclusively for base metals, saving rights existing at any time subject to the conditions following (that is to say)—

(a) written application for such conversion shall be made to the Mining Commissioner;

(b) the Mining Commissioner shall be satisfied, after obtaining the report of the Government Mining Engineer, that there is no reasonable prospect of precious metals being found in payable quantities on the claims, and further, that there is a reasonable certainty of base metals being found thereon in payable quantities.

A new license, available exclusively for base metals, shall be issued by the Mining Commissioner in respect of the claims whenever such application is granted;

(8) whenever, in the case of claims held exclusively for base metals, it shall appear from the report of the Government Mining Engineer that

(a) there is reasonable certainty that precious metals will be found on such claims in payable quantities, and further, that there is no reasonable prospect of base metals being found in payable quantities on such claims; or

(b) that, in the winning of base metals by the license holder or any other person on such claims, precious metals have been found in combination with such base metals and exceeding in value the cost of producing both such precious and base metals;

the Mining Commissioner may order the license holder, either to produce his license for endorsement in manner provided by and subject to the payments mentioned in sub-section (5) of this section, or to convert such license into a license exclusively available for precious metals, and the license holder shall be entitled to choose one of such alternatives. If the license holder shall fail to make such choice or shall otherwise fail to comply with the terms of such order within a period fixed by the Mining Commissioner, no

such license shall be renewed at the expiry of the period for which it was issued, and the claims held thereunder shall lapse and may be dealt with in any of the ways provided by section *thirty*.

**Act No. 35  
of 1908.**

**120.** Whenever in the course of mining base metals on private land precious metals are won in combination with such base metals exceeding in value the cost of producing both such precious and base metals the Governor may by proclamation in the *Gazette* apply the provisions of Part II of this Act to such private land so far as they are applicable to private land ; provided that nothing in this section contained shall be construed as depriving the owner of any rights in respect of base metals which can be worked separately from the precious metals, and the Mining Commissioner may reserve from prospecting pegging or digging any area necessary for the exercise by the owner of such rights.

Circumstances under which Part II of Act may be applied to private land.

**121.** Notwithstanding the repeal by this Act of Law No. 14 of 1897 the provisions of that law relative to the payment to the Crown of one per cent. of the value of base metals worked or removed, whether on Crown or private land, shall remain in force, together with such other provisions of the said law as are incidental to the assessment and collection of the said one per cent.

Base metal royalties.

#### PART IV.

### General and Miscellaneous.

**122.** The holder of any stand license or of a prospecting or digger's license heretofore specially registered or of a prospecting or digger's license in respect of which a certificate of bezitrecht has been granted may hypothecate such license subject to the provisions of the law for the time being governing the registration of mining title.

Mortgage of claims, stands etc.

**123.** Whenever it shall appear expedient in the public interest, the Governor may, by proclamation in the *Gazette*, declare any land adjoining, enclosed by, or situate in the neighbourhood of proclaimed land, to be portion of a proclaimed field.

Proclaimed fields.

**124.** In determining, for the purposes of this Act or any other law, whether there are reasonable grounds for believing that precious metals or base metals exist in payable quantities on

Determination of questions of payability.

**Act No. 35  
of 1908.**

any land, the Governor shall be guided by the report of the Government Mining Engineer, who may be assisted, if the Governor so determines, by a commission of qualified mining engineers appointed by the Minister.

Powers of  
entry on  
private land.

**125.** (1) The Government Mining Engineer, every Mining Commissioner, Beacon Inspector, Inspector of Mines, and any officer of the Mines Department duly authorized in writing by one of such first-mentioned officers, may enter upon private land, for the purpose of carrying out any powers or duties conferred or imposed upon him by this Act or by regulation.

(2) The Director of Geological Survey and any person employed by him or acting under his written instructions, and any surveyor who is engaged in surveying ground for the purposes of this Act or any regulation, may enter upon private land (after giving due notice to all persons entitled to the use and occupation of the surface thereof) with all persons, animals, vehicles, appliances, instruments, flags, and materials necessary for such survey.

(3) Any person who prevents any such entry on private land as is authorized by this section, or wilfully obstructs or hinders any person so authorized in the exercise of his powers and duties under this Act or any regulation, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds.

Mining Com-  
missioner's  
jurisdiction  
incidental to  
investigation.

**126.** Wherever under this Act a Mining Commissioner is authorized or required to investigate any matter or hear any application or objection he shall for the purposes of the investigation, application, or objection, have all the powers and jurisdictions mentioned in the Commissions' Powers Ordinance 1902.

When holder  
of mining title  
may be  
ordered to  
commence  
or continue  
work and  
penalty for  
not complying  
with such  
order.

**127.** (1) Whenever in the opinion of the Minister—

(a) development work or mining has either wholly or in part ceased on ground held under mining title; or

(b) a mine already developed has not yet produced, or a producing mine has ceased to produce precious or base metals;

he may, by notice in writing, call upon the holder of the mining title to give, within three months from the date of such notice, the reasons (if any) why the development work or mining has ceased or why such mine has not produced or has ceased to produce (as the case may be).

(2) If within such period no reasons have been stated by such holder or, if having been given, the Minister shall not deem them satisfactory, he shall appoint a commission to inquire into the matter and report to him. Such commission shall consist of the Government Mining Engineer and two other persons and shall have all the powers, jurisdiction, and privileges which may be conferred upon commissions by the Commissions Powers Ordinance 1902.

(3) The Minister shall cause written notice to be served upon the holder of the mining title of the date and place of the first sitting of the commission and shall, by such notice, require him to appear before it and submit to such commission the reasons called for in the first-mentioned notice and the evidence in support thereof. Not less than one month shall elapse between the date of such notice and the first sitting of the commission.

(4) If, after considering the commission's report, the Minister is of opinion that the development work or mining ceased or (as the case may be) such mine has not produced or ceased to produce, without adequate cause, he may, by written notice, call upon the holder of the mining title to resume and carry on development work or mining or to cause production from the mine to be commenced or resumed (as the case may be) within a period (not being less than three months) fixed by such notice.

(5) If such holder shall, within the period so fixed, fail to comply with the terms of such notice, the Governor may declare that all the rights held under such title have lapsed as from a date to be fixed.

(6) If no mortgage bond is registered in respect of the mining title the declaration of lapsing shall be served upon the holder of the mining title and shall be published in the *Gazette* and in a newspaper circulating in the mining district, and at any time thereafter the Governor may deal with the rights held under such mining title in any manner described in section *thirty*.

(7) If any mortgage bond is registered in respect of the mining title, notice of the Governor's declaration shall also be served immediately upon the mortgagee, and in such case the ground shall not be dealt with under section *thirty*, but a date shall be fixed and notified to such mortgagee and in the *Gazette* (not being less than three months after the notice) on which the rights held



**Act No. 35  
of 1908.**

under the mining title will be put up for sale by public auction by the Mining Commissioner and the rights shall be so sold. Out of the proceeds of the sale the costs of the sale shall first be deducted and after payment to the bondholder of the unsatisfied amount of the mortgage bond and interest due thereunder, the balance shall be paid to the Treasurer.

(8) In either of the cases described in sub-sections (6) and (7), the plant, machinery, or equipment on the ground may, subject to the payment of all sums still due to the Crown, be removed by any person entitled thereto within six months after the rights aforesaid have been declared lapsed, provided that no material shall be removed or destroyed which is used for supporting underground workings. In the case described in sub-section (6), the person who was the holder of the mining title may remove, or for a period of six months or for such further time as the Governor may allow, treat and work any tailings or rock dump on the ground which he held. If in the same case such plant, machinery, equipment, tailings or rock dump be not removed within such period of six months or within any extended period that the Governor may allow, he may, if the ground is to be declared open for pegging, cause it to be sold after public tender or by public auction, or if the ground is to be leased under section *forty-six*, cause it to be sold to the lessee by private treaty, or if a State mine is to be established on the ground, may purchase it for such purpose at a price to be determined by arbitration. In the case described in sub-section (7), the plant, machinery, and equipment, if not removed within such period of six months, or within any extended period that the Governor may allow, shall be sold after public tender or by public auction, and the proceeds of the sale, after deduction of the costs of sale and any sum still due to the Crown from the holder of the mining title, and after payment to the bondholder of the unsatisfied amount of the mortgage bond and interest thereunder, shall be paid to the holder of the mining title.

State  
Mining  
School.

**128.** The Governor may establish and maintain in connection with an existing mine or institution, or otherwise, a State Mining School in which instruction shall be given in occupations incidental to mining. Only white male persons of the age of fourteen years shall be admitted to such instruction which shall only be given

underground to persons of the age of sixteen years or upwards.

**Act No. 35  
of 1908.**

**129.** (1) The Minister may, out of moneys appropriated by Parliament for the purpose, assist the prospecting for and exploitation of precious or base metals

Government assistance to prospectors by medium of public batteries etc.

(a) by erecting batteries, smelting works, ore dressing works, assaying and analytical laboratories, power stations, and pumping stations ;

(b) by the construction of roads, pipe lines, power lines, and water-courses ;

(c) by the sinking of boreholes ;

(d) generally in any other manner prescribed by regulation he may deem expedient ;

and may charge fees for the use of anything so erected, constructed or sunk, and do all acts and things and enter into all contracts necessary for the purposes of this section.

(2) The Minister may, so far as he deems expedient, permit any officer of the Mines Department to advise any prospector or holder of mining title on any matter which relates to prospecting or mining for precious or base metals.

**130.** (1) Save as is provided in section *twenty-four* no right may be acquired under this Act by a coloured person ; and the holder of a right acquired under Law No. 15 of 1898 or a prior law or under this Act shall not transfer, or sub-let, or permit to be transferred or sub-let, any portion of such right to a coloured person, nor permit any coloured person (other than his *bona fide* servant) to reside on or occupy ground held under such right.

Prohibition against acquisition of rights under this Act by coloured persons.

(2) Any person contravening this section shall be guilty of an offence, and liable on conviction to a fine not exceeding fifty pounds, and in the case of a continuing contravention to a fine not exceeding five pounds for every day during which such contravention is continued.

**131.** (1) No coloured person shall be permitted to reside on proclaimed land in districts comprised in class A, except in bazaars, locations, mining compounds, and such other places as the Mining Commissioner may permit.

Restriction on residence of coloured persons on proclaimed land in districts of Class A.

(2) Any coloured person contravening this section shall be liable on conviction to imprisonment for a period not exceeding one month, and upon such conviction the Mining Commissioner may cause any structures occupied by or erected for the use of such coloured person to be removed.

**Act No. 35  
of 1908**

(3) Nothing in this section shall apply to coloured persons in the employ of a white person in so far as they live on the premises where they are so employed nor to coloured persons who at the commencement of this Act were lawfully in occupation of premises.

Regulations.

**132.** (1) The regulations set forth in the Third Schedule to this Act shall be deemed to form part of this Act; provided that the Governor may by proclamation in the *Gazette* make such additions to or alterations in such regulations as are not inconsistent with this Act.

(2) All such additions and alterations shall, within seven days after the publication of such proclamation, be laid on the tables of both Houses of Parliament if Parliament be then in session, or if it be not then in session, within seven days after the commencement of its next ensuing session.

Prescribed fees on applications and objections to certain rights granted under the Act.

**133.** On the lodging of any document mentioned in the Second Schedule to this Act the fees prescribed by such Schedule in respect of each such document shall be paid by means of revenue stamps affixed thereto; and such stamps shall be cancelled as required by law by the person with whom the document is lodged.

Service of notices and other documents.

**134.** Any notice or other document required by this Act or any regulation to be served upon any person shall be deemed to be effectually served if delivered personally to such person, or left at or sent by registered post to his last usual place of abode or business, or, whenever he is absent from the Colony, if such notice or document is served in manner aforesaid on any agent in this Colony of such person.

Production of licenses on demand.

**135.** (1) Every person who is required by this Act to hold any kind of license, certificate, or other document shall produce such license, certificate, or document on the request of the Mining Commissioner, Beacon Inspector, or the senior officer of police having authority in the mining district; provided that, in the case of the holder of a mynpacht-brief, it shall be a sufficient compliance with the requirements of this section if other satisfactory proof be given that he is such holder.

(2) Any person failing to comply with the requirements of this section shall be guilty of an offence and liable on conviction to a fine not exceeding five pounds.

**136.** The following persons shall be guilty of offences and be liable on conviction to the penalties herein prescribed in the case of each offence :—

Offences and penalties therefor.

**Act No. 35  
of 1908.**

(1) Any person required by this Act to obtain a permit or license to prospect or mine for precious or base metals, who prospects or mines for any such metals without being in possession of the necessary permit or license, shall be liable to a fine not exceeding twenty-five pounds and to a further fine of five pounds for every day upon which such prospecting or mining has been carried on.

(2) Any person who, whether he is in possession of a permit or license or not, prospects or mines for precious or base metals upon ground on which such prospecting or mining is not authorized or is expressly forbidden by this Act, shall be liable to a fine not exceeding fifty pounds and to a further fine of ten pounds for every day upon which such prospecting or mining has been carried on.

(3) Any person who alters, moves, or wilfully damages a beacon erected under this Act or any regulation or any prior law, shall be liable to a fine not exceeding one hundred pounds.

(4) Any person who knowingly pegs any claim on ground held under mining title by another person without the written permission of such other person shall be liable to a fine not exceeding one hundred pounds.

(5) Any person who, being required by this Act to give any notice or disclose any fact to a Mining Commissioner or other officer, makes default in complying with such requirement shall, if no other penalty is expressly provided for the default, be liable to a fine not exceeding one hundred pounds.

(6) Any person who occupies or resides upon proclaimed land without being in possession of a license or permission under this Act or any other law authorising him to occupy or reside on such land, shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment without the option of a fine for a period not exceeding six months.

(7) Any person unlawfully removing ore from or out of ground held under mining

Act No. 35  
of 1908.

title, shall be liable to a fine three times the value of the ore removed by him, which shall be paid to the holder of such title, and in addition shall be liable to imprisonment for a period not exceeding five years.

(8) Any person who wilfully and maliciously damages any mine, machinery, water-course, or other mining property, or attempts so to do, shall be liable to a fine not exceeding one thousand pounds, or to imprisonment, without the option of a fine, for a period not exceeding ten years.

Imprisonment for offences.

**137.** (1) In every case where imprisonment is prescribed as a punishment for any offence mentioned in this Act or any regulation, whether such imprisonment be in default of payment or without the option of a fine, it shall be with or without hard labour as the court which passes sentence may determine.

(2) Whenever any fine shall have been imposed under the provisions of this Act or any regulation, and the person convicted shall not forthwith pay the same, the court imposing such fine shall order imprisonment for a period

(a) not exceeding seven days, if the fine imposed does not exceed five pounds ;

(b) not exceeding fourteen days, if the fine imposed does not exceed ten pounds ;

(c) not exceeding one month, if the fine imposed does not exceed twenty pounds ;

(d) not exceeding six weeks, if the fine imposed does not exceed twenty-five pounds ;

(e) not exceeding three months, if the fine imposed does not exceed fifty pounds ;

(f) not exceeding six months, if the fine imposed does not exceed one hundred pounds ;

(g) not exceeding one year, if the fine imposed does not exceed two hundred and fifty pounds ;

(h) not exceeding two years, if the fine imposed does not exceed five hundred pounds ;

(i) not exceeding five years, if the fine imposed be above five hundred pounds unless such fine be sooner paid.

Liability to penalties in proceedings against companies or partnerships.

**138.** In any proceedings for an offence against this Act or any regulation committed by an incorporated company, the secretary, and every manager or director of such company who is in control of the business thereof in this Colony shall be liable to the penalties prescribed for such

offence; and in any proceedings for such offence committed by a partnership, every member and manager in this Colony of such partnership shall be liable to such penalties; provided that nothing in this section contained shall exempt from liability any other person guilty of such offence.

**139.** Whenever it shall be found necessary in the public interest or for public purposes to take away, wholly or in part, rights granted under this Act or under any prior law, the Governor shall have the right to do so, on payment of compensation to be determined, in the absence of mutual agreement, by arbitration.

When compensation for damage to be determined by arbitration.

**140.** The Governor may enter into an agreement with the person or his assigns mentioned in Executive Council Resolution No. 1,377 of 1904, dated the thirtieth day of November, 1904, and purporting to grant to such person or his assigns the right to prospect for precious metals on an area in the Zoutpansberg District once occupied by the Magato tribe, the grant having been made under circumstances in which such area was erroneously considered a native location. Any such agreement by which such person or his assigns will obtain for a period not exceeding ten years the exclusive right to prospect for precious metals in such area and a mynpacht brief in terms of this Act of a size fixed by the Minister, shall, notwithstanding anything in this Act contained, be deemed a valid agreement.

Power of Governor to enter into certain agreements.

**141.** Nothing in this Act contained shall affect the operation of the Local Authorities Roads Ordinance 1904, within the area of any local authority.

Saving of rights of local authorities under Ordinance No. 44 of 1904.

**142.** This Act may be cited for all purposes as the Precious and Base Metals Act 1908 and shall not come into operation unless and until the Governor shall by proclamation in the *Gazette* have declared that it is His Majesty's pleasure not to disallow the Act and thereafter it shall come into operation on such date (not before the first day of January 1909) as the Governor shall by like proclamation declare.

Title and date of coming into operation of Act.

Act No. 35  
of 1908.

## First Schedule.

LAWS REPEALED.	EXTENT OF REPEAL.
Law No. 18 of 1896 First Volksraad Resolution 25th August 1896 Law No. 14 of 1897 (Base Metal Law)	The whole. Article No. 1261. The whole, together with the amendment of Article <i>four</i> thereof approved by the Second Volksraad, Article No. 1749 of 22nd November, 1898, and noted and accepted by the First Volksraad, Article No. 1975, of the 8th December, 1898.
Law No. 15 of 1898 (Gold Law) First Volksraad Resolution 2nd December 1898 First Volksraad Resolution 29th September 1899	The whole. Article No. 1911. Article No. 1425.
Ordinance No. 21 of 1902 Base Metal Amendment Ordinance 1903 (Ordinance No. 42 of 1903)	The whole. The whole.
Brickmaking Lime-burning and Quarrying (Proclaimed Lands) Ordinance 1905 (Ordinance No. 7 of 1905)	The whole.
Mines Works and Machinery Regulations Amendment Ordinance 1905 (Ordinance No. 31 of 1905)	Section <i>four</i> .
Regulation of Trading (Mining Ground) Ordinance 1905 (Ordinance No. 35 of 1905)	The whole.
Mines Works and Machinery Further Amendment Ordinance 1906 (Ordinance No. 23 of 1906)	The whole.
Trading on Mining Ground Amendment Act 1907 (Act No. 35 of 1907)	The whole.

## Second Schedule.

TABLE OF FEES ON LODGING OF CERTAIN DOCUMENTS.

DOCUMENT.	FEES.
Application for Certificate of Bezitrecht... ..	5/-
Notice of objection to issue of Certificate of Bezitrecht ... ..	5/-
Application for Water-Right ... ..	5/-
Application for transfer of Water-Right... ..	5/-
Application for Surface Right ... ..	5/-
„ „ Machinery Site ... ..	5/-
„ „ permission to erect Buildings, construct Railways, etc., on Proclaimed land ... ..	5/-
Notice of objection to erection of Buildings, etc., on Proclaimed land	5/-
Application for enlargement of Stand ... ..	5/-
Application for Stand on open Proclaimed land for erection of dwelling or place of business ... ..	5/-
Application for Industrial Stand ... ..	£1
Notice of objection to grant of Industrial Stand ... ..	£1
Application for Trading Stand Certificate ... ..	£1
Notice of objection to grant of Trading Stand Certificate ... ..	£1
Application for Transfer of Trading Stand Certificate ... ..	£1

**Third Schedule.****Act No. 35  
of 1908.****REGULATIONS.***Forms of Prospecting Permits.*

1. Prospecting permits under section *fourteen* of the Act shall be in Form "A" or "B," annexed to this Schedule according to the circumstances described in each such form.

*Pegging of Prospecting Areas.*

2. For the purpose of pegging a prospecting area under section *fifteen* of the Act, pegs fixed in the ground and projecting not less than two and one-half feet shall be placed at the angular points and at intervals of not more than two hundred yards on every side of such area. Each peg shall be surrounded by a cairn of stones or earth to the height of two feet. The direction of the two nearest pegs shall be indicated by trenches not less than six inches in depth, six inches wide, and six feet long, or, where the nature of the ground will not permit of trenches being dug, by a line of stones of like dimensions.

A board or plate shall be affixed to each peg and shall bear inscribed thereon in a legible manner the words "prospecting area," the number of the permit the name of the pegger, and the date of pegging, for example, as follows:—"Prospecting area—pegged 1st May, 1908, N.-W. Beacon (or Line Beacon), John Smith, Permit No....." If such peg, board, or inscription is missing, or if the inscription becomes illegible through exposure or otherwise, or if the cairn of stones or earth is not maintained at a proper height, it shall be deemed to be a non-compliance with section *fifteen* of the Act and this Regulation, and the Mining Commissioner may declare forfeited the rights acquired under the permit.

*Discovery.*

3. A prospector making a discovery shall forthwith erect a beacon at the place of such discovery as described in Regulation 11, which shall bear an inscription giving the name of the discoverer, the date of discovery, and the name of the metal discovered.

4. With the declaration required by section *seventeen* of the Act to be furnished to the Mining Commissioner shall be sent samples of the ore or lode discovered, together with a sketch plan prepared as nearly as may be in accordance with Regulation 24 showing the place where the discovery was made. If samples of the ore or mineral are sent to the Government Geological Survey Department or to any Assay Office, the certificate of the analysis or assay or a true copy thereof shall also be forwarded to the Mining Commissioner.

5. The declaration referred to in the last preceding Regulation shall be as nearly as circumstances permit according to Form "C" hereto attached, and in addition to the particulars required by section *seventeen* of the Act such declaration shall contain the following information:—

- (a) The name of the metal discovered;
- (b) the number of the prospecting permit under which the discovery was made;
- (c) a statement that the samples referred to in the certificate of assay (if any) were taken from the same ore or lode and that they are identical in character with those sent with the declaration to the Mining Commissioner;
- (d) particulars of the work done on the ground where the discovery was made.

*Beacons of Mynpachten, Werven and other Reservations.*

6. The beacons and trenches defining the mynpachten and reservations referred to in section *twenty-five* of the Act shall be constructed in the manner described in Regulations 7 and 10. Upon the beacons, or the plate referred to in the said Regulations, shall be inscribed the number of the mynpacht, werf, or reservation (as the case may be), the name of the owner, and the official number of the beacon.



**Act No. 35  
of 1908.**

*Beacons Defining Proclaimed Ground.*

7. The beacons required by section *twenty-nine* of the Act to be erected at the angular points of proclaimed land shall have minimum dimensions of four feet high, three feet square at the base, and two feet square at the top, and where possible shall be sunk to a depth of at least one foot in the ground and shall be constructed in the manner described in Regulation 10. Upon the beacons or the plates referred to in the said Regulation shall be inscribed the name and number of the farm corresponding with the registers of the Registrar of Deeds and the official number of the beacon. The beacons defining the boundary lines shall be round, and also of the same construction as described in Regulation 10, and shall have minimum dimensions of three feet high, two feet diameter at the base and one foot diameter at the top. The trenches required by the said section of the Act shall also be constructed in the manner described in Regulation 11.

*Issue and Renewal of Claim Licenses.*

8. Licenses to peg claims in any mining district shall only be issued upon personal application at the office or branch office of the Mining Commissioner of such district, and such licenses and any renewal thereof shall be signed by the Mining Commissioner or by any other officer of the Mines Department authorized thereto by him. At the time of making the application for such licenses the applicant shall furnish the Mining Commissioner with his full name and address, and if required shall make a declaration or affidavit that he is qualified under section *thirty-two* of the Act to obtain such license.

*Pegging of Claims under section thirty-two of the Act.*

9. Claims shall be pegged in the following manner and the pegs provided for in this regulation shall be sufficient for the first seven days thereafter inclusive of the day of pegging :—

- (a) By fixing pegs of reasonable dimensions in the ground projecting not less than two and a half feet above the ground in the middle of the long sides of each claim ; the upper six inches of such peg shall be flattened or squared off and on such portion shall be inscribed in a legible manner the name of the license holder and date of pegging ; or
- (b) By fixing in the ground pegs described as above at the angular points of each block of not more than fifty claims and there shall be inscribed thereon in addition to the particulars mentioned in (a) the number of claims in the block ;

provided that the method of pegging described in paragraph (b) hereof shall not be lawful until the fifth day after ground has become open for pegging by Proclamation, Declaration or Notice, nor if the Mining Commissioner gives notice that within any named boundaries claims must be pegged under paragraph (a).

*Beacons of Claims situate in Districts comprised in Class "A."*

10. In districts comprised in Class "A" the beacons required to be erected under section *thirty-four* and maintained under section *thirty-six* of the Act shall be built of concrete or solid stone masonry, or may consist of a single stone or other material of a permanent nature approved by the Beacon Inspector and where possible shall be sunk to a depth of at least six inches into the ground. The minimum dimensions of beacons shall be two and one-half feet in height, two feet square at the base, one and one-half feet square at the top, and an iron pipe not less than one inch in diameter or other suitable permanent mark, shall fix the centre, having the top level with the top of the beacon.

The name of the license holder, the official number of the beacon, and the number of claims in the claim area shall be inscribed in a legible and durable manner on the beacon or on an iron or brass plate not less than nine inches by twelve inches sunk into the beacon or securely fastened to an iron pipe driven into the ground at the side thereof.

The holder of adjoining ground held under mining title may, subject to his first obtaining the consent of the Mining Commissioner, make use of an existing beacon to mark the boundary of his ground, provided this be done without injury to the beacon.

If buildings or other structures are to be erected on the spot where a beacon is required the Mining Commissioner may permit, or, if he deems it necessary in the interests of the fields, he may by notice require beacons to be constructed in the following manner:—

A cylindrical block of concrete or single stone or other material of a permanent nature not less than fifteen inches diameter and twelve inches deep shall be sunk into and made level with the surface of the ground, and an iron pipe in the centre of not less than three-quarter inch diameter by eighteen inches long shall be erected, the top end of which shall also be level with the surface of the ground. An iron or brass plate shall be sunk in the concrete or stone, and on such plate shall be cut or engraved in a legible and durable manner the particulars mentioned in the last preceding paragraph.

11. Where the nature of the ground permits a trench twelve inches deep and twelve inches wide shall be made round the beacon with a radius of not less than three feet with the rod as a centre, and trenches of similar dimensions shall be made not less than six feet long outward from the said trench in the direction of the boundary lines meeting at the beacon. Where trenches cannot be made, stones shall be placed so as to form the same design.

*Beacons of Claims situate in Districts comprised in Class "B."*

12. In districts comprised in Class "B" the beacons required to be erected under section *thirty-four* of the Act may be erected and inscribed as set forth in Regulation 10 or otherwise shall consist of either hard ant-resisting wood or iron pegs fixed in the ground and projecting not less than two and one-half feet therefrom. The pegs, if wooden, shall not be less than three inches in diameter, and the upper six inches of such pegs shall be flattened or squared off. The pegs, if iron, shall not be less than three-quarter inch diameter.

A metal plate or strong wooden board to the satisfaction of the Beacon Inspector not less than nine inches by twelve inches shall be securely fastened to the upper part of each wooden or iron peg, on which shall be written or cut, in a legible and durable manner, the name of the license holder, the official number of the beacon, and the number of claims in the claim area.

A cairn of stones shall be placed neatly round such peg or rod to the satisfaction of the Beacon Inspector, and where the nature of the ground permits a trench, twelve inches deep and twelve inches wide, shall be made round the cairn or beacon of not less than three feet radius with the rod or peg as a centre, and trenches of similar dimensions shall be made not less than six feet long outward from the aforementioned trench in the direction of the boundary lines meeting at the beacon. Where trenches cannot be made, stones shall be placed so as to form the same design.

*Beacons defining Boundary Lines of Claims—All Districts.*

13. In all districts boundary lines of claim areas longer than four hundred yards shall have intermediate masonry beacons or rods, pegs, cairns of stones, and directory trenches, or stones, as prescribed, with the inscription "line beacon" written thereon in legible and durable letters. There shall be one line beacon to every four hundred yards or thereabouts, or at a less distance if required by the Beacon Inspector. In wooded country the Beacon Inspector may require a path or line to be cut along the boundary of a claim area, if, in his opinion, this is necessary.

*Water-Rights.*

14. The grant of a water-right may include

- (a) the right to take water from any stream, river, natural water course or spring for the purpose of generating motive power, or for purposes incidental to the working of a mining title or for any other purpose authorised by the Act;
- (b) the right to collect and store water in a stream or river and to use such water for the purposes mentioned in paragraph (a) of this Regulation.

15. The grant of a water-right may further include the right to build a weir, dam, or embankment, or to sink a sump for the purpose of

**Act No. 35  
of 1908.**

enabling the holder to pump water from the river, stream, water course, or spring from which the right to take water is granted, or of enabling the holder to accumulate water for the purpose of securing a constant supply; provided that nothing herein contained or in the Act or in any water-right grant under the Act shall be construed as giving the grantee any rights over or upon any ground placed under water under such grant except such rights of access as are necessary for the purpose of constructing and maintaining the dams, weirs, embankments or other works, and of taking water therefrom.

16. Every application for a water-right under Regulation 14 paragraph (a) shall be according to Form "D," and for a water-right under Regulation 14, paragraph (b), shall be according to Form "E" hereto attached.

17. Until a water-right granted be confirmed by the Minister, it may be sufficiently demarcated on the ground by means of such beacons as are described in Regulation 11, and on such beacons shall be legibly inscribed the words "provisional water-right beacon" and the name of the applicant. A copy of the application shall be posted on the ground and affixed to one of the beacons.

18. As soon as the grant of any water-right has been confirmed by the Minister, proper beacons shall be erected in accordance with the provisions of Regulation 10.

19. On every sketch plan representing a water-right on a river or stream shall be shown the respective positions of the dam, weir, or sump, the intake beacon and the return beacon; provided that in the case of a water-right for generating motive power the point or points at which the machinery for generating the power is to be erected shall also be fixed and provided further that the Mining Commissioner may at any time authorise the erection of machinery at any other point from which the water may be returned to the return beacon.

20. In every diagram of a water-right numerical data for the beacons mentioned in the last preceding Regulation shall be given.

21. A sketch plan of a water-right shall show the adjoining properties and give the names of the owners thereof, and such additional information as in the opinion of the Mining Commissioner may be necessary, and shall be signed by the applicant and the Beacon Inspector.

22. No holder of a water-right or mining title shall allow the refuse from his battery or mining plant to flow or fall into, pollute, or make turbid the water in any stream, river, or water course.

23. Any person disturbing or fouling any river, stream, water or water course or water furrow shall on failure to abate the nuisance after notice from the Mining Commissioner be guilty of an offence and liable to a fine not exceeding fifty pounds.

*Sketch Plans.*

24. All sketch plans required by the Act shall be prepared on tracing linen or substantial paper of good quality and show adjoining claims with the owners' names, if possible, and all physical features, such as hills, kopjes, dongas, drifts, roads, houses, and huts which exist upon or are adjacent to the claim or other right, and which would assist in fixing the position thereof.

There shall be recorded upon such sketch plan the distance of each corner of the claim or other right from an existing beacon or beacons of farms or surveyed mining rights, trigonometrical stations, or marked physical features, and the length of the sides of the claim or other right which shall be accurately measured with a tape or chain in the presence if possible, of the Beacon Inspector, and to his satisfaction. The true and the magnetic north shall be indicated on the plan.

Sketch plans shall be signed by the owner or by the pegger for the owner and endorsed by the Beacon Inspector, and shall be prepared to the satisfaction of the Mining Commissioner.

*Quarrying and Brickmaking, etc.*

25. Quarrying, lime-burning and brickmaking, under section *seventy-five* of the Act, shall be carried on over such extent of ground as the Mining Commissioner may determine, and in such a manner as not to endanger the health of the persons employed in such work or of the general public, or to constitute a public nuisance provided that no one permit shall be issued for a greater area than 400 feet by 150 feet.

26. The Mining Commissioner shall have authority to investigate any complaints or to make investigations on his own motion, and, after hearing the parties concerned and after consultation with the Medical Officer of Health or District Surgeon, to order the work to be so conducted and the ground to be so drained or other provision made as to remove the cause of the complaint. Non-compliance with the order of the Mining Commissioner shall be punishable upon conviction by a competent authority, with a fine of not more than fifty pounds.

*Residential, Business and Industrial Stands.*

27. The rate of license moneys payable per month upon residential and business stands granted under section *seventy-eight* of the Act, and the size of such stands shall be as follows :—

			s.	d.
50 feet x 100 feet	...	...	11	3
100 feet x 100 feet	...	...	17	0
100 feet x 150 feet	...	...	21	0

28. The rate of license moneys payable per month upon stands enlarged under section *seventy-seven* and stands granted under section *seventy-nine* of the Act, and the size of such stands shall be as follows :—

				s.	d.
5,000 square feet and less	...	...	...	11	3
In excess of 5,000 square feet and not exceeding 10,000 square feet	...	...	...	17	0
In excess of 10,000 square feet and not exceeding 15,000 square feet	...	...	...	21	0
In excess of 15,000 square feet and not exceeding 20,000 square feet	...	...	...	25	0
In excess of 20,000 square feet and not exceeding 25,000 square feet	...	...	...	30	0
In excess of 25,000 square feet and not exceeding 30,000 square feet	...	...	...	35	0
In excess of 30,000 square feet, at the rate of 5s. per month for every additional 10,000 square feet or portion thereof.					

29. No stand of a lesser area than one hundred feet by one hundred feet shall be granted under section *seventy-eight* or *seventy-nine* of the Act unless an area of ground one hundred feet by one hundred feet is not available, and no stand shall be granted under section *seventy-eight* of the Act in such a position as to interfere with the working of any mine or at a less distance than six hundred feet from any compound.

30. Notice of application for a stand under section *seventy-eight* of the Act signed by the Mining Commissioner and the applicant, together with a true copy of the sketch plan, shall be posted for one month on the ground applied for, and at the Mining Commissioner's and the Beacon Inspector's Offices, and, if required by the Mining Commissioner, at the nearest post office. Such notice shall also be served upon or sent by registered post to the owner of the nearest ground held under mining title if there be any such within one mile. The ground applied for shall be deemed to be reserved for stand purposes from the date of the posting of the application on the ground until the application is disposed of; provided that at the time when the Mining Commissioner decides in favour of the applicant he shall state a period within which the diagrams mentioned in section *eighty-one* of the Act shall be lodged and the beacons therein mentioned erected. If the applicant fails to lodge the diagram and erect the beacons within the said period the Mining Commissioner may cancel the grant.

31. Any person may appear either personally or by an authorised representative, and an incorporated body of persons may appear by an authorised representative and object to the setting aside of such stand; provided that every objector shall have given seven days' notice of intention to object and the reasons therefor to the Mining Commissioner and to the applicant.

32. The beacons required by section *eighty-one* of the Act shall be constructed in the manner described in Regulation 10. Upon the beacons or the plates referred to in the said Regulation shall be inscribed the number of the stand and the official number of the beacon.

**Act No. 35  
of 1908.**

*Regulations in respect of Trading Stands.*

33. Every person to whom has been granted by the Board mentioned in section *eighty-three* of the Act a certificate entitling him to obtain a trading license in respect of a stand set aside for trading purposes under the said section shall pay to the said Board a monthly rent to be fixed by the Board not less than the amount of the stand license under Regulation 28, or more than one hundred pounds sterling in respect of such stand; such rent shall be payable in advance on the first day of each month at the office of the Mining Commissioner of the mining district in which each stand is situated.

34. The amounts payable as license moneys on stands so set apart shall be as set forth in Regulation 28.

*Form of License to Deal in Unwrought Precious Metals.*

35. The license required by section *one hundred and seven* of the Act to deal in unwrought precious metals shall be in the Form "F" annexed to these Regulations.

*Diagrams.*

36. Where the beacons of any ground held under mining title or owner's reservation (werf) are missing, or where it is shown to the satisfaction of the Surveyor-General that such beacons have not been erected in their proper position, such beacons shall be placed or replaced in accordance with the data of the diagram or of the confirmed diagram under the direct supervision of a land surveyor, and at the cost of the holder of such mining title, reservation, or werf.

37. Wherever in the Act a diagram or confirmed diagram is required for the same it shall be prepared in quadruplicate and sent to the office of the Surveyor-General for examination.

38. Where under the Act a confirmed diagram is required, the Surveyor-General shall publish a Notice in three consecutive issues of the *Gazette* to the effect that the diagrams are open for inspection at the offices of the Surveyor-General and the Mining Commissioner, and that if within one month after the date of the first publication no valid protest be lodged with either such officer against the confirmation of the said diagrams, the same will be confirmed. Every protest against the confirmation of such diagram shall be published by the Surveyor-General in one issue of the *Gazette* and such protest shall, within one month of such publication, be followed up by the taking out of a summons. If no summons be taken out within the prescribed period the protest shall be deemed to have lapsed and the diagrams shall be confirmed by the Surveyor-General as if there had been no such protest.

39. Diagrams of sub-divisions of ground held under mining title, and werven for which confirmed diagrams are required, shall be approved by the Surveyor-General without publication.

FORMS.

A.

(*The Precious and Base Metals Act 1908.*)

PROSPECTING PERMIT.

No.....

Permission is hereby granted under the provisions of the above Act to  
(Name in full) .....  
(Address).....  
to search and prospect for precious and base metals for a period of twelve  
months ending.....19.....upon unproclaimed Crown Land,  
unproclaimed Private Land, and proclaimed Crown land not held under Mining  
Title rendered available for prospectors in terms of the Act.

Fee paid 5s.



.....  
*Title of Issuing Officer.*

B.—PRIVATE LAND.

Mining District of.....

PROSPECTING PERMIT.

(The Precious and Base Metals Act, 1908.)

Permission is hereby granted under the provisions of the above Act to  
(Name of holder in full).....  
(Address).....  
to search and prospect for precious metals on the farm :—  
(Name and No. of Farm).....  
(District).....  
(Owner).....  
for the period of.....months from.....  
190..... to.....190.....

This permit is issued with the consent of the holder of the Mineral Rights.  
Consent No.....dated.....19.....

Amount of fee paid ... .. £ s. d.  
... .. 0 5 0

.....  
*License Clerk.*

Office Date Stamp.

.....  
*Mining Commissioner.*

C.—FORM OF DECLARATION OF DISCOVERY.

I,.....of the town of  
.....Address.....  
do solemnly declare :—

1. That on the.....day of.....190..., I discovered what I believe to be.....at.....  
.....under Prospecting permit No....., issued by the Mining Commissioner at.....dated.....and that to the best of my belief and knowledge I am the first discoverer thereof.
2. That the samples sent herewith marked with my name were taken from a body of ore or lode on the ground which is shown on the sketch plan hereto attached, and were broken from the said lode by me.
- \*3. That I forwarded samples thereof to the Geological Survey Department, Pretoria, or.....Assay Office, and duly received the certificate attached hereto. The samples sent for assay are from the same lode, and are identical in character with those sent herewith.
4. That the following are true and correct particulars of the work done by me on the ground :—†  
The outcrop and \*the above shafts and cuttings disclose the following bodies of ore :—.....  
.....  
.....

2s. 6d. Stamp.

.....  
*Signature.*

Sworn before me at.....this.....day of  
.....190.....

.....  
*Justice of the Peace.*

\*Paragraph 3 to be struck out if samples not sent to Geo. Surv. Dept. or to Assay Office.

† Here describe situation fully. Give full particulars of work done, such as shafts, cuttings, trenches, etc.

Act No. 35 of 1908.

D.—APPLICATION FOR A WATER-RIGHT.

(The right to take and use water from a stream, river, natural water-course, or springs.)

I, ... residing at ... being authorised by ... holder(s) of the following mining title situate on the farm ... No ... portion owned by ... do hereby make application on behalf of the said ... for a water-right, particulars of which are as follow :-

- 1. Point of intake.
2. Where water is to be used
3. Point of return.
4. Difference in level between each of the above points.
5. Maximum height of weir or dam (if any) above lowest point in bed of stream, river, or water course.
6. Description and dimensions of weir, dam, or sump.
7. Gradient (percentage or fall of water-course) between points one and two and between points named two and three.
8. Quantity and mean velocity of water flowing in stream (cubic feet per minute) :- (a) In dry season. (b) In wet season.
9. Quantity and mean velocity of water required in water-course (cubic feet per minute).
10. Theoretical water horse-power (measured at point of use).
11. The power is to be used for (here state description of machinery)
12. The water is to be used for.
13. The water-right is to be attached to.

The above particulars are shown on the sketch plan hereunto annexed, dated ...

Thus done at ... the ... day of ... 190 .....

Applicant.

5s. Stamp.

N.B.—If not required for generating motive power, strike out clauses 4, 7, 10, and 11.

E.—APPLICATION FOR THE RIGHT TO CONSTRUCT DAMS OR EMBANKMENTS IN A STREAM OR RIVER FOR THE PURPOSE OF CATCHING AND STORING WATER.

I, ... residing at ... being authorised by ... holder(s) of the following mining title ... situate on the farm ... No ... portion owned by ... in the Mining District of ... do hereby make application on behalf of the said ...

for the right to catch and to store water on the area within the beacons shown on the sketch plan hereunto annexed, dated ... 190 .....

Act No. 35  
of 1908.

1. Point where water is to be used.....
  2. Description and dimensions of dam or embankment.....
  3. Maximum quantity of water to be conserved (to be stated in gallons).....
  4. Superficial area of ground to be placed under water.....
  5. Full particulars of mining titles (if any) affected.....
  6. The water is to be used for.....
  7. The water-right is to be attached to.....
- Thus done at.....the  
day of.....190.....

Stamp 5s. Applicant.

F.

Transvaal. Receipt No.....  
Office Stamp and Date.

LICENSE TO DEAL IN UNWROUGHT PRECIOUS METAL.

*(The Precious and Base Metals Act, 1908.)*

The license required by the abovementioned Act is hereby granted to  
(Full Name of Licensee).....  
(Address) .....  
(subject to the licensee's right to use of the premises for the purposes  
mentioned) for the period of .....months  
ending.....190.....

Amount of license money paid ... .. £ s. d.

License granted this.....day of  
.....190.....

*District Receiver of Revenue.*

This license is not transferable.

ACT NO. 36 OF 1908.] [Came into operation 21st Sept., 1908.

AN  
**ACT**

Act No. 36  
of 1908.

**To validate the Voluntary Registration of certain Asiatics who failed to comply with the provisions of Act No. 2 of 1907 and to make further provision for the registration of Asiatics.**

*(Assented to 22nd August, 1908.)*

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—



**Act No. 36  
of 1908.**

PRELIMINARY.

Interpreta-  
tion of terms.

1. In this Act unless inconsistent with the context ;

“adult” shall mean of the age of sixteen years or over ;

“application for registration” shall mean an application to be placed on the register of Asiatics made in the manner and form prescribed by regulation and accompanied by the particulars and means of identification required by regulation ;

“Asiatic” shall mean any male person belonging to one of the native races of Asia and shall include a coolie, an Arab and a Malay but shall not include—

(a) a Malay born and resident in any British Colony or possession in South Africa ; or

(b) a person introduced into this Colony under the Labour Importation Ordinance 1904 ; or

(c) an officer of any consular service ;

“certificate of registration” shall mean a certificate of registration under Act No. 2 of 1907, or a certificate under this Act in the form set forth in the Schedule to this Act or as prescribed by regulation ;

“commencement of this Act” shall mean the date on which this Act came into operation ;

“Governor” shall mean the officer for the time being administering the Government of this Colony acting by and with the advice and consent of the Executive Council thereof ;

“guardian” shall mean the parent of a minor Asiatic or any other person under whose care such minor is living for the time being, or failing any such person the employer of such minor ;

“lawful holder” as used in relation to any certificate of registration shall mean the person (other than a minor named therein) whose registration is thereby certified ;

“minor” shall mean under the age of sixteen years ;

“register of Asiatics” shall mean the register to be kept for purposes of this Act in manner prescribed by regulation ;

“registrar” shall mean the officer appointed by the Governor to keep the register of Asiatics and any person lawfully acting in such capacity ;

- “regulation” shall mean any regulation made under section *seventeen* of this Act ;
- “unregistered Asiatic” shall mean an adult Asiatic who is not the holder of a certificate of registration.

**Act No. 36  
of 1908.**

## PART I.

### VALIDATION OF VOLUNTARY REGISTRATION.

2. (1) Every person—

(a) who is an Asiatic as defined by Act No. 2 of 1907 ; and

(b) by or in respect of whom an application for registration was on the tenth day of February 1908, or on any day subsequent thereto up till the tenth day of May 1908, made to the registrar or other duly authorised officer ; and

(c) to or in respect of whom a certificate in the form set forth in the Schedule to this Act was issued by the registrar ;

Recognition of certificate issued in scheduled form to Asiatics applying for registration on and after certain dates.

shall, when in possession of such certificate, be deemed to be the lawful holder of a certificate entitling him to enter and reside in the Colony.

(2) Every person who, having been the lawful holder of a certificate of registration under Act No. 2 of 1907, has been permitted to obtain a certificate in the form in the Schedule to this Act in substitution for such first-mentioned certificate, shall also be deemed to be the lawful holder of a certificate entitling him to enter and reside in this Colony.

(3) Every Asiatic who holds any certificate mentioned in this section shall be subject in all respects to the provisions of this Act and not to the provisions of Act No. 2 of 1907.

## PART II.

### REGISTRATION OF ASIATICS AFTER THE COMMENCEMENT OF THIS ACT.

3. An Asiatic shall be entitled to registration under this Act if—

(a) he satisfies the conditions described in sub-sections (2) or (3) of section *four*, whether he was or was not in this Colony at the commencement of this Act ; or

(b) being the lawful holder of a certificate of registration issued under Act No. 2 of 1907, he desires to exchange such certificate for a certificate of registration under this Act ; or

Asiatics who may be registered under this Act.

**Act No. 36  
of 1908.**

(c) having been a minor resident in this Colony at the commencement of this Act, he first entered the Colony with an adult Asiatic who was his guardian and who was registered under Law No. 3 of 1885 or any amendment thereof or is registered or entitled to registration under this Act; or

(d) he was born in any part of South Africa which was at the date of his birth within the boundaries of The Transvaal.

Registration  
of adult  
Asiatics.

\*4. (1) Every unregistered adult Asiatic resident in this Colony at the commencement of this Act shall before such date or dates and at such place or places and to such person or persons as the Colonial Secretary may by notice in the *Gazette* prescribe for particular areas of this Colony, make application for registration, and the registrar shall, on being satisfied that such Asiatic is entitled to registration, issue to him a certificate of registration.

(2) Every unregistered adult Asiatic resident outside the Colony at the commencement of this Act, shall,

(a) if he was resident in The Transvaal for three years prior to the eleventh day of October 1899; and

(b) upon application for registration from a place in South Africa but outside the Colony within one year after the commencement of this Act; and

(c) upon satisfying the registrar of the facts mentioned in this sub-section;

be entitled to obtain a certificate of registration.

(3) Every unregistered adult Asiatic resident outside this Colony at the commencement of this Act but who was—

(a) duly authorised to enter and reside in this Colony by a permit issued under the Indemnity and Peace Preservation Ordinance 1902 or any amendment thereof or issued between the first day of September 1900 and the date of the passing of the said Ordinance (unless such permit shall have been fraudulently obtained); or

(b) was resident and actually in this Colony on the thirty-first day of May 1902;

shall be entitled, upon satisfying the registrar of the fact set forth in paragraph (a) or (b) of this sub-section and upon application for registration from a place in South Africa but outside the Colony, to obtain a certificate of registration.

\* See Govt. Notice No. 951 of 1908 (*Gazette*, 21st Sept., 1908, p. 1110), fixing time as from 1st Oct., 1908, to 30th Nov., 1908, within which Asiatics to apply for registration, and places as Government Offices, Old Church Buildings, Von Brandis Square, Johannesburg (Oct.), and Office of Registrar of Asiatics, National Bank Buildings, Pretoria (Nov.); and Govt. Notice No. 1009 of 1908 (*Gazette*, 2nd Oct. 1908).  
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applications shall be made at Johannesburg.

5. In respect of every unregistered minor Asiatic born in this Colony, not being the child of a labourer introduced into this Colony under the Labour Importation Ordinance 1904, the following provisions shall apply:—

Minor  
Asiatics.

Act No. 36  
of 1908

(1) If his guardian is an Asiatic, the minor's name, his age, his residence and his relationship to his guardian shall be included in the certificate of registration of his guardian.

(2) Within one month after such minor attains the age of sixteen years he shall make application to the registrar for a certificate of registration; provided that, if he be absent from the Colony on attaining that age or one month thereafter, he may, from a place in South Africa but outside the Colony, make application to the registrar for registration and upon satisfying the registrar that he is entitled to registration, the registrar shall issue to him a certificate of registration, and his name shall thereupon be expunged from the register of Asiatics as a minor and shall be deemed to be no longer included in his guardian's certificate of registration.

6. (1) Whenever the registrar is satisfied that any Asiatic claiming to be entitled to registration under section *three* is not so entitled, he shall refuse to issue to him a certificate of registration, and notice of the refusal shall be sent by post to such Asiatic at the address given upon his form of application.

Registrar not to register an Asiatic who is not entitled to registration and procedure in case of refusal to register.

(2) In every case of refusal by the registrar to issue a certificate of registration, an appeal may, within fourteen days of the date of the notice of refusal, be noted by letter addressed to the Colonial Secretary, and such appeal shall be heard by a magistrate specially assigned by the Governor to hear such appeals, and such magistrate shall be deemed, when hearing any such appeal, to be an inferior court within the meaning of section *nineteen* of the Administration of Justice Proclamation 1902.

(3) In the case of an Asiatic who is in South Africa but outside this Colony, the officer in charge of the Immigration Department shall, as soon as the date has been fixed for the hearing of such appeal, send by post to the appellant at the address given upon his application for registration a temporary permit entitling him to enter and remain in the Colony until the appeal has been determined. If the appeal be dismissed, the said magistrate shall make an order in writing directing the appellant to be removed from the

**Act No. 36  
of 1908.**

Colony, and every such order shall be deemed to be an order made under section *six* of the Immigrants Restriction Act 1907 or any amendment thereof.

(4) In the case of an adult Asiatic in the Colony who has not within a period prescribed by sub-section (2) of this section noted an appeal or whose appeal having been noted has not been proceeded with or has been dismissed, the said magistrate shall make an order in writing directing such Asiatic to be removed from the Colony, and every such order shall be deemed to be an order made under section *six* of the Immigrants Restriction Act 1907 or any amendment thereof.

Removal from Colony of Asiatics without certificates of registration.

\*7. Any adult Asiatic who, after such date or dates as may be notified by the Colonial Secretary in the *Gazette*, is found within the Colony and fails, upon such demand as is mentioned in section *nine* to produce a certificate of registration of which he is the lawful holder, may be arrested without warrant and brought before a resident or assistant resident magistrate and if he fails to satisfy such magistrate that he is the lawful holder of a certificate of registration or that the time within which he is required to make application for such certificate has not expired the magistrate shall, save as in the next succeeding section is provided, make an order in writing directing him to be removed from this Colony and every such order shall be deemed to be an order made under section *six* of the Immigrants Restriction Act 1907 or any amendment thereof.

Procedure if Asiatic fail to make application for registration within time prescribed.

8. If an adult Asiatic who has failed to make application for registration in accordance with the provisions of sub-section (1) of section *four* shall satisfy the magistrate before whom he is brought that such failure was due to some good and sufficient cause, the magistrate may, instead of making such order as aforesaid, direct such Asiatic forthwith to make application for registration within eight days, and if such Asiatic shall comply with such direction, his application shall be dealt with in all respects as if it had been made in accordance with the provisions of the said sub-section and all the provisions of this Act which would have applied if the application had been so made shall apply accordingly, but, if he shall fail to comply with such direction, the magistrate shall make an order for removal as aforesaid in respect of such Asiatic and any such order shall be deemed to be an order made under section *six* of the Immigrants Restriction Act 1907 or any amendment thereof.

\* See Govt. Notice No. 1172 of 1908 (*Gazette*, 20th Nov., 1908, p. 342); fixing date as 30th Nov., 1908.

## PART III.

Act No. 36  
of 1908.

## GENERAL AND MISCELLANEOUS.

9. Every Asiatic who enters or is within this Colony shall, upon demand made upon him by any European member of a police force lawfully established therein or by any other European person authorised thereto by the Colonial Secretary, produce the certificate of registration of which he is the lawful holder, and shall also on like demand supply such particulars and furnish such means of identification as may be prescribed by regulation. Any Asiatic who fails upon lawful demand to produce such certificate shall, unless he is the lawful holder of a certificate of registration, be liable to be dealt with in manner mentioned in section *eight*.

Certificates to  
be produced  
on demand.

10. (1) If at any time any certificate of registration is lost or destroyed, the person to whom it was issued shall forthwith apply to the registrar to have the same renewed and the registrar shall, upon compliance by such person with such procedure as is prescribed by regulation and upon payment of a fee of five shillings, renew the certificate. Such fee shall be denoted by means of revenue stamps to be affixed to the application for renewal and shall be defaced by the said registrar.

Lost and  
destroyed  
certificates.

(2) Any person into whose hands shall have come any such certificate shall, unless he is the person to whom it was issued, forthwith deliver or transmit the same as soon as may be to the Registrar of Asiatics, Pretoria.

11. Every certificate of registration shall be accepted as conclusive evidence in all places that the lawful holder thereof is entitled to enter and reside in this Colony; provided that this section shall not apply to persons who have, under section *five* or *six* of the Immigrants Restriction Act 1907 or any amendment thereof, been removed from the Colony.

Evidence of  
registration  
certificates.

12. Whenever, in any prosecution or other proceeding under this Act, the age of any Asiatic is in question such Asiatic shall unless and until the contrary be proved be taken to be of the age which the registrar shall in any certificate issued under his hand certify to be in his opinion the apparent age of such Asiatic.

Evidence as  
to age of  
Asiatics.

13. Any affidavit or sworn declaration which is required by regulation to be made by any person who makes an application for registration shall be exempt from stamp duty.

Exemption  
from stamp  
duty of affi-  
davit or sworn  
declaration.

**Act No. 36  
of 1908.**

Restriction of  
issue of  
trading  
licenses to  
Asiatics.

**14.** (1) No Asiatic shall obtain any trading license under the Revenue Licenses Ordinance 1905 or any amendment thereof or under any bye-law or regulation in force within the jurisdiction of a local authority, unless he produce to the person appointed to issue the license a certificate of registration of which he is the lawful holder and either give his signature in English or supply such other or additional particulars or furnish such means of identification as the Colonial Secretary may either generally or in particular cases prescribe.

(2) Any trading license issued under such Ordinance or under any such bye-law or regulation between the tenth day of February 1908 and the commencement of this Act to an Asiatic who made such application as is prescribed in sub-section (1) (b) of section *two* of this Act shall, notwithstanding anything in section *thirteen* of Act No. 2 of 1907 contained, be deemed to have been lawfully issued.

(3) Section *thirteen* of Act No. 2 of 1907 shall be and is hereby repealed.

Offences  
relating to  
applications  
for  
registration  
and to  
registration  
certificates.

**15.** Any person who—

(a) for the purpose of or in connection with an application for registration or for the purpose of obtaining a certificate of registration, commits any fraudulent act, or makes any false statement or false pretence ;

(b) forges or prior to the commencement of this Act has forged any document in the form set forth in the Schedule to this Act or forges any certificate of registration or utters any such document or certificate knowing the same to be forged ; or

(c) uses or attempts to use as a certificate of registration any such forged document or any such certificate of which he is not the lawful holder;

shall be guilty of an offence and liable to a fine not exceeding five hundred pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding two years or to both such fine and imprisonment, and any person who incites to, or aids or abets any other person in, the commission of any such offence shall be liable to the like penalty.

Power to  
issue permits  
to Asiatics to  
remain in  
Colony for  
limited  
period.

**16.** Notwithstanding anything in the Immigrants Restriction Act 1907 or this Act contained, the Governor may approve the issue of a permit, in the form prescribed by regulation, authorising an Asiatic to enter and remain in the Colony for any period named in such permit, and after the

expiry of such period the person in respect of whom such permit was issued shall be deemed to be a person not duly authorised to be in this Colony, and if found may be arrested without warrant and the provisions of section *six* of the Immigrants Restriction Act or any amendment thereof shall apply to such person, as if he were a person mentioned in paragraph (c) thereof.

\* 17. The Governor may from time to time make, alter, or rescind regulations for any of the following purposes:—

Power to make regulations.

- (1) Prescribing the form of the register to be kept for the purposes of this Act.
- (2) Prescribing the manner and form in which application shall be made for registration, the particulars to be supplied and the means of identification to be furnished by any applicant for the purpose of or in connection with such application.
- (3) Prescribing the form of certificates of registration.
- (4) Prescribing the particulars to be supplied and the means of identification to be furnished
  - (a) by any Asiatic upon such demand as is mentioned in section *nine* ;
  - (b) by any Asiatic applying for the renewal of any certificate of registration which has been lost or destroyed.
- (5) Prescribing the procedure to be observed on or in connection with appeals to the magistrate mentioned in section *six*.
- (6) Prescribing the form of permit to be issued under section *sixteen*.
- (7) Generally for the better carrying out of the objects and purposes of this Act.

18. Any Asiatic or the guardian of any Asiatic failing to comply with any requirement of this Act or of the regulations shall, except where otherwise specified, be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

General penalties.

19. Notwithstanding anything to the contrary in sub-section (b) of Law No. 3 of 1885 as amended by Volksraad Resolution Article 1419 of the twelfth day of August 1886 the portion of Erf No. 373 Church Street Pretoria which was registered in the name of the late Aboobaker Amod and which at the commencement of this

Special powers to register transfer of certain fixed property.

\* For regulations, see Govt. Notice No. 950 of 1908 (*Gazette*, 21st Sept., 1908, p. 1107).



**Act No. 36 of 1908.** Act was registered in the name of Henry Salomon Leon Polak may be transferred into the name of the heirs of the said Aboobaker Amod.

\* 20. This Act may be cited for all purposes as the Asiatics Registration Amendment Act 1908 and shall not come into operation unless and until the Governor shall have declared by proclamation in the *Gazette* that it is His Majesty's pleasure not to disallow the Act and thereafter it shall come into operation on such date as the Governor shall by like proclamation declare.

Title and date of operation of Act.

**Schedule.**

TRANSVAAL ASIATIC REGISTRATION CERTIFICATE.

Name in full.....  
 Race.....Age.....Height.....  
 Description.....  
 .....



Right Thumb Impression.

.....  
 Registrar of Asiatics.  
 Date of Issue.....  
 Holder's }  
 Signature } .....

Name of Wife..... Residence.....  
 SONS and MALE WARDS under the age of 16 years.

Names.	Age.	Residence.	Relationship to Guardian.

No alterations or endorsements are to be made on the face of this Certificate except by the Registrar of Asiatics.

\* See Proc. No. 81, Admn. 1908 (*Gazette*, 18th Sept., 1908, p. 1001), notifying His Majesty's assent and proclaiming date of operation of Act as 21st September, 1908.

ACT NO. 37 OF 1908.] [Came into operation 2nd Sept., 1908. **Act No. 37 of 1908.**

AN

# ACT

To amend the Land and Agricultural Bank Act 1907.

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows:—

1. (1) In this Act the term "principal law" shall mean the Land and Agricultural Bank Act, 1907. Interpretation of terms.

(2) For the purposes of the principal law and this Act;

"farmer" shall mean a person who devotes his attention to farming in this Colony either exclusively or together with some profession, business, or other occupation;

"co-operative society" shall mean a society registered under the Co-operative Agricultural Societies Act 1908.

(3) Save as to the term "co-operative society", any term to which by the principal law a meaning has been assigned for the purposes thereof, shall, when used in this Act, have the same meaning.

2. Notwithstanding anything in section *nine* of the principal law contained, a cheque upon any banking account kept by the bank and signed by the manager and the accountant of the bank shall be deemed to be duly drawn without the countersignature of a member of the board. Cheques signed by manager and accountant need not be countersigned by member of board.

3. Section *thirteen* of the principal law shall be and is hereby amended by the deletion of the word "three" from paragraph (c) thereof and by the substitution of the word "six" for the word so deleted. Amendment of section *thirteen* of Act No. 26 of 1907.

4. Section *twenty* of the principal law shall be and is hereby amended by the deletion of paragraph (c) thereof and the substitution of the following new paragraph:— Amendment of section *twenty* of Act No. 26 of 1907.

(c) to pay off existing liabilities on land or, in special circumstances, any other liabilities.

**Act No. 37  
of 1908.**

Repeal of section *twenty-one* of Act No. 26 of 1907, and substitution of new provisions.

5. Section *twenty-one* of the principal law shall be and is hereby repealed and the following new section substituted therefor:—

21. (1) ~~The funds of the bank shall be two and a half million pounds sterling, which shall be issued by the Treasurer to the bank from time to time in such sums as the Governor may determine out of any loan raised under the Transvaal Guaranteed Loan Act 1907.~~

(2) The bank shall pay to the Treasurer half-yearly upon such dates as the Treasurer may prescribe, interest at the rate of three and one-half per cent. per annum on the sums issued to the bank under this section.

(3) The Treasurer shall apply such interest, as and when received, in accordance with the provisions as to interest of the said Act.

(4) The provisions of this section shall take effect as from the first day of October, 1907.

Amendment of section *twenty-two* of Act No. 26 of 1907.

6. Section *twenty-two* of the principal law shall be and is hereby amended by the addition immediately after the words "other than a mortgage or charge under this Act," of the words "or of Part II of Ordinance No. 38 of 1904."

Amendment of section *twenty-three* of Act No. 26 of 1907.

7. Section *twenty-three* of the principal law shall be and is hereby amended by the deletion whenever the same occurs in the said section of the word "person" and the substitution therefor of the word "farmer."

Repeal of sections *twenty-five*, *twenty-six*, and *twenty-seven* of Act No. 26 of 1907.

8. Sections *twenty-five*, *twenty-six*, and *twenty-seven* of the principal law shall be and are hereby repealed.

Interest on advances and times of repayment of principal and interest.

9. Upon application in form prescribed by the Board, advances may be made for a period of thirty years subject to the provisions and conditions following that is to say:—

(1) For the period of five years next succeeding the date on which an advance is made, there shall be paid thereon half-yearly in advance to the bank by the mortgagor, interest at the rate of five pounds per cent. per annum. The half-yearly payment of interest shall be deducted from the full amount of the advance.

(2) After the expiry of the said period of five years, the advance, with interest at the rate aforesaid, shall be repaid to the bank by the mortgagor within a term of twenty-five years by half-yearly instalments in advance until the whole advance, with the interest thereon, has been repaid.

(3) Every half-yearly instalment shall consist partly of principal and partly of interest, but every such instalment, except the last, shall be at the rate of three pounds ten shillings for every hundred pounds of the advance.

(4) All such half-yearly instalments shall be calculated and paid according to the table set forth in the Schedule to this Act, showing the amounts of half-yearly instalments for every hundred pounds of the advance, how much of each and every half-yearly instalment is on account of principal and how much on account of interest, and the balance of principal owing to the mortgagor immediately after payment of each half-yearly instalment. A copy of such table shall be supplied to every mortgagor.

(5) The form of mortgage for securing any such advance shall be as prescribed by the Board.

10. (1) The mortgagor may, on the date on which the interest is payable and during the first five years after the advance was made, repay to the bank any sum, not being less than five pounds or a multiple of five pounds, in reduction of the principal. If the mortgagor elect to repay any sum or sums as aforesaid, prior to the date when interest is payable, no rebate of interest shall be allowed in respect of such payment.

Circumstances under which advance may be repaid before maturity.

(2) After the expiry of the said period of five years the mortgagor may, irrespective of the prescribed half-yearly instalments, from time to time pay to the bank any sum, not being less than five pounds or a multiple of five pounds, in reduction of the principal sum then due; provided that no such payment shall affect the prescribed half-yearly instalments or the obligation of the mortgagor in respect thereof, but the same shall be held and applied as hereinafter provided, unless the Board shall otherwise in special cases determine.

(3) All such last-mentioned payments shall be credited with interest at the rate of three per cent. per annum with yearly rests until such payments, together with the accumulations of interest thereon, are equal to the balance of principal owing for the time being according to the said table, together with all other moneys (if any) owing under the mortgage, and thereupon such payments shall be set off against such principal and other moneys, and the mortgagor shall be entitled to a discharge of the mortgage on payment of the prescribed fees.

(4) Any advance may be paid out by the bank in instalments as improvements are being effected, or stock is being purchased, and interest on any

Act No. 37  
of 1908.

Power to call up advance where same improperly applied.

such instalments shall be calculated from the date on which it was paid out.

**11.** If at any time in the opinion of the board any advance has not been applied for the purposes thereof, or has not been carefully and economically expended or in the event of the mortgagor dying, becoming insolvent or being sentenced to imprisonment without the option of a fine, the board may refuse to pay any further instalments of the proposed advance, and may at once call in the whole amount already advanced; thereupon the mortgagor shall forthwith repay such amount, and upon his default, the board shall have the same remedies for the recovery of the amount as are provided by the principal law as amended by this Act for the recovery of sums payable by a mortgagor.

*Advances to Co-operative Societies.*

Repeal of sections *twenty-nine, thirty, and thirty-one* of Act No. 26 of 1907.

**12.** Sections *twenty-nine, thirty, and thirty-one* of the principal law shall be and are hereby repealed.

Objects for which advances may be made to co-operative societies.

**13.** (1) A co-operative society may obtain an advance for any of the objects for which such society may be formed under the Co-operative Agricultural Societies Act 1908 or any amendment thereof.

(2) The provisions of sections *nine, to eleven* inclusive of this Act shall apply *mutatis mutandis* in respect of an advance to a co-operative society.

(3) The security for an advance to a co-operative society shall be a first mortgage of its immovable property together with the machinery, buildings, improvements, and fixtures to be erected or effected thereon; provided that the advance shall not exceed fifty per cent. of the value of such immovable property, with such machinery, buildings, improvements and fixtures.

(4) If the advance exceeds five thousand pounds it shall be approved by the Governor.

(5) The advance shall be made in such instalments as the board may determine after a proper inspection of the progress of the machinery, buildings, improvements and fixtures and after a valuation thereof.

Advance to co-operative societies on produce.

**14.** Notwithstanding anything to the contrary in section *thirteen* contained, a co-operative society may obtain from the bank, wholly or partly on the security of any raw or manufactured produce, or of the joint and several liability of the members of the society, or on any other and

additional security which the board may require, an advance under the circumstances and on the conditions following, that is to say:—

- (a) such advance shall be for the purpose of enabling the society to make loans to its members on the produce supplied to it; if such advance exceeds five thousand pounds, it shall be approved by the Governor;
- (b) the advance shall bear interest at a rate not exceeding seven per cent. per annum and shall be repayable within twelve months, unless the board allows an extension of time for repayment;
- (c) any other conditions which the board may deem necessary for the storage or disposal of the produce or for safeguarding the security of the bank.

15. (1) Section *thirty-two* of the principal law shall be and is hereby repealed. Readjustment  
of loans.

(2) For the purpose of carrying out the objects and purposes of advances made under the principal law as amended by this Act, the following special provisions shall apply:—

(a) The rate of interest on any fixed loan advanced to any mortgagor prior to the coming into operation of this Act, shall on the date on which interest is payable on such loan, be reduced to five per cent. per annum so soon as he pays such interest, and the loan shall thereupon be treated as a fresh loan under section *nine* of this Act.

(b) Any mortgagor not being in arrear with any instalment or other payment under an instalment loan granted prior to the coming into operation of this Act, may at the date on which interest and instalment is payable on such loan claim to have such loan converted into a loan under section *nine* of this Act, and the balance then remaining unpaid shall be treated as a fresh loan, duly granted for a fresh term as from that time.

(c) The conversion shall be effected by memorandum of readjustment, which shall be executed by the bank and the mortgagor, and shall specify the amount of the fresh loan and the date as from which it is deemed to be granted.

(d) The memorandum of readjustment shall be noted by the Registrar of Deeds on the original and duplicate original bonds executed by the mortgagor in respect of the original loan, and it shall not be necessary to register a separate bond.

(e) From and after the execution of the

**Act No. 37  
of 1908.**

memorandum of readjustment, such mortgage shall operate and be construed as applying to the fresh loan in lieu of the original loan, in the same manner in all respects and with the same priorities of security and otherwise, as if the mortgage had been originally in respect of the fresh loan.

(f) Whenever any part of an amount owing by a mortgagor to the bank by way of principal has been paid off, the board may, if the mortgagor is not in arrear with any interest due under the mortgage, consent to the release from the operation of the bond of so much of the property specified therein, as in the opinion of the board, will allow such margin of security as is mentioned in sub-section (1) of section *twenty-four* of the principal law to be maintained.

Amendment of section *thirty-seven* of Act No. 26 of 1907.

**16.** Section *thirty-seven* of the principal law shall be and is hereby amended by the deletion therefrom of the words "the members of the board."

Repeal of section *thirty-nine* of Act No. 26 of 1907 and substitution of new provisions.

**17.** Section *thirty-nine* of the principal law shall be and is hereby repealed and the following new section substituted therefor:—

39. (1) As soon as may be after the coming into operation of this Act the board shall create a reserve fund which shall be credited from time to time subject to the provisions of sub-section (3)—

(a) with a sum equal to five per cent. of the gross amount of interest received during each financial year as from the first day of October, 1907;

(b) any nett profit earned by the bank.

(2) Such fund shall be applied by the board in making good any loss or deficiency which may occur in any of its transactions.

(3) The total amount of such fund shall in no case exceed two hundred and fifty thousand pounds.

(4) Whenever any balance remains in such fund after providing for such loss or deficiency, it shall be invested on account of such fund in the same manner as any other funds of the bank may by law be invested.

Amendment of First Schedule of Act No. 26 of 1907.

**18.** The eighth covenant set forth in the First Schedule to the principal law shall not apply to a farm mortgaged as security for a loan and used exclusively for stock farming.

Title and date of operation of Act.

**19.** This Act may be cited for all purposes as the Land and Agricultural Bank Amendment Act 1908, shall come into operation on the date of its first publication as an Act in the *Gazette*, and shall be read as one with the principal law.

**SCHEDULE.**

**Act No. 37  
of 1908.**

Table of Prescribed Half-Yearly Instalments payable in Advance for every £100 (one hundred pounds) of the loan, at seven pounds per centum, namely, five pounds per centum for interest, and the balance in reduction of the capital, such half-yearly payments beginning at first half-year.

Half-Year.	Prescribed Half-yearly Instalments.	APPORTIONED THUS.		Balance of Principal.
		On account of Interest at 5 per cent.	On account of Principal.	
1st	£ s. d. 3 10 0	£ s. d. 2 10 0	£ s. d. 1 0 0	£ s. d. 99 0 0
2nd	3 10 0	2 9 8	1 0 4	97 19 8
3rd	3 10 0	2 9 0	1 1 0	96 18 8
4th	3 10 0	2 8 4	1 1 8	95 17 0
5th	3 10 0	2 8 0	1 2 0	94 15 0
6th	3 10 0	2 7 4	1 2 8	93 12 4
7th	3 10 0	2 6 8	1 3 4	92 9 0
8th	3 10 0	2 6 4	1 3 8	91 5 4
9th	3 10 0	2 5 8	1 4 4	90 1 0
10th	3 10 0	2 5 0	1 5 0	88 16 0
11th	3 10 0	2 4 4	1 5 8	87 10 4
12th	3 10 0	2 3 8	1 6 4	86 4 0
13th	3 10 0	2 3 0	1 7 0	84 17 0
14th	3 10 0	2 2 8	1 7 4	83 9 8
15th	3 10 0	2 1 8	1 8 4	82 1 4
16th	3 10 0	2 1 0	1 9 0	80 12 4
17th	3 10 0	2 0 4	1 9 8	79 2 8
18th	3 10 0	1 19 8	1 10 4	77 12 4
19th	3 10 0	1 18 8	1 11 4	76 1 0
20th	3 10 0	1 18 0	1 12 0	74 9 0
21st	3 10 0	1 17 4	1 12 8	72 16 4
22nd	3 10 0	1 16 4	1 13 8	71 2 8
23rd	3 10 0	1 15 8	1 14 4	69 8 4
24th	3 10 0	1 14 8	1 15 4	67 13 0
25th	3 10 0	1 14 0	1 16 0	65 17 0
26th	3 10 0	1 13 0	1 17 0	64 0 0
27th	3 10 0	1 12 0	1 18 0	62 2 0
28th	3 10 0	1 11 0	1 19 0	60 3 0
29th	3 10 0	1 10 0	2 0 0	58 3 0
30th	3 10 0	1 9 0	2 1 0	56 2 0
31st	3 10 0	1 8 0	2 2 0	54 0 0
32nd	3 10 0	1 7 0	2 3 0	51 17 0
33rd	3 10 0	1 6 0	2 4 0	49 13 0
34th	3 10 0	1 5 0	2 5 0	47 8 0
35th	3 10 0	1 3 8	2 6 4	45 1 8
36th	3 10 0	1 2 8	2 7 4	42 14 4
37th	3 10 0	1 1 4	2 8 8	40 5 8
38th	3 10 0	1 0 0	2 10 0	37 15 8
39th	3 10 0	0 19 0	2 11 0	35 4 8
40th	3 10 0	0 17 8	2 12 4	32 12 4
41st	3 10 0	0 16 4	2 13 8	29 18 8
42nd	3 10 0	0 15 0	2 15 0	27 3 8
43rd	3 10 0	0 13 8	2 16 4	24 7 4
44th	3 10 0	0 12 0	2 18 0	21 9 4
45th	3 10 0	0 10 8	2 19 4	18 10 0
46th	3 10 0	0 9 4	3 0 8	15 9 4
47th	3 10 0	0 7 8	3 2 4	12 7 0
48th	3 10 0	0 6 0	3 4 0	9 3 0
49th	3 10 0	0 4 8	3 5 4	5 17 8
50th	6 0 8	0 3 0	5 17 8	—



Act No. 38 of 1908.

ACT NO. 38 OF 1908.]

[Came into operation

AN

# ACT

To amend the Immigrants Restriction Act 1907.

(Assented to 22nd August, 1908.)

**B**E IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of The Transvaal as follows :—

Amendment of section *two* of Act No. 15 of 1907 as to definition of "prohibited immigrant".

1. Section *two* of the Immigrants Restriction Act 1907 shall be and is hereby amended by the deletion of paragraph (*h*) of the classes of persons excluded from the definition of "prohibited immigrant", and the substitution for such paragraph of the following new paragraph (*h*) :—

"(*h*) descendants of the aboriginal races of Africa, south of the Equator, who, entering and remaining in this Colony as unskilled labourers, do not fall within sub-sections (3), (4), (5), (6), (7) and (8) of the definition of 'prohibited immigrant', unless they so entered this Colony in contravention of the laws of the Colony or territory of their country of origin, or unless, having entered this Colony as unskilled labourers without having contravened those laws, they remain therein in contravention of those laws ;".

Amendment of section *six* of Act No. 15 of 1907.

2. Section *six* of the Immigrants Restriction Act 1907 shall be and is hereby amended by the deletion of paragraph (*b*) and both provisoes of the said section and by the addition at the end of paragraph (*c*) of the said section of the words :

"or having complied with the terms of such order subsequently re-enters this Colony without such written authority as may be prescribed by regulation."

Title and date of operation of Act.

3. This Act may be cited for all purposes as the Immigrants Restriction Amendment Act 1908 and shall not come into operation unless and until the Governor shall have declared by proclamation in the *Gazette* that it is His Majesty's pleasure not to disallow the Act, and thereafter it shall take effect on such date as the Governor may by like proclamation declare.

# INDEX.

	PAGE
<b>ANGORA RAMS AND EWES</b>	
penalty for exporting .. .. .	198
prohibition of exportation of, save to Colonies or territories with reciprocal legislation .. .. .	197
special jurisdiction of courts of resident magistrate ..	198
 <b>APPROPRIATION ACTS</b>	
of public moneys to particular services	
for year ended 30th June, 1907 .. .. .	20
for year ended 30th June, 1908 .. .. .	42
for year ending 30th June, 1909 .. .. .	1, 83
 <b>ASIATICS</b>	
definition of .. .. .	436
entitled to registration .. .. .	437
evidence as to age of .. .. .	441
exemption from stamp duty of affidavit or sworn declaration .. .. .	441
general penalties .. .. .	443
minors .. .. .	439
permits for limited period .. .. .	442
Registrar not to register certain .. .. .	439
registration of	
adult .. .. .	438
certificates of, to be produced on demand .. .. .	441
evidence of .. .. .	441
fraud in relation to certificates of .. .. .	442
lost and destroyed certificates of .. .. .	441
procedure if no application for .. .. .	440
validation of voluntary .. .. .	437
removal from Colony of certain .. .. .	440
restriction on issue of trading licenses to .. .. .	442
special powers to register transfer of certain fixed property .. .. .	443
who entitled to registration .. .. .	437
 <b>ASYLUMS BOARD</b>	
discharge of lunacy patients from asylum by .. .. .	9
establishment of .. .. .	6
investigation of complaints by .. .. .	8
meetings of .. .. .	8
attendance of superintendents at .. .. .	9
minutes of .. .. .	9
members of	
remuneration of .. .. .	7
vacation of office by .. .. .	7
no authority of, over officers of institutions .. .. .	9

	PAGE
<b>ASYLUMS BOARD—(continued)</b>	
reports to Minister of visits by .. .. .	8
suggestions by .. .. .	8
visits to institutions by .. .. .	8
<b>CATTLE DISEASE</b>	
compensation to owners	
rate of .. .. .	40
when payable .. .. .	40
definition of "stock" .. .. .	40
infected areas	
collecting of cattle ticks within .. .. .	41
declaration of .. .. .	39
penalty for removing stock to and from .. .. .	39
removal of stock from, and areas adjoining .. .. .	39
offences in relation to .. .. .	39
penalties	
for collecting or being in possession of cattle ticks with intent to spread disease .. .. .	41
for removing stock to and from infected areas and areas adjoining infected areas .. .. .	39
permit necessary to purchase or acquire cattle in areas where East Coast fever is prevalent .. .. .	40
powers of Minister of Agriculture as to .. .. .	39
reporting of .. .. .	39
<b>CHILDREN</b>	
custody of	
contributions by parent or guardian for maintenance of .. .. .	89
definition of "guardian" .. .. .	89
under eighteen whose parent or guardian has been charged with crime .. .. .	89
under sixteen charged with crime .. .. .	88
<b>CO-OPERATIVE AGRICULTURAL SOCIETIES</b>	
auditor of	
appointment of .. .. .	101
casual vacancy in office of .. .. .	101
duties of .. .. .	102
powers of .. .. .	102
remuneration of .. .. .	102
balance-sheet and profit and loss account and financial statement .. .. .	102
certain societies to be deemed .. .. .	93
directors of	
accepting commissions, etc. .. .. .	106
chairman of .. .. .	97
election of .. .. .	97
filling of vacancies .. .. .	98
keeping of list of .. .. .	103
loans by, involving liability of .. .. .	98
meetings of .. .. .	97
minutes of meetings of .. .. .	101

CO-OPERATIVE AGRICULTURAL SOCIETIES—	PAGE
<i>(continued)</i>	
directors of— <i>(continued)</i>	
not liable for losses .. .. .	98
not to be appointed auditor .. .. .	101
powers of .. .. .	98
quorum of .. .. .	97
tenure of office of .. .. .	97
vacation of office of .. .. .	98
dissolution of .. .. .	103
exemption of, from obligation to obtain trading licenses	
in certain respects .. .. .	105
financial year .. .. .	99
formation of .. .. .	91
funds of .. .. .	96
general meetings of	
annual .. .. .	99
minutes of .. .. .	101
procedure at .. .. .	99
special .. .. .	99
voting at .. .. .	100
legal proceedings by or against	
loans	
exceeding one hundred pounds .. .. .	100
involving liability of .. .. .	98
to, by Land Bank .. .. .	448
management and control of .. .. .	97
members of	
keeping of list of .. .. .	103
liability of .. .. .	96
qualifications of .. .. .	91
quorum of .. .. .	99
objects of .. .. .	91
offences	
continuing of operations after number of members	
reduced below seven .. .. .	105
director or officer accepting commissions, etc. .. .. .	106
failing to register .. .. .	92
penalty for, where no penalty expressly provided .. .. .	106
wilful false statements in documents .. .. .	105
officers of	
accepting commissions, etc. .. .. .	106
not to be appointed to office of auditor .. .. .	101
penalty for contravention for which no penalty	
expressly provided .. .. .	106
property of	
registration of .. .. .	106
vesting of .. .. .	106
registrar of	
appointment, powers, and duties of .. .. .	91
particulars to be transmitted to .. .. .	103
registration of	
application for .. .. .	92

CO-OPERATIVE AGRICULTURAL SOCIETIES—	PAGE
<i>(continued)</i>	
registration of— <i>(continued)</i>	
certificate of .. .. .	95
conditions of .. .. .	94
fee payable on .. .. .	95, 96
preliminary procedure prior to .. .. .	93
regulations	
adoption of model .. .. .	93
alteration of model .. .. .	93
alteration of .. .. .	96, 100
alteration of, affecting reserve fund .. .. .	100
contents of .. .. .	94
endorsement of .. .. .	95, 96
forwarding to registrar of .. .. .	92
keeping of copy of .. .. .	103
model regulations to form part of .. .. .	93
registration of .. .. .	95, 96
removal from register of dissolved .. .. .	105
 <b>CRIMES</b>	
accessories to .. .. .	88
arson .. .. .	88
framing of certain charges .. .. .	88
indecent between male persons .. .. .	87
malicious or negligent grass burning .. .. .	88
unlawful carnal connection of native with white woman	86
unlawful carnal connection with females under sixteen	87
 <b>CUSTOMS DUTIES</b>	
amendment of prior .. .. .	19
estimation of value of goods imported .. .. .	18
rebate of .. .. .	17, 18
suspension of .. .. .	18
 <b>DEEDS</b>	
hypothecation for future debts .. .. .	283
 <b>DISEASES OF STOCK—(see Cattle Disease)</b>	
 <b>EAST COAST FEVER—(see Cattle Disease)</b>	
 <b>EDUCATION</b>	
division of Colony into school districts .. .. .	276
school boards	
powers of, to manage schools without committees	
in certain cases .. .. .	277
school committees	
constitution of .. .. .	276
election of .. .. .	277

EDUCATION—( <i>continued</i> )	PAGE
teachers	
application of certain provisions of Public Service and Pensions Act to .. .. .	148
contracts with, as to gratuities .. .. .	140
teachers' provident fund	
benefits from .. .. .	140
contributions to .. .. .	140
establishment of .. .. .	140
payments out of, not to be assignable or executable	147
who may participate in benefits of .. .. .	141
 ERF TAX	
abolition in Pretoria of .. .. .	116
 EXCISE DUTY	
distillation of spirits .. .. .	19
 FENCING	
access to magistrate, officials, surveyors, inspectors, etc. .. .. .	51
access to persons erecting fences .. .. .	50
advances by Land Bank for .. .. .	45, 46
Agricultural Department may execute work if necessary .. .. .	47
Agricultural Department may inspect fencing ..	47
certain provisions of Land and Agricultural Bank Act, 1907, not to apply to .. .. .	48
interest on .. .. .	46
materials to be supplied at cost price .. .. .	47
repayment of .. .. .	46
security for .. .. .	46
supply of materials to Agricultural Department ..	47
bush may be cleared for.. .. .	48
certain sections of Fencing Act to be binding on Crown as owner or lessee .. .. .	53
ditch and bank fence .. .. .	49
fence may be ordered to be made stock proof ..	50
fence to be a sufficient fence for Stock Theft Ordinance, 1904 .. .. .	53
give and take line .. .. .	49
lessor may intervene and defend proceedings against his lessee .. .. .	53
manner of placing dividing fence .. .. .	49
offences	
accidentally damaging fencing .. .. .	52
injuring fences and failing to give correct name and address.. .. .	51
leaving open of gates .. .. .	51
malicious injury to fences .. .. .	51
misappropriation of money and material advanced for fencing .. .. .	52

	PAGE
<b>FENCING—(continued)</b>	
private agreements may be made if not made to frustrate Fencing Act .. .. .	53
repairs to dividing fence .. .. .	49-50
repairs to fence erected under Ordinance 38 of 1904 ..	50
repeal of law .. .. .	43
special civil jurisdiction of magistrates .. .. .	53
use of another's fence .. .. .	48, 53
 <b>FIELD CORNETS</b>	
powers and duties of .. .. .	197
 <b>IMMIGRATION</b>	
prohibited immigrant	
amended definition of .. .. .	452
removal from Colony of certain persons .. .. .	452
 <b>IMMORALITY</b>	
between white woman and native .. .. .	86
enticing to commission of acts of .. .. .	87
indecent exposure for purpose of .. .. .	87
keeping of brothel	
definition of .. .. .	86
male person living on earnings of prostitution	
penalty on .. .. .	87
male person with male person .. .. .	87
soliciting for .. .. .	87
unlawful carnal connection, etc., with girl under sixteen years .. .. .	87
 <b>INFECTIOUS DISEASES</b>	
power to alter list of .. .. .	196
 <b>INTER-COLONIAL COUNCIL</b>	
“employment under the Council” .. .. .	29
estimates of expenditure for 1907-08 to remain of force .. .. .	22
pensions and gratuities	
continuance of payment of .. .. .	29
convention providing for payment of, to be interdependent with convention of even date .. .. .	30
proportion by each Government of .. .. .	29
to non-transferred constabulary officer .. .. .	32
to non-transferred Inter-Colonial Council officer other than a railway or constabulary officer ..	32
to non-transferred railway officer .. .. .	31
to other transferred officer .. .. .	31, 145
to persons transferred to services other than those of the Transvaal or the Orange River Colony or the new Administration .. .. .	32
to transferred Cape railway officer .. .. .	31
to transferred constabulary officer .. .. .	31

IRRIGATION—(see Water)	PAGE
<b>JUVENILE OFFENDERS</b>	
power to try privately .. .. .	286
<b>LAND AND AGRICULTURAL BANK</b>	
accounts of	
publication and keeping of .. .. .	450
board of management of	
vacation of office by members of .. .. .	445
covenants and conditions to be implied in mortgages	450
execution of documents .. .. .	445
fencing	
advances for .. .. .	45, 46
certain provisions of Land and Agricultural Bank Act, 1907, not to apply to advances for .. .. .	48
interest on advances for .. .. .	46
materials to be supplied at cost price .. .. .	47
repayment of advances for .. .. .	46
security for advances for .. .. .	46
supply of materials for .. .. .	47
funds of .. .. .	446
loans by	
calling up of, where improperly applied .. .. .	448
interest on .. .. .	446
limitation of, on securities already mortgaged .. .. .	446
mode of .. .. .	446
purposes for which, may be made .. .. .	445
readjustment of .. .. .	449
repayment of .. .. .	446
repayment of, before maturity .. .. .	447
to co-operative societies .. .. .	448
officers of	
application of certain provisions of Public Service and Pensions Act to .. .. .	148
reserve fund .. .. .	450
signing of cheques .. .. .	445
<b>LAW AGENTS</b>	
admission as attorneys of .. .. .	296
special examination for .. .. .	296
special examination for, to be equivalent to Transvaal Law Certificate Examination .. .. .	297
<b>LEPROSY</b>	
interim reception order	
transmission of, to Colonial Secretary .. .. .	1
repeal .. .. .	2
superintendents of asylums	
appointment of .. .. .	2
duties of .. .. .	2
powers of, to try certain offences .. .. .	2



LIQUOR	PAGE
distillation of spirits from the produce of the vine ..	19
LUNACY	
criminal lunatics	
detention of .. .. .	4
discharge of .. .. .	9
discharge of lunacy patients from asylum by Asylums Board .. .. .	9
Governor's pleasure lunatic	
ceasing to be such .. .. .	4
discharge of .. .. .	9
maintenance of lunatics .. .. .	5
“member of Asylums Board” to be substituted for “visitor” and “official visitor” .. .. .	5
repeal .. .. .	5
transmission of medical report to Attorney-General..	3
unrecovered discharged lunatics .. .. .	5
MAGISTRATES COURTS	
establishment of new districts .. .. .	285
fees of advocates appearing before .. .. .	287
garnishee orders not to be issued in respect of salary or wages .. .. .	287
special provisions as to District of Johannesburg ..	286
use of Dutch language in .. .. .	286
NATIVES	
taxation of	
“adult” .. .. .	33
amount of .. .. .	34
arrest without warrant .. .. .	38
burden of proving payment of .. .. .	35
certificate to farm labourer .. .. .	37
certificate to municipal location resident .. .. .	37
certification of number of farm labourers by proprietor .. .. .	37
certification of number of municipal location residents .. .. .	37
date of payment of .. .. .	34
exemption from .. .. .	35
“farm labourer” .. .. .	33
jurisdiction of magistrates and native commissioners	
to try offences against Native Tax Act, 1908 ..	37
method of enforcing payment .. .. .	35
penalty for depriving native of use of receipt ..	36
penalty for fraudulently using receipt .. .. .	36
penalty for non-payment .. .. .	35
production of receipts and other documents ..	36
repeal of laws .. .. .	33

PENSIONS (see Public Service ; Railways ; and Police)	PAGE
<b>POLICE</b>	
application of certain provisions of Public Service and Pensions Act to .. .. .	148
appointment of special constables .. .. .	17
boards of officers	
confirmation of sentences by .. .. .	14
constitution of .. .. .	13
summoning of witnesses before .. .. .	13
Commissioner of, to have command .. .. .	11
composition of .. .. .	10
employment in times of emergency of .. .. .	11
limitation of actions .. .. .	16
members of	
contravention of Transvaal Police Act by .. .. .	13
contravention of Transvaal Police Act by, below	
rank of superintendent .. .. .	13
dismissal of .. .. .	15
disposing of Government property by .. .. .	15
duties of .. .. .	11
non-attachment of salary or allowances of .. .. .	16
not to assign salary or allowance .. .. .	16
not to resign in time of emergency .. .. .	12
penalty for unlawfully pretending to be .. .. .	16
period of imprisonment not to count as service in .. .. .	14
powers of .. .. .	11
reduction of .. .. .	15
rewards to .. .. .	16
suspension of .. .. .	15
offences under Transvaal Police Act, 1908, not neces- sarily to be prosecuted under provisions thereof .. .. .	15
officers of	
appointment of .. .. .	11
particular places of incarceration .. .. .	14
pensions to .. .. .	134
calculation of .. .. .	137
to be paid out of revenue .. .. .	137
widows and minor children of, killed in execution of duty .. .. .	135
when injured in execution of duty .. .. .	135
withdrawal of .. .. .	136
property of force	
not to be seized or attached for debt .. .. .	15
penalty for unlawfully receiving or having .. .. .	15
repeal of laws .. .. .	10
retirement of policemen .. .. .	135
 <b>PRECIOUS AND BASE METALS</b>	
application of money from rights to mine under reser- vations .. .. .	386

PRECIOUS AND BASE METALS—(continued)	PAGE
base metals	
on Crown Land .. .. .	415-7
on private land .. .. .	417
royalties .. .. .	417
bezitrecht	
issue of certificate of .. .. .	386-8
issue of certificate of, notwithstanding certain defects .. .. .	388
claims	
abandonment of .. .. .	381
diagram may be required of .. .. .	377
dimension and shape of .. .. .	377
excess pegging of .. .. .	378-9
lapsing of .. .. .	378
lapsing to Crown of abandoned	
maintenance of beacons .. .. .	378
pegging of .. .. .	376
procedure on lapsing of .. .. .	408
provision on lapsing of, belonging to estate of deceased person or insolvent .. .. .	408
renewal of prospecting license .. .. .	379
report to beacon inspector of pegging of .. .. .	377
sketch plan of .. .. .	377
coloured persons	
restriction on residence of, in certain districts .. .. .	421
not to hold rights .. .. .	421
determination of questions of payability .. .. .	417
digger's license	
conversion of prospecting license into .. .. .	379
provisions applicable to .. .. .	379
share of license moneys payable to owner of private land .. .. .	381
transfer of .. .. .	381
discoverers of	
rights and duties of .. .. .	365-6
discovery	
report to Mining Commissioner of .. .. .	364
division of Act .. .. .	358-9
expropriation of rights for public interest .. .. .	425
fees on applications and objections .. .. .	422
Government assistance .. .. .	421
Government Mining Engineer .. .. .	359
grant of certain Government ground as a mynpacht .. .. .	383
holder of mining title may be ordered to commence work .. .. .	418-20
liability to penalties by companies and partnerships .. .. .	424
license moneys	
amount of .. .. .	380
amount payable to owner in respect of land leased or State Mine .. .. .	385
exemptions from payment of .. .. .	380-1
machinery sites .. .. .	395

PRECIOUS AND BASE METALS—(continued)	PAGE
Mines Department	
appointment of officers of .. .. .	361
establishment of .. .. .	359
Mining Commissioner .. .. .	360
jurisdiction of, incidental to investigation .. .. .	418
mining districts .. .. .	359-60
mortgage of claims, stands, etc. .. .. .	417
mynpachts	
beaconing of .. .. .	372-3
conditions of holding of .. .. .	369
duties of holder of mineral rights as to .. .. .	367
grant of certain Government ground as .. .. .	383
issue and renewal of briefs .. .. .	367
size of .. .. .	366
transfer or mortgage of grant of certain Govern- ment ground as a .. .. .	384
native locations	
provisions applicable to .. .. .	371
offences	
imprisonment for .. .. .	424
penalties for .. .. .	423
open proclaimed land	
stands on .. .. .	399
use for agriculture of .. .. .	394
use of .. .. .	394
pegging of claims .. .. .	376
penalties	
for carrying on business on any proclaimed land, except upon a stand .. .. .	406
for inducing coloured person to buy from particular license holder .. .. .	406
for paying wages other than in current coin .. .. .	406
for persons carrying on mining being interested in trading .. .. .	406
power of Governor to enter into certain agreement .. .. .	425
powers of entry on private land .. .. .	418
privileges to volunteers and other persons when under arms .. .. .	409
proclaimed fields .. .. .	417
proclaimed land	
brickmaking, quarrying, etc., on .. .. .	397
construction of railway sidings, power lines, etc., on machinery sites .. .. .	396
penalty for carrying on business on, except upon a trading stand .. .. .	395
validation of unauthorized use of .. .. .	406
validation of unauthorized use of .. .. .	397
production of licenses on demand .. .. .	422
prospecting licenses	
conversion of license into digger's license .. .. .	379
share of license moneys payable to owner of private land .. .. .	381
transfer of license .. .. .	381

PRECIOUS AND BASE METALS—(continued)	PAGE
prospecting on unproclaimed land	
by owner or holder of mineral rights .. ..	362
exclusive right of, in certain areas .. ..	363
investigation as to .. ..	365
land open to public .. ..	361
not permitted in certain places .. ..	364
on land settlement lands and native locations ..	362
on unproclaimed private land which is not declared open .. ..	362
permits for .. ..	363
rights attaching to permits .. ..	363
public diggings	
alternative methods of dealing with .. ..	375
beaconing, etc., of all land before proclamation ..	375
conditions of proclamation of private land as ..	374
deproclamation of .. ..	375-6
effect of proclamation of .. ..	374
leasing of .. ..	382-3
proclamation of .. ..	373
transfer or mortgage of lease of .. ..	384
repeal of laws .. ..	355
reservations	
beaconing of .. ..	372-3
owner's .. ..	371
right of mining for and disposing of precious metals vested in the Crown and of base metals in owner of land .. ..	355
right to mine under <i>bewaarplaatsen</i> , machine stands, etc. .. ..	385
saving of rights of local authorities under Local Authorities Roads Ordinance, 1904 .. ..	425
service of notices and other documents .. ..	422
specially registered claims and stands; procedure when license moneys in arrear .. ..	408-9
stands	
beacons and diagrams .. ..	400
enlargement of existing .. ..	398
granted under prior laws .. ..	398-9
industrial .. ..	399
licenses for .. ..	400
on ground held under mining title .. ..	400-1
on open proclaimed land .. ..	399
procedure on lapsing of .. ..	407
provisions on lapsing of, belonging to estate of deceased person or insolvent .. ..	408
trading to be carried on on, only .. ..	400
State Mine	
establishment of .. ..	384
provisions applicable to working of .. ..	385
State Mining School .. ..	420

PRECIOUS AND BASE METALS—(continued)	PAGE
surface of land held under mining title	
permission to use .. .. .	392
prohibition against fencing of .. .. .	394
reservation to Government of rights .. .. .	392
use for public and certain other purposes of ..	393
trading stands	
application for certificates for .. .. .	402
appointment of board to select, in Johannesburg, Boksburg, and Krugersdorp Districts .. .. .	400
beaconing of .. .. .	402
cancellation and suspension of certificates for ..	404
conditions of grants, renewals, or transfers of certifi- cates for .. .. .	404
existing .. .. .	401
expiration of certificate for .. .. .	403
jurisdiction of board to select, in Johannesburg, Boksburg, and Krugersdorp Districts .. .. .	400
objections to grant of certificates for .. .. .	402-3
penalty for carrying on business on proclaimed land except upon a .. .. .	406
penalty for inducing coloured person to buy from particular license holder .. .. .	406
publication of list of .. .. .	402
renewal of certificates for .. .. .	403
rent and license moneys .. .. .	405
returns to Mining Commissioner concerning ..	405
selection of .. .. .	400-1
special offences in relation to holders of .. .. .	405
transfer of certificate for .. .. .	403
transfer or mortgage of grant of certain Government ground as a mynpacht .. .. .	384
unwrought precious metal	
accessories and persons attempting to contravene provisions as to .. .. .	414
burden of proof of being licensed to deal in ..	412
contravention by holder of license to deal in ..	412
disabilities entailed by conviction for offences as to	414
disposal by Crown of, in case of conviction ..	414
issue of licenses to deal in .. .. .	411
maliciously placing, on premises with intent ..	414
penalty for receiving, from coloured persons ..	414
penalty on coloured persons dealing, etc., in ..	414
prohibition of dealing in, at certain times ..	412
prohibition of payment of debts or wages in ..	413
register of .. .. .	413
regulations as to dealing in .. .. .	411
unlawful dealing in .. .. .	410
unlawful possession of .. .. .	411
water	
application for rights .. .. .	389
beaconing off of rights .. .. .	390
cancellation of rights for improper use .. .. .	391

PRECIOUS AND BASE METALS—(continued)	PAGE
water—(continued)	
confirmation of rights .. .. .	390
duty to construct bridges over furrows traversing roads and footpaths .. .. .	392
lapsing of existing unattached rights .. .. .	391
lapsing of rights .. .. .	391
no proprietary right to .. .. .	388
not to be used without right .. .. .	389
regulations as to use of .. .. .	392
transfer and removal of rights .. .. .	390
who may obtain rights .. .. .	389
 PRECIOUS STONES	
profits	
agreements as to application of, before distribution	289
assessment by Government officer of .. .. .	289
calculation and division of .. .. .	288
division of assets created out of .. .. .	289
repeal .. .. .	288
 PRESCRIPTION	
<i>actiones redhibitoria</i> and <i>quanti minoris</i> .. .. .	201
commencement of .. .. .	204
exclusion, extension, or renunciation of .. .. .	204
in actions for defamation of character .. .. .	201
in cases of liquid documents and written contracts ..	202
in cases of professional fees, debts, salaries, oral contracts, rent, interest, or damages for tort .. .. .	202
in cases where no prescription fixed .. .. .	202
in mixed actions .. .. .	202
in proceedings for <i>restitutio in integrum</i> .. .. .	202
in regard to immovable property and servitudes ..	204
interruption of .. .. .	203
in vindicatory actions against <i>bona fide</i> possessors of movables .. .. .	202
non-interruption of .. .. .	204
repeal of laws .. .. .	201
suspension of .. .. .	203
to apply to all persons indiscriminately, but limited as against the Crown .. .. .	205
 PRISONS	
pensions to subordinate officers .. .. .	136
calculation of .. .. .	137
to be paid out of revenue .. .. .	137
subordinate officers of; application of certain provisions of Public Service and Pensions Act to ..	148
 PUBLIC MONEYS	
appropriation of, to particular services	
for redemption of Selati Railway debentures ..	116

PUBLIC MONEYS—( <i>continued</i> )	PAGE
appropriation of, to particular services—( <i>continued</i> )	
for year ended 30th June, 1907 .. .. .	20
for year ended 30th June, 1908 .. .. .	41
for year ending 30th June, 1909 .. .. .	1, 83
special warrants for issue of .. .. .	85
PUBLIC PROSECUTORS	
special qualifications in respect of .. .. .	122
PUBLIC SERVICE	
application of Act to teachers, police, subordinate officers of prisons, and Land Bank officials ..	148
appointments in	
qualification for .. .. .	120
temporary .. .. .	122
termination of .. .. .	121
to be made by Governor .. .. .	121
Board	
appointment of .. .. .	119
duties of .. .. .	119
dismissal from .. .. .	119
division of .. .. .	119
general	
age of retirement from .. .. .	138–9
appointments to and removals from .. .. .	122
conditions of temporary employment .. .. .	122
forfeiture of contributions to provident fund .. .. .	139
members of, retiring before prescribed age .. .. .	139
offences by officers in .. .. .	124
pensions to dependents of members of, on death .. .. .	139
previous service of members of .. .. .	139
incremental pay .. .. .	145
leave of absence .. .. .	145
misconduct .. .. .	123
offences	
by officers in Administrative and Clerical Service .. .. .	123
by officers in General Service .. .. .	124
general .. .. .	123
officers of	
transfer from one department to another of .. .. .	119
whole time of, to be at disposal of Government .. .. .	145
pension fund	
arrear contributions to .. .. .	126
contributions out of general revenue to .. .. .	127
contributions to .. .. .	125
contributions to, to be deducted from salaries .. .. .	126
establishment of .. .. .	124
interest on amounts lodged with Treasury .. .. .	125
investment of balance of .. .. .	125
lodging with Treasury of amounts contributed to .. .. .	124
quinquennial valuation of .. .. .	127
refund of contributions to .. .. .	125



PUBLIC SERVICE—(continued)	PAGE
pension fund—(continued)	
pensions of certain persons not to be charged on..	127
pensions	
calculation of, to police, prison officials, and nurses in asylums, etc. . . . .	137
calculation of service for . . . . .	129
certain, to be paid out of revenue . . . . .	128
commutation of small . . . . .	146
gratuity to female officers on marriage . . . . .	133
gratuity to widows of officers dying while in Service not to be assigned or executable . . . . .	132 147
of certain persons not to be charged on fund . . . . .	127
of policemen, prison officers, and nurses in asylums to be paid out of revenue . . . . .	137 132
recalling to office of certain persons in receipt of . . . . .	146
reduction of . . . . .	130
scale of . . . . .	146
suspension or forfeiture of . . . . .	147
to cease on conviction . . . . .	147
to cease on insolvency, but may be restored on rehabilitation . . . . .	147 147
to clerical staff of Governor's office transferred from Cape of Good Hope . . . . .	146 146
to dependents in case of death of member of General Service . . . . .	139 139
to medically unfit officers . . . . .	131
to members of nursing staff in asylums, etc. . . . .	136-7
to officers retiring in consequence of injury or per- manent ill-health occasioned in course of duties..	132 132
to officers transferred to other Governments . . . . .	133
to officials of late South African Republic.. . . .	141-2
to policemen . . . . .	134-6
to subordinate officers in prisons . . . . .	136
to teachers . . . . .	140-1
to transferred members of South African Con- stabulary . . . . .	145 145
to transferred officials . . . . .	124
to transferred officials from Inter-Colonial Council . . . . .	145
to whom, not payable . . . . .	133
position of Auditor-General . . . . .	148
probationary appointments in . . . . .	120
confirmation of . . . . .	121
termination of . . . . .	121
provident fund	
contributions by officers to . . . . .	138
contributions from revenue to . . . . .	138
establishment of . . . . .	137
forfeiture of contributions to . . . . .	139
management of . . . . .	138
payments out of, not to be assignable or executable . . . . .	147
pensions payable out of . . . . .	138
quinquennial valuation of . . . . .	138

PUBLIC SERVICE—(continued)		PAGE
qualifications for appointment in .. .. .		120
recalling to office of certain pensioned officers ..		131-2
reduction of pay and suspension of increments ..		144
retirement from		
age of .. .. .		128
age of, of officers employed in asylums .. ..		129
special qualifications in respect of magistrates and public prosecutors .. .. .		122
 RAILWAY BOARD		
absence of members of .. .. .		24
appointment of <i>domicilium citandi et executandi</i> at Bloemfontein by .. .. .		24
appointment of servants by .. .. .		153
chairman of .. .. .		24
powers of .. .. .		24
constitution of .. .. .		23
delegation of powers by .. .. .		154
meetings of		
notice of .. .. .		24
place of .. .. .		24
times of .. .. .		24
position of staff of .. .. .		190
powers of .. .. .		24
to construct new lines .. .. .		26
to expropriate railway lines .. .. .		26
to make regulations .. .. .		189
quorum of .. .. .		24
regulations by .. .. .		160
revocation of appointment to .. .. .		24
vesting of railway assets in .. .. .		23
 RAILWAYS		
accidents		
enquiry into .. .. .		79
reporting of .. .. .		79
returns of .. .. .		79
Auditor of		
annual report of .. .. .		25
appointment of .. .. .		25
duties of .. .. .		25
inspection of books by .. .. .		26
suspension of .. .. .		25
Belfast-Lydenburg		
advance to Board of money for construction of ..		199
approval of .. .. .		199
working by Board of .. .. .		200
budget of		
preparation of .. .. .		26
provisions for renewals and betterment in ..		26

RAILWAYS—(continued)	PAGE
compensation for loss of or injuries to stock ..	77
constables	
appointment of .. .. .	81
breach of duty by .. .. .	82
list of appointments and dismissals of, to be sent to magistrates .. .. .	81
powers and area of jurisdiction of .. .. .	82
contracts between Postmaster-General and Adminis- tration .. .. .	80
convention for working of	
arbitration in case of dispute on termination of ..	27
provision for termination of .. .. .	27
to be inter-dependent with convention of even date	27
estimates of expenditure for 1907-08 to remain of force .. .. .	22
execution of documents .. .. .	22
fares	
amount of excess .. .. .	60
conditions of acceptance .. .. .	59
recovery of .. .. .	62
refund of .. .. .	59
to be posted up .. .. .	58
future legislation regarding .. .. .	27
General Manager of .. .. .	25
report by .. .. .	25
goods	
conditions of acceptance of .. .. .	64
cost of detention and examination of .. .. .	68
dangerous .. .. .	68
destroyed, etc., on other lines .. .. .	70
detention of .. .. .	68
disposal of .. .. .	65
false statement of .. .. .	67
liability for animals and birds .. .. .	69
liability for articles of special value .. .. .	70
liability for freight .. .. .	64
liability for .. .. .	63, 66, 68
lien for freight .. .. .	64
particulars to be supplied .. .. .	67
proof of manner of loss not necessary .. .. .	71
recovery of freight by action .. .. .	65
sale of, liable to customs duty .. .. .	71
sale of, to produce freight payable .. .. .	64-5
sale of unclaimed .. .. .	65
time of claim for refund of freight and compensation	70
warehousing of .. .. .	66
headquarters of administration .. .. .	24
incorporation of administration under name of Central South African Railways .. .. .	21
incorporation of .. .. .	25
indemnification of certain persons .. .. .	22
keeping of books and accounts of .. .. .	26

RAILWAYS—(continued)	PAGE
legal proceedings	
court may order medical examination of person claiming compensation for injury .. ..	78
limitation of actions .. .. .	78
property not to be attached .. .. .	78
to be brought against administration in its corporate name .. .. .	78
liabilities of, for accidents .. .. .	59
losses of; making good of .. .. .	26
luggage	
free conveyance of .. .. .	63
lien on .. .. .	63
loss of .. .. .	63
registration of .. .. .	63
new	
construction of .. .. .	26
expropriation of .. .. .	26
working of .. .. .	26
observance of prior conventions and agreements ..	27
offences	
altering or defacing pass or ticket .. .. .	61
desertion or refusal to serve by servants .. ..	72
drunkenness of railway servants .. .. .	71
endangering the safety of persons by railway ser- vants .. .. .	71
false statement of goods .. .. .	67
forging of tickets .. .. .	61
fraudulently claiming compensation for loss of stock .. .. .	77
fraudulently travelling or attempting to travel ..	62
general .. .. .	73-6
grave .. .. .	76
refusing to pay excess fare .. .. .	61
servants demanding more than is due .. .. .	72
servants resigning without notice .. .. .	72
transferring tickets .. .. .	62
passengers	
administration may refuse to carry certain persons as .. .. .	59
not to travel without pass or ticket .. .. .	60
travelling beyond places authorised .. .. .	60
travelling in higher class .. .. .	60
travelling without pass or ticket .. .. .	60
pensions and gratuities	
continuous employment for purposes of .. .. .	29
convention providing for payment of, to be inter- dependent with convention of even date .. ..	30
pensions to servants	
Auditor of Inter-Colonial Council and Statistician to old Administration .. .. .	187
commutation of small .. .. .	191
continuity of employment for purposes of .. ..	192

RAILWAYS—( <i>continued</i> )	PAGE
pensions to servants—( <i>continued</i> )	
diminution of .. .. .	191
not assignable or executable .. .. .	190
recalling of servant after granting of .. .. .	192
regulations as to .. .. .	188-9
to cease on conviction .. .. .	191
to cease on insolvency.. .. .	191
withdrawal of .. .. .	190
pensions to transferred servants	
absence on leave .. .. .	183
age of superannuation .. .. .	179
benefits to widow and children .. .. .	179
compensation for abolition of office, etc. .. .. .	181
computation of annuity .. .. .	183
contributions .. .. .	178
description of transferred servants .. .. .	177-8
employment to be continuous .. .. .	183
gratuity to widow or dependents of deceased servant killed in discharge of duty .. .. .	181
increases of .. .. .	182
not to be paid to certain persons .. .. .	179
pensionable emoluments .. .. .	183-4
rate of contributions .. .. .	178
re-appointment after retirement .. .. .	182
retirement owing to injury or permanent ill-health..	180
scale of .. .. .	180
to be calculated on actual period of employment..	184
to be paid on retirement from all offices ... .. .	184
to be paid out of revenue .. .. .	184
pensions to widows of transferred servants	
amount of .. .. .	186
arrangement with Government of Cape Colony as to	185
commutation of .. .. .	187
contributions to .. .. .	185
payment out of revenue of .. .. .	187
refund of contributions .. .. .	187
special contributions .. .. .	186
powers of Administration	
to make charges for transport and conveyance of traffic .. .. .	56
to make regulations .. .. .	56
to transport and convey traffic .. .. .	56
to use locomotive engines .. .. .	56
profits of; application of .. .. .	26
ratification of conventions between Transvaal and Orange River Colony .. .. .	21
redemption of Selati Railway debentures .. .. .	116
regulations; copies of, to be kept at stations .. .. .	58
repeal of laws .. .. .	54
revenues; appropriation of .. .. .	22
rolling stock; apportionment of .. .. .	26

RAILWAYS—(continued)	PAGE
servants	
age of retirement of .. .. .	169
annuities to .. .. .	168-9
appointment of .. .. .	153
arrest by .. .. .	81
compensation on retrenchment of .. .. .	156
confirmation of probationary appointments of .. .. .	154
delivery to Administration of railway property by .. .. .	73
demanding more than is due .. .. .	72
desertion by .. .. .	72
dismissal or reduction of .. .. .	155
disputes between Administration and .. .. .	72
drunkenness of .. .. .	71
endangering safety of passengers by .. .. .	71
guilty of misconduct .. .. .	160
misconduct by .. .. .	158
probationary appointments of .. .. .	154
procedure on misconduct by .. .. .	159
refusing to serve .. .. .	72
resignation without notice of .. .. .	72
service	
discipline in .. .. .	158
division of .. .. .	153
position of Auditor .. .. .	190
position of staff of Board .. .. .	190
promotion in .. .. .	155
regulations as to .. .. .	188
to be public service for purposes of Workmen's Compensation Act, 1907 .. .. .	190
superannuation fund	
continuance in case of termination of Convention of .. .. .	30
deficiency in .. .. .	30
establishment of .. .. .	29
quinquennial valuation of .. .. .	30
surplus in .. .. .	30
superannuation fund for non-transferred servants	
accounts of .. .. .	176
additional annuities from .. .. .	169
additional contributions to .. .. .	164
admission of females to .. .. .	176
age of retirement of servants .. .. .	169
amalgamation of, with other funds .. .. .	161
annuities from .. .. .	168
arrear contributions to .. .. .	165
calculation of pensions .. .. .	174
continuity of employment for pension purposes .. .. .	173
contributions by Administration .. .. .	168
contributions of members on leave .. .. .	167
contributions to .. .. .	164
contributions to, to be deducted from salaries .. .. .	166
cost of administration of .. .. .	177
date of commencement of contributions to .. .. .	164

RAILWAYS—(continued)	PAGE
superannuation fund for non-transferred servants— (continued)	
death after superannuation .. .. .	172
death before superannuation .. .. .	172
dismissal of servants .. .. .	171
division of .. .. .	161
establishment of .. .. .	160
investment of balance of .. .. .	168
management of .. .. .	161
members of, transferred to other services .. ..	163
payments on which contributions based .. ..	166-7
pension not to be paid during tenure of office ..	173
persons transferred from service after date of estab- lishment of .. .. .	175
persons transferred to service after date of estab- lishment of .. .. .	174
qualifications for membership of .. .. .	162
quinquennial valuation of .. .. .	177
re-employment of pensioned servant .. .. .	173
retirement of servants due to inefficiency .. ..	171
retirement of servants entering the service when over fifty .. .. .	172
retirement of servants on ill-health, etc. .. ..	170
retirement of servants on retrenchment, etc. ..	171
servants transferred to or from joint service ..	163
voluntary retirement of servants .. .. .	170
telegraphs and telephones	
contracts between Postmaster-General and Adminis- tration .. .. .	80
fixing of wires .. .. .	80
power to erect .. .. .	79
use by public of .. .. .	80
vesting of .. .. .	80
tickets	
altering or defacing .. .. .	61
conditions of issue .. .. .	59
forging of .. .. .	61
transferring of .. .. .	62
using of already used .. .. .	62
time-tables to be posted up .. .. .	58
 REGISTRATION OF MINING TITLES	
conditions of .. .. .	281
Deeds Office Law applied to .. .. .	283
diagrams not approved by Surveyor-General to be approved if found correct .. .. .	285
division of undivided hypothecated title .. ..	281
hypothecation for future debts .. .. .	283
provision in case of insolvency .. .. .	282
Registrar	
appointment and duties of .. .. .	279

REGISTRATION OF MINING TITLES—(continued)	PAGE
Registrar—(continued)	
Assistant .. .. .	284
powers of .. .. .	280
registration office; establishment of .. .. .	279
repeal of laws .. .. .	277
transfer only to be cancelled by order of Court .. .. .	281
transmission by Mining Commissioner of documents in connection with grants of surface rights .. .. .	283
validation of issue or renewal of licenses by District Registrars, etc. .. .. .	284
when separate deeds of transfer necessary or unnece- sary in transferring more than one interest .. .. .	281
<b>REGULATIONS (POWER TO MAKE)</b>	
as to unwrought precious metals .. .. .	411
as to use of water under Precious and Base Metals Act .. .. .	392
by Railway Board under Inter-Colonial Conventions Ratification Act, 1908 .. .. .	25
under Asiatics Registration Amendment Act .. .. .	443
under Irrigation Act .. .. .	244
under Leprosy Act .. .. .	2
under Mining Titles Registration Act .. .. .	283
under Native Tax Act .. .. .	38
under Precious and Base Metals Act .. .. .	422
under Public Service and Pensions Act .. .. .	142
under Railway Service and Pension Act .. .. .	160, 161, 188
under Railways Regulation Act .. .. .	57
under Townships Amendment Act .. .. .	342
under Transvaal Police Act .. .. .	12
<b>SELATI RAILWAYS</b>	
redemption of debentures .. .. .	116
<b>SHOP HOURS</b>	
application of Act .. .. .	290
businesses exempted from Act .. .. .	292
closing of shops on public holidays .. .. .	293
for areas other than Pretoria and Witwatersrand .. .. .	292
for Pretoria and Witwatersrand area .. .. .	291
limitation of hours for auctioneers, pedlars, and hawkers .. .. .	293
limitation of time for prosecution of offences against Act .. .. .	295
limiting of hours of shop assistants .. .. .	294
penalties .. .. .	294
repeal of laws .. .. .	290
sale in eating-houses, etc., after closing hours pro- hibited, except as to food and drink to be consumed on the premises .. .. .	294
saving as to certain days and circumstances .. .. .	293
shops doing mixed business .. .. .	294
special hours for closing certain shops .. .. .	293



TAXES	PAGE
abolition in Pretoria of land .. .. .	116
land taxes to be a debt due to the Crown .. ..	116
repeal of law .. .. .	116
TOWNSHIPS	
alteration in general plans of .. .. .	336
any number of lots, etc., may be included in one deed .. .. .	340, 345
application of Act.. .. .	298-9
Burgersdorp	
confirmation of reservation of stands for Rand Aid Association .. .. .	318
provision where more than one person in occupation of a stand .. .. .	318
terms of freehold title in .. .. .	317
valuation of certain stands in .. .. .	318
certain deeds may be issued by Registrar of Deeds or Rand Townships Registrar .. .. .	334
certain deeds to be registered in triplicate .. ..	333-4
certificate of township title .. .. .	329
cession, transfer, or mortgage of certain leases ..	336
deeds of grant and certificates of freehold title	
arrears stand licenses, fines, and costs to be paid before grant of .. .. .	343
exemption of, from transfer duty or stamp duty ..	342
endorsement by Registrar of Deeds on title deeds ..	329
freehold title	
certificate of, to be subject to existing bonds, servitudes, etc. .. .. .	340
effect of issue of .. .. .	341
form of .. .. .	339
to be granted in future .. .. .	312
Government	
application of payments to Government in, situate within a municipality .. .. .	308
mode of obtaining freehold title in .. .. .	305
title to stands registered in name of .. .. .	344
Heidelberg	
issue of freehold title in respect of stands in township of .. .. .	328
in Mining District of Krugersdorp	
administration of certain area by Council as brick-fields .. .. .	326
certain areas to be deemed a Government township	325
certain portion of farm Paardekraal to be a private leasehold township .. .. .	327
inapplicability of certain Volksraad Resolutions ..	324
vesting of freehold title of Paardeplaats in Municipality of Krugersdorp .. .. .	326
liability of registered holder or registered owner ..	344
lodging of diagrams and title deeds .. .. .	329

TOWNSHIPS—( <i>continued</i> )	PAGE
Newtown	
provisions applicable to .. .. .	323
on proclaimed land	
establishment of .. .. .	300
reservation of land for .. .. .	300
on Randjeslaagte and Braamfontein	
agreements as to boundaries of adjoining stands or lots .. .. .	315
appeal to arbitration board against boundary fixed by Surveyor-General.. .. .	314
constitution, powers, and jurisdiction of arbitration board .. .. .	315-6
final boundaries of .. .. .	315
fixing and marking boundaries of stands and lots..	314
framing of general plans of .. .. .	313
procedure before arbitration board .. .. .	316
surveyed area of stand or lot to be the area on which title is granted .. .. .	317
owners of	
duties of, approved after commencement of Townships Amendment Act .. .. .	331
to lodge diagram and title deeds .. .. .	328-9
private leasehold	
collection of moneys by registering officer ..	310
conditions of obtaining certain benefits by owners of .. .. .	311
mode of obtaining feehold title in .. .. .	308
mode of obtaining freehold title in, where township owner is not the freehold owner .. .. .	309
procedure where license moneys are in arrear ..	311
records of, to be filed with registering officer ..	338
survey of.. .. .	330
processes may be served on Registrar of Deeds or Rand Townships Registrar .. .. .	335
processes served on Registrar of Deeds or Rand Townships Registrar to be in duplicate .. .. .	335
Prospect Township	
conditions of grant of freehold title in .. .. .	320
form of survey .. .. .	322
mode of establishing claims to rights in .. .. .	321
power to proclaim .. .. .	319
standholder under Law 15 of 1898 to be deemed a registered holder .. .. .	323
surveys .. .. .	321
trading in .. .. .	323
provision for delay in obtaining certificate owing to general plan not being filed .. .. .	344
Rand Townships Registrar	
appointment of .. .. .	331
to follow law applicable to Deeds Office .. .. .	333
transmission of documents to .. .. .	332, 340
Rand townships registration office; establishment of	331

TOWNSHIPS—(continued)	PAGE
receipts where payment made to mining commissioner Registrar of Deeds; transmission of documents and information to .. .. .	312 332, 340
registration of stands or lots until conversion into freehold .. .. .	335
registration of title in; Deeds Office procedure to apply to .. .. .	333
reservation of mineral rights from freehold title ..	345
semi-Government	
application of payments to Government in, situate within a municipality .. .. .	308
conditions of obtaining certain benefits by owners of .. .. .	311
extension of, at Roodepoort .. .. .	308
“Fairview” to be deemed a .. .. .	307
Government’s portion of stand licenses to be paid for limited time only .. .. .	306
mode of obtaining freehold title in .. .. .	307
procedure where license moneys are in arrear ..	311
record of, to be filed with registering officer ..	338
remission of payments due to Government ..	307
survey of .. .. .	330
separate diagrams of stands or lots not necessary ..	342, 345
service of notices and other documents .. ..	345
stand	
certain provision of Law 15 of 1898 to apply to certain .. .. .	299
Government stands in .. .. .	299
validation of existing .. .. .	300
transfer of township or portion thereof .. ..	337-8
validation of certain non-notarial documents executed in good faith which should have been executed notarially .. .. .	335
vesting of mineral rights .. .. .	343
Vrededorp	
conversion of title in .. .. .	319
to be deemed a private leasehold township for certain purposes .. .. .	331
where registration of title to be effected .. ..	332
within a municipality .. .. .	302
establishment of .. .. .	301-2
 <b>VOLUNTEERS</b>	
commandant of	
powers and jurisdiction of, may be exercised by other officer .. .. .	195
 <b>WATER—(see also Precious and Base Metals)</b>	
application of fines .. .. .	246
award of damages by court of resident magistrate ..	246
co-operative irrigation societies .. .. .	228

WATER—(continued)	PAGE
courts	
appeals against orders or awards of .. .. .	235
arbitration instead of submitting dispute to .. .. .	236
constitution of .. .. .	232-3
exclusive jurisdiction of, in the first instance .. .. .	233
jurisdiction of, as to claims for servitudes .. .. .	240
orders or awards of .. .. .	234
procedure in .. .. .	234, 237
registration against title of orders and awards of .. .. .	236
special cases to Supreme Court by .. .. .	234
exemptions from operation of Act .. .. .	228, 247
general powers of Governor .. .. .	209
Government irrigation and drainage works	
commutation of rates for use of .. .. .	210
construction of .. .. .	210
not to be subject to jurisdiction of river board .. .. .	210
rates for use of .. .. .	210
recovery of rates for use of .. .. .	210
Irrigation Department	
appointment of Chief Engineer .. .. .	209
appointment of officers of .. .. .	209
establishment of .. .. .	208-9
functions of .. .. .	208-9
loans	
application for .. .. .	242
particulars to be supplied on application for .. .. .	242
to proprietors .. .. .	242
to river boards .. .. .	242
offences and penalties .. .. .	245
power greater than ten horse power .. .. .	230
private .. .. .	229
protection of weirs and other obstructions erected	
before commencement of Irrigation Act .. .. .	246
public .. .. .	229
primary, secondary, and tertiary uses of .. .. .	229
rights of proprietors on change of course of public	
stream .. .. .	231
storage of surplus .. .. .	230-1
surplus, may be diverted on to non-riparian farms	
or across the watershed .. .. .	230, 231
Rand Water Board .. .. .	228
regulations .. .. .	244
repeal of laws .. .. .	205
right of entry upon land .. .. .	243
river boards	
authentication of documents, etc. .. .. .	220
bye-laws by .. .. .	227
casual vacancies .. .. .	217
chairman of .. .. .	218
claims and objections to voters .. .. .	213-4
constitution of .. .. .	212
Crown farms subject to jurisdiction of .. .. .	228

WATER—(continued)	PAGE
river boards—(continued)	
date of assumption of office of .. .. .	217
disqualification of members of .. .. .	217
election of .. .. .	215-6
engineer to assist .. .. .	218
execution of contracts .. .. .	220
expenses of election of members of .. .. .	216
final list of voters .. .. .	214
general duties of .. .. .	222
general powers of .. .. .	220-2
grants to .. .. .	226
inspection of final list of voters .. .. .	214
irrigation rates .. .. .	225
joint committees .. .. .	227
loans to .. .. .	242
minutes of meetings of .. .. .	219
nomination of candidates .. .. .	214
not to exercise jurisdiction over Government irrigation and drainage works .. .. .	210
not to remove weir constructed before commencement of Irrigation Act .. .. .	223
officers of .. .. .	220
ordinary meetings of .. .. .	219
outgoing members to hold office until new members appointed .. .. .	219
payments only to be made in pursuance of resolution .. .. .	220
period of office of .. .. .	217-8
posting up of provisional list of voters .. .. .	213
powers of, may be exercised by Minister as to public streams not in river districts .. .. .	212
power to Governor in regard to defaulting .. .. .	218
Pretoria Municipality exempt from jurisdiction of .. .. .	228
provisional list of voters .. .. .	213
provision in case of failure to elect the proper number of members .. .. .	216
publication of names of elected members of .. .. .	216
qualification of members .. .. .	215
qualification of voters .. .. .	213
quorum of .. .. .	219
raising of loans by .. .. .	226
Rand Water Board exempt from jurisdiction of .. .. .	228
records and accounts of .. .. .	226
recovery of river rates .. .. .	225
revenue of .. .. .	223-5, 246
special meetings of .. .. .	219
to be bodies corporate .. .. .	220
to prepare schedule of ratable areas .. .. .	223
transmission to Irrigation Department of final list of voters .. .. .	214
triennial revision of list of voters .. .. .	214

WATER—(continued)	PAGE
river districts	
alteration of boundaries of .. .. .	212
establishment of .. .. .	211
joint committees for .. .. .	227
powers of Minister as public streams not in ..	212
Pretoria Municipality not to be included within ..	228
saving as to powers of mining commissioner and as to proclaimed land .. .. .	247
saving of existing rights .. .. .	247
service of notices and documents .. .. .	244
servitudes	
abutment.. .. .	239
conversion of temporary into permanent .. .. .	241
cost of repairs to joint works .. .. .	239
duty of proprietor of .. .. .	239
jurisdiction of water court as to claims for lapse of .. .. .	240
mode of acquiring .. .. .	239-40
passage of water .. .. .	238
registration of .. .. .	242
registration of, acquired prior to Irrigation Act ..	223
rights of .. .. .	237
storage .. .. .	238
to include right to take materials for works ..	239
special provisions applicable to railway administration .. .. .	246
subterranean	
in dolomite formation presumed to flow in defined channels .. .. .	232
use of .. .. .	232